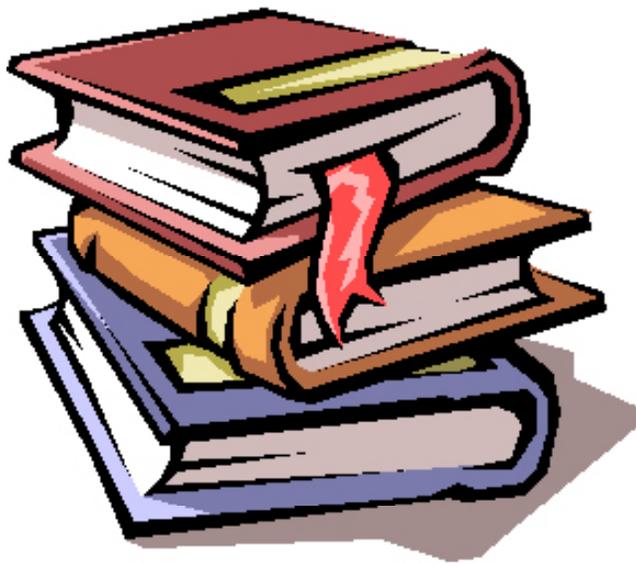


A Civil Service Primer



Prepared by the

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PREFACE

The New York Civil Service Law, Rules and Regulations, along with collective bargaining agreements, are the most important sources of authority affecting public sector employees. Civil Service Rules and Regulations, which have the force and effect of law, provide the system for administering Civil Service Law by prescribing rules for:

- A. Jurisdictional Classification
- B. Position Classification
- C. Examinations
- D. Appointments, Probationary Terms, Promotions, Transfers, Reassignments, and Resignations
- E. Layoff Procedures

Civil Service Rules and Regulations applicable to employees in the State service are established by the State Civil Service Commission and are published in the Rules Section of the Civil Service Rules and Regulations.

Civil Service Rules and Regulations applicable to employees of municipalities, e.g. county, town, village, school district, etc., are established and published by the municipal Civil Service Commission or Personnel Office defined as having authority for the municipality. It is advisable for each municipal bargaining unit to obtain a copy of the Civil Service Rules and Regulations for that municipality, from the appropriate local civil service commission or personnel officer.

MUNICIPAL CIVIL SERVICE RULES

CSEA Local Government bargaining units should obtain a copy of the Civil Service Rules and Appendices that cover their unit. The Rules and Appendices can be obtained from the Municipal Civil Service Commission/Personnel Officer that has jurisdiction for that unit.

Local Civil Service Rules are available:

- On the Civil Service or Personnel Office Web page
- Via a request to the local Civil Service Administration Office
- Via a written Freedom of Information (FOIL) request sent to the Public Information Officer for the specific Civil Service entity of interest.

IMPORTANT: Be sure to request all of the Appendices to the Civil Service Rules, which contain a listing of all titles in the local jurisdiction other than the Competitive Class.

SECTION I

THE CONSTITUTION, THE LAW, THE RULES & REGULATIONS

The administration of Civil Service is governed by the State Constitution, the Civil Service Law, the Civil Service Rules and, in the State service, by the regulations of the President of the Civil Service Commission. Although each of the foregoing has application to civil service procedures, they are listed in their relative order of legal recognition and importance.

The Constitution of the State of New York is the primary law of the State. The Constitution can be amended at a constitutional convention or at any other time the Legislature submits this question to the electors of the State: “shall there be a convention to revise the Constitution and amend the same?” If there is a positive response from the electorate, the convention is held.

The Constitution can also be amended by the passage of a bill by two separate and distinct sessions of the Legislature. “Distinct,” in this case, means two different bodies of Legislators. In some cases, this may mean two successive years, while in other cases it may require a three-year interval. After the second enactment of the Bill, the proposition is placed before the electors at the general election. It is only after the voters have approved the amendment can it become part of the Constitution. The effective date of such an amendment is generally contained in the Bill. This usually is the first date of the calendar year following the general election.

There is one provision of the Constitution that specifically addresses civil service appointments and promotions. This is Article V, Subdivision 6, which mandates that positions be filled by competitive examinations where practicable and contains the basic terms and conditions for granting veterans credits in examinations.

The Civil Service Law is an enactment of the State Legislature. A Legislative Commission last recodified it after a study in 1958. The Law is amended each year by the Legislature. The process is inaugurated by the introduction of Bills in the Legislature. After passing both houses, the Bills are sent to the Governor who either approves or disapproves them. If approved, they are then filed with the Secretary of State. The effective date of a particular piece of legislation will be stated in the legislation. However, that date cannot precede the date it is filed with the Secretary of State.

CIVIL SERVICE RULES

Under Civil Service Law Sections 6 and 20, the State Commission and all local Civil Service Commissions and Personnel Officers have the right to adopt rules. These rules have the force and effect of law. The procedures in the adoption of rules by the State are different from the procedures required of municipalities.

In the State service, the Commission prepares a proposed rule change. They may or may not hold a public hearing on the proposal. They may or may not invite comments from

interested parties or organizations. They do adopt the proposed rule at a Commission meeting.

The State Administrative Procedure Act requires that the proposed rule be published in the State Register for a period of at least 21 days. The Executive Law Section 101-a requires that the Majority Leader of the Senate and the Speaker of the Assembly receive notification of the adoption of any rule at least 21 days before such action. To save time, both notifications to the Secretary of State and to the Legislature, are sent out at the same time.

After the 21 days has elapsed, the proposed rule is sent to the Governor for his/her approval. If the Governor approves the rule, it is filed with the Secretary. It is then and only then that the rule is legally in effect. There is no time limitation for the Governor to act on such proposed rules. Some proposed rules have been kept in the Governor's Office for as long as 4 years without any action taken. So, although the Commission has approved the rule, they cannot put it into effect until it is approved by the Governor and filed with the Secretary of State. Changes in jurisdictional classification are part of the rules. Consequently, if the Commission has proposed placing a position in the exempt or non-competitive class and the Governor has not approved the resolution, the position must still be considered in the competitive class.

In Local Government service, a proposed rule change must be published in the local press for 3 days. The publication need not contain the complete rule and can be only a summary, but it must give the date and place of a public hearing and the place where the complete text can be reviewed. Monitoring proposed rule changes and appearing at public hearings could impede or prevent the adoption of objectionable rules.

Under Civil Service Law Section 20.2, interested individuals can request that they be provided with a 30-day advanced written notice prior to each public hearing to be held in conjunction with any proposed modification(s) of the Civil Service Rules and/or appendices to such Rules of the jurisdiction.

Written requests to have your name added to the mailing list must be filed each year during the month of December. This will entitle you to receive notices for Civil Service public hearings and summaries of proposed rules throughout the next calendar year.

Once the local commission adopts a rule, it is sent to the State Civil Service Commission for their approval or disapproval. If the State Civil Service Commission approves the rule, it is sent to the Secretary of State. It is then and only then that the rule is in effect. Local rule changes are considered at the monthly State Civil Service Commission meetings. Consequently, if your objections are ignored at the local public hearing, you still have an opportunity to write to the State Commission expressing your objections.

In the case of City Civil Service Commission or City Personnel Officers, before a rule change is sent to the State Civil Service Commission, it must be sent to the Mayor for approval. In cities with a City Manager, the approval must be obtained from the officer who

has the general power of appointment. The Mayor has 30 days to act on the rule change. If the Mayor does not act within that period, it is deemed approved.

Regulations have the full force and effect of law. The President of the State Civil Service Commission is empowered to promulgate regulations. Local Civil Service agencies do not have regulations. Although other laws do not require it, the President of the State Civil Service Commission follows the procedure of notifying the Majority Leader of the Senate and the Speaker of the Assembly, as well as having the regulation printed in the State Register for 21 days before the regulation is put into effect.

SECTION II JURISDICTIONAL CLASSIFICATION

The State Constitution requires that “appointments of all promotions in the civil service of the state and all of the civil divisions thereof, including cities and villages, shall be made according to merit and fitness to be ascertained, as far as practicable, by examination which, as far as practicable, shall be competitive.”

The key words here are “as far as practicable.” The State of New York has a unique system for determining and decreeing what positions can be filled by competitive examination. The system is known as the jurisdictional classification of positions.

The Legislature has provided certain guidelines in the Civil Service Law. However, every civil service agency interprets and expands upon these guidelines. The net result is that positions having the same duties and qualifications may be filled in a different manner in different municipal agencies or the state. It is also possible for similarly titled positions in the same agency to be filled in different ways. For example, there are some Assistant Attorney General positions that are filled by competitive examination while others are filled merely by designation of the Attorney General.

All persons who receive payment for wages or salary from a governmental source are either in the military or civil service. Many people have the impression that only those persons who are appointed from eligible lists are in civil service.

The civil service is subdivided into two broad groups: the **unclassified** and the **classified** service.

UNCLASSIFIED SERVICE

The unclassified service contains: all elected officials, all employees of the Legislature and all employees of local legislative bodies whose principal functions are related to legislative functions; all of the executive department who are not heads of such divisions; the heads of departments of government who have the power to appoint and remove employees; all officers and employees of board of elections; and selected other positions designated as being in the unclassified service by either the Commissioner of Education or the Chancellor of State University (CSL Section 35).

In Local Government, unless the person heads a legally constituted department and has the power to hire and fire, his/her position cannot be placed in the unclassified service.

The fact that employees in the Board of Elections are in the unclassified service may seem unusual; however, the reason for this is that election law requires that personnel selected must be equally divided as enrolled in the two major parties. If a clerk is hired as an enrolled Democrat, another clerk must be hired who is an enrolled Republican regardless of whether the workload demands two clerks. Since it is improper in the classified service to inquire as

to the political affiliation of candidates or employees, these positions are placed in the unclassified service.

There are no examinations for filling positions in the unclassified service. Nor is there any tenure attached to these positions other than teachers and teaching assistants. Generally, these persons serve solely at the pleasure of the appointing authority.

CLASSIFIED SERVICE

The classified service is subdivided into four groups: exempt, non-competitive, labor and competitive class (CSL Section 40).

EXEMPT CLASS

The exempt class consists of policy-making positions and some alleged “confidential” positions. If the particular law so authorizes such a position, each state department, each temporary state commission, each municipal board or commission, one clerk and one deputy clerk of any justice of the Supreme Court and one clerk of each elective judicial officer is in the exempt class (CSL Section 41).

The law also contains an omnibus statement that permits placing positions in the exempt class where it is found that filling positions by competitive or non-competitive examination is not practicable.

Any position presently in the exempt class must be re-evaluated when it becomes vacant. A determination must be made within four months after the vacancy occurs. During this period, the position can only be filled on a temporary basis.

LABOR CLASS

The labor class, as its name implies, consists of unskilled laborers. Positions are filled in the labor class by nomination of the appointing officer. The appropriate civil service agency may examine the nominees for their fitness to perform the duties of the position. Generally where this is done, a medical examination is held (CSL Section 43).

NON-COMPETITIVE CLASS

The non-competitive class consists of positions which are not in the exempt or labor class and which the appropriate civil service agency determines that it is not practicable to fill by competitive examination. Appointments to non-competitive class positions are made after the appropriate civil service agency has examined the candidate on a non-competitive basis. Such examination may involve merely the review of the candidate’s qualifications compared to the qualifications established for the positions in the specification standard. The appropriate civil service agency may subject the nominee to a written or oral test before determining whether or not he/she is qualified for the position (CSL Section 42).

In municipalities having a population of less than 5,000 as determined by the last Federal census, the local civil service agency may place all positions in the non-competitive class except those involving public safety such as police officer and water or sewer plant operators. Most positions in these municipalities are part-time.

NOTE: Civil Service Law requires that each title placed outside of the Competitive Jurisdictional Classification must be specifically identified in the appropriate appendix of the Local Rules (e.g.: Exempt Class titles – Appendix ‘A’, Non-Competitive Class – Appendix ‘B’, Labor Class – Appendix ‘C’ and Unclassified Service – Appendix ‘D’).

COMPETITIVE CLASS

The competitive class consists of those positions not in any of the other classes for which competitive examinations are held, lists established, and appointments made from certifications of the lists (CSL Section 44).

For a position to be legally in a class other than the competitive class, it must be listed in the rules of the appropriate civil service agency. If there is more than one position in a jurisdictional classification other than competitive, the rules must show the precise number. Any positions in the same title in excess of the number stipulated in the rules must be considered to be competitive class positions. The only exception to indicating precise numbers are those instances where the number employed in the title varies from month to month. In such cases, the plural designation is permissible. This would include Laborers and Motor Equipment Operators.

SECTION III CHANGING THE JURISDICTIONAL CLASSIFICATION

The Constitution of the State of New York provides that appointments and promotions be made by competitive examination as far as practicable.

This means that whenever a legislative body creates a position it is immediately in the competitive class of Civil Service until certain legal steps are taken to place the position either in the unclassified service or the exempt, non-competitive or labor class.

In the State service, this requires an operating department to submit to the State Civil Service Commission reasons for removing the position from the competitive class. If the Commission approves the request, it forwards a resolution to the Governor. The Governor can either approve or disapprove the resolution. If the Governor approves the resolution, it is forwarded to the Secretary of State.

In Local Government service, the local civil service agency must publicize in the local press its intention to place a position outside of the competitive class. Then a public hearing is held and a resolution indicating the proposed change is forwarded to the State Civil Service Commission.

Under Civil Service Law Section 20.2, interested individuals can request that they be provided with a 30-day advanced written notice prior to each public hearing to be held in conjunction with any proposed modification(s) of the Civil Service Rules and/or appendices to such Rules of the jurisdiction.

The State Commission can either approve or disapprove the resolution. If it approves the resolution, it is forwarded to the Secretary of State.

In all cases, the change in the jurisdictional classification of the position is not legally in effect until the resolution making the change is filed with the Secretary of State.

If you have been permanently appointed to a position under a title designated in the non-competitive, exempt or labor class, and that title is subsequently placed in the competitive class, you are entitled to all the rights and privileges of competitive class status, without further examination on the day the appropriate resolution is filed with the Secretary of State. You cannot lose your position due to a change in the jurisdictional classification to the competitive class.

On the other hand, if your current exempt, non-competitive, or labor class position is reclassified to a title that already exists in the competitive jurisdictional class, you must be reachable on the appropriate eligible list or eligible for transfer or reinstatement in order to be permanently appointed to the new position.

