

New York State
Association of School Personnel Administrators



**Personnel / Human Resources
Administrators Academy**

*Understanding New York State
Civil Service and Education Law*

PART II

CLASSIFIED EMPLOYEES

(Appointment, Layoff/Recall, and Discipline/Discharge)

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PART II

UNDERSTANDING NEW YORK STATE CIVIL SERVICE LAW

CLASSIFIED EMPLOYEES

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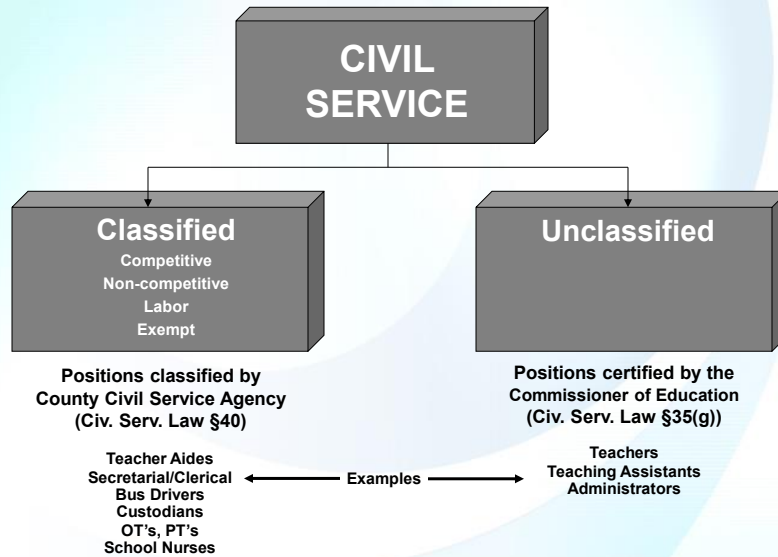
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Jurisdictional Classification of School Employees



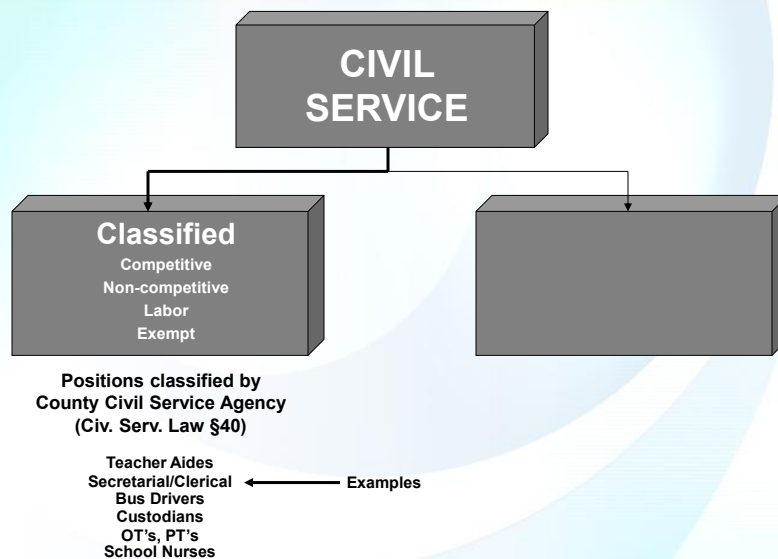
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Jurisdictional Classification of School Employees



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Classes of Classified Employees



- Competitive (Civ. Serv. Law §44)
 - Includes those positions for which it is practicable to determine merit and fitness of applicant by competitive examination
- Non-Competitive (Civ. Serv. Law §42)
 - Includes those positions for which it is not practicable to determine applicants merit and fitness by competitive examination but instead by a review of minimum qualifications

NOTE: *Some competitive positions can be filled without examination by individuals with handicapping conditions under §55-a of the Civil Service Law. Also, some competitive class positions, approved by the State Civil Service Commission, can be designated non-competitive if filled on a part-time basis. The term "part-time" is defined by the local Civil Service Commission.*

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Classes of Classified Positions



- Exempt (Civ. Serv. Law §41)
 - Includes those positions for which competitive or non-competitive examinations or other qualification requirements are not practicable. The appointing authority has a free hand in selection.
- Labor (Civ. Serv. Law §43)
 - Unskilled employees

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Appointments

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Appointments

- Permanent Serving Probation (Civ. Serv. Law §63)
- Provisional (Civ. Serv. Law §65)
- Temporary (Civ. Serv. Law §64)
- Contingent Permanent (Civ. Serv. Law §64(4))

- Applies to all permanent appointments regardless of hours worked and class of position (i.e., Competitive appointments from eligibility list, Non-Competitive, Labor, Exempt)
- Must adhere to Rule of 3 if appointment is from an eligibility list (Civ. Serv. Law §61(1))
- Individuals interviewed but not selected must be given written notice (Civ. Serv. Law §61(3))

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Appointments



- Permanent Serving Probation (Civ. Serv. Law §63)
- Provisional (Civ. Serv. Law §65)
- Temporary (Civ. Serv. Law §64)
- Contingent Permanent (Civ. Serv. Law §64(4))

- Veterans are allowed additional competitive exam credits (Civ. Serv. Law §85)
- Must meet minimum qualifications for Non-Competitive appointment
- The length of the probationary period is determined by the local civil service commission (Civ. Serv. Law §63(2))

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Appointments



- Permanent Serving Probation (Civ. Serv. Law §63)
- Provisional (Civ. Serv. Law §65)
- Temporary (Civ. Serv. Law §64)
- Contingent Permanent (Civ. Serv. Law §64(4))

- The probationary period can be extended by absences during the probationary period (paid & unpaid)
- An employee obtains permanent status upon completion of the probationary service or upon earlier notice after the minimum period
- The date of permanent appointment is retroactive to the start date of the probationary appointment

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What is the “rule of three”?



- All candidates at the highest score are immediately eligible for consideration for appointment. Candidates at lower scores can only be considered when there are fewer than 3 candidates at the highest score.
- Any candidate's eligibility for appointment depends not only on his or her rank (all eligible's who received the same score are equally ranked) but also how many other candidates are tied at that and higher level ranks.

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What is the “rule of three”?



Example One		
Score	No. of Candidates at this score	Rank of Candidates
100	1	1
95	1	2
90	1	3

In this case all three candidates at all three scores and ranks are equally eligible to be appointed.

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What is the “rule of three”?



Example Two

Score	No. of Candidates at this score	Rank of Candidates
100	10	1
95	10	2
90	10	3

In this case, only the ten candidates at score 100 and rank 1 are eligible for appointment. If, however, through hiring or declinations the number of interested candidates at 100 is reduced to 2, then all 10 candidates at the score 95 (rank 2) can also be considered. Only if there were only 2 or fewer candidates at the scores of 100 and 95 (ranks 1 and 2) can any of the 10 candidates at the 90 score be considered.

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Personnel Department

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Find Your Test Ranking

Online Civil Service Eligible Lists by Job Title [Eligible List FAQ's](#)

Welcome to our new online facility. Our goal is to provide access to your score, rank and current eligible list status online.

Select the job title link to view the eligible lists for this job title.

Job Title Description:

[Search By Name](#)

Job Title
TYPIST I
TYPIST II

Select a Department

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Personnel Department

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Find Your Test Ranking

Online Civil Service Eligible Lists

[Eligible List FAQ's](#)

Select the exam number link to view the eligible list for this exam.

Job Title Code: 01010

Job Title: TYPIST II

Exam Nbr	Exam Date	Exam Type	List Effective Date	List Termination Date
00409	04/02/2005	OPEN COMPETITIVE	06/16/2005	06/16/2007
00510	04/02/2005	PROMOTIONAL	06/16/2005	06/16/2007
00410	05/13/2006	OPEN COMPETITIVE	08/01/2006	08/01/2008
00711	05/13/2006	PROMOTIONAL	08/01/2006	08/01/2008

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Personnel Department

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Find Your Test Ranking

Online Civil Service Eligible List Members

[Eligible List FAQ's](#)

Job Title: **TYPIST II**

Exam Number: Continuous Recruitment Date List Established: N/A Total# on List: 14

Year Held: N/A Date List Expires: N/A

Rank	Last name	First name	MI	Final Grade	Status
1	PARTRIDGE	EILEEN	M	95.0	Active
2	COLE	JANET		90.0	Active
2	DENT	ELLEN	G	90.0	Active
2	SNYDER	DONNA	M	90.0	Active
3	CAYWOOD	MARCIA		85.0	Active
3	LEACH	LEISHA	K	85.0	Active
3	SEELEY	SHARON		85.0	Active
3	SHELDON	JENNIFER	M	85.0	Active
4	BAGGETT	ANNE		80.0	Active
4	RINALDI	KATHLEEN		80.0	Active
4	WHITE	LAURA	M	80.0	Active
5	SCOTT	SYLVIA	J	75.0	Active
5	STUHLER	KAREN	A	75.0	Active
6	FORBES	MELISSA	A	70.0	Active

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Find Your Test Ranking

Online Civil Service Eligible Lists

[Eligible List FAO's](#)

Select the exam number link to view the eligible list for this exam.

Job Title Code: 01010

Job Title: TYPYST II

Exam Nbr	Exam Date	Exam Type	List Effective Date	List Termination Date
00409	04/02/2005	OPEN COMPETITIVE	06/16/2005	06/16/2007
00510	04/02/2005	PROMOTIONAL	06/16/2005	06/16/2007
00410	05/13/2006	OPEN COMPETITIVE	08/01/2006	08/01/2008
00510	05/13/2006	PROMOTIONAL	08/01/2006	08/01/2008

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Select a Department Go

Personnel Department

—Elaine L. Walter, Commissioner

Find Your Test Ranking

Online Civil Service Eligible List Members

[Eligible List FAO's](#)

Job Title: **TYPYST II**

Exam Number: Continuous Recruitment Date List Established: N/A Total# on List: 52
 Year Held: N/A Date List Expires: N/A

Rank	Last name	First name	MI	Final Grade	Status
1	BARNHOLDT	MICHAEL	E	100.0	Active
2	CLARK	DEBBIE	J	95.0	Active
2	HANNA	MARTHA	B	95.0	Active
2	LA FRANCE	ANNAMARIE		95.0	Active
2	LEUBNER	KATHY		95.0	Active
3	BARITELL	JAYNE	P	90.0	Active
3	MACKOWSKY	JOANNE		90.0	Active
3	MUSENGO	MICHELLE		90.0	Active
3	SHANTY-MORLEY	SUSAN		90.0	Active
3	VANWIE	CAROL	M	90.0	Active
3	WALKER	PAMELA	J	90.0	Active
3	WOOLRIDGE	ELAINE		90.0	Active
4	BALCER	KAREN	A	85.0	Active
4	DIRENZO	JULE	A	85.0	Active
4	EVERSON	STEVEN	P	85.0	Active
4	FISCHETTI	BARBARA		85.0	Active
4	FRITZ	LAURA	J	85.0	Active

Appointments



- What's the difference and when to use?
 - Open Competitive
 - Promotional List
 - Residential
- What is a direct line of ascension?

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Appointments



- Permanent Serving Probation (Civ. Serv. Law §63)
- Provisional (Civ. Serv. Law §65)
- Temporary (Civ. Serv. Law §64)
- Contingent Permanent (Civ. Serv. Law §64(4))

- Applies only to competitive appointments where no eligibility list exists
- Employee must meet minimum qualifications, take exam and be reachable on the next eligible list
- Limited number of successive provisional reappointments
- No seniority service credit

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Appointments



- Permanent Serving Probation (Civ. Serv. Law §63)
- Provisional (Civ. Serv. Law §65)
- **Temporary** (Civ. Serv. Law §64)
- Contingent Permanent (Civ. Serv. Law §64(4))

1. Applies to appointments in all classes to fill:

- A need which is important and urgent – Appointment can not exceed 3 months
- A leave of absence – Appointment is for the duration of the leave
- A position which is for a limited duration – Appointment can not exceed 6 months but may be extended for up to an additional 6 months with approval
- When filling a position vacated by an employee who has been promoted to a position requiring a probationary period – Appointment is for the duration of the probationary period

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Appointments



- Permanent Serving Probation (Civ. Serv. Law §63)
- Provisional (Civ. Serv. Law §65)
- **Temporary** (Civ. Serv. Law §64)
- Contingent Permanent (Civ. Serv. Law §64(4))

2. When temporary appointments are to positions in the Competitive Class and the duration is:

- 3 months or less – no eligibility list requirement but employee must meet minimum qualifications
- More than 3 months but 6 months or less – eligibility list must be canvassed but Rule of 3 waived
- More than 6 months – eligibility list must be canvassed and selection must be from top 3

3. No seniority credit

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Appointments



- Permanent Serving Probation (Civ. Serv. Law §63)
- Provisional (Civ. Serv. Law §65)
- Temporary (Civ. Serv. Law §64)
- Contingent Permanent (Civ. Serv. Law §64(4))

- Applies only to Competitive appointments
- Allows temporary appointment to be treated like a permanent serving probation appointment
- Eligibility list must be canvassed and Rule of 3 applies
- Seniority service credit upon permanent status

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Civil Service Probationary Periods



Type of Appointment	Probationary Period
Permanent Appointment From Open Competitive List	8-52 Weeks
Successive Permanent Appointment to Open Competitive Positions (not on a promotional basis)	8-52 Weeks
Original Permanent Appointment to Exempt, Labor, Non-Competitive Positions	8-52 Weeks
Successive Permanent Appointment from a Competitive, Exempt, Labor, Non-Competitive position to a Non-Competitive, Exempt, Labor position	8-26 Weeks
Permanent Appointment From a Promotional Eligibility List	8-26 Weeks
Transfer	12 Weeks

Source: Onondaga County Civil Service Rule XIV

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Hiring Certain Professional Staff



- Office of State Comptroller Amendments to Section 315.2 governing the New York State and Local Retirement Systems
- Employee or Independent Contractor
- Classification of Attorneys, Physicians, Engineers, Architects, Accountants or Auditors