SECTION IV THE TITLE CLASSIFICATION PROCESS

Classification is a natural process. We do it every day in our life, both consciously and subconsciously. We say something is good or bad, short or tall, narrow or broad. This is a form of classification.

In an organization as complex as the State service and most of the municipal services with the wide variety of functions that are being performed and the vast array of knowledge and skills needed to perform these functions, it is essential that there be some system to identify the individual jobs. This system is known as “position classification.”

The term “position classification” means a grouping together, under common and descriptive titles, of positions that are substantially similar in their essential character and scope (CSL Section 2.11). The common position or title is called a “class.”

Where a number of classes of positions are substantially similar as to the type of work involved and differ only in rank as determined by the importance of the duties, the degree of responsibility involved, and the amount of training and experience required, such classes constitute a series and each is given a title containing a common term descriptive of the type of work with a modifying term or a number after the title indicative of the relative rank. For example, the Office Assistant 1 (Stores/Mail), Office Assistant 2 (Stores/Mail), Stores & Mail Operations Supervisor, Head Mail & Supply Clerk, Head Stores Clerk, and Chief Mail & Supply Clerk, would constitute a title series.

The terms “broad classification” and “narrow classification” are frequently heard and discussed. As its name implies, broad classification means classifying positions in broad occupational groups. On the other hand, narrow classification involves subdividing the broad occupational general groups such as clerk, senior clerk and principal clerk. Dividing such a series into mail clerk, senior mail clerk, principal mail clerk; file clerk, senior file clerk and principal file clerk; license clerk, senior license clerk and principal license clerk; etc., would be narrow classification.

Advocates of narrow classification state that it permits greater recognition for special skills and knowledge. Those opposed say it is too confining, decreases promotion opportunities and increases the number of examinations required to be held by the civil service agencies.

To minimize confusion in the classification process, there is an established written specification for each job title. **In the state service**, such specifications are now called classification standards. These are designed to provide detailed information for the class and to provide an understanding of the class.

A classification standard can include as few as one class or as many as seven similar classes in a single standard. Information in a classification standard is grouped into four main areas, which are:

- **Brief description of the class or classes** – This is a short summary of the position or positions, which describes the essence of the occupation.
- **Distinguishing characteristics** – This section describes those duties that are key characteristics of the class as well as any duties that are unique to the class. This can include such information as: level in a series, duties that are specific to the position, complexity of work, supervision exercised, and limitations.
- **Illustrative duties** – This section describes the most commonly performed duties and tasks, which are listed in the order that they are most frequently performed.
- **Minimum qualifications** – This section shows the experience and education needed in order to be appointed to the position.

In addition, the following areas may be included in a classification standard if deemed necessary:

- **Independence of operation** – Includes such information as extent to which incumbents of positions in this class function independently. Includes supervision received, availability of guidelines, manuals, judgment required, consequences of error, etc.
- **Complexity** – Describes the level of difficulty in performing the work as well as the level of responsibility for the completed work (e.g., This is the most routine work, work of moderate difficulty, most difficult, requires constant revision of procedures and policies, requires research, analysis, variety of assignments, etc.
- **Communication** – Description of personal interaction (oral and written) required. Includes people that are contacted, along with the frequency and purpose of the contacts.
- **Supervision** – Provides the type and scope of supervisory responsibility.
- **Related classes** – Explains a brief description of the duties of positions in similar classes.

The local government specifications contain the following sections: (A) class title, (B) distinguishing features of the class, (C) typical work activities, (D) full performance knowledge, skill, abilities and personal characteristics and (E) minimum qualifications. These sections are defined as follows:

(A) **CLASS TITLE** –

This is designed to give an immediate word picture of the essential nature of the work.

(B) DISTINGUISHING FEATURES OF THE CLASS –

This section distinguishes between this class and other positions in the series or occupational group.

(C) TYPICAL WORK ACTIVITIES –

This is a listing of the activities that are characteristic of the class as a whole. The listing is not intended to include all activities performed. Any one incumbent may perform one or more of the activities as assigned.

(D) FULL PERFORMANCE KNOWLEDGE, SKILLS, ABILITIES AND PERSONAL CHARACTERISTICS –

These are the knowledge, skills, abilities and personal characteristics necessary for the proper discharge of the duties of the position. This should include physical abilities, e.g., specific agility and dexterity requirements and the physical exertion involved in the work. They may not be necessarily expected of a new worker until after a completed probationary period and/or training period.

(E) MINIMUM QUALIFICATIONS –

These are the minimum qualifications needed for appointment to the position. They represent the lowest level of acceptable experience and training.

****Important:*** *Classification standards/job specifications contain general descriptions of the duties, responsibilities, tasks and assignments. Classification standards are not intended to cover all of the duties of positions under that class and an individual in that class may not routinely perform all of the duties listed.*

Any advance preparation for an examination would be aided by a review (**in the State service**) of the section of the specification that states the Job Requirements and in **Local Government service** by the section titled “Full Performance Knowledge, Skills, Abilities and Personal Characteristics.” The examination announcement for a particular position follows these respective sections. Certain adjectives are employed to define the level of knowledge required of an incumbent in a position or a candidate in an examination. These adjectives are basic, working, good and comprehensive. They are defined as follows:

(A) BASIC KNOWLEDGE –

Awareness and general understanding of principles, practices and procedures and body of facts relevant to and/or supportive of the assigned categories of work as required for the basic performance level work.

(B) WORKING KNOWLEDGE –

Sufficiently knowledgeable of generally accepted and commonly used methods, practices and procedures to work effectively in normal work situations with little or no guidance. Is characteristic of the full performance level or journeyman level.

(C) GOOD KNOWLEDGE –

Having advance knowledge of field so as to permit solutions to unusual as well as commonplace work problems, advising on technical questions and planning methods for the solution of difficult work problems by extending accepted methods and techniques or developing new ones.

(D) COMPREHENSIVE KNOWLEDGE –

Having expert knowledge with mastery of the field that is characteristic of positions recognized as top subject matter experts.

Employees should have in their personal files a copy of the specification of their position. Whenever possible, it is also advisable that employees have all specifications in the series in which their position(s) falls. There are definite advantages to the employee in following such a procedure. **First**, they become familiar with what is expected of them in their jobs and how they have to prepare for promotion to the next higher title in the series. **Second**, in preparing for promotion, they may attend training programs or courses that will give them the required knowledge and skills for the promotion. **Third**, if they are required to work out-of-title, the specification will tend to confirm this fact and will make any subsequent grievance or arbitration procedure simpler. **Fourth**, if they are about to be disciplined for something they did not do, the specification may demonstrate that they were not required to perform such duties.

There are times when an employee seeks a reclassification of their position. Either the employee or the appointing officer can file the necessary forms requesting the reclassification. Whenever it is possible, it is preferable that the appointing officer initiates the request. This avoids any allegation that the employee is not performing the duties that he/she has claimed on the appeal form.

In the State service, such applications are filed with the Director of Classification and Compensation. The employee is given a reasonable opportunity to present any facts or documents to support his/her claim. The Director of Classification and Compensation can approve the application.

If the application is denied, an appeal can be submitted to the State Civil Service Commission which can examine and review the case and either affirm or alter the decision of the Director of Classification and Compensation. Such an appeal must be filed with the State Civil Service Commission within 60 days of the receipt of the determination of the Director of

Classification and Compensation. If the Commission denies the appeal, the only remaining recourse to the employee is to present the case to a court of law. However, it is difficult to obtain a reversal of the Commission decision unless it can be clearly shown that the decision was arbitrary and capricious.

In Local Government service, the application procedure is similar except that, since there is no Director of Classification and Compensation in the locality, the application in the first instance is submitted to the Local Commission or Personnel Officer.

In local governments, employees who seek a 'reclassification' (change of title) of their position must closely follow the reclassification procedures of the local civil service administration having jurisdiction. These procedures (at least for competitive class positions) are found in the applicable Local Civil Service Rules.

SECTION V CIVIL SERVICE APPOINTMENT

The Provisional Appointment

A provisional appointment can only be made when there is no valid eligible list in existence for the position (CSL Section 65).

The appointing officer merely nominates the individual for the provisional appointment. It is the responsibility of the appropriate Civil Service Commission to review the nominee's qualifications and determine whether or not he/she is qualified for the position. Once the determination is made that he/she is qualified, the individual should be able to participate in the next scheduled examination for the position. The courts have ruled that a provisional appointee does not need to be qualified to take the civil service exam. However, an individual appointed in such a manner will never gain permanent tenure status.

The law states that a provisional appointee shall not serve for more than nine months in the position. However, this provision of law is not followed. Generally, the provisional serves until the list is established for the position. Because of the delays in holding examinations and in the rating of the papers, a provisional may serve many years in the position.

Once the list is established, the provisional appointment must be terminated within two months of the date the list is established. The list is certified in the usual manner, the selection of one of three persons highest on the list willing to accept the appointment. The provisional has no special rights at this stage. He/she must do more than merely qualify: he/she must be among the first three highest on the eligible list to receive a permanent appointment.

There is a mistaken notion that if the provisional serves long enough in a position he/she will acquire permanency. This is completely untrue. The provisional can only acquire tenure through the examination procedure described above.

It is possible, under certain circumstances, for the provisional to serve more than 2 months after the list is established. If, in a particular agency, a large number of provisionals either failed the examination or were not reachable on the eligible list and the appointing officer was obliged to layoff a large portion of his/her staff, then he/she could arrange with the Civil Service Commission involved to layoff such persons at prescribed intervals. However, in no event can the appointing officer keep any provisional longer than four months.

A person who is provisional cannot receive a second provisional appointment to the same position unless the eligible list that has been established is not large enough to fill all vacancies.

If the provisional is reachable for appointment, even though he/she is the only person on the list, the appointing officer has several choices before him/her. The appointing officer

may decide to leave the position vacant, he/she may make the present provisional permanent or he/she may select a new and different person as a new provisional. But in no case can the appointing officer give the present provisional a second provisional appointment. A current or former provisional appointee, who becomes eligible for permanent appointment to any such position, shall, if he/she is then to be continued in or appointed to such position, be afforded permanent appointment to such position.

Provisional employees may be terminated at any time, so long as they are not terminated for an unlawful reason (i.e. race, gender, union membership). A provisional employee may be terminated at the will of the appointing officer even before a list is established for the position. Neither Section 75 of the Civil Service Law nor contract provisions protects the provisional employee from arbitrary dismissal even though the employee may be an honorably discharged veteran or an exempt volunteer fireman.

In the event of a layoff, the provisional appointee 'must be' laid off before any permanent appointees in the same title. Where reductions of positions are limited to a group of positions occupied by provisionally appointed individuals, the employer may terminate the employment of any provisionally appointed employee without regard to length of service. The reduction in force provisions of New York Civil Service Law Section 80 or corresponding state or local rules do not apply to provisionally appointed employees. Unions can, however, via impact bargaining, encourage employers to reduce the provisional workforce according to length of service.

Sometimes a permanent competitive class employee is enticed to accept a provisional position at a higher grade in a position that is not the normal line of promotion. As a condition to his/her receiving the new position, the employee is asked to resign from his/her permanent position. **Under no circumstances should he/she do so.** If he/she does resign and he/she is not reachable on the list established for the new position, he/she will be terminated and will have no position to fall back on. An employee who resigns from a position loses all rights he/she had acquired. In the State service, it is possible for such an employee to be reinstated to his/her former position if he/she has vacated it for less than one year. In Local Government service you need to refer to your locally adopted Civil Service Rules and Regulations concerning reinstatement. Certain Local Government jurisdictions may have a "less than one year" rule while others may have "within four years from the date of such resignation" rule. However, this is not a right. In order to be reinstated, there must first be a vacancy in the position. Then the decision to reinstate the employee is totally within the discretion of the appointing officer.

Permanent employees can receive a provisional promotion. In these cases, the employee's permanent rights in the lower-level position might be protected. In the event the provisional is unsuccessful in the promotion examination, either in failing the examination or not being high enough on the eligible list to be reachable for permanent appointment, he/she could be entitled to be returned to his/her permanent position. **Therefore, a permanent employee should never resign from a permanent position as a condition for obtaining a provisional appointment. They should make sure they have the right to go back to their permanent item if they fail to obtain permanent status in the provisional appointment.**

A State Executive Branch employee who has not completed his/her probationary period can receive a provisional promotion. The time he/she serves in the higher-level position can be considered in meeting the requirements of the probationary period in the lower-level position. At any time after the completion of the minimum period of probation and when requested by the probationer, the appointing officer shall furnish a decision whether or not the service in the higher-level position shall be considered as satisfactory probationary service. If the appointing officer will not consider the service in the higher-level position as meeting the requirements of the probationary term, the employee, at his/her request, must be returned to his/her former position to complete his/her probationary term. The employee cannot be terminated for unsatisfactory service unless he/she has served at least the minimum probationary period in his/her position.

The Temporary Appointment

There are several types of temporary appointments. Each type is covered by a different section of the law in regard to the manner in which the positions are filled (CSL Section 64).

A temporary appointment for a period not exceeding three months. Such appointments are made when the services of the employee are important and urgent. Occurrences such as a break in a water main or an unusually heavy snowstorm fall in this category. Here the appointing officer must immediately recruit additional help. Since this is an emergency situation, appointments are made without regard to any eligible list.

Then there is the temporary appointment which is more than three months but does not exceed six months. Such appointments must be made from the eligible list. However, the appointment need not be made in direct order from the list. Anyone on the eligible list can be appointed to the position.

Temporary appointments which are expected to last longer than six months. Any temporary appointment to a position that is expected to last six months or longer must be filled from among those who stand highest on the most appropriate eligible list, if one is in existence at the time of appointment.

Six-month temporary appointments are permitted when the appointing authority states that the position will not be in existence for more than six months. The appropriate Civil Service Commission must make proper inquiries to determine that such is the case. However, what often occurs at the end of the first six months is that the appointing authority will state that the project is not completed and that the appointing authority requires additional time. Then, the Commission can grant the extension of the temporary employment for an additional six-month period but not beyond this period. Any appointment which goes beyond the six-month period must be made from those ranked highest on the eligible list.

The most common type of temporary appointment is made to fill a position vacated because an employee is given a leave of absence. In these cases, the employee is guaranteed his/her position when he/she returns from his/her leave. The vacated position can only be

filled on a temporary basis. The temporary employee can, therefore, serve in his/her position for a period of time equal to the leave of absence.

Amongst these types of leaves are leaves to enter military service, extended leaves following maternity, educational leaves under the G.I. Bill of Rights or otherwise leaves for occupational injury as defined in Workers' Compensation Law and granted requests for leave of absence for one year. In cases such as military and educational leave, the temporary appointee may serve in the position for several years. In all of these cases, an eligible list established for the position to be vacated must be used to fill the temporary appointment.

Contingent Permanent Appointment

There is another unique type of temporary appointment that is more common in state service than in municipal service. It is known as the contingent permanent appointment. This type of appointment is available to a permanent employee in a department who accepts a higher-grade position made vacant temporarily by the leave of absence of another employee. The appointment must be designated as a contingent permanent appointment by the appointing authority. If the appointment is in another department or agency than that in which the employee has permanent status, the new appointing officer must agree in writing that if the employee successfully completes his/her probationary service, the appointing officer will provide a permanent position to which the employee will be restored in the event the original employee returns from his/her leave of absence (CSL Section 64.4).

To receive a contingent permanent appointment, the employee must be among the three highest on the eligible list or be eligible for a non-competitive promotion.

A contingent permanent appointment may be made to a position left temporarily vacant by the leave of absence of the permanent incumbent. Such appointment may be made on the basis of an open-competitive appointment, promotion, transfer or reinstatement.

Under this type of temporary appointment, the employee so appointed shall have all the rights and benefits of a permanent competitive class employee, except with reference to certain situations. First, if the prior permanent incumbent of the position, to which the employee receives a contingent permanent appointment, returns, necessitating termination of the contingent permanent appointee, he/she shall not be separated from State service or replaced unless there is no incumbent in the promotion unit in the same position title serving on a temporary or provisional basis. However, such contingent permanent appointee shall be separated before another contingent permanent appointee having more seniority in such appointment status in the same title and promotion unit.

In the event that a contingent permanent appointee is separated or replaced as a result of the return of the prior permanent incumbent, he/she shall have his/her name placed on a preferred list for certification for reinstatement. If such separation occurs, the employee so affected may request that his/her name be restored to the appropriate eligible list from which the contingent permanent appointment was made.

In a case where an employee receives a contingent permanent appointment in another department or agency other than that in which the employee has permanent status, and the new appointing authority agrees in writing to provide a permanent position in which the appointee will be restored, in the event that such restoration becomes necessary, the name of the appointee shall be certified for reinstatement from the preferred list only to positions within the new appointing authority, or for positions within the promotion unit in which the contingent permanent appointment was made.

If an employee receives a contingent permanent appointment within the same appointing authority in which he/she has permanent status, then he/she will be granted a leave of absence from his/her permanent position, and, should he/she be separated or replaced from the contingent permanent position, his/her name will be placed on a preferred list only for positions within the employing agency. If the employing agency is divided into separate promotion units, the name of a separated or replaced employee shall be placed on a preferred list only for the promotion unit in which the contingent permanent appointment was made.

In the event that a contingent permanent appointee must be separated or replaced as a result of the return of the prior permanent incumbent to the position, such employee shall be restored with permanent status to the position he/she formerly held on a permanent basis.

Other Temporary Appointments

Another type of temporary appointment is permitted when there are plans to abolish positions or reduce the work force. Rather than hire new employees to continue the work of the agency that might result in the suspension or demotion of permanent employees, the agency is authorized to hire temporary employees. But such temporary employees cannot serve in their position for more than one year. **In addition, it is limited to the State and the City of New York and it is not applicable to the municipalities of the State** (CSL Section 64.1 [c]).

Perhaps one of the most widely used temporary appointments is known as Section 64 subdivision 3 appointments. This section of the law was designed to permit the hiring of persons who would render professional, scientific, technical or other expert services. Such services are to be rendered either on an occasional basis or on a full-time or regular part-time basis to conduct a special study or project for a period not exceeding 18 months. However, this section of the law has been extended in its use for purposes other than its original design.

Temporary employees have no rights. They can be terminated at any time so long as they are not terminated for an unlawful reason (i.e. race, gender, union membership). They are not entitled to hearings on disciplinary actions even though they may be veterans or exempt volunteer firemen. In the state service and in most municipalities they do receive salary increments in the same manner as regular employees but they are not eligible for promotion examinations since such examinations require prior permanent service.

SECTION VI COMPETITIVE CLASS APPOINTMENT PROCESS

The Examination Announcement

The examination announcement is in fact a contract between the general public, if it is an open competitive examination, or the employees of the governmental agency, if it is a promotion examination announcement, and the civil service agency that has issued it. It is, therefore, essential that you read every word of the announcement carefully and that you retain a copy for your own records.

One of the first things to read on the examination announcement are the requirements for the position. If you do not have the requirements, you cannot file for the examination. Read the requirements carefully. Sometimes an examination is announced with anticipated requirements. A typical example would be an examination requirement of college graduation. However, the examination is being held in March. In such cases, the announcement is so worded and if you can meet the announced requirement by the specified date, then you should file for the examination.

When filling out your application, keep the announcement in front of you. Make certain that your application clearly shows that you have the necessary requirements from the standpoint of minimum educational requirements and length and type of experience. Many persons are disqualified not so much because they do not have the required education and experience, but rather they do not clearly indicate that they do. For example, if the requirement is two years of accounting experience, it is not sufficient to state that you worked for an accounting firm for two years; rather, you must show that your duties included at least two years of accounting work.

The announcement will also show the closing date for the receipt of application. In order to take the examination, your application must be received by the appropriate civil service agency prior to the closing date. There is no advantage in filing your application at the last moment. In fact, you may be doing yourself a great disservice by doing so. First, some civil service agencies break ties on the basis of date of receipt of application. Second, if your application requires additional information or clarification of the information you have provided, if you filed early, there will be sufficient time for the exchange of correspondence to clearly establish that you meet the minimum qualifications. Third, applications that are received late are rejected by the civil service agency.

If you are disqualified, you must receive a written statement of the reasons for the action. You are also given an opportunity to explain and submit facts in opposition to the disqualification. However, you should do this immediately upon the receipt of your notice. As a general rule, if your case is a borderline case, you are more apt to receive a favorable decision if the review is before the examination date rather than after the examination date. Keep in mind that a decision in your favor after the examination date would require the civil service agency to give you a comparable examination. Not only is the construction of a

comparable examination difficult, but it costs as much to construct an examination for one person as it does for 20,000 candidates.

The announcement will also tell you the date of the examination. You should receive a notice where to appear for the examination insofar as time and place and what to bring to the examination at least three or four days before the examination is held. If you have not received this notice by such time, it is your responsibility to contact the appropriate civil service agency immediately. In cases of doubt or where they are not able to locate your papers immediately, the civil service agency will issue a conditional admission notice. This will permit you to participate in the examination until any issues concerning your qualifications are resolved. If you do nothing and let the examination date pass by, you will have disqualified yourself.

What kind of an examination will be held? The examination announcement will state whether it is a written test, an oral test, a practical test, an evaluation of training and experience, a physical agility test or a medical examination. It may also state whether a combination of these types of examinations will be held. Equally important it may set certain conditions for participating in subsequent portions of the examination, such as the highest 25 candidates will participate in the oral examination.

You will be able to learn from the announcement which part of the examination will be used to establish your rating. Sometimes a written examination is used to reduce the candidate population to a workable number before an oral examination is administered. In such cases, the score received on the oral examination becomes the critical score. In other cases, an oral examination may only be qualifying and the score in the written examination becomes the critical score. Still in other cases, both scores are used, weighted and a combination score is developed.

What to study? The announcement contains a section titled “Subjects of Examination.” This section outlines the areas of knowledge, skills and abilities that will be included in the examination. The examination will not contain any other subjects. Therefore, you can limit your study to solely those items specified in the announcement.

The salary grade of the position is stated on the announcement. If you are successful in the examination and are reachable for appointment, you are entitled to receive a position at the announced salary grade. At times, a list is canvassed at a lower grade than that which is announced. If you accept a lower grade position, your name still remains on the higher-grade eligible list for future vacancies at that grade.

The duties of the position you are filing for are also contained on the announcement. This outline of the duties often becomes important at times of requested reclassifications or claims of out-of-title work. Since, as has been previously indicated, your “contract” as contained in the announcement, has specified certain duties, any radical change in these duties is an opening wedge for the reclassification of your position or a payment for out-of-title work.

Your basic competitive civil service rights stem from the examination list from which you were appointed. The announcement describes critical aspects of your position. Read it carefully and retain a copy for the length of your employment.

The Examination Appeal Process

There are several types of review and appeal offered to candidates for different examinations. Candidates should be aware of the type of appeal afforded to them for the particular examination in which they have participated. The examination appeal process is described in the Civil Service Rules established by State and/or Municipal Civil Service Commission/Personnel Officers.

Some test questions receive prior approval before the test is held. This means that the Civil Service Commission has accepted the key answers as final, based on the agreement of experts in the field, on the results of previous use of the questions, or on the nature of the question allowing for only one possible answer (e.g., arithmetic or spelling questions). If prior-approved questions are included in a test, candidates cannot review them or appeal the correctness of the answers to them (CSL Section 50.7).

Another type of appeal procedure is known as the prerating review. Here candidates are required to indicate on the day of the examination that they wish to review the questions and the tentative answers to these questions. They fill out what is popularly referred to as the “pink sheet.” Such reviews generally take place on the Saturday following the examination. At these reviews candidates do not receive their own answer papers. They receive the question booklet or booklets and a set of what are considered the correct answers to the questions. They may appeal the answer to any question open to review. (Sometimes prior-approved questions are included in a test otherwise open to prerating review. This cannot be reviewed or appealed). Candidates may or may not remember how they answered any given questions. Their appeals, therefore, are often appeals (in the abstract) of the correctness of the intended key answer.

All appeals throughout the State are assembled. Even though a particular candidate may not have appealed the answer to a particular question, some other candidate elsewhere in the State may have. A final key is established after all appeals have been received, reviewed by a committee on appeals and acted on by the Commission. It is only when the final key is established that the papers are assigned a final rating. Each candidate is affected by any appeals granted.

After candidates receive their scores, they may request a computational review. For State (and most local) examinations, they must make this request within ten (10) days of the postmark date of the score notice they received. If you are competing in a local examination, you should check with your local Commissioner as to the number of days you have to file your request. **DO NOT FILE EXAMINATION APPEALS OR REQUESTS TO REVIEW WITH CSEA.** The delay may cause your request to be rejected as untimely.

The sole purpose of a computational review is to check the computation of your score. Multiple-choice papers are rated by computer, but scoring errors do occasionally occur. An erasure may be incomplete, a candidate may err in filling in the “bubbles” of a booklet number, or (in an extreme case) an incorrect key for a question may have been supplied to the computer. These possibilities make it desirable to go through the computational review process.

Usually, the number of correct answers by a candidate is converted to a different scale by an arithmetic formula (so passing scores will range from 70 up). This formula will be provided at the review. Apply the formula to the number of correct answers you have to make sure you received the correct score. It is possible for mathematical errors to sometimes creep into this process.

In rare cases (usually with other-than-multiple-choice tests, such as essay or drafting tests), candidates are allowed post-rating review if there was no prerating review of the test material. In post-rating review, you receive your own test paper(s), the test key, and the scoring formula. You are allowed to appeal the correctness of the test key, as well as the application of the key and scoring formula to your paper(s). Usually, the results of post-rating appeals, if granted, affect **ONLY** the appellant; the scores of other candidates are unchanged.

In writing an appeal, it is not sufficient to state that you believe that your answer is equal to or better than the accepted answer. According to the rules of the State Commission, the appellant must clearly demonstrate a manifest error or a mistake appearing in a rating key or scale or in the application of such key or scale to the appellants’ test papers. In addition, the appeal will not be considered unless the granting of the appeal will affect the relative standing (rank) of the candidates.

In order to enter a post-rating appeal, you must receive a rating of 65 or over, if the examination is of the multiple-choice type, or a rating of 60 or higher, if the examination is an essay type. If you are below these critical scores, you must obtain special permission of the State Commission to inspect your papers.

You must prepare your appeal on the day your papers are made available for your inspection. You may bring books or other reference material to the review center and you may bring with you a representative or representatives to review the record and listen to the oral tapes.

If your appeal of an examination is granted, it will sometimes be necessary to rescore the papers of all competitors in the examination. This may produce higher or lower scores of these competitors. What is important to keep in mind is that anyone who is appointed from the eligible list while his/her appeal is being processed will retain his/her position, although you receive a higher score than another candidate as a result of your appeal. Therefore, if there is only one position to be filled and no other such position exists in the agency, it is questionable whether it is worthwhile to file an appeal after the position has been filled.

There are times when the Commission rescues an examination on its own, months after the list has been established. This is permitted under the rules of the Commission when the Commission discovers an obvious clerical error.

It is hoped that you never need to appeal an examination. But, if you do, it is important that you know the procedure and your rights.

Promotion Appointments

Vacancies in the competitive class must be filled by promotions whenever possible.

There are many types of promotion examinations. These include the departmental, the interdepartmental, the non-competitive and the simultaneous open competitive and promotion (CSL Section 52).

Departmental Promotion - In the departmental promotion, only those persons in the department who have permanent competitive class status in the title and for a specified length of service may compete. If it is determined that there may not be sufficient names on an eligible list in proportion to the number of expected vacancies, the examination announcement will describe who may participate in the examination, the date, and what experience qualifications are required.

Interdepartmental Promotion - An interdepartmental promotion is open to persons in some lower-level titles in some local government jurisdictions. The master list established from this examination is subdivided by departments. When vacancies are to be filled in a particular department, the departmental list must be used first. If the departmental list is reduced to two names, a third name is added to the certification from the top of the master list. This practice will vary between local government jurisdictions and is not typical for State employees.

Non-Competitive Promotion – When there are three or less persons eligible for a promotion exam, a non-competitive promotion may be held. In the non-competitive promotion, the appointing officer can make his/her selection immediately and only his/her nominee can take the examination. What is important is if the nominee has already passed a comparable examination, he/she does not have to take a new examination.

Simultaneous Promotion and Open-Competitive Examination - A simultaneous promotion and open competitive examination is held when there is a doubt that the promotion list will be large enough to fill all anticipated vacancies. The established promotion list is used first. After the promotion list is exhausted, then the open competitive list is certified. These lists are kept as two separate lists. At no time is a certification made from two names from the promotion list and one name from the open competitive list. The open competitive list will be used for 1 year after the promotion list has been exhausted. This is true even though a new field for promotion has developed and provided the open competitive list is not more than 4 years old.