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Hiring Certain Professional Staff



- Certification for Individuals Engaged in Certain Professions (RS2414) (7/08)
 - Employee – employer has the right to control the means and methods of what work will be done and how the work will be done
 - Independent Contractor – consultant or other individual engaged to achieve a certain result who is not subject to the direction of the employer as to the means and methods of accomplishing the result

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Layoff / Recall

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Generally

- Rules apply to **competitive class** permanent employees¹; however, honorably discharged war veterans and exempt volunteer firefighters serving in non-competitive and labor class positions have 1 year right to transfer to similar position vacancy without reduction in pay²
- Seniority date is date of original permanent appointment in the classified service and continuous service since that date³
- Look to collective bargaining agreements

¹Civ. Serv. Law § 80

²Civ. Serv. Law § 86

³Civ. Serv. Law § 80(2)

See: Checklist
Verification Form for Retention Status

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Continuous Service



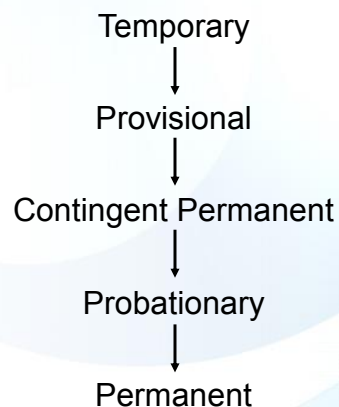
- Continuous service is NOT broken by:
 - Approved unpaid leave
 - Reinstatement or reappointment within 1 year of resignation
 - Reinstatement or reappointment after occupational injury
 - Temporary or provisional employment immediately preceded and followed by permanent classified service
 - Period on a PEL

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Order of Layoff



- Order of layoff when position is abolished



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Continuous Service



- Retention seniority determined by ranking on the PEL
- Preference in retention for certain permanent competitive class employees upon position abolitions:
 - Wartime veteran: 30 months additional service credit
 - Disabled wartime veteran: 60 months additional service credit
 - Legally blind: Absolute preference
 - Spouse of 100% disabled veteran: 60 months additional service credit

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Preferred Eligible List



- Excessed Competitive class employee is placed on 4 year preferred eligible list (Civ. Serv. Law §81)
 - PEL is certified to appointing authority before promotional or open competitive list
 - PEL is certified to fill vacancies first in same title, second in title in lower grade in direct line of promotion, and third in any comparable position
 - Most senior person certified first
 - Rule of 1
 - Declination removes employee from PEL provided recall is to the same position title and grade

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Bumping Rights – Competitive Class



- Displacement of least senior employee in next lower level direct line of promotion
- Requires greater retention rights
- Direct line defined narrowly (same generic root)
- Employee can decline bumping right
- Reduction in hours IS NOT a layoff, therefore bumping rights DO NOT apply¹. (*Schoonmaker*)

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¹[Note: where position remains at least 50% or greater]

Retreat Rights – Competitive Class



- Applies when, and only when, there is no lower occupied position
- Title last served in on a permanent basis and position must be Competitive
- Service in the prior position must have been satisfactory
- Must be in lower salary grade
- Retreating employee must have greater retention rights
- May not retreat to a position twice removed from current title

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Transfer of Function Rights – Competitive Class



- Non-instructional employees entitled to protection upon the transfer of a function from one governmental entity to another (i.e. transfer of Occupational Therapist services from district to BOCES constitutes a transfer of function)
- If no position exists for the classified employee to be transferred, placed on Preferred Eligible List in the receiving entity.



¹Civ. Serv. Law § 70

²Hellner v. BOE Wilson Central School, 2010, WL 4703558
(4th Dept. Nov.19, 2010)

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Classified Employees Example 1



	9/1/95	7/1/98	7/1/03	6/30/XX
 A	Hired as Teacher Aide 12 hrs/week, 10 months		Hired as Typist from civil service eligibility list	
 B		Hired as Typist from civil service eligibility list		



PERSON _____

Typist position abolished – who is laid off?

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Classified Employees Example 2



	7/1/99	10/1/99		6/30/XX
 A		Permanent appointment		
 B	Permanent appointment		Approved unpaid leave of absence 7/1/01-6/30/02	



PERSON _____

Typist position abolished – who is laid off?

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Classified Employees Example 3



	7/1/98	7/1/99	7/1/00	6/30/XX
 A	Provisional appointment		Permanent appointment	
 B		Permanent appointment		



PERSON _____

Typist position abolished – who is laid off?

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KEY POINTS

Classified Employees

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KEY POINTS

- Civil Service rules are complex
- Civil Service rules differ from unclassified rules
- The local county civil service agency is responsible for administering the rules for their jurisdiction (Civ. Serv. Law §17)
- Rules may differ by county
- Seniority is measured from the date of original permanent appointment in the classified service and continuous service from that date (Civ. Serv. Law §80(2))

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KEY POINTS



- Approved unpaid leave does not interrupt continuous service (Civ. Serv. Law §80(2))
- Four (4) year PEL (Civ. Serv. Law §81)
- Declining recall to the same position title and grade removes employee from PEL. The employee can appeal his/her removal (Civ. Serv. Law §81)
- Transfer of function rights may apply in district or BOCES take back

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Evaluation of Performance

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Tools for Evaluating Performance



- Counseling Memos
- Improvement Plans
- Section 913 (Education Law)
- Evaluations

These actions are not considered discipline and therefore do not trigger union representation rights.

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Education Law, § 913

Medical examinations of teachers and other employees



- In order to safeguard the health of children, the board of education of any school district or BOCES shall be empowered to require any employee to submit to a medical examination by a physician or other health care provider of his or her choice, in order to determine the physical or mental capacity of employee to perform his or her duties.
- Employee shall be entitled to be accompanied by a physician or other person of his or her choice.
- The determination as to the physical or mental capacity of employee to perform his or her duties shall be reported to the board of education or BOCES and may be referred to and considered for the evaluation of service of the employee or for disability retirement.

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Discipline / Discharge

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Discipline/Discharge

- Termination before minimum probationary period (first 8 weeks of employment)
 - §75 regardless of classes of position (i.e. Competitive, Non-Competitive, Labor, Exempt)
- Termination after minimum probationary period but during or at end of probationary period regardless of classes of position
 - No §75 rights

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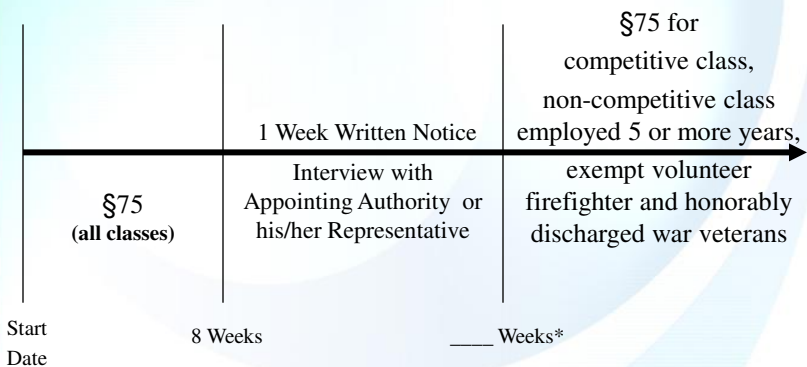
Discipline/Discharge



- Termination or disciplinary action after probation (permanent status) §75 applicable to:
 - Competitive class
 - Non-Competitive class employee after 5 or more years of continuous service
 - Exempt volunteer firefighter or honorably discharged war veteran in the Non-Competitive, Labor, or Exempt classes

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Termination



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* County Civil Service determines max probationary periods

Discipline/Discharge



- §75 - Applicable to:
 - Permanently appointed Competitive employees
 - Permanently appointed Non-Competitive employees with 5 or more years of continuous employment
 - Exempt volunteer firefighter
 - Honorably discharged war veterans
 - Probationary employees discharged prior to the minimum probationary period

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Discipline/Discharge



- Reasons
 - Incompetence
 - Misconduct
- Penalties
 - Reprimand
 - Fine - \$100 maximum
 - Suspension without pay – 2 months maximum
 - Demotion
 - Dismissal

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Discipline/Discharge



- Procedures
 - Charges preferred (18 months statute of limitations)
 - Hearing officer appointed by Board of Education
 - Hearing officer makes recommendation to appointing authority
 - Appointing authority makes final decision
 - Employee may be placed on administrative unpaid leave after preference of charges, not to exceed 30 days

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Discipline/Discharge



- §71 – Reinstatement after separation for disability resulting from occupational injury or disease as defined in the Workers' Compensation Law
 - Applicable to all classes
 - Employee entitled to leave of absence for 1 year
 - Employee can be terminated after 1 year absence (**leave time is cumulative**)
 - Right to examination by Civil Service designated physician within 1 year after termination of disability
 - If medically fit, right to reinstatement to former position if vacant, or to similar position in lower grade in same occupational field
 - Placed on PEL (4 years) if no vacancy
 - Right to pre-termination due process hearing

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Discipline/Discharge



- §72 – Leave for ordinary disability other than a disability resulting from an occupational injury or disease
 - Applicable to all jurisdictional classifications
 - Notice to employee regarding inability to perform duties due to disability
 - Ordered medical exam by Civil Service designated physician
 - Placed on leave without pay if medically unfit to perform duties of position
 - Employee right to hearing objecting to leave (must be requested within 10 days of notice of intent to place employee on leave)

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Discipline/Discharge



- §72 – Leave for ordinary disability other than a disability resulting from an occupational injury or disease
 - Hearing, if requested (held within 30 days of request)
 - Right to representation
 - Employee may request further medical exam while on leave without pay
 - Reinstatement if medically fit
 - If not medically fit, or denied reinstatement, may appeal to Civil Service Commission whose decision is binding

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Discipline/Discharge



- §73 – Separation for ordinary disability, reinstatement
 - Employee may be terminated after 1 year without pay (***leave time is continuous***)
 - Employee may, within 1 year after termination of disability, apply for medical examination and, if medically fit, eligible for reinstatement to former or similar position if vacant, or placement on PEL (same as §71)
 - Pre-termination due process hearing required

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Discipline/Discharge



- Pre-termination due process hearing
 - Notice
 - Opportunity to be heard
 - Entitled to explanation of the grounds for discharge and opportunity to respond to discharge
 - Procedure must be sufficient to serve as “an internal check against mistaken decisions”

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Key Points

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KEY POINTS

- Civil Service rules are complex
- Civil Service rules differ from unclassified rules
- The local county civil service agency is responsible for administering the rules for their jurisdiction (Civ. Serv. Law §17)
- Rules may differ by county
- The appointing authority must give written notice to all persons on an eligible list who are considered but not selected for an appointment or promotion (Civ. Serv. Law §61(3))

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KEY POINTS



- Seniority is measured from the date of original permanent appointment in the classified service and continuous service from that date (Civ. Serv. Law §80(2))
- Approved unpaid leave does not interrupt continuous service (Civ. Serv. Law §80(2))
- Four (4) year PEL (Civ. Serv. Law §81)
- Declining recall to the same position title and grade removes employee from PEL. The employee can appeal his/her removal (Civ. Serv. Law §81)
- There is an 18 month statute of limitations for §75 charges (Civ. Serv. Law §75(4))

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KEY POINTS



- An employee who at the time of questioning appears to be a potential subject of disciplinary action shall have a right to representation by his/her union and shall be notified in advance, in writing, of such right (Civ. Serv. Law §75(2))
- Unclassified positions are certified to the State Civil Service Commission by the Commissioner of Education. The certifications are filed with the Civil Service Commission (Civ. Serv. Law §35(g))

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LETTERS
AND
FORMS

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**CLASSIFIED EMPLOYEE
TEMPORARY APPOINTMENT LETTER**

[DATE]

[ADDRESS]

Dear [NAME]

I am happy to inform you that the Onondaga-Cortland-Madison BOCES Board of Education acted at its regular meeting on [DATE] to grant you a temporary appointment as a [TITLE], effective [DATE]. Your rate of pay for this position will be [SALARY].

Enclosed is a copy of your appointment. Please sign the appointment, keep one copy for your records and return the other to the Personnel Office.

Welcome to BOCES! I sincerely hope that you will find your employment with us to be an enjoyable and rewarding experience. If you have questions regarding any facet of your appointment, please feel free to contact me or anyone else in the Personnel Office at your convenience.

I sincerely hope that you will continue to find your employment with us to be an enjoyable and rewarding experience. If I can ever be of any assistance to you, please feel free to contact me or anyone else in the Personnel Office at your convenience.

Yours truly,

Mark Pettitt, Director
Personnel and Labor Relations

MP/pb
Enclosure
cc: Supervisor [Name]
Personnel File

**CLASSIFIED EMPLOYEE
PROVISIONAL APPOINTMENT LETTER**

[DATE]

[ADDRESS]

Dear [NAME]

I am happy to inform you that the Onondaga-Cortland-Madison BOCES Board of Education acted at its regular meeting on [DATE] to grant you a provisional appointment as a [TITLE], effective [DATE]. Your annual salary for this position will be [SALARY].

Enclosed is an official copy of your provisional appointment. Please sign the appointment, keep one copy for your records and return the other to the Personnel Office.

I would like to remind you that it is your responsibility to maintain communication with the Onondaga County Civil Service Personnel Office so that you may take the competitive examination for this position when it is next offered. Your eventual appointment to this position on a permanent basis is contingent upon your passing the examination with a sufficiently high score to be eligible to permanent appointment as defined by Civil Service Rules and Regulations.

Welcome to BOCES! I sincerely hope that you will find your employment with us to be an enjoyable and rewarding experience. If you have questions regarding any facet of your appointment, please feel free to contact me or anyone else in the Personnel Office at your convenience.