When there are less than three persons eligible on the promotion list, the appointing officer can request filling the vacancy from an open competitive examination only. However, a notice of intention to fill by open competitive basis must be conspicuously posted by both the department and the civil service agency involved for at least 15 days. If you feel that a promotion examination should be held, you must protest in writing, giving your reasons to the appropriate civil service agency. This should be done within the 15-day period (CSL Section 51).

Eligible List and the Certification Process

Much confusion surrounds the certification process. It is, therefore, desirable to review some of the basic principles involved in the certification of an eligible list and the resultant appointment process.

Eligible Lists (Traditional vs. Band [zone] scoring)

Section 61 of the New York State Civil Service Law, in pertinent part, provides:

Appointment or promotion from eligible lists to a position in the Competitive class shall be made by selection of one of the three persons certified by the appropriate civil service commission as standing highest on such eligible list who are willing to accept such appointment or promotion.

The concept of '*one of the three persons standing highest*' seems to cause great confusion when vacancies are filled from eligible lists.

Eligible lists are created when the names of the candidates who passed the examination (scored 70 or higher) are listed or ranked according to their score, highest to lowest.

Prior to filling a vacancy in the competitive class, the appointing authority canvasses the eligible list, or a portion of the list, in order to discover which candidates would consider accepting an appointment if offered. Once the list is canvassed, assuming there are at least three candidates who indicate a willingness to accept, the appointing Authority can then select one of those candidates who is willing to accept, who is among the three who stand highest on the eligible list.

The way in which the State and local government civil service entities have created eligible lists changed in the mid-1980's.

Traditional (exact grade score)

Prior to the change, both open competitive and promotional, eligible lists were generated after the examination scores were determined by ranking the candidates, who passed the exam, by the exact score that they earned. For example, scores were listed on the

eligible list in increments as little as one point or even one half point. Scores of 99, 98, 97.5, 96, 94.5, 91.....70 were common. This method, it was argued, was too limiting for management officials who preferred a larger list of candidates to choose from.

Band (Zone) Scoring

In the mid-1980s the State and local government civil service administrations adopted a new method of creating eligible lists, which creates bands of scores in five grade increments. After the examination scores were tabulated, the scores were rounded up to the next increment of five. For example, if a candidate's actual score was anywhere between 96 and 100, the band score for eligible list purposes would be 100. Likewise, if a candidate's score were between 91 and 95, the band score would be 95.

This method provides appointing authorities with greater flexibility than the traditional method offered.

CSEA challenged the Band Scoring method by claiming that it was unconstitutional. On June 2, 1988, the *McGowan vs. Burstein* lawsuit was decided by the New York State Court of Appeals, in favor of the State. The Court ruled that grouping of final scores together in bands was not unconstitutional; however, the widths of the bands must be reasonable. The interpretation of this ruling has been that bands of 5 grades or fewer are acceptable.

Band Scoring is now the preferred method of creating eligible lists.

Selecting candidates from eligible lists

Regardless of which method (traditional or band) is used to establish eligible lists, the resulting lists are considered mandatory for use in filling vacancies on a permanent basis until the list has fewer than three names of candidates who expressed a willingness to accept the appointment.

When a vacancy or vacancies are to be filled, the appointing authority requests a certified eligible list from the appropriate civil service administration office. The certified eligible list provides the names of enough candidates who can be canvassed in order to determine if there are at least three willing acceptors. After the canvassing of the list the appointing authority is limited to the names of the candidates who expressed a willingness to accept the appointment and who are considered "reachable."

To be reachable a candidate's name must be equal to or greater than the name of the candidate who ranks number three on the resulting certified eligible list. For example, if 5 candidates receive a band score of 100, and 50 candidates received a band score of 95, the employer, assuming all candidates were willing to accept the appointment, is required to appoint from among the 5 candidates who scored 100. The appointing authority cannot consider candidates in the band score of 95 until or unless there were less than three willing acceptors in the 100 band score.

Another example would be where there was one candidate who was in the 100 band score, one candidate who was in the 95 band score, and 50 candidates who were in the 90 band score. Assuming that all candidates were willing to accept the appointment, the appointing authority counts down from the top score until three candidates are included. If there are other candidates who are tied with the number three candidate, all of those who achieved the same score as the third candidate are considered to be the third candidate as well. In this example the appointing authority would have a pool of 52 candidates to choose from. The appointing authority would not be permitted to select a candidate who was in the 85-band until the 100, 95 and 90 bands combined contained the names of fewer than three candidates who were willing to accept the appointment.

Using the band scoring method, the following examples further illustrate just how the rule of three works.

Example 1

(Assumption: all candidates are willing to accept the appointment if offered.)

<u>Rank</u>	<u>Name</u>	<u>Exam Score</u>	<u>Explanation</u>
1	Betty T.	100	<i>REACHABLE</i>
2	Thomas S.	95	<i>REACHABLE</i>
3	William B.	90	<i>REACHABLE</i>
4	Diane K.	85	{ In this case the Appointing Authority must choose from Betty T., Thomas S., and William B. This is because the NYS Civil Service Law requires that the selection be made from the three highest-ranking candidates who are willing to accept the appointment. }
5	Jamar W.	80	
6	Susanne S.	80	
7	George D.	80	

Example 2

(Assumption: all candidates are willing to accept the appointment if offered.)

<u>Rank</u>	<u>Name</u>	<u>Exam Score</u>		<u>Explanation</u>
1	Dominick F.	90	REACHABLE	{ In this case the Appointing Authority must choose from Dominick F., Gerald B., Jill D. and Jillian M. This is because the NYS Civil Service Law requires that the selection be made from the three highest-ranking candidates who are willing to accept the appointment. Note that if there is anyone whose score is tied with the third name, then he/she is considered to be equally reachable. }
2	Gerald B.	90	REACHABLE	
3	Jill D.	90	REACHABLE	
4	Jillian M.	90	REACHABLE	
5	Taylor F.	85		
6	Amanda M.	85		
7	George D.	80		

Example 3

(Assumption: all candidates are willing to accept the appointment if offered.)

<u>Rank</u>	<u>Name</u>	<u>Exam Score</u>		<u>Explanation</u>
1	Louis G.	90	REACHABLE	{ In this example the Appointing Authority must choose from six candidates, who are, considered reachable. Note that those with the score of 85 are tied with number three therefore they are considered to be among the top three candidates who are willing to accept the appointment. }
2	Trevor R.	90	REACHABLE	
3	Patricia S.	85	REACHABLE	
4	Marcus C.	85	REACHABLE	
5	Jose L.	85	REACHABLE	
6	Sheryl M.	85	REACHABLE	
7	Mel. O.	80		

➤ ***Please Note: The existence of an eligible list, with a sufficient number of names, does not require the appointing authority to fill a vacancy if the appointing authority does not wish to fill the vacancy.***

When an eligible list is established, all of the then-provisional appointees must be terminated. If there are a few provisionals in the title, such provisionals must be terminated within two (2) months after the date the list is established. If there is a large percentage of provisionals in the agency, the appointing officer may request permission of the appropriate civil service commission to displace provisionals at stated time intervals. But in no case can the process last more than four (4) months (CSL Section 65.3).

What is of particular importance is the fact that even though there were provisionals serving in the titles and such provisional appointments are required to be terminated, the appointing officer can then decide to leave the positions vacant. In such cases, the eligible list established for the position remains dormant.

If the appointing officer decides to fill vacancies, then he/she requests and receives a certification from the eligible list. Section 61 of the State Civil Service Law requires that appointment to a position in the competitive class shall be made by the selection of a person on the appropriate eligible list whose final rating is equal to or higher than the rating of the third highest ranking eligible on the list who is willing to accept appointment.

The appointing authority contacts the persons certified to determine if they are interested in the position at that time (canvassing). The appointing authority is not required to conduct interviews prior to the appointment.

One mistaken notion that some people have is that if you are number one (#1) on the list you must receive the appointment. This is untrue. The appointing officer may select one (1) of three (3) and can continually reject the number one (#1) eligible.

Another mistaken notion held by many candidates is that if you are passed over in three (3) separate certifications your name is removed from the eligible list. This is equally untrue. Your name will continue to be certified under the same conditions until either you receive an appointment or the list expires.

Candidates on an eligible list who are interviewed or considered for a position, but not appointed, are entitled to receive written notice from the appointing authority that they have not been selected for appointment (CSL Section 61.3).

Sometimes an appointing officer has more than three (3) names certified to make an appointment. This can come as a result of tie scores. Tie breaking on eligible lists can be made by selecting any eligible whose final exam rating (score) is equal to or higher than the rating of the third highest standing eligible. For example, if three people score 92, two people score 88 and one person scores 87, the three people with scores of 92 will be certified as eligible for appointment. However, if one person scores 92, one person scores 88 and ten people score 87, the appointing officer would choose from all twelve certified eligibles.

Although the appointing officer has the right to select one (1) name from three (3), the appointing authority could equally make a permanent appointment from a one (1) or two (2) name list. If a provisional appointment is desired, then the appointing officer can insist upon receiving a three (3) name certification. If the list comes back with fewer than three names, the appointing officer can declare the one (1) or two (2) name list exhausted thereby allowing a provisional appointment to be made.

There is a provision of law that is seldom used in State service, but has some importance in Local Government service. When an eligible list is in existence for less than one (1) year and contains less than three (3) names and a new list is created for the position, a

proper certification can be made with the remaining names on the old list with additional names on the new list to make three (3) names. These lists are not merged, but rather tacked onto each other. Hence a certification could list exam scores that read 75, 70, 95. The names on the old list can continue to be so certified until the old list is one (1) year old (CSL Section 60.1).

If the old list is more than one (1) year old and a new list is created containing less than three (3) names, the Civil Service Commission may certify the names on the old list with sufficient names from the new list to make a three (3) name certification (CSL Section 60.1).

An eligible list must be in existence for at least one (1) year. When a list is more than one (1) year old, the new list supersedes and cancels the old list. The Commission does have the right to extend the old list up to a four (4) year period, or longer under certain circumstances. (CSL Section 56).

A municipality that has no lists of its own for a particular title may obtain a state list for the same title. Such a list may be limited to residents of the particular municipality or residents for the judicial district or any reasonable combination of municipalities as requested by the municipal commission. Once the locality obtains a list from the State, it must consider such list as their own list and use it until it establishes its own list or until the State list expires or is exhausted.

A State examination announcement, for example, may state that certifications outside of Albany County will be made on the basis of residence where the vacancy exists. When this is stipulated, a certification is made from persons who have indicated that such is their place of residence. Such certification will be made in the order of persons from that locality and may include ranking of candidates to read #8, #35, and #58. Once the number of names from the particular locality is reduced to less than three (3), additional names are added to the certified list from the general list. If there are no names on the list from a particular locality, then the general list must be used (CSL Section 60.3).

Although the law permits certifying a list on the basis of sex, this provision is seldom used these days. In order to certify a list based upon sex, it must be demonstrated that the duties of the position involve the institutional or custodial care of persons of the same sex or visitation, inspection of work of any kind, the nature of which requires sex selection (CSL Section 60.2).

SECTION VII THE PROBATIONARY TERM (CSL SECTION 63)

Introduction

The probationary term is considered as part of the examination process. There are many aspects of a position that are difficult or impractical to evaluate in a written or oral examination. The probationary period is used to judge the individual in his/her performance on the job. Does he/she get along well with others? Can he/she produce the product required in the position? Can he/she work in the organizational structure?

The probationary period is not solely for the benefit of the appointing authority. It equally provides the opportunity to the employee to show that he/she can do the job.

The State and each Local Commission make their own probationary rules. Such rules may provide for probationary terms for exempt class, non-competitive class or labor class employees in addition to competitive class employees. They may provide probationary terms solely for initial appointments (from open competitive lists) or may extend probationary terms to promotion appointees. They may provide for a fixed term or a flexible probationary term. It is, therefore, wise to review the rules of the Commission wherein you are employed to determine what is applicable to you.

Although particular rules may provide for a probationary term for exempt, non-competitive and labor class employees, such employees do not necessarily acquire tenure in their position after the completion of the probationary period. Such rules are designed for the benefit of the appointing authority so that the appointing authority can terminate a veteran or exempt volunteer fireman at the conclusion of the minimum probationary period without being involved in the procedures outlined in Section 75 of the Civil Service Law. Tenure for non-competitive and labor class employees who have not served in their position for 5 continuous years can be negotiated. Exempt class employees are at will employees and, as such, have no tenure in their current position.

Duration of Probationary Term

Probationary terms are either fixed or flexible. A probationary rule that states the probationary term will be six months is a fixed probationary rule. On the other hand, rules which state the probationary term is a minimum of eight weeks or a maximum of 26 weeks is a flexible probationary term.

Termination or Extension of Probationary Term

If the conduct or performance of a probationer is not satisfactory, then his/her employment may be terminated at any time after eight weeks (the minimum term) and before completion of the maximum period of probationary service. However, the appointing authority may offer such probationer an opportunity to serve a second probationary term of not less than 12 weeks nor more than 26 weeks in a different assignment, in which case the

appointment may be made permanent at any time after completion of 12 weeks of service or the employment may be terminated at any time after completion of eight weeks of service and on or before the completion of 26 weeks of service.

Once the employee serves even one day beyond the maximum probationary period (including of course any valid extension), he/she may be deemed to have acquired permanent status, absent sufficient prior notice that this was not intended. The individual situation must be analyzed in the context of court decisions to determine whether such “tenure by estoppel” can be claimed in a given case.

During the probationary period, the employee shall be advised of his/her status and progress. Although this feedback need not take a particular form, its absence or clear inadequacy may provide a basis for challenging a probationer’s termination.

The immediate supervisor of the employee must report in writing to the proper appointing authority at least two weeks before the end of the probationary period. If the employee is to be terminated for unsatisfactory service, then he/she must receive a written notice at least one week prior to his/her termination. Court cases have resulted in “substantial compliance” exceptions that may dilute the effect of an employer’s failure to follow the one-week, written notice requirement. Further, liability for such failure may be limited to back pay for the days that the advance notice was “short,” rather than reinstatement to the employment position.

The employee may upon request have an “exit interview” with the appointing authority or its representative. However, this can be a one-sided interview where the appointing authority or his/her representative merely listens to the employee.

Absences During the Probationary Term

Sometimes an employee may have to be absent during his/her probationary period. If the probationary period is 26 weeks at its maximum, the appointing officer may, in his/her discretion, consider a maximum of ten absent days as days worked. If the probationary period is more than 26 weeks, the appointing officer may consider up to 20 days of absence as days worked. On the other hand, if the appointing officer does not wish to consider these absences as days worked, then the probationary period is extended by the number of absent days. Similarly, any days of absence beyond those treated as days worked operate to extend the probationary period.

Promotion While Serving a Probationary Term

Although the employee is serving a probationary period, he/she may be promoted to a higher-level position. Since he/she has not completed his/her probationary period, he/she has not acquired permanent status in the lower-level position. The appointing authority may, in its discretion, consider the time served in the higher-level position as meeting the requirements of the probationary term. At the end of the minimum probation period, the employee may request the appointing authority to furnish to him/her a written statement

indicating whether the service in the higher-level position will be considered in meeting the probationary period. If the appointing officer says it will not, then the employee can request to be returned to his/her original position so that he/she can complete his/her probationary period. At this stage, the employee must weigh the difference between acquiring permanent status in the lower-level position against the higher salary in the new position.

In the State service, every permanent appointment from an open-competitive list and every original permanent appointment to the non-competitive, exempt or labor class shall be subject to a probationary term of not less than 26 weeks nor more than 52 weeks. For some specific titles, the length of probationary period varies and is specified in Section 4.5 of the State Civil Service Rules and Regulations.

Promotional Probationary Term

In State Service, every promotion to a position in Grade 13 and below is subject to a probationary period of not less than eight weeks nor more than 26 weeks. Every promotion to a position in Grade 14 and above shall be subject to a probationary period of not less than 12 weeks nor more than 52 weeks. Appointments to higher-grade positions in the non-competitive class are considered promotions for the purpose of determining the length of probationary period.

Pursuant to Section 63, in the case of an interdepartmental promotion, the appointing officer may waive the requirement of probation.

Probationary Term Upon Transfer

Interdepartmental and inter-institutional transfers require the transferee to serve a probationary period identical to the requirement upon promotion. Transferees between positions allocated to Grade 13 and below are required to serve a probationary period of not less than eight weeks nor more than 26 weeks; and transferees between positions allocated to Grade 14 and above are required to serve a probationary period of not less than 12 weeks nor more than 52 weeks provided, however, that the appointing authority having jurisdiction over a position to which transfer is sought may, at its option, elect to waive the probationary term required for such position.

An appointment, promotion or transfer shall become permanent upon the retention of the probationer after his/her completion of the maximum period of service (absent some exception—see above discussion), or upon earlier written notice following completion of the minimum period that his/her probationary term is successfully completed or, in the case of a transferee, upon written notice that the appointing authority has elected to waive the serving of the probationary term.

Traineeship Probationary Term

The probationary term for a trainee appointment or trainee promotion shall coincide with the term of training service, except where an appointment from an open-competitive list can be made to either the trainee or journey level position; in that case, the probationary period for the trainee appointment will be from 26 to 52 weeks or the length of the training period, whichever is greater. If the conduct or performance of the probationer is not satisfactory, then the probationer's employment may be terminated at any time after the completion of a specified minimum period of service and on or before the completion of the term of training service. Such specified minimum period of service, unless otherwise prescribed in the announcement of examination, shall be eight weeks.

SECTION VIII THE TRANSFER

The Transfer in State Service

There are many good reasons why an individual may want to transfer from one State Agency to another. For instance, an employee may seek transfer because of transportation problems, or because he/she must move to another area. Although career mobility can occur within the confines of the agency that an individual is employed in, it may be necessary to transfer to a different agency in some instances, in order to meet specific career objectives. There are other good reasons for seeking transfer that vary from employee to employee.

When seeking transfer, it is generally best to talk first with your Personnel Officer. If your reasons for seeking transfer are other than transportation or location of work, it is possible that a reassignment within your own agency will be to your best interest. Agency Personnel Officers usually work closely together, calling on one another for information about current employees. If you have or have had a particular problem in your current agency, it is usually best to briefly mention the circumstances involved at your interview.

Transfers require the consent, in writing, of the transferee and of the appointing authority having jurisdiction over the position to which the transfer is sought, and the approval of the Department of Civil Service. A transfer does not require the consent or approval of the employee's current appointing authority. When a probationary period is required upon transfer, the transferee must be placed on a leave of absence from his/her former permanent position pending satisfactory completion of the probationary term.

What is a Transfer?

Under Section 1.2 of the Rules of the Classified Service, transfer is defined to mean the change, without further examination, of a permanent employee from a position under the jurisdiction of one appointing authority to a position under the jurisdiction of another appointing authority, or the change to a position in a different title in the same or a higher salary grade under the jurisdiction of the same appointing authority.

A transfer should not be confused with a reassignment, which is defined to mean the 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. A common example of a reassignment would be a change in work location without a change in title or appointing authority.

Are You Eligible?

An employee is eligible to transfer to any competitive class title which is currently held on a permanent basis, or to a title which starts at a salary grade level within two salary grades of the current permanent competitive class title; providing that the three criteria listed below are met:

1. Transferees must be permanent in a competitive class position and have one year of permanent service at their current salary grade. Employees who have not completed probation may transfer if otherwise eligible.
2. The transfer may not be to a position more than two salary grades higher than the position from which the transfer is made.
3. Voluntary transfers will not be approved if a preferred list, reemployment roster, or placement roster exists for the position to which transfer is sought, except:
 - a. if the highest ranking acceptor on the preferred list who is eligible for the position to which transfer is sought is simultaneously appointed to the position left vacant by the transfer;

or

 - b. if an acceptor on the reemployment roster or placement roster who is eligible for the position to which transfer is sought is simultaneously appointed to the position left vacant by the transfer.

It is your responsibility to initiate a transfer by contacting potential agencies on your own. The key to any transfer is an agency's nomination. Therefore, it is up to you to "sell" yourself to agencies by presenting an attractive "image" of yourself through past performance, properly prepared resumes, personal cover letters, and by making a favorable impression at interviews. The cover letter should explain your desire for transfer, your reasons for choosing that particular agency, and your own qualifications.

Personnel Officers are interested in obtaining employees with valuable work backgrounds and good work habits for their agencies. It is your responsibility to give the Personnel Officer reason to believe that you are capable and willing to do a good job. It is the Personnel Officer's responsibility to hire only those individuals who will contribute to the agency's effectiveness.

Civil Service Law

Sections 52.6, 70.1, and 70.4 of the NYS Civil Service Law allow permanent competitive class employees to voluntarily transfer, provided that they meet the basic criteria of Civil Service Department policy.

Section 70.1 transfers are lateral transfers. This section allows you to move to similar positions in your own agency, or to the same or similar positions in another agency without taking another examination. A similar position is one having comparable critical knowledge, skills, and abilities, and is generally no more than two salary grades above your permanent grade.

One example of a 70.1 transfer would be an Office Clerk 1 (Grade 6) transferring to an Office Assistant 1 (Stores/Mail (Grade 6) position. Another example would be a Motor Vehicle Representative (Grade 9) transferring to Tax Compliance Representative 1 (Grade 11).

Section 70.4 transfers involve changing occupations. This section allows you to move to the same or different occupational area in a title no more than two salary grades above your permanent grade when you have earned a license or degree, passed an open competitive examination, or otherwise qualified for a new line of work and open competitive appointment is currently appropriate for the desired position.

Section 52.6 permits an employee in a position designated as administrative to transfer to another administrative position without further examination. Nominees for transfer should have at least one year of permanent service in an administrative title at a similar salary grade.

Civil Service Approval

When an agency wishes to nominate you for transfer, the agency must first request approval from the Civil Service Department. The request will usually be approved, provided the following criteria are met:

1. You are eligible for the position to which the agency has nominated you;
2. There is no placement roster or preferred list in existence for the position in the same geographical location at the time of transfer;
- and
3. Your appointment will benefit the hiring agency and your prior service was satisfactory.

Promotion Lists

If you transfer to another agency, this will affect your eligibility to be appointed from current interdepartmental promotion lists. Depending upon when you transfer and the length of your probationary period, you will be able to request that your name be added to your new agency's departmental lists.

For instance, you no longer have interdepartmental promotion rights in your former agency if you have successfully completed your probationary term in your new agency or if you have resigned from your former agency.

If you return to your former agency prior to completing your probationary term and your name appears on the new agency's interdepartmental list, you may request to have your name placed on the former agency's departmental list.

You should ask your Personnel Office for more information.

Salary

Determining an employee's salary is a complex matter which is handled by the Department of Audit and Control through an employee's Personnel or Payroll Office. Salary determination is further complicated by the different pay scales for the various bargaining units.

In general, however, upon transfer from one agency to another, you will receive credit for your previous service within the salary range provided for each salary grade. You cannot receive a higher salary than the maximum pay allowed for the grade of the job to which you are appointed.

Benefits of Taking Examinations

We suggest that you apply for and take any examinations for which you qualify. For some types of transfers it is necessary to first pass a qualifying examination before the transfer can be approved. If you are already on an eligible list for the title, or if you are on an eligible list for a title that had a similar examination context, you may be able to transfer without taking another examination. These transfers are possible without regard to your rank on an eligible list, provided that the title starts at a grade level within two salary grades of your permanent competitive class title.

Leave of Absence

If you do transfer, it is important for you to know that the permanent position from which you transfer cannot be filled, except on a temporary basis, during your probationary term in the position to which you transferred. With this in mind, it is of primary importance that persons seeking transfer **do not resign from their permanent position**. If you must serve a probationary term in your new agency, your current agency must grant you a leave of absence for the duration of the probationary period (Civil Service Rule 4.5(e) for State employees). Local Government employees must check their Local Civil Service Rules for information regarding leaves of absence. If you do resign, and do not satisfactorily complete your probationary period in the position to which you transferred, you will find that you are out of a job.

Probationary Periods

Employees who voluntarily transfer from one agency to another may be required to complete a probationary period in their new position. Employees who transfer at Grade 13 and below will serve a probationary period of eight to 26 weeks. Employees who transfer at Grade 14 and above will serve a probationary period of 26 to 52 weeks.

A transfer shall become permanent upon the completion of the maximum period of service or upon earlier written notice from the appointing authority in your new agency. The

appointing authority having jurisdiction over a position to which transfer is sought may elect to waive the required probationary term.

At any time during the probationary period, in a position to which you transfer, you shall have the right, upon reasonable notice, to return to your previous position, if you so decide. If your performance during your probationary period is unsatisfactory, you shall be restored to your former permanent position at the end of the probationary term.

Restoration to the Eligible List Before Completion of Probation

If your appointment was made from an eligible list and you are still on probation, but you are unhappy in your present situation, you have another opportunity available to you. Instead of seeking a transfer, you can resign from your agency and request to have your name restored to the eligible list for recanvass. To do this, you would have to write a letter to the Civil Service Department's Staffing Services giving them your name, address, telephone number, last four digits of your social security number, the name of the list to which you want to be restored, the last date you were in the title, and your handwritten signature. Civil Service will check with the Agency asking if your name should be restored to the eligibility list. If the Agency does not object or they do not respond within 4-6 weeks then Civil Service will restore your name to the list. This process takes from six to eight weeks, however, and you must first resign before you can request to be restored to the eligible list.

If the eligible list is about to expire, or if a new examination is to be held soon, then resignation and request for restoration to the eligible list is **NOT** recommended.

Seniority and Leave Credits

Upon transfer from one agency to another, seniority date and leave credits will remain the same.

Retirement System

Your status in the Retirement System will not be affected by your transferring from one agency to another.

Transfers from One Governmental Jurisdiction to Another

There are times when an employee may wish to transfer from a municipal position to a state position or from a state position to a municipal position. This is possible provided certain conditions additional to those previously mentioned are met. In general, one must remember that transfers involving localities are governed by Local Civil Service Rules and local rules may vary between jurisdictions.

Residency requirements are a potential obstacle when an employee transfers from State to municipal employment. It is not uncommon for localities to have established residence requirements for municipal positions. Their concept is local jobs for local people.

A local Commission may waive resident qualifications for unusual classes of positions such as Psychiatrist or Professional Engineer. However, when they do so, they do it with considerable reluctance. Therefore, in order to transfer from the State service to a municipality, the transferee must meet the residence requirement, if any, as established by the local Civil Service Commission. In order to transfer from a locality to the State service, the transferee must be eligible for certification and appointment to the position in the State service.

Generally, transfers from either local service to State service or State service to local service, may require the approval of both the State and local Civil Service Commissions. In these transfer cases, it is strongly recommended that the transferee obtain a leave of absence from his/her permanent position before accepting the transfer. Since he/she will probably serve a probationary period in the new position, the possibility exists that he/she might receive an unsatisfactory rating in the new position. Obtaining a leave of absence serves as insurance to retaining permanent status in a position.

It is also possible to transfer from one county to another. Here, too, the qualifications and examinations of both positions must be comparable. Again, the residence qualifications of the locality to which the transferee seeks to be employed may be a condition of the transfer.

If a transfer is sought from a city within a county to the county or vice versa and two Civil Service Agencies are involved, then, the same conditions as transfers from county to county prevail.

Questions regarding accumulated vacation and sick leave credits are common when considering a transfer. Generally, it is best to use your vacation credits before your transfer. However, if you cannot do this, you should negotiate with the new appointing agency to accept your accumulated vacation and sick leave credits. The appointing authority could, but is not required to, accept these credits upon legislative approval.

As long as you continue to be employed in New York State or a municipality in New York State your retirement service is considered as continuous. Before the transfer, you should inquire as to which section of the Retirement Law the municipality under which you are going to be functioning follows. It is possible that you may be going into a less advantageous plan. If you decide to transfer, notify the new Personnel Officer of your retirement registration number. This will doubly assure that your retirement service credit will be continuous.

Transfer of Function

At times laws are enacted which mandate the transfer of functions either from one department or agency of the State to another department or agency of the State, or from one civil division of the State to another civil division of the State, or from a civil division of the State to the State, or vice versa. Such transfers are governed by Section 70.2 of the Civil Service Law.

There are three basic features of this section of the law that merit particular attention. First, an employee who does not have permanent competitive class status does not acquire such status in a transfer of function. Second, employees who are transferred carry over their seniority from their original agency. Third, the appointing officer of the new agency is not obliged to transfer all of the employees of the old agency. The appointing officer accepts only as many employees in the particular classification that he/she believes are needed to operate the consolidated agency.

The procedures for these types of transfers are involved. You should be aware of all of the steps that are mandated so that you can protect your rights.