Yours truly,

Mark Pettitt, Director
Personnel and Labor Relations

MP/pb
Enclosure
cc: Supervisor [Name]
Personnel File

**CLASSIFIED EMPLOYEE
PROBATIONARY APPOINTMENT LETTER**

[DATE]

[ADDRESS]

Dear [NAME]

I am happy to inform you that the Onondaga-Cortland-Madison BOCES Board of Education acted at its regular meeting on [DATE] to appoint you to a probationary term as a [TITLE], effective [DATE]. This probationary term will be for not less than eight (8) weeks nor more than fifty-two (52) weeks. Your annual salary for this position will be [SALARY].

Enclosed is a copy of your appointment. Please sign the appointment, keep one copy for your records and return the other to the Personnel Office.

Welcome to BOCES! I sincerely hope that you will find your employment with us to be an enjoyable and rewarding experience. If you have questions regarding any facet of your appointment, please feel free to contact me or anyone else in the Personnel Office at your convenience.

Yours truly,

Mark Pettitt, Director
Personnel and Labor Relations

MP/pb
Enclosure
cc: Supervisor [Name]
Personnel File

Permanent Appointment Recommendation

To:

From: Mark W. Pettitt, Director of Personnel & Labor Relations

Regarding:

Date: October 13, 2009

The above referenced employee's probationary period of employment expires as follows:

- Fifty-two week probationary term expires on _____.
- Twenty-six week probationary term expires on _____.
- Twelve week probationary term expires on _____.

Directions: Indicate the personnel action you recommend. Sign, date and return this recommendation to the Personnel Office prior to expiration of employee's probationary period.

RECOMMENDATION

- I recommend permanent appointment effective _____.
- I recommend termination of employment effective _____.

^ Supervisor's Signature

^ Date

Revised: 9/28/07

**CLASSIFIED EMPLOYEE
PERMANENT APPOINTMENT LETTER**

[DATE]

[ADDRESS]

Dear [NAME]

I am happy to inform you that you have successfully completed your probationary period on [DATE] as a [TITLE] and have acquired permanent status in that position. I have enclosed a copy of your official appointment notice. Please sign the notice, keep one copy for your records and return the other to the Personnel Office.

Congratulations on your permanent appointment. I hope that you will continue to find your employment with BOCES to be a satisfying experience.

Yours truly,

Mark Pettitt, Director
Personnel and Labor Relations

MP/pb
Enclosure
cc: Supervisor [Name]
Personnel File

Classified Civil Service Appointment Notice

 ▲ Name

 ▲ Position Title

In accordance with the Rules and Regulations of the Onondaga County Department of Personnel and the Board of Cooperative Educational Services you are hereby notified of the nature of your appointment as follows:

Provisional Appointment

As a provisional appointee, continued employment is subject to competitive examination and appointment from the resulting list of eligibles for your position title in accordance with civil service rules and regulations. Your application for examination has been submitted to the Civil Service Commission. The Commission will inform you of your examination date, by letter, sent to the address listed on your application. It is your responsibility to notify the OCM BOCES Personnel Office of any address change.

Probationary Appointment

You are appointed to a probationary term effective _____. This probationary term will be for not less than eight (8) weeks nor more than _____ weeks.

Permanent Appointment

Your probationary period has been successfully completed. Congratulations on your permanent appointment.

Temporary Appointment

Your temporary appointment begins on _____ and ends on _____.

 ▲ Director, Personnel & Labor Relations

 ▲ Date

As an indication that you have received this notification, please sign the enclosed copies. Retain the original for your files and return the copy to the Personnel Office.

 ▲ Employee's Signature

 ▲ Date

cc: Personnel Office

Revised: 9/29/08

**CLASSIFIED EMPLOYEE PERSONNEL INFORMATION
VERIFICATION FORM FOR RETENTION STATUS
AT TIME OF REDUCTION IN FORCE**

Name: Last: _____ First: _____ Middle: _____		Date Prepared:
Title: <i>(Now serving in)</i>		Jurisdictional Class: Competitive
Status in Above Title: <input type="checkbox"/> Permanent <input type="checkbox"/> Probationary <input type="checkbox"/> Temporary <input type="checkbox"/> Provisional <input type="checkbox"/> Contingent Permanent		
Permanent Status Title: <i>(If different from above)</i>		Jurisdictional Class:
Employing Jurisdiction/Civil Division:		
Department/Agency:		
Veterans Status:	Exempt Vol. Firefighter: <input type="checkbox"/> Yes <input type="checkbox"/> No	Blind: <input type="checkbox"/> Yes <input type="checkbox"/> No
*Date of Original Permanent Appointment:		**Adjusted Seniority Date:
Home Address: (Street)		
Post Office:	State:	Zip Code:
Employee Signature and Date:		

*This is the seniority date based on the date of original permanent appointment in the classified service (non-competitive, labor, exempt, or competitive) and continuous service since that date.

**This is the adjusted seniority date, for permanent competitive class employees who are non-disabled war veterans (who get 30 months or 2.5 years additional seniority), disabled war veterans and the spouses of disabled war veterans with 100% service connected disability (who get 60 months or 5 years additional seniority), and legally blind employees (who, regardless of their original date of permanent appointment, are considered the most senior employees of all employees in their title in the same category of retention status).

WAR VETERANS, SPOUSES OF DISABLED WAR VETERANS & BLIND EMPLOYEES (§85.7)

Certain employees, who are permanent in the competitive class, are provided with additional seniority in layoff situations.

- Disabled war veterans' seniority dates are deemed to be 60 months (5 years) earlier than their date of original permanent appointment to the classified service.
- Non-disabled war veterans' seniority dates are deemed to be 30 months (2 1/2 years) earlier than their date of original permanent appointment to the classified service.
- Spouses of disabled war veterans' (with a 100% service connected disability), and who are also head of household, seniority dates are deemed to be 60 months (5 years) earlier than their date of original permanent appointment to the classified service.
- Blind employees who are permanent in the competitive class are granted absolute preference in retention by §85.7. Since the wording of §85.7 requires it to be "read" in conjunction with §80, and the provisions of these latter sections distinguish between the rights of probationers and non-probationers, blind employees are provided absolute preference in a title as a probationer or a non-probationer, as the case may be. Therefore, a blind probationer, while deemed to be the "most senior" of all probationers, would be laid off before any employee in the title who had completed probation.

Some other points about veterans are:

- State residency at the time of layoff is not required to receive additional seniority;
- "Disabled war veterans" are those so defined by the Veterans Administration. This status must be established on or before the date of layoff, and cannot be retroactively applied if this status is granted after that date.

The terms "war veteran" and "disabled war veteran" are defined in Civil Service Law §85 which also includes the definition of "time of war" during which the veteran or disabled veteran was required to serve to be eligible for additional seniority credits.

**LETTER WITH NOTICE, SCHEDULING INVESTIGATORY INTERVIEW WITH
EMPLOYEE COVERED BY SECTION 75 OF THE CIVIL SERVICE LAW**

TO BE TYPED ON SCHOOL DISTRICT/BUILDING LETTERHEAD

VIA CERTIFIED MAIL [OR HAND DELIVERED]

TO: [NAME]
FROM: [NAME], Building Principal [SUPERVISOR]
DATE: [DATE]
RE: Incident of [DATE]

On [DATE OF MEETING], I have scheduled a 2:00 p.m. meeting with you in my office to discuss your relationship with [NAME], a female student who rides your bus, and a series of incidents involving her. This is a mandatory meeting.

This interview could lead to disciplinary action against you. Accordingly, state law requires us to give you a written notice of your right to union representation. Two copies of this notice are enclosed. You must sign and date one copy and return it to me. If you do not wish to bring a union representative, you should also sign your name a second time, on that line as well.

In anticipation of your seeking union representation, I have arranged to have [NAME, UNION REP] present for such purposes at that time.

Please contact me if you have any questions or concerns, or if you wish to decline union representation.

EMPLOYEE SIGNATURE

DATE

cc: Personnel File

NOTICE OF RIGHT TO REPRESENTATION

**INVESTIGATORY INTERVIEW WITH EMPLOYEE COVERED
BY §75 OF THE CIVIL SERVICE LAW**

Pursuant to Civil Service Law §75(2), certain public employees who are questioned by a public employer are entitled to the following rights, in the event they are potential subjects of a disciplinary action at the time of questioning:

1. The right to representation, during questioning, by the employee's certified or recognized employee organization;
2. The right to reasonable time to obtain such representation, if representation is requested. If an employee fails to procure representation within a reasonable time, this employer has the right to then question the employee without such representation. A hearing officer shall have the power to find that a reasonable period of time was or was not afforded.

§75(2) of the Civil Service Law will not modify or replace any written collective bargaining agreement between a public employer and an employee organization negotiated pursuant to Article 14 of the Civil Service Law.

I acknowledge that I have received and read this Notice.

EMPLOYEE SIGNATURE

DATE

I do not wish to have a union representative present.

EMPLOYEE SIGNATURE

DATE

RETURN ONE (1) SIGNED COPY OF THIS NOTICE
TO THE SUPERINTENDENT'S OFFICE

VIA CERTIFIED RETURN RECEIPT MAIL OR HAND DELIVERY

(date)____ __, 20__

[name]
[address]

Re: Termination of Employment

Dear _____

I am writing to inform you that I intend to recommend to the Board of Education the _____ School District that your employment be terminated pursuant to the terms of Civil Service Law Section 71, effective on _____, 20__ **[insert date at least 30 days following service of this letter to employee]**. The basis for my recommendation is that you have been absent from your position as a _____ for the District, in excess of one year by reason of a disability resulting from occupational injury or disease as defined in the Workers' Compensation Law. Since a cumulative absence greater than one year has evolved, it is appropriate and necessary for the District to terminate your employment pursuant to Civil Service Law Section 71 so that your position can be filled.

Please be advised you have the right to apply to this office prior to that date for restoration to duty if you are medically fit to perform the duties of your position. If you apply, you may, upon the District's discretion, be required to submit to a medical examination to determine your fitness to perform the duties of your position. If the examining physician finds that you are not fit, you have the right to a hearing to contest that finding. If you are found fit for duty by the District, your leave will be terminated and you will be scheduled to return to work.

Prior to making a final determination, you may request a meeting with me to discuss your situation and present any evidence that you have which shows that you have not been cumulatively absent for more than one year due to a disability resulting from occupational injury or disease as defined in the Workers' Compensation law. If you wish to have such a meeting, you must request it in writing no later than **[Select date about two weeks from letter being sent]** and state the nature of your dispute.

If you are terminated pursuant to Civil Service Law Section 71, you may, within one year after the termination of the disability, make application to the _____ Civil Service Department for a medical examination to determine if you are physically and mentally fit to perform the duties of your former position. If you are found fit, you may be reinstated to your former position if it is vacant, or to a vacancy in a similar position in a lower grade in the same occupational field. If no appropriate vacancy exists, your name may be placed on a preferred eligible list for reinstatement in the future, in accordance with Civil Service Law.

Pursuant to the Americans with Disabilities Act (ADA) and New York State Human Rights Law, it is the District's policy to provide a reasonable accommodation to the known physical or mental limitations of an otherwise qualified employee with a disability. If you are an individual with a disability as defined by the ADA or the Human Rights Law, you may be entitled to an accommodation to enable you to perform the essential functions of your position.

When this action occurs, the District will be terminating your health insurance benefits effective _____, 20___. The District is using this notice to inform you that you have the opportunity to continue your health insurance coverage under COBRA. Please contact _____, _____, as soon as possible if you are interested in taking advantage of or if you have any questions about health coverage under COBRA.

Sincerely,

Superintendent of Schools

cc: Personnel File

[date]

Re: Termination of Employment

Dear _____:

I am writing to inform you that your employment with the _____ School District, was terminated, effective _____, 20___. The basis for your termination, is that you have been absent from your position as a _____ for the District, for a total cumulative absence in excess of one year due by reason of a disability resulting from occupational injury or disease as defined in the Workers= Compensation Law. Since a cumulative absence greater than one year has evolved, it is appropriate and necessary for the District to terminate your employment pursuant to Civil Service Law Section 71 so that your position can be permanently filled.

If you recover from your disability in the future, you have the right pursuant to Civil Service Law Section 71, to apply to the _____ Civil Service Commission within one year from the end of your disability, for a medical examination to determine your fitness to return to work and to perform the duties of your former position. If you are found fit, you may be reinstated to your former position if it is vacant, or to a vacancy in a similar position in a lower grade in the same occupational field. If no appropriate vacancy exists, your name may be placed on a preferred eligible list in accordance with applicable Civil Service Law.

You should consider contacting the Employees= Retirement System to determine your possible eligibility for various retirement benefits, including accidental disability retirement. If you intend to do so, you should act promptly as there are often short time limitations.

Also, the District will be terminating your health insurance benefits effective _____, 20___. The District is using this notice to inform you that you have the opportunity to continue your health insurance coverage under COBRA. Please contact _____, as soon as possible if you are interested in taking advantage of or if you have any questions about health coverage under COBRA.

Sincerely,

Superintendent

VIA CERTIFIED RETURN RECEIPT MAIL AND REGULAR MAIL

_____, 20__

[Name]

[Address]

[City, State Zip]

Re: Termination of Employment

Dear _____:

I am writing to inform you that it is my intent to recommend to the Board of Education that your employment be terminated pursuant to the terms of Civil Service Law Section 73 effective _____, 20__. The basis for my recommendation is that you have been continuously absent from and unable to return to your position as a _____ since _____, 20__, which is in excess of one year, by reason of a disability, other than a disability resulting from occupational injury or disease as defined in the workmen's compensation law. Since a total of one year of continuous absence has evolved, it is appropriate and necessary for the District to terminate your employment pursuant to Civil Service Law Section 73 so that your position can be permanently filled.

Prior to making a final determination, you may request a meeting with me to discuss your situation and present any evidence that you have not been continuously absent for more than one year due to a disability. If you wish to have such a meeting, you must request it in writing no later than _____, 20__ and state the nature of your dispute.