As soon as practical after the legislation requiring the transfer of function is enacted but not less than 20 days before the effective date of the transfer, the head of the agency to which the functions are to be transferred must certify to the head of the agency from which the function is transferred a list of names and titles of persons scheduled to be transferred with the function. This list must be publicly and conspicuously posted along with the appropriate section of the Civil Service Law (Section 70.2) in the agency from which the function is to be transferred.

The employees in the agency to be transferred upon seeing the transfer list may protest either their inclusion or exclusion from such list. The protest must be made in writing, must be addressed to both department heads, must give reasons for the protest, and must be made prior to the effective date of the transfer.

Upon the receipt of the protest, both department heads consult. The employee must be notified as to the determination made at these consultations within 10 days after the receipt of the protest. These determinations can only be reviewed by a court of law. Failure by the employee to protest his/her inclusion or exclusion from the transfer list is considered that he/she has consented to the transfer.

Employees who are transferred and who have permanent civil service status retain their civil service title and status without further examination or qualification. If the new appointing officer is either unwilling or unable to transfer all employees from the old agency, then the appointing officer must establish seniority lists for each title involved in the transfer. In establishing the seniority list, veterans and disabled veterans must have time added to their actual seniority in the same manner as if a layoff list were being created. Persons are selected for the transfer in order of their original appointment, that is, the person with the most seniority on the computed seniority list must be selected first.

Employees who are to be transferred receive a written notice indicating that they will be transferred. The employee must respond to such notice. If the employee fails to respond within ten days after he/she receives the transfer offer, then he/she has relinquished his/her right to transfer. Once the employee is transferred, he/she becomes subject to the Civil Service rules of the agency or locality to which he/she is transferred.

If the employee is not transferred, then he/she is placed on two preferred lists for re-employment in the same or similar position when vacancies occur. One preferred list is for the agency in which he/she was employed. The other preferred list is for the agency where the function was transferred.

One of the concerns of employees in the transfer of functions is what will happen to the sick leave and vacation credits that they have accrued in the original agency. Often times special legislation initiates and mandates the transfer process. Such legislation may contain precise provisions as to how accrued vacation and sick leave credits are to be transferred to the new agency. In the absence of such legislation or provisions in such legislation concerning the transfer of sick leave and vacation, the agency or locality to which the functions are transferred may make its own regulations. These regulations can credit all or part of the employee's unused sick leave or vacation credit.

The law places one restriction on legislative bodies. They cannot grant more sick leave or vacation credit to the transferred employees than the maximum accumulation permitted in the new jurisdiction.

In the event you are aware that a transfer of function is being contemplated there are two approaches you may wish to consider. You may negotiate with your parent agency to receive a cash payment for unused vacation, or at least that portion of your earned vacation credit that the new agency will not accept. The other approach to consider is to use your vacation credits before you transfer to the new agency.

SECTION IX THE LAYOFF PROCESS

Layoffs occur when the governmental agency seeks to economize, consolidate, abolish functions, or curtail activities. It is important to note that the legislative body creates positions and therefore it alone has the right to abolish positions. Neither the department head nor the civil service agency has the right to abolish any position. The only exception to this procedure is when a legislative body mandates that the department head reduce staff by a given number or a given percentage of his/her positions. Such mandates are rare but can occur.

In the event of layoff, the first thing to review is the layoff unit. For the State service, these are enumerated in the Civil Service regulations (Part 72). In municipal service the problem is more complex. Layoffs in municipalities are by department. However, the municipality may call some organization a department but it is not legally a department unless it is so designated by charter or local law. For example, a County Clerk may speak of his/her Motor Vehicle Department. Yet this is not legally a department but merely a subdivision within the County Clerk's office. Layoffs of personnel in a County Clerk's office must be determined on the basis of all employees in the County Clerk's office.

The second factor to examine is the seniority of all persons in the layoff unit in the titles to be abolished. Seniority is determined from the date of the first permanent appointment in the classified service to the date of the projected layoff. The key words in the definition are permanent and classified service (CSL Section 80 & 80a).

Provisional or temporary service immediately prior to the first permanent appointment is disregarded in computing seniority. On the other hand, if a person had a permanent appointment and thereafter received a provisional appointment followed by a permanent appointment, his/her service would be considered continuous. Some persons referred to this as the "sandwich" concept, a provisional appointment sandwiched in between two permanent appointments.

If an employee takes a leave of absence without pay or resigns and returns to his/her position within a year, then his/her service is considered continuous.

⇒ Note: Section 80a (CSL) applies to non-competitive class positions in the State service. Local government employees must check the Civil Service Rules that apply to that municipality to determine if the Local Rules contain a similar provision. Additionally, similar protection may be provided by the collective bargaining agreement.

Persons who legally transfer from one governmental jurisdiction to another, or from a municipality to the State service, or vice versa, or from one department to another, or whose functions are transferred, are considered to have continuous service.

Persons who are veterans or disabled veterans receive additional time credit in computing their seniority. In addition to the actual time served since the first permanent appointment, thirty months are added to the veteran's time and sixty months are added to a disabled veteran's time. In order to receive such credit the veteran or disabled veteran must meet the conditions specified in Section 85 of the Civil Service Law. Persons who are legally declared blind have absolute preference in retention.

Once seniority tables are established for the specific titles of positions to be abolished, the actual persons to be laid off can be determined. The order of layoff is first temporary or provisional employees, then probationers, then persons in the title with the least seniority. It is important to note that the layoffs will only affect the layoff unit where positions have been abolished. Although there may be provisional employees serving in the same title in another department or agency, these persons will retain their position while permanent employees in the layoff unit will be dropped.

When the individual is notified that he/she will be laid off, his/her first approach to retain a position in the government service is to consider the bumping of an employee with less seniority in the next lower title in the direct line of promotion. The next lower occupied title is the next lower title in the line of promotion. If no one is serving in that title in the layoff unit, then the next closest title in the promotion series is used. The laid-off employee has no right to decide which of the persons in the lower grade he/she wishes to displace. He/She can only displace the person in the lower grade with the least seniority or refuse to accept such appointment. A competitive class employee can only bump another competitive class employee even though the next lower title in the "promotion" series is in the non-competitive class. For example, if Garage Foreman was a competitive class position and the next lower position was Auto Mechanic in the non-competitive class, the laid off Garage Foreman could not bump the Auto Mechanic even though he/she had greater seniority.

If there are no lower-level occupied positions in the direct line of promotion, the laid-off employee can consider the possibility of retreat. Retreat is possible in those cases where the laid-off employee served on a permanent basis in another title prior to the layoff. Under the retreat procedure, the employee may displace an incumbent with the least retention right in a position in the title in which he/she last served on a permanent basis, providing the following conditions are met:

1. The position to which retreat is sought is occupied;
2. The retreating employee's service, while in the former position title, was satisfactory;
3. The position to which the employee is retreating is in the classified service;
4. The position to which retreat is sought is in the same layoff unit from which the employee is being displaced;

5. The position to which retreat is sought is in the same or a lower salary grade compared to the position from which the employee is being displaced; and
6. The retreating employee must have more seniority than the employee presently occupying the position to which retreat is sought.

(Civil Service Rules 5.5 and 5.6).

In **State service**, persons with one year of permanent service in a position in the non-competitive or labor class have the same retention, bumping and retreat rights as persons in the competitive class.

The Preferred List

As its name implies, the preferred list must be used to fill vacancies before any other list is used (CSL Section 81). There are two exceptions to this general rule of which you should be aware.

First, there is the special eligible list. Such lists are created when someone who has been in military service and who has not completed all parts of an examination returns to civilian life. If he/she successfully completes the remaining portion of the examination, then his/her name is entered on the original eligible list whether or not the list is still in existence. If this individual could have been reached for certification between the time he/she entered military duty and the date he/she was notified that he/she passed the examination, then his/her name is placed on a special eligible list for the position. Such special eligible list remains in existence for a period of two years from the date the individual is placed on it. This list is certified first, even before the preferred list. Generally, such lists contain only one or two names and the appointing officer can elect either to use or disregard such list (Military Law Section 243, Subdivision 7).

The second exception to the first use of a preferred list occurs when a position is reclassified. If the use of the preferred list would cause the layoff or suspension of the reclassified employee, then the preferred list has no priority in the filling of the reclassified position (CSL Section 121, Subdivision 4).

A preferred list is unlike any other list certified to an appointing officer. The appointing officer no longer has the right to select one person out of three names submitted to him/her. The appointing officer only receives a one-name certification. His/her only option is to appoint the one person or leave the position vacant.

There is another fundamental difference between a preferred list and other lists. Although persons on a preferred list have a four-year period of eligibility, the list itself is not established on a particular date nor does it expire on a particular date. As persons are laid off, their names are placed on a preferred list. Their prescribed four-year period of eligibility begins the date they are laid off. Another person in the same title may be laid off six months

later. His/her name will be entered on the preferred list for the title, but he/she can remain on the preferred list six months longer than the first employee.

Persons are placed on a preferred list in accordance with their seniority. Consequently, this list does change as new persons are added to it. It is possible for a person with greater seniority who is laid off at a later date to go above a person who had been laid off for a longer period.

However, this seeming injustice is overcome by the way the list is certified. A preferred list is certified on the basis of the layoff unit where the employee previously served. Basically, persons who are laid off from a particular layoff unit are entitled to be re-employed in the same layoff unit when vacancies are created. Consequently, the preferred list is certified by submitting the name of the person highest on the list who was laid off from that layoff unit. If there are no persons on the list from that particular layoff unit, the top name on the list is certified.

You will be asked by your agency to complete a preferred list/re-employment roster eligible card. On this form, you will indicate those counties to which you would accept reassignment and/or re-employment from preferred lists, re-employment rosters, or placement rosters. Carefully make your decision. If you choose "Statewide" or counties to which you cannot relocate and then decline a job offer, your name will be removed for that county and salary grade. Unlike eligible lists, declining job offers from these lists affects your rights for future opportunities and your name generally cannot be reactivated for jobs you have declined. Limit your choices to counties you are willing to accept at this time. You can always add additional counties by writing to the Department of Civil Service.

The person who is laid off has the right to be restored to a similar position as the one previously held. Consequently, if an individual accepts a position in a lower grade, he/she is not removed from the preferred list. The individual's name will be certified to other vacancies at the higher grade when they occur. If the person refuses to accept a position in the lower grade, then the person's name remains on the preferred list. However, this individual will no longer be certified to any vacancy in such lower grade unless he/she requests, at a later date, to be certified to the lower-grade position.

Similarly, if the person is certified to a geographic location other than the one where he/she was employed prior to layoff and refuses such appointment, this person's name will not be removed from the preferred list. Here, again, he/she will not be certified to any vacancy in that location.

When you are offered a position similar to your former position in the same or higher salary grade and in the same layoff unit and you refuse to accept such position, your name will be removed from the preferred list.

Generally, your name cannot be reactivated for jobs you have declined from the preferred list. If you feel that there were special circumstances for your declination, you may request restoration by writing to the Civil Service Department. If you are temporarily unable

to work, you should request “temporarily inactive” status by writing to the Civil Service Department.

Probationary employees who are on a preferred list and who are later reinstated must complete their probationary term when they have been reinstated.

A person who is reinstated to his/her former or similar position is entitled to receive at least the same salary he/she had at time of layoff.

Persons on a preferred list can participate in any promotional examinations for which they are qualified. The seniority of persons on a preferred list continues as if they were still employed in their position.

Detailed layoff information regarding the layoff and recall process for New York State Executive Branch Employees is currently available in a booklet titled: “Information for New York State Employees Affected by Layoff”.

This booklet is available through the CSEA web site: www.csealocal1000.org or it is available on the New York State Civil Service web site at: www.cs.state.ny.us.

Layoff procedures for Competitive class local government employees are found in the Local Civil Service rules. Please note that procedures for Non-Competitive and Labor Class local government employees at this time are not covered by Civil Service Law. As a result, they must be negotiated. You will need to check your Collective Bargaining Agreement (Labor contract). If no language exists, a procedure should be negotiated during the regular collective bargaining process or through impact bargaining if layoffs are imminent.

SECTION X

THE DISCIPLINARY PROCESS (Under Civil Service Law)

Employees in civil service are subject to disciplinary penalties for “incompetency or misconduct.” Although these are the only two bases for disciplinary action, they are broad enough to cover a multitude of charges against an employee (CSL Section 75.1).

However, certain groups of employees are protected against arbitrary actions of supervisors. These groups include all permanent competitive class employees, all state permanent employees in the classified service who are veterans or exempt volunteer firemen, and all employees in the non-competitive and labor classes who have had at least five years of continuous service (CSL Section 75).

⇒ **NOTE: State employees who are covered by the CSEA collective bargaining agreements need have only one year of continuous service to acquire this protection (CBA Article 33.1[a]). In addition, labor class employees with one year of continuous service have similar protection.**

An employee holding a position in the non-competitive class other than a position designated in the rules of the State or Municipal Civil Service Commission as confidential or requiring the performance of policy influencing functions, who since last entry into service has completed at least five years of continuous service in such a position shall be provided the benefit of the Section 75 disciplinary procedure (CSL Section 75.1[c]).

For a veteran to receive this protection he/she need not have been inducted from New York State nor need he/she have returned to New York State from military service. The only requirement is that he/she was honorably discharged and served in time of war as defined in Section 85 of the Civil Service Law.

All volunteer firemen are not necessarily “exempt volunteer firemen” (General Municipal Law Section 200). To achieve the status of an exempt volunteer fireman, a person must have served as a member of a volunteer fire company for a period of five years. When he/she has served five years, he/she can receive a certificate attesting to this fact by the person in the volunteer company who has custody of the company’s records.

New employees who are serving a required probationary period have no protection under Section 75 and may be terminated without notice and/or hearing. Even new employees with veteran or exempt volunteer firefighter status must complete any required probationary period before any entitlement to Section 75 protection attaches. Management’s only responsibility in terminating a probationary employee is that such termination must not be in bad faith, contrary to statute or violative of the employee’s civil rights. The only exception to the probationary period rule would apply to a permanent employee who has received a promotion and is serving a probationary period in the promoted position. In such cases, any Section 75 protection the employee was previously entitled to would continue.

Employees covered by Section 75, as described above, have the right to representation by their union representative if the employee appears to be a potential subject of disciplinary action at the time the employer questions the employee. Such employee has the right to be notified in advance, in writing, of such right. If the employee requests representation, a reasonable period of time shall be afforded to obtain such representation.