If you are terminated pursuant to Civil Service Law Section 73, you may, within one year after the termination of the disability, make application to the _____ County Civil Service commission for a medical examination to determine if you are physically and mentally fit to perform the duties of your former position. If you are found fit, you may be reinstated to your former position if it is vacant, or to a vacancy in a similar position in a lower grade in the same occupational field. If no appropriate vacancy exists, your name will be placed on a preferred eligible list for a period of four years.

Sincerely,

Superintendent of Schools

cc: Personnel File

[COUNSELING MEMO]

[TO BE TYPED ON SCHOOL DISTRICT/BUILDING LETTERHEAD]

VIA CERTIFIED MAIL [OR HAND DELIVERY]

MEMO TO: [Employee Name]
FROM: [Name], Building Principal [Supervisor]
DATE: XX/XX/XX
RE: Incident of [day, date]

On [date of meeting], you and I met to discuss an incident occurring on [date of incident]. Your union representative, [name], was also present [or, you were offered the right to bring a union representative, but declined].

On [date of incident], [I observed you] [you reportedly] [describe incident]. [I appreciate your honesty in admitting that the incident did occur as described above] [or] [your version of the incident is _____].

Behavior of this type is improper because [explain]. There should be no recurrence. If there is of this conduct, you may well be subjected to disciplinary sanctions, up to and including discharge, in the manner provided for by law and by the collective bargaining agreement.

In order to help you to avoid further problems of this nature, I am offering the following suggestions:

1. _____.
2. _____.
3. _____.

Let me reiterate that the purpose of this memo is to warn you of the serious consequences of any future incident, and to instruct you as to how to avoid such problems in the future. This memo should not be construed as a formal accusation, charge, or formal disciplinary action. Neither is it intended to rule out formal disciplinary action for this incident.

A copy of this memo will be placed in your personnel file. If you wish to respond or further clarify the situation in any way, you may submit a written response, which will also be placed in your file.

Please sign this memo where indicated below. Your signature serves as an acknowledgment that you have had the opportunity to review and respond to the memo, that you received a copy, and that you are aware that a copy will be placed in your file. It does not necessarily indicate your agreement with my opinion.

If you have any questions, please feel free to contact me.

Dated: _____

Building Principal

Employee Signature

cc: personnel file

Report appointment and each change in title, status, or salary on this form. Report all personnel changes on this form. Send one copy prior to payroll effected by this change. **Report of Personnel Change** Date
Month / Day / Year

To: Wash. Co. Civil Service Commission
Fort Edward, N.Y. 12828

From: _____
City County Town Village or District

Name and Title of Last Employee in Position

Name of Employee

Address

Title of Position

Salary _____

Veteran Non-Veteran

Disabled Veteran Exempt Volunteer Fireman

Social Security Number

	Check Nature of Personnel Change	Date Effective	Action Necessary by Appointing Officer
Appointments	Permanent		Return Report of Certification
	Provisional		Attach Application (MSD 330)
	Temporary	From To	State Length of Employment
	Substitute	From To	Give Facts Under Remarks
	For Term of Office	From To	Give Facts Under Remarks
	Permanent Promotion		Return Report of Certification
	Provisional Promotion		Attach Nomination
	Non-Competitive Class		Attach Application (MSD 330)
	Exempt Class		Submit this Form only
	Labor Class		
Terminations	Resignation		Submit Signed Resignation
	Retirement		Give Effective Date
	Deceased		Indicate Date
	Removal		Attach copy of Proceedings
	Lay-off (Lack of Work)		Give Facts Under Remarks
Other Changes	Leave of Absence	From To	Give Facts Under Remarks
	Transfer		Give Facts Under Remarks
	Demotion		Give Facts Under Remarks
	Suspension		Give Facts Under Remarks
	Reinstatement		Give Facts Under Remarks
	Change of Classification		Give Facts Under Remarks
	New Position		Submit Form MSD 222
	Change in Salary		Indicate New Salary
	Change in Name		Give Facts Under Remarks
	Other		Give Facts Under Remarks

Remarks: (Continue on back if necessary)

Appointing Officer _____

Title _____

Address _____

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE

MUNICIPAL SERVICE DIVISION

JOB CLASSIFICATION AND EVALUATION QUESTIONNAIRE

INSTRUCTIONS TO EMPLOYEES

The attached questionnaire asks you for detailed information about the specific duties and responsibilities of your position. The information you give us will allow us to properly classify your position and evaluate your title for compensation purposes.

The questionnaire will take about one hour to fill out. You will be given work time to answer the questionnaire. Please complete this questionnaire very carefully. We suggest you read through the entire questionnaire before answering any questions. You may ask for help in filling out the questionnaire, but be sure to tell us about your own job, in your own words.

Please tell us everything we should know about your job. Be honest and candid. Remember, the information you give us will help us determine your job class and salary level. Give your questionnaire to your supervisor when you are finished. He or she can add comments, but will not change anything you have written. If you would like a copy of your questionnaire with your supervisor's comments, ask for one. Your supervisors have been instructed to make copies available to you.

INSTRUCTIONS TO SUPERVISORS AND DEPARTMENT HEADS

Supervisors should review their employees' questionnaires, and then forward all questionnaires to their department heads for review. Department heads should then make copies of all questionnaires, and then forward the original questionnaires to:

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
MUNICIPAL SERVICE DIVISION
JOB CLASSIFICATION AND EVALUATION QUESTIONNAIRE

1. Name _____ Title _____

(PLEASE PRINT)

2. Who is your immediate supervisor?

Name _____ Title _____

3. Please list the names and titles of employees you directly supervise. This includes only those employees who report directly to you for work assignments and whose work performance you review and evaluate.

Name

Title

4. What is the total number of full-time employees for whom you are responsible, either directly or indirectly through supervisors reporting to you? _____

5. Please describe your job in one or two sentences.

6. Please describe fully the work that you do. List all of the major duties and responsibilities of your job. Also, give your best estimate of the percentage of time spent performing each duty or responsibility. Attach additional pages if necessary.

% of Time

Duties and Responsibilities

a. _____

b. _____

c. _____

d. _____

e. _____

7. INTERNAL CONTACTS

What contacts with other County employees are required to do your job? Do not include your supervisor or subordinate employees. Consider the purpose, extent and frequency of internal contacts needed to resolve work issues. Contacts may be written, personal or oral.

Circle the number of the statement that best describes the internal contacts in your job.

- I usually have contact with County employees within my immediate work area 1
- I usually have contact with County employees in my immediate work area and with employees across units, divisions, or bureaus within my department or agency 2
- I contact County employees across departments or agencies within the county about professional/technical/operational work on overlapping projects or issues such as mutual clients and/or caseloads 3
- My contacts are with County employees across departments or agencies within the county concerning issues of major policy and program management 4

Give examples of who you work with and why: _____

8. EXTERNAL CONTACTS

Which statement best describes your work contacts with individuals or groups not employed by the County? Consider the purpose, extent and frequency of contacts needed to resolve work issues. Contacts may be written, personal or by telephone.

Circle the number of the statement below that best describes the external contacts in your job.

- External contacts are minimal or may involve giving basic information to the general public 1

External contacts involve work issues that ensure the delivery of programs and/or services such as work with vendors, suppliers, students and the general public 2

External contacts involve the administration of programs and/or services such as working with professional associates, liaison agencies or consultants..... 3

External contacts involve the development of policy and programs and are with high level public officials and administrators including heads of public/private agencies or organizations/companies 4

Give examples of who you contact and why: _____

9. INTERPERSONAL SKILLS

When you work with others on the job, what interpersonal skills do you need?

Circle the number of the statement below that best describes the interpersonal skills needed in your job.

Interpersonal skills are needed to give or receive information and/or answer routine questions 1

Interpersonal skills are needed to verify or explain information; or to inform others about agency regulations, policies, or programs in a clear and courteous manner 2

Interpersonal skills are needed to teach, instruct or advise others; to motivate subordinate employees; to interview people to elicit sensitive or confidential information; to contact patients, clients and/or residents and their families to evaluate criteria for eligibility, collect client data, and provide assistance in obtaining program eligibility; or to provide physical/emotional care to others 3

Interpersonal skills and understanding needed to persuade, counsel, motivate, or influence others under adverse or tense conditions; to provide direct medical, physical, psychological or emotional/spiritual care to patients, clients and/or residents; to present or defend matters

involving disagreement; or to conduct meetings or involving difficult issues..... 4

Interpersonal skills and sensitivity are needed to clinically treat or care for persons with severe emotional/psychological problems or illnesses; or to negotiate highly controversial issues involving serious consequences for county government 5

Give examples of the situations in your job that require interpersonal skills: _____

10. USE OF MACHINES, TOOLS, AND EQUIPMENT

Think about the machines, tools, instruments, appliances, or equipment you use in your job. Examples include hand tools, heavy equipment, kitchen or laundry equipment, office equipment, medical apparatus, etc.

Circle the number of the statement below that best describes your use of machines and equipment on the job.

Use of machines, tools, instruments, or equipment reading BASIC coordination and/or operating knowledge and skill, such as automobile, dictaphone, mail processing equipment, hand tools, photocopier, or cleaning equipment 1

Use of machines, tools, instruments, or equipment requiring MODERATE manual dexterity, precision, and/or operating knowledge and skill such as small equipment repair tools, building, grounds and motor maintenance equipment, blood pressure gauge, drafting/surveying equipment, computer for word processing, spreadsheet, or use of other software..... 2

Use of machines, tools, instruments, or equipment requiring CONSIDERABLE manual dexterity, precision and/or operating knowledge and skill such as dialysis machine, I.V. needle, bulldozer, welding tools, pipecutter, computer programming, medical/dental instruments 3

Use of machines, tools, instruments, or equipment requiring EXTREME precision, manual dexterity, and/or operating knowledge and skill such as weapons, cranes, computer for system designs and analysis, computer aided design, advanced medical/dental and engineering..... 4

List all machines, tools, equipment, and instruments you use: _____

11. WORK ENVIRONMENT

Does your work environment expose you to disagreeable conditions like dust, dirt, grease, grime, blood, bad weather conditions, exposure to sickness or disease, or offensive sights or odors? (Do not include conditions such as a cool or warm office.)

Circle the number of the statement below that best describes your work environment.

Work environment has MINIMAL, if any, exposure to disagreeable conditions 1

Work environment has MODERATE exposure to disagreeable conditions 2

Work environment has CONSIDERABLE exposure to disagreeable conditions.. 3

Work environment has EXTREME exposure to disagreeable conditions 4

Give examples of the disagreeable conditions that you experience: _____

12. PHYSICAL/VISUAL EFFORT

Physical effort includes the amount of standing, walking, lifting, bending, etc., associated with the day-to-day duties of the job. Visual effort refers to the visual concentration and strain required to perform close, fine, detail work on the job.

Circle the number of the statement below that best describes the physical/visual effort required in your job.

The employee is normally seated and may occasionally lift items. Visual concentration typical of desk work is needed or may include brief or infrequent periods of visual concentration 1

The work requires physical effort such as frequent standing, bending, climbing, reaching or handling supplies or boxes; or the work may require extended periods of sitting performing repetitive motion(s) causing fatigue and strain; or long periods of visual concentration causing eye strain such as VDT use, or long periods of reviewing forms and detailed documents, ledgers, drawings or blueprints 2

The work requires physical effort like long periods of standing, walking, bending, climbing, reaching, or repetitive motion causing strain to certain parts of the body, or lifting of moderately heavy items like small children, mail bags, or cleaning supplies; or extensive periods of intense visual concentration causing significant eye strain 3

The work requires physical effort like prolonged crouching or crawling in cramped spaces, digging, or lifting of heavy objects like heavier children or adults, furniture, heavy equipment or materials; or strenuous and nearly continuous, intense visual concentration causing significant eye strain (such as production-oriented VDT use) 4

Give examples of the physical effort in your job: _____

13. SUPERVISORY RESPONSIBILITY

What is the nature and extent of supervision you exercise over subordinate employees and/or program areas? Supervision is defined as the responsibility for time and attendance, performance appraisals and final accountability for the quantity and quality of subordinates' work activities and/or program accomplishments.

Circle the number of the start below which best describes your supervisory responsibilities.

No supervisory responsibility exercised 1

Lead worker (not including formal supervisory responsibility as defined above) of a work group, or project; or exercises supervisory responsibility over assigned personnel within a work unit, section, or work group 2

Supervises an entire work unit, section, or work group; first-line supervisors 3

Supervises two or more work units, sections, or work groups each having an individual supervisor; or a small agency or a small division in a department 4

Supervises a major division in a large department..... 5

Describe your supervisory responsibilities: _____

14. INDEPENDENT JUDGMENT

How much independent judgment and decision-making are required in your job? Consider the guidance you receive in making decisions.

Circle the number of the statement below that best describes the independent judgment in your job.

The work involves clear-cut assignments, and standard procedures are followed closely 1

The employee may select from a limited number of alternative procedures, and situations which differ from established methods are referred to the lead worker or supervisor 2

The work involves a variety of tasks or activities within a field. Many cases require diagnosis of a problem and selection of the appropriate response to a variety of situations. Unusual situations are referred to the supervisor 3

The work involves a wide variety of activities and projects within a profession. Many cases require the interpretation and evaluation of guidelines and policies as they relate to difficult situations. Decisions made are of a considerably complex level, and work which involves setting of new policy or precedent is referred to supervisor for approval 4

The work regularly requires that new policies, procedures or methodologies be developed and initiated. Guidelines are available only in terms of broadly stated program objectives or professional standards , and decisions made are of a highly complex level. Work is subject to not more than general administrative controls 5

Give examples of the independent judgment and decisions that you make on the job: _____

15. FORMAL EDUCATION

What do you think should be the basic or minimum educational requirement for your job?

- No formal education needed 1
- High school or general equivalency diploma (GED) or completion of an equivalent technical/vocational program (such as BOCES) 2
- One year of college study or equivalent post high school training in a technical/vocational program 3
- A two-year associate's degree or the equivalent credit hours of college study, or a two-year certification in a technical or field..... 4
- A bachelor's degree 5
- A master's degree in a general professional or technical field 6

What field of study or vocational/technical specialization (if any) should be required for your job? _____

16. EXPERIENCE

How much previous work experience do you think is necessary to do your present position? Circle the number of the appropriate statement.

- No previous experience 1
- Six months' previous work experience 2
- One year previous work experience 3

Two years' previous work experience	4
Three years' previous work experience	5
Four years' previous work experience	6
Five years, or more previous work experience	7

17. ADDITIONAL INFORMATION ABOUT YOUR JOB

Is there anything else we should know about your job? Remember, we will be using the information from this questionnaire to evaluate your job. Please be sure you have given us a complete description of your duties and responsibilities

Employee's Signature _____ Work Phone #: _____

18. IMMEDIATE SUPERVISOR'S COMMENTS

Please review the questionnaire and sign off. Any significant differences indicate below. Do not change or alter any of the statements made by the employee.

Supervisor' s Signature _____ Date _____

Title _____

19. DEPARTMENT HEADS COMMENTS

Please comment on the above statements of the employee and the employee's supervisor as they relate to the duties and responsibilities of the position.

Department Head's
Signature_____Date_____

Title_____

Civil Service Law, Section 22: Certification for positions. Before any new position in the service of a civil division shall be created or any existing position in such service shall be reclassified, the proposal therefore, including a statement of the duties of the position, shall be referred to the municipal commission having jurisdiction and such commission shall furnish a certificate stating the appropriate civil service title for the proposed position or the position to be reclassified. Any such new position shall be created or any such existing position reclassified only with the title approved and certified by the commission. Effective 1978

New Position Duties Statement

Department head or other authority requesting the creation of a new position, prepare a separate description for each new position to be created except that one description may cover two or more identical positions in the same organizational unit.
Forward one typed copy to this Commission.

- | | | |
|----------------------|--|-----------------------------|
| 1. Department | Bureau, Division, Unit or Section | Location of Position |
|----------------------|--|-----------------------------|
- 2. Description of Duties:** Describe the work in sufficient detail to give a clear word picture of the job. Use a separate paragraph for each kind of work and describe the more important or time-consuming duties first. In the left column, estimate how the total working time is divided.

Job Title:

Percent of Work Time

Job Duty

(Attach additional sheets if more space is needed)

3. Names and Titles of Persons Supervising this position (General, Direct, Administrative, etc.)

<u>Name</u>	<u>Title</u>	<u>Type of Supervision</u>

4. Names and Titles of Persons Supervised by Employee in this position

<u>Name</u>	<u>Title</u>	<u>Type of Supervision</u>
-		

5. Names and Titles of Persons doing substantially the same kind and level of work as will be done by the incumbent of this new position

<u>Name</u>	<u>Title</u>	<u>Location of Position</u>

6. What minimum qualifications do you think should be required for this position?

Education: High School _____ Years
College _____ Years, with specialization in _____
College _____ Years, with specialization in _____

Experience: (list amount and type)

Essential knowledges, skills and abilities:

Type of license or certificate required:

7. The above statements are accurate and complete.

Date: _____ **Title:** _____ **Signature:** _____

Certificate of Civil Service Commission

8. In accordance with the provisions of Civil Service Law Section 22, the _____ Civil Service Commission certifies that the appropriate civil service title for the position described is:

Title: _____

Jurisdictional Classification: _____

Date: _____ **Signature:** _____

Action by Legislative Body or Other Approving Authority

9. Creation of described position

Approved
 Disapproved

Date: _____ **Signature:** _____

STATUTES
AND
REGULATIONS

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McKinney's Civil Service Law § 71



Effective: September 22, 2003

McKinney's Consolidated Laws of New York Annotated [Currentness](#)Civil Service Law ([Refs & Annos](#))Chapter 7. Of the Consolidated Laws ([Refs & Annos](#))[Article V.](#) Personnel Changes[Title A.](#) Transfers; Reinstatements ([Refs & Annos](#))

➔ § 71. Reinstatement after separation for disability

Where an employee has been separated from the service by reason of a disability resulting from occupational injury or disease as defined in the workmen's compensation law, [\[FN1\]](#) he or she shall be entitled to a leave of absence for at least one year, unless his or her disability is of such a nature as to permanently incapacitate him or her for the performance of the duties of his or her position. Notwithstanding the foregoing, where an employee has been separated from the service by reason of a disability resulting from an assault sustained in the course of his or her employment, he or she shall be entitled to a leave of absence for at least two years, unless his or her disability is of such a nature as to permanently incapacitate him or her for the performance of the duties of his or her position. Such employee may, within one year after the termination of such disability, make application to the civil service department or municipal commission having jurisdiction over the position last held by such employee for a medical examination to be conducted by a medical officer selected for that purpose by such department or commission. If, upon such medical examination, such medical officer shall certify that such person is physically and mentally fit to perform the duties of his or her former position, he or she shall be reinstated to his or her former position, if vacant, or to a vacancy in a similar position or a position in a lower grade in the same occupational field, or to a vacant position for which he or she was eligible for transfer. If no appropriate vacancy shall exist to which reinstatement may be made, or if the work load does not warrant the filling of such vacancy, the name of such person shall be placed upon a preferred list for his or her former position, and he or she shall be eligible for reinstatement from such preferred list for a period of four years. In the event that such person is reinstated to a position in a grade lower than that of his or her former position, his or her name shall be placed on the preferred eligible list for his or her former position or any similar position. This section shall not be deemed to modify or supersede any other provisions of law applicable to the re-employment of persons retired from the public service on account of disability.

CREDIT(S)

(L.1958, c. 790, § 1; amended [L.2003, c. 577, § 1, eff. Sept. 22, 2003.](#))[\[FN1\]](#) Renamed Workers' Compensation Law.

McKinney's Civil Service Law § 72

**Effective: [See Text Amendments]**McKinney's Consolidated Laws of New York Annotated [Currentness](#)Civil Service Law ([Refs & Annos](#))Chapter 7. Of the Consolidated Laws ([Refs & Annos](#)) [Article V.](#) Personnel Changes [Title A.](#) Transfers; Reinstatements ([Refs & Annos](#))**→ § 72. Leave for ordinary disability**

1. When in the judgment of an appointing authority an employee is unable to perform the duties of his or her position by reason of a disability, other than a disability resulting from occupational injury or disease as defined in the workers' compensation law, the appointing authority may require such employee to undergo a medical examination to be conducted by a medical officer selected by the civil service department or municipal commission having jurisdiction. Written notice of the facts providing the basis for the judgment of the appointing authority that the employee is not fit to perform the duties of his or her position shall be provided to the employee and the civil service department or commission having jurisdiction prior to the conduct of the medical examination. If, upon such medical examination, such medical officer shall certify that such employee is not physically or mentally fit to perform the duties of his or her position, the appointing authority shall notify such employee that he or she may be placed on leave of absence. An employee placed on leave of absence pursuant to this section shall be given a written statement of the reasons therefor. Such notice shall contain the reason for the proposed leave and the proposed date on which such leave is to commence, shall be made in writing and served in person or by first class, registered or certified mail, return receipt requested, upon the employee. Such notice shall also inform the employee of his or her rights under this procedure. An employee shall be allowed ten working days from service of the notice to object to the imposition of the proposed leave of absence and to request a hearing. The request for such hearing shall be filed by the employee personally or by first class, certified or registered mail, return receipt requested. Upon receipt of such request, the appointing authority shall supply to the employee, his or her personal physician or authorized representative, copies of all diagnoses, test results, observations and other data supporting the certification, and imposition of the proposed leave of absence shall be held in abeyance until a final determination is made by the appointing authority as provided in this section. The appointing authority will afford the employee a hearing within thirty days of the date of a request by the employee to be held by an independent hearing officer agreed to by the appointing authority and the employee except that where the employer is a city of over one million in population such hearing may be held by a hearing officer employed by the office of administrative trials and hearings. If the parties are unable to agree upon a hearing officer, he or she shall be selected by lot from a list of persons maintained by the state department of civil service. The hearing officer shall not be an employee of the same appointing authority as the employee alleged to be disabled. He or she shall be vested with all of the powers of the appointing authority, and shall make a record of the hearing which shall, with his or her recommendation, be referred to the appointing authority for review and decision and which shall be provided to the affected employee free of charge. A copy of the transcript of the hearing shall, upon request of the employee affected, be transmitted to him without charge. The employee may be represented at any hearing by counsel or a representative of a certified or recognized employee organization and may present medical experts and other witnesses or evidence. The employee shall be entitled to a reasonable period of time to obtain such representation. The burden of proving mental or physical unfitness shall be upon the person alleging it. Compliance with technical rules of evidence shall not be required. The appointing authority will render a final determination within ten working days of the date of receipt of the hearing officer's report and recommendation. The appointing authority may either uphold the original proposed notice of leave of absence, withdraw such notice or modify the notice as appropriate. In any event, a final determination of an employee's contest of a notice of leave shall be rendered within seventy-five days of the receipt of the request for review. An employee on such leave of absence shall be entitled to draw all accumulated, unused sick leave, vacation, overtime and other time allowances standing to his or her credit. The appointing authority in

McKinney's Civil Service Law § 72

the final determination shall notify the employee of his or her right to appeal from such determination to the civil service commission having jurisdiction in accordance with subdivision three of this section.

2. An employee placed on leave pursuant to subdivision one of this section may, within one year after the date of commencement of such leave of absence, or thereafter at any time until his or her employment status is terminated, make application to the civil service department or municipal commission having jurisdiction over the position from which such employee is on leave, for a medical examination by a medical officer selected for that purpose by such department or commission. If, upon such medical examination, such medical officer shall certify that such employee is physically and mentally fit to perform the duties of his or her position, he or she shall be reinstated to his or her position.

3. An employee who is certified as not physically or mentally fit to perform the duties of his or her position and who is placed on leave of absence pursuant to subdivision one of this section, or who is denied reinstatement after examination pursuant to subdivision two of this section, may appeal from such determination to the state or municipal civil service commission having jurisdiction over his or her position. Such employee and appointing officer or their representatives shall be afforded an opportunity to present facts and arguments in support of their positions including medical evidence at a time and place and in such manner as may be prescribed by the commission. Provided however, that in considering appeals pursuant to subdivision two of this section where a hearing has not been held within nine months from the date of notification pursuant to subdivision one of this section, the commission shall designate an independent hearing officer who shall hold a hearing and report thereon. The commission shall make its determination on the basis of the medical records and such facts and arguments as are presented to it. The final determination of the commission shall be binding on both the employee and the appointing authority; provided, however, that an employee or appointing authority may seek review of a final determination of a commission in accordance with the provisions of article seventy-eight of the civil practice law and rules.

4. If an employee placed on leave pursuant to this section is not reinstated within one year after the date of commencement of such leave, his or her employment status may be terminated in accordance with the provisions of [section seventy-three](#) of this article.

5. Notwithstanding any other provisions of this section, if the appointing authority determines that there is probable cause to believe that the continued presence of the employee on the job represents a potential danger to persons or property or would severely interfere with operations, it may place such employee on involuntary leave of absence immediately; provided, however that the employee shall be entitled to draw all accumulated unused sick leave, vacation, overtime and other time allowances standing to his or her credit. If such an employee is finally determined not to be physically or mentally unfit to perform the duties of his or her position, he or she shall be restored to his or her position and shall have any leave credits or salary that he or she may have lost because of such involuntary leave of absence restored to him or her less any compensation he or she may have earned in other employment or occupation and any unemployment benefits he or she may have received during such period.

CREDIT(S)

(Added L.1969, c. 225, § 2; amended L.1983, c. 561, § 1; L.1984, c. 547, § 1.)

McKinney's Civil Service Law § 73

**Effective: [See Text Amendments]**McKinney's Consolidated Laws of New York Annotated [Currentness](#)Civil Service Law ([Refs & Annos](#))Chapter 7. Of the Consolidated Laws ([Refs & Annos](#)) [Article V.](#) Personnel Changes [Title A.](#) Transfers; Reinstatements ([Refs & Annos](#))**→§ 73. Separation for ordinary disability; reinstatement**

When an employee has been continuously absent from and unable to perform the duties of his position for one year or more by reason of a disability, other than a disability resulting from occupational injury or disease as defined in the workmen's compensation law, [\[FN1\]](#) his employment status may be terminated and his position may be filled by a permanent appointment. Such employee may, within one year after the termination of such disability, make application to the civil service department or municipal commission having jurisdiction over the position last held by such employee for a medical examination to be conducted by a medical officer selected for that purpose by such department or commission. If, upon such medical examination, such medical officer shall certify that such person is physically and mentally fit to perform the duties of his former position, he shall be reinstated to his former position, if vacant, or to a vacancy in a similar position or a position in a lower grade in the same occupational field in his former department or agency. If no appropriate vacancy shall exist to which such reinstatement may be made, or if the work load does not warrant the filling of such vacancy, the name of such person shall be placed on a preferred list for his former position in his former department or agency, and he shall be eligible for reinstatement in his former department or agency from such preferred list for a period of four years. In the event that such person is reinstated to a position in a grade lower than that of his former position, his name shall be placed on the preferred eligible list for his former position or any similar position in his former department or agency. This section shall not be deemed to modify or supersede any other provisions of law applicable to the re-employment of persons retired from the public service on account of disability.

CREDIT(S)

(Formerly § 72, added L.1965, c. 508, § 1; renumbered 73, L.1969, c. 225, § 1.)

[\[FN1\]](#) Renamed Workers' Compensation Law.