In the event that the employer does not provide these rights, then any and all statements obtained from said questioning as well as any evidence or information obtained as a result of said questioning cannot be used against the employee in a Section 75 hearing. It should be noted that these rights do not modify or replace any written collective bargaining agreement between a public employer and the union.

An employee against whom disciplinary action is proposed must receive a written notice of the proposed action and the reasons for it. He/She must receive a copy of the charges and he/she has at least eight days to answer the charges.

A hearing date is set. Under the statute, the person who has the power to remove the employee holds the hearing. If he/she does not wish to preside at the hearing, then he/she may designate a deputy or other person to conduct the hearing. However, such designations must be in writing. If a deputy conducts the hearing, then he/she must record the hearing and make a recommendation to the person having the power to remove.

At the hearing, it is the responsibility of the accusing officer to prove the charges that he/she has made. The employee has the right to be represented by counsel, or by a representative of a recognized or certified employee organization, and to summon witnesses on the employee's behalf. The employee has the right to receive a copy of the transcript(s) of the hearing without charge.

Before the hearing is held, the employee may be suspended for a period not exceeding 30 days. If there has been no determination of the charges after the 30-day period, the employee must be reinstated to his/her position.

After the hearing is held and if the employee is found guilty of the charges, he/she may receive a reprimand, a fine not to exceed one-hundred dollars, suspension without pay for a period not exceeding two months, demotion in grade and title, or dismissal from service. If the employee was suspended prior to the holding of the hearing, then that period of time can be considered as part of the penalty.

It is important to note that a reprimand is a penalty imposed after a hearing. The charges presented to an employee cannot contain such statements as "the employee was reprimanded many times for this offense," unless there were formal hearings and determinations. If the charges do contain such statements and no hearings were held, the employee, his/her counsel, or the representative of the employee organization, should move to have these statements removed from the record.

If the employee is found not guilty of the charges, then he/she must be restored to his/her position with full pay for the period of suspension. Unemployment insurance, if he/she received any, will be deducted from the back-pay award, as well as any earnings from other employment during the period of suspension. If the employee had been moonlighting prior to his/her suspension, such earnings are not deducted from the back-pay award.

An employee can appeal the determination made in disciplinary proceedings. If he/she intends to appeal, then he/she should collect a copy of the charges, his/her written answer, a transcript of the hearing and a copy of the determination. The employee has two avenues to appeal the determination, but he/she can only use one.

He/She can appeal to the appropriate Civil Service Commission provided that he/she files the appeal in writing within 20 days after he/she has received written notice of the determination following the conclusion of the hearing. The Commission reviews the record of the hearing. The Commission may or may not supplement the review of the record with written or oral arguments.

The law authorizes the Commission to affirm, reverse, or modify the previous determination. They may direct the reinstatement of the employee or the transfer of the employee to a similar position in another department or place the employee on a preferred list for the next opening in that title. The important thing to keep in mind is that the determination made by the Commission is final and conclusive and no further review can be made to a court.

The other avenue of appeal that is available to the employee is presenting the issue to a court of law. Here, the important thing to observe is that the court action must be made within four months after the employee has received the determination of the hearing. Many actions have been thrown out of court when the employee has instituted his/her court action after the four-month period has passed.

The employee pursuing a court action must file a special proceeding pursuant to Article 78 of the Civil Practice Law and Rules (CPLR) within four months after receiving the final determination following the conclusion of the hearing. The grounds for overturning a determination in a Section 75 disciplinary proceeding are extremely limited and will depend upon the specific facts and conditions of the case. Be mindful, however, that notice of claim provisions may apply to such court actions. For example, if the employer is a school district, a notice of claim must be filed within three months of final determination, prior to initiating an Article 78 proceeding.

SECTION XI VETERANS' RIGHTS (Under Civil Service Law)

The right of a veteran to receive additional credits in an examination is a constitutional right and can be altered only if Article V, Subdivision 6 of the State Constitution is changed.

To receive credit as a veteran you must meet certain conditions contained in the law. First, you must have received an honorable discharge or have been released under honorable conditions. Second, you must be a resident of New York State at the time of application for appointment. Third, you must have served in the Armed Forces in time of war (CSL Section 85).

“Time(s) of War” are specified periods defined in the Civil Service Law. However, it is wise to review the law from time to time since the Legislature often extends the time of a particular war. For example, hostilities in which the Armed Forces participated popularly known as the “Korean War” or the “Vietnam War” have had their terminal date extended several times.

To receive credit as a disabled veteran you must meet all of the conditions required of a veteran. In addition, the U.S. Veterans Administration must certify that such war-incurred disability is rated at 10% or greater. The disability must exist at the time you receive the credits either for examination or retention. Unless you have a certified permanently stabilized condition of disability, the certification from the U.S. Veterans Administration must show that a physician of the Veterans Administration medically examined you within one year from the date you claim additional credits for either examination or retention rights. Payments from military pension from a source other than the U.S. Veterans Administration will not qualify you as a disabled veteran.

A veteran claiming additional credits in an examination may make such claim any time between the date of his/her examination application and the date the list is established. He/She has not less than two months from the date he/she has filed his/her examination application to establish by documentary proof of his/her right to receive the additional credit.

It is generally wise to claim the credits at the time the application is filed. The veteran may withdraw his/her claim for credits at any time prior to his/her permanent appointment or promotion. Such withdrawal must be in writing and filed with the appropriate Civil Service Commission. However, once the veteran decides to withdraw his/her claim for additional credits, such decision is irrevocable insofar as that particular examination is concerned.

The purpose behind the law granting additional credits to veterans in examinations is to assist the veteran to receive a permanent appointment or promotion in the public service. **Once the veteran has received a permanent appointment with the use of additional credits he/she cannot claim additional credits for any other examination.** If the appointment does not mature into a permanent appointment or if the veteran is terminated either at the end of the probationary period or resigns either before or at the end of the

probationary period, it is considered that he/she has not received a permanent appointment and he/she can use his/her credits for another examination. A disabled veteran cannot claim credits as a veteran in an examination, receive a permanent appointment, and then claim a balance of credits in a promotion examination—he/she has already received a permanent appointment and elected to claim credits as a veteran.

The concept of receiving only one permanent appointment with the use of credits is carried over to vacancies in the various municipalities in the State. If the veteran has received a permanent appointment in the State service, then he/she cannot claim credit in an examination in a municipality and vice versa. The law mandates that the State, as well as all the municipalities in the State, maintain a roster of all persons who have received permanent appointments. Such information is exchanged between the State and the municipalities and between municipalities. A veteran who had been previously permanently appointed and has received a second permanent appointment with the use of veterans' credits could lose his/her second appointment.

There are certain circumstances where even though the veteran has claimed credits and has received a permanent appointment, it is considered that he/she has not used his/her credits. These include instances where the veteran's standing on the eligible list is unchanged (whether or not he/she receives veterans' credits), and instances where his/her relative standing among eligibles willing to accept the appointment is unchanged (whether or not he/she received veterans' credits in the examination).

Veterans receive additional credits in examination and additional seniority in the event of layoff. In an open competitive examination, the veteran receives five additional points added to his/her score in the examination while a disabled veteran receives ten additional points. In promotion examinations, they receive half of this amount, namely, a veteran would receive two- and one-half additional points while a disabled veteran would receive five additional points. However, these points are only added when the veteran or the disabled veteran achieves the minimum passing score in the examination.

In the event of layoff, the additional seniority credits that veterans and disabled veterans receive are similar to those granted in promotion examinations converted to months and added to their true seniority in their position. The two- and one-half points converts to two and one half years or 30 months for the veterans or the five points converts to five years or 60 months for the disabled veteran.

The spouse of a veteran with a one hundred per cent (100%) service connected disability is granted 60 months (five years) of additional seniority credits (CSL Section 85.7).

Veterans in the non-competitive class of Civil Service receive tenure in their position and cannot be summarily disciplined or dismissed. They are afforded the same protection in law as permanent competitive class employees and must receive statements of charges and afforded an opportunity for a hearing before any action is taken. To receive this benefit the veteran need not meet all the conditions required for him/her to receive examination credits. This benefit is provided to every honorably discharged veteran who served in time of war.

In the municipalities, veterans receive an additional benefit. If his/her position is in the non-competitive or labor class and there is a layoff, then he/she can receive a transfer to any similar vacant position if he/she can locate a vacancy. In the State service, this benefit is extended to labor class employees. In such transfers, the employee receives the same compensation he/she previously had received.

SECTION XII

VETERANS' RIGHTS (Under Military Law)

Veterans obtain certain rights in relation to Civil Service under terms and conditions specified in Military Law. It is therefore worthwhile to review these features of the Military Law.

Everyone is entitled to absent themselves from their positions to perform military duty (Military Law Section 243). An individual must receive a leave of absence for the period of time that he/she is engaged in military duty. After completing military duty veterans must be reinstated to their positions provided they apply for reinstatement within 90 days after the termination of their military duty or at any time during their terminal leave. If these individuals do not request reinstatement within 90 days of the termination of their military duty, they may be reinstated within one year from that date at the discretion of the appointing officer.

A veteran must also be granted a leave of absence from his/her position to continue his/her study under the Servicemen's Readjustment Act (popularly known as the "G.I. Bill of Rights") (Military Law Section 246). Such leave cannot be longer than four years. In order to be reinstated the veteran must make application within 60 days from the completion of the course of study.

In the event a veteran competed in certain portions of an examination but reported to military duty before completing all tests in the examination, he/she is entitled to receive the remaining portion of the examination upon his/her return to civilian life provided he/she applies within 60 days after his/her restoration to his/her position. If the individual is successful in the examination, then he/she is placed on a special military list provided he/she was reachable for certification if he/she had not been in military service. Such special military list remains in existence for a period of two years from the date the individual is placed on the list. This list must be certified first even before a preferred list for the position. If the examination was an open competitive examination and the veteran was appointed, then his/her seniority is established as the date any candidate lower on the original eligible list was appointed (Military Law Sections 243 and 243-b).

Similarly, if the veteran is on an eligible list while on military duty and has been reached for certification, then he/she is entitled to be placed on a special military list. Other conditions, such as the life of this list, seniority, and preferential certification, are the same as the situation surrounding veterans who have not completed all parts of an examination.

If a promotion examination had been held while the veteran was in military service and he/she was eligible to compete in such examination, then he/she is entitled to receive a comparable examination. Here, too, the veteran must request the comparable examination within 60 days after his/her restoration to his/her position.

In all of the above cases where the veteran competes or participates in an examination, his/her name is inserted on the original eligible list if it is still in existence. His/Her right to

be placed on a special military list occurs only when someone lower on the eligible list has been appointed or when the original eligible list has expired.

An employee can be appointed from an eligible list while in military service. However, the time he/she serves in military service is considered as meeting the period of satisfactory service for the probationary period. Similarly, if an employee has not completed his/her probationary period and is inducted into the military service, then his/her probationary period is considered as being satisfactory while in military service.

If an examination announcement contains age requirements, the period of military service must be deducted from the actual age of the candidate. However, a veteran cannot deduct more than six years from his/her actual age for this purpose.

It is conceivable that a person in the armed forces might sustain an injury in the line of duty. Such injury cannot bar him/her from appointment or promotion unless it can be shown that the disability would prevent the veteran from efficiently performing the duties of the position.

Members of a reserve force or reserve component or the organized military or the Armed Forces of the U.S. are entitled to absent themselves from their civilian position to attend service schools or training duty. In the case of service schools, the employee is entitled to a maximum of six months leave. This period of time includes going to and returning from the place of assignment. This period of leave is granted whether or not the employee consents to such training or duty.

Although the law permits a six-month period of absence, the employee is entitled to a maximum of 30 days of salary for ordered military duty (Military Law Section 242). The maximum of 30 days is for any calendar year. The 30 days includes the time spent reporting to or returning from the place of assignment. This 30-day period is independent from any vacation period accrued to the employee. The employee is entitled to receive his/her vacation separately and in the same manner as any other employee in the organization.

A public employee who enters military service does not accrue sick leave and vacation benefits for the period during which he/she serves in the armed forces. The employee may continue to contribute to a pension or retirement system the amount he/she would have contributed had his/her employment been continuous.

The basic concept in Military Law is that the veteran should have the same rights that he/she would have had if he/she remained in civilian life rather than entering military service. Consequently, if he/she had been a public employee prior to entering military service and later returned to public employment, then he/she is entitled to all increments and other salary increases he/she would have received had he/she been continuously employed in government service. In addition, for seniority purposes, his/her military service time is added to his/her previous time in his/her position to make a continuous period of service.

SECTION XIII

CIVIL SERVICE EXAMINATION PROCESS

How to Take a Written Examination

Often, persons fail examinations or do not receive as high a score as they should because they forget certain basic principles and practices. It is therefore important to review these fundamental issues so that you can obtain a better score in your written examination.

One of the common statements made by candidates is “I became nervous.” This possibility can be either minimized or eliminated by following these steps:

First, arrive at the test location in sufficient time to park your car, go to the restroom and arrive in the examination room before the examination has started. If you arrive late and others have started, you will tend to hurry to catch up, to make mistakes and to lose your calm. If you are not sure how long it will take you to go from your home to the examination site, it would be well worth your while to take a dry run the evening before.

Second, come prepared to the examination. Look at your notice to appear to the examination before you leave the house and be certain that you have everything you were told to bring. Generally, you are told to bring two #2 pencils. As a factor of safety, you could just as easily bring three or four. What you may not be told is to bring a good pencil eraser. Bring one. You may need it if you make any changes. All erasures must be clean or they may be picked up by the optical scanner as a double answer.

Third, bring along a sufficient supply of your favorite candy bars, cookies, or whatever snacks you will need or want during the time interval of the examination. However, please be mindful of neighboring test takers while eating—noisy snacks may be distracting to others.

Fourth, the only identification on your answer sheet is your social security number. Do not trust your memory. Do not raise doubts in your mind that will cloud your examination process as to whether the first three numbers, for example, are 031 or 013. Write your social security number on your admission card the evening before the examination. Then you need only to copy it, and your mind will be clear for the actual examination.

Fifth, fill out the answer sheet completely. Use the precise title of the examination as it appears on your admission card. The test booklet number appears on the front of the test booklets. Enter the time started and at the conclusion of the exam, the time finished.

You are now ready to take the examination. The first thing to do is read all instructions carefully. A second reading to make certain that you fully understand them will pay off. Follow the instructions given. Do not say to yourself “I have taken this examination or similar examinations before; they are all alike.” Each examination may have areas of difference from previous examinations. By ignoring instructions, you may fail.