McKinney's Civil Service Law § 75

**Effective: [See Text Amendments]**McKinney's Consolidated Laws of New York Annotated [Currentness](#)Civil Service Law ([Refs & Annos](#))Chapter 7. Of the Consolidated Laws ([Refs & Annos](#)) [Article V.](#) Personnel Changes [Title B.](#) Removal and Other Disciplinary Proceedings**→ § 75. Removal and other disciplinary action**

1. Removal and other disciplinary action. A person described in paragraph (a) or paragraph (b), or paragraph (c), or paragraph (d), or paragraph (e) of this subdivision shall not be removed or otherwise subjected to any disciplinary penalty provided in this section except for incompetency or misconduct shown after a hearing upon stated charges pursuant to this section.

(a) A person holding a position by permanent appointment in the competitive class of the classified civil service, or

(b) a person holding a position by permanent appointment or employment in the classified service of the state or in the several cities, counties, towns, or villages thereof, or in any other political or civil division of the state or of a municipality, or in the public school service, or in any public or special district, or in the service of any authority, commission or board, or in any other branch of public service, who was honorably discharged or released under honorable circumstances from the armed forces of the United States having served therein as such member in time of war as defined in [section eighty-five](#) of this chapter, or who is an exempt volunteer firefighter as defined in the general municipal law, except when a person described in this paragraph holds the position of private secretary, cashier or deputy of any official or department, or

(c) 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 functions influencing policy, who since his last entry into service has completed at least five years of continuous service in the non-competitive class in a position or positions not so designated in the rules as confidential or requiring the performance of functions influencing policy, or

(d) an employee in the service of the City of New York holding a position as Homemaker or Home Aide in the non-competitive class, who since his last entry into city service has completed at least three years of continuous service in such position in the non-competitive class, or

(e) an employee in the service of a police department within the state of New York holding the position of detective for a period of three continuous years or more; provided, however, that a hearing shall not be required when reduction in rank from said position is based solely on reasons of the economy, consolidation or abolition of functions, curtailment of activities or otherwise.

2. Procedure. An employee who at the time of questioning appears to be a potential subject of disciplinary action shall have a right to representation by his or her certified or recognized employee organization under article fourteen of this chapter and shall be notified in advance, in writing, of such right. A state employee who is designated managerial or confidential under article fourteen of this chapter, shall, at the time of questioning, where it appears that such employee is a potential subject of disciplinary action, have a right to representation and shall be notified in advance, in writing, of such right. If representation is requested a reasonable period of time shall be afforded to obtain such representation. If the employee is unable to obtain representation within a reasonable period of time the employer has the right to then question the employee. A hearing officer under this section shall have the power to

McKinney's Civil Service Law § 75

find that a reasonable period of time was or was not afforded. In the event the hearing officer finds that a reasonable period of time was not afforded then any and all statements obtained from said questioning as well as any evidence or information obtained as a result of said questioning shall be excluded, provided, however, that this subdivision shall not modify or replace any written collective agreement between a public employer and employee organization negotiated pursuant to article fourteen of this chapter. A person against whom removal or other disciplinary action is proposed shall have written notice thereof and of the reasons therefor, shall be furnished a copy of the charges preferred against him and shall be allowed at least eight days for answering the same in writing. The hearing upon such charges shall be held by the officer or body having the power to remove the person against whom such charges are preferred, or by a deputy or other person designated by such officer or body in writing for that purpose. In case a deputy or other person is so designated, he shall, for the purpose of such hearing, be vested with all the powers of such officer or body and shall make a record of such hearing which shall, with his recommendations, be referred to such officer or body for review and decision. The person or persons holding such hearing shall, upon the request of the person against whom charges are preferred, permit him to be represented by counsel, or by a representative of a recognized or certified employee organization, and shall allow him to summon witnesses in his behalf. The burden of proving incompetency or misconduct shall be upon the person alleging the same. Compliance with technical rules of evidence shall not be required.

3. Suspension pending determination of charges; penalties. Pending the hearing and determination of charges of incompetency or misconduct, the officer or employee against whom such charges have been preferred may be suspended without pay for a period not exceeding thirty days. If such officer or employee is found guilty of the charges, the penalty or punishment may consist of a reprimand, a fine not to exceed one hundred dollars to be deducted from the salary or wages of such officer or employee, suspension without pay for a period not exceeding two months, demotion in grade and title, or dismissal from the service; provided, however, that the time during which an officer or employee is suspended without pay may be considered as part of the penalty. If he is acquitted, he shall be restored to his position with full pay for the period of suspension less the amount of any unemployment insurance benefits he may have received during such period. If such officer or employee is found guilty, a copy of the charges, his written answer thereto, a transcript of the hearing, and the determination shall be filed in the office of the department or agency in which he has been employed, and a copy thereof shall be filed with the civil service commission having jurisdiction over such position. A copy of the transcript of the hearing shall, upon request of the officer or employee affected, be furnished to him without charge.

3-a. Suspension pending determination of charges and penalties relating to police officers of the police department of the city of New York. Pending the hearing and determination of charges of incompetency or misconduct, a police officer employed by the police department of the city of New York may be suspended without pay for a period not exceeding thirty days. If such officer is found guilty of the charges, the police commissioner of such department may punish the police officer pursuant to the provisions of sections 14-115 and 14-123 of the administrative code of the city of New York.

4. Notwithstanding any other provision of law, no removal or disciplinary proceeding shall be commenced more than eighteen months after the occurrence of the alleged incompetency or misconduct complained of and described in the charges or, in the case of a state employee who is designated managerial or confidential under article fourteen of this chapter, more than one year after the occurrence of the alleged incompetency or misconduct complained of and described in the charges, provided, however, that such limitations shall not apply where the incompetency or misconduct complained of and described in the charges would, if proved in a court of appropriate jurisdiction, constitute a crime.

CREDIT(S)

(L.1958, c. 790, § 1; amended L.1960, c. 312, § 1; L.1962, c. 645, § 1; L.1965, c. 738, § 1; L.1970, c. 942, § 1; L.1978, c. 240, § 1; L.1983, c. 774, § 1; L.1984, c. 710, § 1; L.1985, c. 842, § § 1, 2; L.1986, c. 439, § 2; [L.1989, c. 350, § 1](#); [L.1990, c. 753, § 2](#); [L.1993, c. 279, § 1](#); [L.1994, c. 226, § 1](#); [L.1995, c. 197, § 1](#).)

McKinney's Education Law § 913

McKinney's Consolidated Laws of New York Annotated
Education Law (Refs & Annos)
Chapter 16. Of the Consolidated Laws (Refs & Annos)
Title I. General Provisions
Article 19. Medical and Health Service (Refs & Annos)

McKinney's Education Law § 913

§ 913. Medical examinations of teachers and other employees

Effective: September 1, 2005

[Currentness](#)

In order to safeguard the health of children attending the public schools, the board of education or trustees of any school district or a board of cooperative educational services shall be empowered to require any person employed by the board of education or trustees or board of cooperative educational services to submit to a medical examination by a physician or other health care provider of his or her choice or the director of school health services of the board of education or trustees or board of cooperative educational services, in order to determine the physical or mental capacity of such person to perform his or her duties. The person required to submit to such medical examination shall be entitled to be accompanied by a physician or other person of his or her choice. The determination based upon such examination as to the physical or mental capacity of such person to perform his or her duties shall be reported to the board of education or trustees or board of cooperative educational services and may be referred to and considered for the evaluation of service of the person examined or for disability retirement.

Credits

(Added L.1952, c. 668. Amended L.1973, c. 22, § 1; L.2004, c. 477, § 12, eff. Sept. 1, 2005.)

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McKinney's General Municipal Law § 200



Effective: [See Text Amendments]

McKinney's Consolidated Laws of New York Annotated [Currentness](#)General Municipal Law ([Refs & Annos](#))

Chapter 24. Of the Consolidated Laws

[Article 10](#). Firemen and Policemen ([Refs & Annos](#))

→ § 200. Defining qualifications of exempt volunteer firemen

An exempt volunteer fireman is hereby declared to be a person who as a member of a volunteer fire company duly organized under the laws of the state of New York shall have at any time after attaining the age of eighteen years faithfully actually performed service in the protection of life and property from fire within the territory immediately protected by the company of which he is a member, and while a bona fide resident therein, for a period of five years, as provided in this article, or, if such company shall have been sooner disbanded upon the organization of a paid fire department, for a period of at least one year and shall also have been a member of such volunteer fire company at the time it shall have been disbanded; but the limitation of one year's service shall not apply to a volunteer fireman who was a member of a fire company which was disbanded prior to January first, nineteen hundred two. The foregoing residence requirements shall not apply (1) to a volunteer fireman who has been duly elected to membership in his fire company as a non-resident member residing in territory which is afforded fire protection by his fire company pursuant to a contract for fire protection, as authorized by [paragraph three of subdivision c of section fourteen hundred two of the not-for-profit corporation law](#) or by subdivisions two and three of either [section 10-1006 of the village law](#), [section one hundred](#) seventy-six-b of the town law or section sixteen-a of the general city law, (2) to a volunteer fireman whose membership has been duly continued in his fire company as authorized by paragraph three of subdivision c of section fourteen hundred two of the not-for-profit corporation law or by subdivision five of either [section 10-1006 of the village law](#), [section one hundred](#) seventy-six-b of the town law or section sixteen-a of the general city law and (3) to a volunteer fireman who has been duly elected to membership as a non-resident as authorized by paragraph three of subdivision c of section fourteen hundred two of the not-for-profit corporation law or by subdivision six of either [section 10-1006 of the village law](#), [section one hundred](#) seventy-six-b of the town law or section sixteen-a of the general city law. The foregoing requirement of five years' service shall not apply to a volunteer fireman serving as such at the time of his entry into the military service of the United States or of one of its allies in world war II, or during the period of hostilities as defined in [subparagraph three or subparagraph four of paragraph \(c\) of subdivision one of section eighty-five of the civil service law](#), who, as a result of such military service, shall have become incapacitated for performing the full duties of a volunteer fireman, or to a volunteer fireman who, as the result of the performance of his duties as such, shall have become likewise incapacitated, but any such volunteer fireman shall be an exempt volunteer fireman even though he may have served as such for a lesser period than five years, and he shall be entitled to a certificate as provided in [section two hundred two](#) of this chapter which, in addition to the specifications contained in said section, shall set forth the facts in reference to his military service, if any, as aforesaid and that as a result of such military service, or as the result of service as a volunteer fireman, he was incapacitated for performing the full duties of a volunteer fireman. The term "military service" as used in this section shall mean the same as the term "military duty" as used in [section two hundred forty-three of the military law](#), except that it shall relate to service for an ally of the United States in world war II as well as to service for the United States.

CREDIT(S)

(L.1909, c. 29; amended L.1937, c. 295, § 1; L.1946, c. 422, § 1; L.1948, c. 364, § 1; L.1958, c. 919, § 1; L.1960, c. 378, § 1; L.1963, c. 946, § 1; L.1972, c. 892, § 23; L.1972, c. 894, § 13; L.1973, c. 176, § 2; L.1976, c. 954, § 1.)

COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK
TITLE 2. DEPARTMENT OF AUDIT AND CONTROL
CHAPTER VI. NEW YORK STATE AND LOCAL EMPLOYEES' RETIREMENT SYSTEM AND NEW
YORK STATE AND LOCAL POLICE AND FIRE RETIREMENT SYSTEM
PART 315. EMPLOYER REPORTING

Current through amendments included in the New York State Register,
Volume XXXI, Issue 40, dated October 7, 2009.

Section 315.2. Definitions

- (a) As used in this Part, the term employer shall mean the State, a participating employer, and any other unit of government or organization obligated or agreeing to make contributions to the retirement system on behalf of its employees.
- (b) The term employee shall mean an individual performing services for the employer for which the employer has the right to control the means and methods of what work will be done and how the work will be done.
- (c) The term **independent contractor** shall mean a consultant or other individual engaged to achieve a certain result who is not subject to the direction of the employer as to the means and methods of accomplishing the result. For purposes of this part, when making a determination as to whether an individual is an employee or an **independent contractor**, the factors set forth hereinafter in § 315.3 (c) (2) shall be considered by the employer.

CREDIT(S)

Sec. filed June 18, 1974; amd. filed Dec. 2, 1974; renum. 315.3, new filed April 11, 1975 eff. commencing with the first payroll period ending on or after April 1, 1975; emergency rulemaking eff. Apr. 2, 2008, expired June 30, 2008; emergency rulemaking eff. July 1, 2008, expired Aug. 29, 2008; emergency rulemaking eff. Aug. 29, 2008, expired Oct. 27, 2008; adpt. eff. Nov. 12, 2008.

COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK
TITLE 2. DEPARTMENT OF AUDIT AND CONTROL
CHAPTER VI. NEW YORK STATE AND LOCAL EMPLOYEES' RETIREMENT SYSTEM AND NEW
YORK STATE AND LOCAL POLICE AND FIRE RETIREMENT SYSTEM
PART 315. EMPLOYER REPORTING

Current through amendments included in the New York State Register,
Volume XXXI, Issue 40, dated October 7, 2009.

Section 315.3. Employer reporting

(a) *Timeliness of reporting.* All reporting as defined in subdivision (b) of this section shall be made so as to be received by the retirement system within seven days after the close of the month to which service and salary data apply.

(b) *Reporting document.* Employers shall provide a legible certified document containing all information deemed necessary by, and in a format prescribed or approved by, the Comptroller for the purpose of making benefit determinations from service, salary and deduction records. Employers seeking to alter or change any reporting document, once approved, must submit the proposed changes to the Comptroller for approval prior to implementation of the changes. In lieu of reporting salary and service information on a hard copy document, as described above, an employer may comply with the reporting requirements of [sections 34](#) and [334 of the Retirement and Social Security Law](#) by providing all information required by the retirement system over the internet pursuant to an electronic employer reporting system established for such purpose by the Comptroller. The reporting document shall include the following information for each member paid on any payroll paid during the month:

- (1) Control information. That information deemed necessary by the Comptroller for identifying and controlling specific records and accounts including registration number, name, location code, report code, and report date.
- (2) Contribution and payment information. Normal contribution or mandatory amount, loan payment amount, and arrears payment amount.
- (3) Salary information. Gross salary paid (including value of maintenance, if any).
- (4) Service information. Number of days worked, determined in accordance with the following:
 - (i) Number of days worked shall be reported without reduction for paid sick leave, paid vacation, personal leave, bereavement leave, or time off in lieu of pay for overtime.
 - (ii) A full day worked shall be any day on which the employee performs paid service for at least the standard number of hours required for the position in which such service is rendered. In no event shall less than six hours be considered to be a full day.
 - (iii) In the event that less than a full day is worked, prorated credit shall be given by the ratio of the number of hours worked in that day to the greater of the standard number of hours required for the position in which such service is rendered or six hours.
 - (iv) Days worked, both full and fractional, shall be accumulated within a report period and the resulting total rounded to the next higher hundredth of a whole day. This total shall be reported as number of days worked.
 - (v) In the event that salary adjustments are made in conjunction with a report, any corresponding adjustment in days worked must also be reported in the same period in which such salary adjustment is reported.

(vi) In the event that salary and service adjustments are made but are not reflected on the regular report, a separate reporting form shall be submitted for employees to whom such adjustments apply, showing the amount of the adjustment and the control information applicable to the members for the report period to which the adjustments apply.

(vii) In the case of an officer serving in an elective office, as to that office an employer may consider such factors as the official duties of the office, and the need to be available to the public, outside normal working hours, for the purpose of reporting days worked.

(viii) In establishing the number of days worked for elected/appointed officials, a record of their activities for a sample month is an acceptable alternative for the maintenance of an actual time record. If an employer adopts the sample month procedure, a sample month for each elected and/or appointed officer must be submitted to the governing board. The governing board shall review the sample month record submitted and establish the standard work day (minimum of six hours per day) for the position, and the number of days worked to be reported.

(ix) A full day worked for employees of the New York State Legislature shall be a minimum of six hours of accumulated time worked and the total number of days worked by such employees for the purpose of employer reporting shall be determined based on the cumulative number of hours worked in a calendar year. The number of hours which shall be reported as days worked, for the purpose of reporting preliminary credit, for a full year of service credit for employees of the State Legislature is 1,560 hours.

(5) Control totals. Each employer shall provide, in connection with each monthly report, such control totals of dollar amounts reported and number of days worked as are deemed necessary by the retirement systems.

(c) Employees to be reported.

(1) Only persons who are active members of the New York State and Local Employees' Retirement System or the New York and Local Police and Fire Retirement System and who have been assigned a registration number shall be included in the above reporting requirements. In the case of employees who are in the process of being registered to membership, all service, salary and deductions data and mandatory contributions shall be accumulated by each employer and such accumulation shall be included with the first monthly report which is due after the employee's registration number has been assigned. Members of the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System must be reported on separate reports.

(2) Determination by Employer. An individual serving the employer as an independent contractor or consultant is not an employee and should not be reported to the retirement system. The employer has the primary responsibility for determining whether an individual is rendering services as an employee or as an independent contractor. When making such a determination, the employer must consider the following:

(i) Factors supporting the conclusion that an individual is an employee rather than an independent contractor:

(A) the employer controls, supervises or directs the individual performing the services, not only as to result but as to how assigned tasks are to be performed;

(B) the individual reports to a certain person or department at the beginning or during each work day;

(C) the individual receives instructions as to what work to perform each day;

(D) the individual's decisions are subject to review by the employer;

- (E) the employer sets hours to be worked;
 - (F) the individual works at established and fixed hours;
 - (G) the employer maintains time records for the individual;
 - (H) the employer has established a formal job description;
 - (I) the employer's governing board formally created the position with the approval of the local civil service commission where necessary;
 - (J) the employer prepares performance evaluations;
 - (K) the employer requires that the individual attend training;
 - (L) the employer provides permanent workspace and facilities (including, but not limited to, office, furniture and/or utilities);
 - (M) the employer provides the individual with equipment and support services (including, but not limited to, computer, telephone, supplies and/or clerical assistance);
 - (N) the individual is covered by a contract negotiated between a union and the employer;
 - (O) the individual is paid salary or wages through the employer's payroll system;
 - (P) tax withholding and employee benefit deductions are made from the individual's paycheck; and
 - (Q) the individual is entitled to fringe benefits (including, but not limited to, vacation, sick leave, personal leave, health insurance and/or grievance procedures).
- (ii) Factors supporting the conclusion that an individual is an independent contractor rather than an employee:
- (A) the individual has a personal employment contract with the employer;
 - (B) the employer pays the individual for the performance of services through the submission of a voucher;
 - (C) the individual is authorized to hire others, at the expense of the individual or a third party, to assist the individual in performing work for the employer;
 - (D) the individual provides similar services to the public;
 - (E) the individual is concurrently performing substantially the same services for other public employers; and
 - (F) the individual is also employed or associated with another entity that provides services to the employer by contract, retainer or other agreement

(iii) Presumption:

Except as prohibited by Section 2051 of Part 3 of Article 41 of the Education Law, which provides that a lawyer shall not simultaneously be an independent contractor and an employee of a school district or BO-CES for the purpose of providing legal services, in the case of an individual whose service has been engaged by an employer in the capacity of attorney, physician, engineer, architect, accountant or auditor and who is also a partner, associate, including an attorney in an "of counsel" relationship, or employee of another organization or entity that has a contract, retainer or other agreement to provide professional services to the participating employer, it shall be presumed that the individual is an independent contractor and not an employee of the participating employer;

(iv) Examples:

(A) An attorney who, in providing services to a participating employer, sets his own hours, is not supervised in the manner in which the work is performed, uses his or her own office and staff and has no deductions from salary is considered to be an independent contractor.

(B) A physician who in performing examinations and providing medical services for a school district, is provided with office space in the school, has set hours, is provided with supplies and receives a fixed salary with regular payroll deductions is considered to be an employee;

(3) Written explanation by participating employers; certain professions. In the case of an individual whose service has been engaged by a participating employer in the capacity of attorney, physician, engineer, architect, accountant or auditor and the participating employer has determined that the individual is rendering service as an employee and, therefore, may be eligible for credit with a retirement system, such employer shall submit to the retirement system, in a form prescribed by the Comptroller and certified by the chief fiscal officer of the employer, an explanation of the factors that led to the conclusion that the individual is an employee and not an independent contractor or consultant. Such certification shall be submitted to the retirement system at the time the individual is registered to membership or, in the case of an individual who is already a member of the retirement system, at the time the individual is first reported by the participating employer to the system. In addition, such employer shall submit copies of documentation pertaining to the appointment of the individual as an employee and the decision to report the individual to the retirement system as well as the acceptance of the appointment by the local civil service commission where necessary. In the event appointments are made by a governing board of the participating employer, such documentation shall include a copy of the minutes of the meeting of such employer's governing board.

(4) Explanation at the request of the retirement system. In the case of any individual who is currently a member or a retiree of a retirement system, the retirement system may require that an employer submit to the retirement system an explanation of the factors that led to the conclusion that an individual engaged by the employer was an employee. An employer receiving such a request shall submit a response within thirty days of the date of the request or provide an explanation as to why it is unable to do so.

(5) Adjustment reports. In the event the retirement system or an employer determines that an individual has been incorrectly reported to a retirement system, the employer, upon notification from the retirement system, or upon its own initiative, shall promptly file salary and service adjustment reports with the retirement system to correct the error.

CREDIT(S)

Sec. filed June 18, 1974; renum. 315.4, new added by renum. 315.2, filed April 11, 1975; amds. filed: Dec. 16, 1976; April 21, 1986; Feb. 3, 1989; April 24, 1990; April 20, 2001 eff. May 9, 2001. Amended (b); emergency rulemaking eff. Apr. 2, 2008, expired June 30, 2008; emergency rulemaking eff. July 1, 2008, expired Aug. 29, 2008; emergency rulemaking eff. Aug. 29, 2008, expired Oct. 27, 2008; adpt. eff. Nov. 12, 2008.



Office of the New York State Comptroller
 New York State and Local Retirement System
 Employees' Retirement System
 Police and Fire Retirement System
 110 State Street, Albany, New York 12244-0001

Certification for Individuals Engaged in Certain Professions

RS 2414
 (7/08)

You must complete this form for all Attorneys, Physicians, Engineers, Architects, Accountants or Auditors engaged **on or after April 1, 2008**. For individuals who are determined to be elected officials, public officers or employees, return this form certified by the Chief Fiscal Officer to the Retirement System within 30 days, along with supporting documentation.

Individual's Name	Social Security Number	Registration Number (if known)
Individual's Title	Employer	Employer Location Code

If the individual is an **Elected Official**, check here and sign and date on the reverse side of this form and return to the Retirement System. You do not need to complete the Employee/Independent Contractor questions below.

If the individual is a **Public Officer**, check here , provide the four documents noted immediately below and sign and date on the reverse side of this form and return to the Retirement System. You do not need to complete the Employee/Independent Contractor questions below.

1. The resolution of the governing board creating the position
2. The resolution of the governing board appointing the individual to the position
3. A copy of the oath of office
4. Information documenting any residency requirements (if required) or the enactment of local legislation waiving or changing the residency requirement

For **all other individuals**, complete the Employee/Independent Contractor questions below.

Circle YES or NO for each question. If most of the selections appear in the Employee column, the individual may be an employee. If most of the circles appear in the Independent Contractor column, the individual may appropriately be classified as an independent contractor. Where the selections are split between both columns, weight should be given to the amount of control the employer has over the individual's work in making a determination.		
	Employee	Independent Contractor
Does the employer have the right to control, supervise or direct the individual performing the services, not only as to result but as to how assigned tasks are to be performed?	YES	NO
Does the individual report to a certain person or department at the beginning of or during each work day?	YES	NO
Does the individual receive instructions as to what work to perform each day?	YES	NO
Are the individual's decisions subject to review by the employer?	YES	NO
Does the employer set the hours to be worked?	YES	NO
Does the individual work at established and fixed hours?	YES	NO
Does the employer maintain time records for the individual?	YES	NO
Has the employer established a formal job description for the position?	YES	NO

Has the employer's governing board formally created the position with the approval of the local civil service commission where necessary?	YES	NO
Does the employer prepare performance evaluations for the individual?	YES	NO
Does the employer have the right to require the individual to be trained?	YES	NO
Does the employer provide the individual with permanent workspace and facilities (e.g., office, furniture, utilities)?	YES	NO
Does the employer provide the individual with equipment and support services (e.g., computer, telephone, supplies, clerical assistance, etc.)?	YES	NO
Is the individual covered by a contract negotiated between a union and the employer?	YES	NO
Does the individual have a contract with the employer?	NO	YES
Does the employer pay the individual salary or wages through the employer's payroll system?	YES	NO
Does the employer pay the individual for the performance of services through the submission of a voucher?	NO	YES
Are tax withholding and employee benefit deductions made from the individual's paychecks?	YES	NO
Does the individual receive any fringe benefits (e.g., health insurance, sick or vacation time)?	YES	NO
Is the individual authorized to hire others, at the expense of the individual or a third party, to assist the individual in performing work for the employer?	NO	YES
Is the individual currently performing substantially the same services for other public employers?	NO	YES
Is the individual also employed or associated with another entity that provides services to the employer by contract, retainer or other agreement?	NO	YES
Does the individual provide similar services to the public?	NO	YES

If the individual is an **Employee**, check here , provide the information noted below and sign and date the bottom of this form and return to the Retirement System.

- ✓ Acceptance of the appointment by the local civil service commission, where necessary
- ✓ Documentation of the decision to report the individual to the Retirement System (e.g., minutes of the employer's governing board, contracts, agreements, memos, etc.).

If the individual is an **Independent Contractor**, check here and maintain this document for your records.

I, the Chief Fiscal Officer of this participating employer, have reviewed and completed the Certification for Individuals Engaged in Certain Professions and I certify that I have determined that the individual is designated as indicated above:

Please print name: _____ Title: _____

Signature: _____ Date: _____ Phone No.: _____

If you have any questions, please contact us at 518-474-0167 or via email at NYSLRSEmpReview@osc.state.ny.us.

This certification form and all supporting documentation **for each individual** determined to be an elected official, public officer or employee should be mailed to:

New York State and Local Retirement System
Employer Participation & Education Unit Maildrop 5-2
110 State Street, Albany NY 12244-0001

INVESTIGATIONS

Union Representation During An Investigation Interview; The Right To Be Told Of The Right To Representation; Compulsion To Cooperate In The Investigation.

Background On The Private Section (For Comparison): In the private sector, unionized employees have the right to union representation at investigatory interview that the employee reasonably believes might result in disciplinary action. This right is an application of the right to engage in concerted activity for mutual aid and protection. (NLRB v. Weingarten, 420 U.S. 251 (1975)). Weingarten has now been applied to non-unionized employees, thereby allowing non-unionized employees the right to have a co-worker accompaniment at such interviews. (Epilepsy Foundation v. Borgs, 164 LRRM 1233 (2000)).

The Public Sector: (Where the employee is the subject of the investigation)

	The Right To Union/Co-Worker Representation At An Investigatory Interview	The Right To Be Told In Advance Of The Interview Of The Right To Representation	May the Employee Be Compelled To cooperate And Answer Questions?
Unionized Civil Service Employees Covered by Civil Service Law §75	Yes , “where it appears that such employee is a potential subject of disciplinary action,” (Civ. Serv. §75(2))	Yes , “the employee shall be notified in advance in writing, of such right.” (Civ. Serv. §75(2)).	Yes , the refusal to cooperate is insubordination. (<u>Shales v. Leach</u> , 119 A.D. 2d 990 (4 th Dept. 1986); and <u>Matt v. Larocca</u> , 71 N.Y. 2d 154, 1987)
Unionized Civil Service Employees Not Covered by Civil Service Law §75	Yes , Weingarten rights (to union representation upon request) were explicitly applied to all unionized employees by Transit Workers and New York City Transit, Case #U-22551 (2002)	No , Weingarten does not provide employees with the right to notice of their right to union representation. Therefore, application of <u>Weingarten</u> , in and of itself, does not convey that right ¹	

¹ It may be advisable nonetheless to provide unionized employees who are not covered by Civil Service Law Section 75 with notice of their right to union representation. This may foster better labor relations, avoid any perceived unfairness in the investigative process, and prevent a challenge based on the alleged unfairness of the investigation.