The instructions will tell you what questions to answer and in what booklets the questions appear. Answer only those questions and no others. You will not receive credit for correct answers to questions that you are not required to answer. Some examinations are in one booklet; others may be in two or more booklets.

Read the questions carefully. Answer the questions as written. Pick out the **best** answer - the answer closest to answering the question. Do not answer based on your knowledge of the subject matter if the answer is not included amongst the given alternatives. Watch for key words in the question such as most, least, best, most likely, etc.

Give only one answer to each question. Do not give two answers to any question. You will not receive credit for either answer even if one of your double answers is correct. Do not leave any question blank; you receive no credit for blank answers. Blank answers are considered as wrong answers. Mark your answers on the answer sheet only. Do not put your answers in the question booklet. Question booklets are not rated. If you plan to transpose the answers from the booklet to the answer sheet, you may not have sufficient time and you may introduce the possibility of errors when transposing your answers.

Answer the questions that you are fairly sure of first, then go back to those you must think over more carefully. Proportion your time. Do not spend too much time on any one question. Save such a question to the very end. Block it out of your mind and proceed with the rest of the examination. Generally, you will have sufficient time to come back to it after you have completed the rest of the examination.

In answering multiple choice questions, cross out those alternatives that appear ridiculous to you, then make your selection from the remaining alternatives. This will increase your chance of answering correctly.

Complete the examination even though you find it difficult. Remember, if it is difficult for you, it is probably equally difficult for other candidates. On occasion, when it is determined that an examination is too difficult for the candidate population, scores are recalibrated giving candidates additional credits for correct answers. However, if you do not complete the examination or if you withdraw, you will not be able to obtain the benefit of any upward rescoring formula.

Once you have completed the examination, do not go back changing answers. Research has shown that in most cases, the first response is the correct response. Do not change answers unless you are absolutely certain that you misread the question or committed some oversight in the first reading.

Some candidates become upset during the examination when they select the same letter answers for three or four questions in a row. They begin to think that at least one of the answers in the series is wrong. Nothing could be further from the truth. There is no established pattern in the answers to questions; there is no requirement in test construction that there be an equal number of correct answers for each alternative. For example, in answering the questions in the examination, if you find five correct answers in succession

with the “C” alternative, that does not mean you must be wrong. Answer the questions to the best of your ability and do not be concerned whether you show more answers in the “C” alternative than the rest.

There is such a thing as preparing too much for an examination. The night before the examination, you should have completed your examination subject matter preparation. Stop. Have a relaxing evening, and come to the examination the next morning, calm, cool and collected.

How to Take an Oral Examination

Candidates participate in oral examinations with a poor attitude believing that they cannot prepare for such examination and the ultimate result depends upon the attitude of the examiners. The sole purpose of the following is to dispel these beliefs and guide you in presenting yourself in the best possible manner to increase your chances of success in these examinations.

The first thing to do is review the announcement of the examination. There are two types of oral examinations. One type is given after the written examination and is designed to evaluate certain qualities such as communication skills or ability to adjust to different situations. The other type is given where there is no written examination. Here, technical knowledge and abilities are evaluated. The announcement will indicate which type of oral examination is being given and what factors are being evaluated. Once you know the broad outline of the examination, you can key yourself and your response to these factors.

The second thing to do is review the specification for the position. Make sure you know the duties of the position you are seeking to qualify for. Sometimes, as a warm-up question to bring you into the main discussion, the examiner will ask you about the duties of the position. If you fumble this question, you may severely hurt your chances to pass the examination.

If the examination is designed to measure the intangibles, you will discover that the questions can be answered in several ways. There is no one correct answer. The examiners are interested in how you approach the problem and the basis for your solution. Another candidate approaching the problem from a completely opposite point of view can obtain an equivalent score provided that his/her development and logic are equally good.

The most destructive method to answer a question is to merely say “yes” or “no” and leave it at that. The examiners are not concerned with the “yes” or “no” response. They are concerned with how you arrive at a conclusion, what factors you consider important in evaluating the situation, and what items are important in resolving the issue.

Answer the precise question presented to you. Do not try to second-guess the examiners by saying to yourself, “This is what they meant to ask.” The examiners have a responsibility to pose a clear question. If you are answering in a digressive direction, it is their responsibility to rephrase the question. Remember that in an appeal, the record will only

show the question and your answer. It will not contain what you thought the examiners meant to ask.

In some questions that are presented, you may find that in order to answer you must make certain assumptions. These assumptions will establish the frame of reference for your answer. Express your assumptions clearly so that the examiners will understand why you are answering the question in the manner you have selected. A given set of assumptions may lead to an answer to the question that will merit a high rating. Yet the same answer without the expressed assumption might lead to a failing score.

Take a position. The examiners are interested in whether you can arrive at a sound judgment. Do not say on one hand it can be this, but on the other hand it can be something else. This is fence straddling. While you may be right in your analysis, unless you select what you believe to be the best approach, you will receive a failing score.

One of the subconscious quirks that destroy a candidate in an oral examination is an inability to forget the previous question while answering a new question. The result is that he/she does not give full attention to the new question and achieves a failing score both on the old question and the new question. Once you have completed a question, forget it and clear your mind for the new question so that you can give it full attention.

It is possible that you might be given a question on a subject that you know nothing about. If that happens, the wisest thing to do is to honestly admit you have no knowledge in that particular field. The examiners will appreciate your saving their time and you may receive an alternate question. But under any circumstance, do not try to bluff your way through. The examiners are expert in their field and can readily detect that you are fudging. They will give you a further series of questions that will lead you into a dead end position. Regardless of how well you do on subsequent questions, the fact that you tried to bamboozle them on one question will affect their evaluation of your performance. You may therefore receive a failing score.

There is a type of oral examination known as a “stress interview.” Here the examiners are trying to discover how the candidate reacts under stress. If you are a candidate in this type of an examination, you will be badgered with a series of questions. The important thing is to keep your cool. If you become flustered, abusive, or angry, you have lost the ball game.

The problem of humor in an oral examination is a delicate one. Humor properly used can serve to break the tension in an examination and bring the examiners to your side. However, this requires considerable skill and finesse. You must avoid giving the impression that you are a wise guy. So, unless you consider yourself a second Trevor Noah or Jimmy Fallon, avoid it. It is very risky.

Remember that your problem is to create a favorable impression. There are several, seemingly little things which detract from a candidate’s performance. First, look at the examiners when you answer their questions. The candidate who looks at his/her shoes or the ceiling is giving a poor impression. Second, avoid nervous mannerisms either in speech or

action. Nothing is more defeating than the candidate who punctuates each sentence with some phrase such as “Do you get me?” Earlobe pulling, rubbing your nose, and swinging your feet are as obnoxious as picking your nose. Third, dress neatly in accordance with the job you are seeking. If you are seeking a junior administrative position, do not come to the examination in jeans and a Hawaiian shirt. Little things like polished shoes are important.

It is possible that you may know a member of the Board. Do not hide it. He/She probably has already told the other members of the Board and has disqualified him/herself as a rater. Accept it as a matter of course. Do not try to take advantage of your acquaintance. It will bounce back on you.

One of the major things is to be yourself at all times. Listen and be attentive to the question and the proceedings. Don’t interrupt the examiner. Give him/her the courtesy of completing his/her question. The worst thing is to presume you know the question before he/she has the opportunity to ask it. Reply to the question promptly but not hastily. A long stage wait is deadly. A wait of half a minute seems to be five minutes long when an examiner is waiting for an answer.

As you progress in the answer to a particular question and as the examiners prod you with supplemental questions, you may suddenly realize that you have made an error in judgment. Admit it and proceed to correct yourself. However, do not change your answer to merely agree with an examiner. If you believe you have a good position keep it. Defend your point of view but do not try to start a debate.

Generally, at the conclusion of the interview, the examiners will ask you if you have anything to add. The wisest thing to do at that stage is to say “No, thank you.” At that time in the proceedings, the examiners have heard enough from you and have formulated their opinion. Any further discussion would be wasting their time and would be to your disadvantage. Under no circumstance should you try to soft soap the examiners by telling them what a good board they are and what a fine examination they have conducted. When you receive your score you may have a different opinion and any chance of an appeal will be destroyed.

Test Preparation Booklets

Additional assistance, in the form of test preparation booklets, online courses, and workshops are available for CSEA members who plan on taking a written or oral civil service examination. The booklets and online courses cover a wide range of civil service exam areas and are available free to members through the CSEA website <https://cseany.org>. To view these test preparation booklets and online courses members have to log in to the website and then: 1). Go to “For Members”; 2). Click on “Civil Service Test Prep and Job Info; and 3). Click on “Booklets” or “Online Courses”. If you prefer a hard copy of a booklet sent to you, they are available for a nominal fee through the CSEA Work Institute. Additional information is available by calling (518) 782-4427 or toll free at (866) 478-5548, or by writing to: CSEA Work Institute, 1 Lear Jet Lane, Suite 5, Latham, New York, 12110. You may also send an email to: workinst@cseainc.org.

SECTION XIV ENFORCEMENT OF THE CIVIL SERVICE LAW

The enforcement of the Civil Service Law is the responsibility of the Civil Service agency (i.e. State or Municipal Commission/Personnel Officer), the appointing officer, the employee and the general public. If each does their part, the provisions of the law will be followed and Civil Service procedures will be effective and to the benefit of all concerned.

The primary responsibility for the enforcement of the Civil Service Law rests with the Civil Service agency. Its major area of control is the payroll certification procedure. If the employment of an individual is improper, the Civil Service agency does not approve the payment of the salary for the individual (CSL Section 100).

When this occurs, several situations may develop. The appointing officer should terminate the employment of the individual. If the appointing officer has employed the individual before receiving the approval of the Civil Service agency, then he/she is personally liable for the salary due the employee. Since the employee has worked for the period, the employee is entitled to receive his/her salary (CSL Section 102).

If the appointing officer decides to ignore the fact that the Civil Service agency has disapproved the employment of the individual and continues to employ him/her, then the responsibility for the payment of the salary of the individual falls upon the disbursing officer. Where the Civil Service agency has refused to certify the payment of salary of an individual, and the disbursing officer pays the salary, he/she becomes guilty of a misdemeanor and can be prosecuted on this count (CSL Section 101).

Any action brought against a disbursing officer, if sustained in court, makes the disbursing officer personally liable for any wages paid to the employee. These illegal payments cannot be charged to the governmental agency. All monies so recovered must be paid to the governmental agency (CSL Section 102).

These provisions of law can be strong deterrents to improper employment. However, they are seldom used. Civil Service agencies are reluctant to bring actions against disbursing officers. Individuals can initiate such actions; however, they rarely do so, either because they are unaware of this avenue or because of the costs involved in such litigation. While the law does authorize the individual to receive payments for costs in such actions, these costs do not include attorney fees.

Certain violations of Civil Service Law can also be the subject of a lawsuit in the New York State Supreme Court pursuant to Article 78 of the Civil Practice Law and Rules (CPLR). A proceeding under CPLR Article 78 is a lawsuit to overturn an action by the State or by a local government unit. The government action that gives rise to an Article 78 petition is a violation of law by a government official, or a violation of a regulation. The action can also be based on a failure to perform a duty required by the law.

The party bringing the Article 78 petition has the burden of proving that the government action was arbitrary and capricious or was taken in bad faith or in violation of law. If a hearing was held before an administrative agency, the party bringing the lawsuit must prove that the decision resulting from the hearing was not supported by substantial evidence.

Any individual taxpayer has great powers to prevent and stop illegal actions under the Civil Service Law. The taxpayer can prevent payment of salary of an employee working contrary to the provisions of the Civil Service Law. Here, too, individual taxpayers seldom avail themselves of this remedy, either because they are unaware of this provision of law or do not wish to get involved (CSL Section 102.1).

Individuals have many rights under Civil Service Law. Any person who obstructs the rights of an individual in regard to him/her taking an examination, to be certified for appointment, promotion, or reinstatement, is guilty of a misdemeanor. Similarly, any examiner who falsely grades an examination, wrongfully changes a candidate's standing on an eligible list, furnishes special or confidential information to either improve or injure a candidate's standing on an eligible list, or impersonates or permits someone to impersonate a candidate in an examination, is guilty of a misdemeanor. A misdemeanor is punishable by a fine or imprisonment up to one year, or both.

Candidates and employees are both concerned about inquiries as to their political affiliation. The Civil Service Law is very explicit on this issue. No one can directly or indirectly ask any employee, or require him/her to transmit orally, or in writing, any statement as to his/her political affiliation as a test of fitness to hold a position. This prohibition applies not only to the employee but also equally to his/her dependents or relatives. The penalty prescribed in law for the violation of this provision is a fine of not less than \$100 and not more than \$500, or imprisonment for not less than 30 days, nor more than six months, or both fine and imprisonment. However, there is no prohibition for an employer to inquire whether a candidate or employee belongs to an organization or group that advocates the overturning of the government of the United States by force or violence (CSL Section 107.1 & 107.2).

Employees are often faced with the issue of contributions to a political party. No one can compel an employee to make a political contribution or promise any benefit such as a promotion to persons making political contributions. Nor can an employee be solicited at his/her place of work to make a political contribution. Even solicitation for political contributions by mail is prohibited (CSL Section 107.3).

Candidates for political office cannot promise any individual appointment or promotion in the public service for his/her aid in securing the political appointment. Under law this is considered a bribe, and the individual involved is subject to prosecution and penalty (CSL Section 107.4). The penalty prescribed in law for the violations of this provision is a fine of not less than \$100 and not more than \$3,000, or imprisonment for not less than ten days nor more than two years, or both fine and imprisonment.

Yet every employee has his/her rights as a citizen. He/She can make voluntary contributions to the political party of his/her choice or, on a voluntary basis, aid a political candidate in his/her campaign for election or re-election.

Questions are often raised as to whether a public employee can run for political office or engage actively in partisan political activities. The answer depends on the program wherein the employee functions. If a state or local government employee is employed in a program that is entirely federally funded (regardless of the position he/she holds), then he/she is prohibited from certain types of political activity, including running for office. Employees in federally funded programs, before getting involved in partisan political activities, should review the provisions of the Federal Hatch Act (5 U.S.C. 1501-1508) or contact the United States Office of the Special Counsel.

The provisions of law discussed here were designed to protect the employee and to provide impartial and objective administration of the Civil Service Law. They will only be effective if you report and seek to prosecute any violation of your rights.