	The Right To Union/Co-Worker Representation At An Investigatory Interview	The Right To Be Told In Advance Of The Interview Of The Right To Representation	May the Employee Be Compelled To cooperate And Answer Questions?
Non-Unionized Civil Service Employees Covered By §75	?: 1. §75 is written with the <i>assumption</i> that the employee is unionized. 2. <u>Epilepsy Foundation</u> has not been adopted or rejected in the public sector. ²	?: 3. §75 is written with the <i>assumption</i> that the employee is unionized. 4. <u>Epilepsy Foundation</u> has not been adopted or rejected in the public sector. ³	Yes, See <u>Shales</u> and <u>Matt</u>, above.
Non-Unionized Civil Service Employees Not Covered by Civil Service Law §75	No, <u>Epilepsy Foundation</u> has not been applied to non-unionized public sector employees.⁴	N/A, (If the District will allow co-worker accompaniment, it may choose to allow notice of that allowance.)	
Teachers (Assuming they are unionized)	Yes, <u>Weingarten</u> rights of union representation during questioning. (Chapter 244 Laws of 2007)	?	No, <u>Cadet</u>, Commissioner's decision 13,589, aff'd 250 A.D. 2d 122 (3rd Dept. 1998)

² The Safer course of action may be to allow non-unionized employees who are covered by Civil Service Law §75 with the right to co-worker accompaniment at an investigatory interview.

³ The Safer course of action may be to allow non-unionized employees who are covered by Civil Service Law §75 with the right to co-worker accompaniment at an investigatory interview, and notice of that option.

⁴ It may be advisable nonetheless to allow the option for co-worker accompaniment during the investigatory interview.

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: January 13, 2011

509840

In the Matter of KAREN
SCHOONMAKER,

Appellant,

v

MEMORANDUM AND ORDER

CAPITAL REGION BOARD OF
COOPERATIVE EDUCATIONAL
SERVICES et al.,

Respondents,
et al.,
Respondents.

Calendar Date: November 19, 2010

Before: Mercure, J.P., Malone Jr., Stein, McCarthy and
Egan Jr., JJ.

Office of James R. Sandner, Latham (Robert T. Reilly of
counsel), for appellant.

Kevin H. Harren, Albany, for Capital Region Board of
Cooperative Educational Services and others, respondents.

William P. Seamon, Public Employees Federation, AFL-CIO,
Albany (Rita J. Verga of counsel), for Public Employees
Federation, AFL-CIO, amicus curiae.

Nancy E. Hoffman, Civil Service Employees Association,
Inc., Albany (Kara L. Hilburger of counsel), for Civil Service
Employees Association, Inc., amicus curiae.

Arthur P. Scheuermann, School Administrators Association of
New York State, Latham (Robert T. Fullem of counsel), for School
Administrators Association of New York State, amicus curiae.

McCarthy, J.

Appeal from a judgment of the Supreme Court (O'Connor, J.), entered February 9, 2010 in Albany County, which dismissed petitioner's application, in a proceeding pursuant to CPLR article 78, to review a determination of respondents Capital Region Board of Cooperative Educational Services, Board of Education of the Capital Region Board of Cooperative Educational Services and Charles S. Dedrick reducing petitioner's hours of employment by 25%.

Petitioner is employed by respondent Capital Region Board of Cooperative Educational Services (hereinafter BOCES) as a Senior Keyboard Specialist. From October 2000 through June 2009, she was employed full time. Due to a reduction in her division's workload, BOCES reduced petitioner's hours to 75% of full time and her wages decreased correspondingly. Petitioner commenced this proceeding alleging that BOCES, respondent Board of Education of BOCES and respondent Charles S. Dedrick, the Superintendent of BOCES, violated her rights under Civil Service Law § 80 by reducing her hours and salary but not reducing the hours of Senior Keyboard Specialists with less seniority. Holding that BOCES did not violate the statute, Supreme Court dismissed the petition. Petitioner appeals.

BOCES did not violate Civil Service Law § 80 when it reduced petitioner's hours, despite her seniority. The parties present a question of pure statutory interpretation. As the statutory text is unambiguous, we must give effect to its plain meaning (see Zakrzewska v New School, 14 NY3d 469, 479 [2010]; Matter of DaimlerChrysler Corp. v Spitzer, 7 NY3d 653, 660 [2006]). The statute at issue, entitled "[s]uspension or demotion," provides that "[w]here, because of economy, consolidation or abolition of functions, curtailment of activities or otherwise, positions in the competitive class are abolished or reduced in rank or salary grade, suspension or demotion . . . among incumbents [in the same governmental jurisdiction] holding the same or similar positions shall be made in the inverse order of original appointment" (Civil Service Law § 80 [1]). Senior Keyboard Specialist is a position in the competitive class. Petitioner's hours were reduced due to

economy, abolition of functions or curtailment of activities, namely that petitioner previously performed work related to several grants and those grants ended in June 2009. The question then becomes whether the reduction in hours and corresponding effect on petitioner's overall income equate to her position being "abolished or reduced in rank or salary grade." The answer is no.

While conversion of a full-time position to part time has been considered as an abolition of the full-time position (see Matter of Linney v City of Plattsburgh, 49 AD3d 1020, 1021 [2008]; see also Matter of Kerr v Weisenberg, 65 AD2d 815, 816 [1978], affd 49 NY2d 870 [1980]), the local civil service rules in Albany County – which includes BOCES employees – define part-time employment as a person working 50% or less or earning not more than half of the rate assigned if the position was allocated to a graded salary schedule. Under those rules, petitioner's position remained full time and was not converted to a part-time position. Hence, her position was not abolished.

Petitioner was also not reduced in rank; after her hours were reduced, she retained the civil service title of Senior Keyboard Specialist. Her salary grade was not reduced either. Petitioner continued to receive the same pay rate according to her salary grade (see Civil Service Law § 130); she just received 75% of her former total wages to reflect that she was only working 75% of her former hours. BOCES's diminution of petitioner's hours did not violate the plain language of the statute.

Had the Legislature intended to require that governmental employers suspend or demote employees in the inverse order of appointment when a position was "abolished or reduced in rank[,] salary grade" or hours, those additional words could have been included in the statute (see Matter of Amorosi v South Colonie Ind. Cent. School Dist., 9 NY3d 367, 373 [2007]). Indeed, the Legislature attempted to add to the statute by requiring inverse-seniority demotion or suspension when an employer reduced its employees' work hours, but the Governor vetoed the bill (see Sponsor's Mem, Bill Jacket, 2003 NY Assembly Bill 8399; Governor's Disapproval Mem, Bill Jacket, 2003 NY Assembly Bill

8399). Because the language referring to hours was not included, we cannot intrude on the legislative function and read such wording into the statute (see Bender v Jamaica Hosp., 40 NY2d 560, 562 [1976]). Contrary to petitioner's policy arguments that our decision will create a slippery slope, allowing governmental entities to reduce a senior employee's hours as punishment or to benefit favored less-senior employees, government workers are currently protected by the law and may bring an action against an employer if they suffer adverse employment actions based upon decisions rendered in bad faith (see Matter of Linney v City of Plattsburgh, 49 AD3d at 1021).

Mercure, J.P., Malone Jr., Stein and Egan Jr., JJ., concur.

ORDERED that the judgment is affirmed, without costs.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger
Clerk of the Court

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1181

CA 10-01250

PRESENT: MARTOCHE, J.P., LINDLEY, SCONIERS, PINE, AND GORSKI, JJ.

IN THE MATTER OF JANET HELLNER,
PETITIONER-APPELLANT-RESPONDENT,

V

MEMORANDUM AND ORDER

BOARD OF EDUCATION OF WILSON CENTRAL SCHOOL DISTRICT, WILSON CENTRAL SCHOOL DISTRICT, MICHAEL S. WENDT, IN HIS CAPACITY AS SUPERINTENDENT OF WILSON CENTRAL SCHOOL DISTRICT, RESPONDENTS-RESPONDENTS, BOARD OF EDUCATION OF ORLEANS/NIAGARA BOARD OF COOPERATIVE EDUCATIONAL SERVICES, ORLEANS/NIAGARA BOARD OF COOPERATIVE EDUCATIONAL SERVICES AND DR. CLARK J. GODSHALL, IN HIS CAPACITY AS DISTRICT SUPERINTENDENT OF ORLEANS/NIAGARA BOARD OF COOPERATIVE EDUCATIONAL SERVICES, RESPONDENTS-RESPONDENTS-APPELLANTS.

JAMES R. SANDNER, LATHAM (ROBERT T. REILLY OF COUNSEL), FOR PETITIONER-APPELLANT-RESPONDENT.

HOGDSON RUSS LLP, BUFFALO (RYAN L. EVERHART OF COUNSEL), FOR RESPONDENTS-RESPONDENTS.

WAYNE M. VANVLEET, MEDINA, FOR RESPONDENTS-RESPONDENTS-APPELLANTS.

Appeal and cross appeal from a judgment (denominated order and judgment) of the Supreme Court, Niagara County (Richard C. Kloch, Sr., A.J.), entered December 11, 2009 in a proceeding pursuant to CPLR article 78. The judgment directed respondents Wilson Central School District and Orleans/Niagara Board of Cooperative Educational Services to place petitioner on their preferred hiring lists, subject to review of her qualifications, and otherwise denied the petition.

It is hereby ORDERED that the judgment so appealed from is unanimously reversed on the law without costs and the matter is remitted to Supreme Court, Niagara County, for further proceedings in accordance with the following Memorandum: Petitioner commenced this CPLR article 78 proceeding seeking, inter alia, to direct respondents to transfer her position as an occupational therapist from respondent Wilson Central School District (District) to respondent Orleans/Niagara Board of Cooperative Educational Services (BOCES) pursuant to Civil Service Law § 70 (2). Petitioner had been employed by the District for 14 years when, as a result of budget constraints,

the District abolished her position and entered into a Cooperative Services Agreement (Agreement) with BOCES for the provision of occupational therapy services. The collective bargaining unit of which petitioner was a member demanded petitioner be afforded the "transfer of a function" rights pursuant to section 70 (2), i.e., that the District certify petitioner's name to BOCES as the employee to be transferred and that BOCES offer petitioner the position of occupational therapist. Both the District and BOCES refused to do so, whereupon petitioner commenced this proceeding. Supreme Court denied the petition and instead directed the District and BOCES to place petitioner's name on their preferred hiring lists. Petitioner appeals and BOCES cross-appeals from the judgment.

We agree with petitioner that the Agreement for the provision of occupational therapy services previously provided to the District by petitioner constitutes the "transfer of a function" within the meaning of Civil Service Law § 70 (2). Respondents contend, however, that Education Law §§ 3014-a and 1950 exclusively govern the issue of employee transfer rights inasmuch as BOCES took over the occupational therapy program from the District. We reject that contention. Neither Education Law statute provides for any transfer rights for non-teaching positions, and thus respondents' contention is at odds with the decision of the Court of Appeals in *Matter of Vestal Empls. Assn. v Public Empl. Relations Bd.* (94 NY2d 409). In that case, the Court of Appeals expressly stated that the affected school district employee, who provided printing services and thus had a non-educational position (*see id.* at 413), nevertheless was "afforded certain protections upon the transfer of his functions pursuant to Civil Service Law § 70 (2)" (*id.* at 416). Contrary to respondents' contention, that statement in *Vestal* is not mere dictum but, rather, it is a necessary element of the Court's analysis in that case.

We also reject respondents' contention that affording petitioner transfer rights would violate various administrative provisions applicable to BOCES and the District. Based on the Court's decision in *Vestal* (94 NY2d at 416), we conclude that the transfer of occupational therapy services from the District to BOCES constitutes the transfer of a function pursuant to Civil Service Law § 70 (2) and thus that petitioner, as the employee whose function was transferred, is afforded certain affirmative rights upon the transfer. To the extent that the administrative provisions upon which respondents rely are inconsistent with section 70 (2), the statute controls (*see generally Matter of Harbolic v Berger*, 43 NY2d 102, 109). "[A]dministrative regulations are invalid if they conflict with a statute's provisions or are inconsistent with its design and purpose" (*Matter of City of New York v Stone*, 11 AD3d 236, 237).

Although we agree with petitioner that she is entitled to protections afforded by Civil Service Law § 70 (2), we are unable on the record before us to determine the scope of those protections. Unlike Education Law § 3014-a, which affords teachers with seniority the right to existing positions in BOCES in the event that their positions purportedly are transferred there, section 70 (2) requires the transfer only of "necessary . . . employees who are substantially

engaged in the performance of the function to be transferred." In the event that BOCES had sufficient staff to provide the required occupational therapy services when petitioner's position was transferred, petitioner thus would not be entitled to the relief that she seeks, i.e., immediate employment at BOCES in that position (see *Matter of De Pietro v Thom*, 213 NYS2d 853). The record is insufficient to enable us to determine whether BOCES had sufficient occupational therapy staff at the time of the Agreement, and we therefore reverse the judgment and remit the matter to Supreme Court for further proceedings on the petition to determine that issue. In addition, we direct that, upon remittal, petitioner must join as necessary parties other occupational therapists whose employment may be jeopardized as a result of the petition, although we reject respondents' contention that the court was required to dismiss the petition based on petitioner's failure to join those parties in the first instance (see *Matter of Basher v Town of Evans* [appeal No. 1], 112 AD2d 4; *Matter of Gill v Dutchess County Bd. of Coop. Educ. Servs.*, 99 AD2d 836, 837).

Entered: November 19, 2010

Patricia L. Morgan
Clerk of the Court