

State of California

MEMORANDUM

TO: PERSONNEL MANAGEMENT LIAISONS DATE: March 30, 2000
REFERENCE CODE: 2000-020

THIS MEMORANDUM SHOULD BE DISTRIBUTED TO:

Personnel Officers
Employee Relations Officers

FROM: Department of Personnel Administration
Policy and Operations Division

SUBJECT: Classification and Pay Guide, Revision #8

CONTACT: Sara Hull, Staff Personnel Program Analyst
(916) 324-9416, CALNET 454-9416
FAX: (916) 327-1886
Email: SARAHULL@DPA.CA.GOV

This revision contains changes to the Out-of-Class Section of the Classification and Pay (C&P) Guide. These changes are a result of collective bargaining and modifications to several of the Memorandum of Understanding between various employee organizations and the State of California.

Please duplicate and distribute the changes to all holders of the C&P Guide in your department. The revision record in Section 3 should be completed after insertion of the changes.

FILING INSTRUCTIONS:

REMOVE

INSERT

Entire Section 375

Entire Section 375

If you have any questions regarding information in this revision, please contact your Classification and Compensation Analyst.



Peter J. Strom
Chief

Attachment(s)



GUIDE TO CLASSIFICATION AND PAY POLICIES AND PROCEDURES

<i>MAJOR AREA</i>	<i>SUBJECT</i>	<i>SECTION NUMBER</i>
POSITION ALLOCATION	OUT-OF-CLASS ASSIGNMENTS	375

375. OUT-OF-CLASS (OOC) ASSIGNMENTS

1. Definition

For excluded and most rank-and-file employees, OOC work is defined as more than 50 percent of the time performing the full range of duties and responsibilities allocated to an existing class and not allocated to the class in which the person has a current, legal appointment. This means the inappropriate assignment of duties of a higher classification.

Please refer to the appropriate Memorandum of Understanding (MOU) for exact definition of OOC work

2. Alternatives to OOC Assignments

Whenever possible or practical, temporary staffing needs should be accommodated by the use of civil service alternatives rather than the assignment of OOC work. Managers and supervisors should explore the feasibility of using the following alternatives any time an OOC assignment is being considered:

- 2.1 Limited-Term Appointment
- 2.2 Temporary Reassignment of Work to Appropriately Classified Positions
- 2.3 Rotating Assignments
- 2.4 Training and Development (T&D) Assignments
- 2.5 Acting Assignments Under the State Personnel Board (SPB) Rule 302.3 (Compensable up to 60 Workdays)
- 2.6 Compelling Management Need Assignments Under SPB Rule 442 (Noncompensable)

NOTE: SPB Rule 302.3 should not be used when the acting assignment can reasonably meet the OOC provisions in a current MOU agreement or in the Department of Personnel Administration (DPA) Rule 599.810. In addition,

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SPB Rule 302.3, pertaining to acting assignments, should not be used in sequence with MOU or DPA Rule 599.810 (see Section 4).

3. DPA Preapproval

OOO assignments are inappropriate in the following situations unless approved in advance by DPA:

3.1 To exempt positions or levels. DPA may approve an OOC assignment to an exempt position or level. However, the exempt position must first be evaluated as a civil service position and a salary determination made based on what the classification of the position would be if it were allocated to a civil service class. All OOC assignments to an exempt position must be coordinated with the Exempt Unit at DPA.

3.2 To supervisory, Career Executive Assignment (CEA), and other managerial positions or levels, requiring classification preapproval by DPA (classifications requiring preapproval are identified in the pay scales as NONE under Modified Classification Review [MCR]; MCR II classes may also require preapproval if the duties were not previously approved by DPA). Before considering preapproval in these situations, DPA will require the department to demonstrate that there are no viable alternatives to OOC and that there is a plan to correct the OOC by the end of 120 days.

3.3 To positions or levels not authorized in the department's budget. Before considering preapproval in these situations, DPA will require specific written notice from the Department of Finance that funding is available.

3.4 Where the employee's class specification provides for the proposed work assignment. An example would be an Assistant Section Chief acting for the Section Chief.

4. OOO Duties Assigned

Certain MOU provisions and DPA Rule 599.810 allow for short-term OOC assignments to meet temporary staffing needs. Should OOC work become necessary, the assignment would be made pursuant to the applicable MOU provision or DPA regulation (see below). Before assigning the OOC work,

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the appointing power should have a plan to correct the situation before the 120-day time period runs its course.

5. OOO Duties - Represented Employees

MOU provisions for compensating rank-and-file employees for assigned OOC duties are as indicated below:

5.1 Bargaining Units 2, 12, 15, 17, and 20

An employee who is required to work in a higher classification for more than 15 consecutive calendar days shall receive a pay differential of 5 percent over his/her normal daily rate for that period in excess of 15 calendar days. If the employee is required to work in a higher classification for 30 consecutive calendar days or more, the employee shall receive a 5 percent pay differential over his/her normal daily rate from the first day of the assignment, not to exceed the maximum of the "to" class, (see DPA Rule 599.671). If the assignment to a higher classification is not terminated before it exceeds 120 consecutive calendar days, the employee shall receive the difference between his/her salary and the salary of the higher class at the same step the employee would receive if he/she were to be promoted to that class, for that period in excess of 120 consecutive calendar days. The 5 percent differential shall not be considered as part of the base pay in computing the promotional step in the higher class.

5.2 Bargaining Units 1, 3, 4, 10, 11, 14, 18, and 21

When an employee is assigned OOC work for two consecutive weeks or more, they shall receive the rate of pay they would have received pursuant to Title 2 Cal. Code of Regs Section 599.673, 599.674, or 599.676 if appointed to the higher classification. OOC pay shall not be considered as part of the employee's base pay when computing the rate due upon promotion to the higher level. All of these bargaining units, with the exception of Units 14 and 18, also limit OOC pay to work performed (a) during the one (1) year calendar period before the employee's grievance was filed; and (b) the time between the grievance being filed and finally decided by an arbitrator. Units 14 and 18 provide that an employee can be compensated retroactively for a period no greater than one year for an approved OOC grievance.

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5.3 Bargaining Units 6, 7, 9, and 13

The same provisions apply as described for the California State Employees Association (CSEA) Units listed in 5.1 above and Bargaining Unit 12, EXCEPT that employees must be assigned OOC duties in writing. Unit 13 also provides that no employee can be compensated for more than one year of OOC work for any one assignment.

5.4 Bargaining Unit 8

No employee can be involuntarily assigned to work OOC. If the department head or his/her designee requires an employee in writing to work in a higher classification for more than 30 consecutive days (and the employee consents) the employee shall receive a pay differential of 5 percent over his/her normal daily rate of the class to which he/she is appointed for that period in excess of 30 days not to exceed the maximum of the "to" class (see DPA Rule 599.671). If a department head or designee requires in writing (and the employee consents) an employee to work in a higher classification for 60 consecutive calendar days or more, the employee shall receive a pay differential of 5 percent over his/her normal daily rate of the class to which he/she is appointed from the first day of the assignment. If the assignment to a higher classification is not terminated before it exceeds 120 consecutive calendar days, the employee shall be entitled to receive the difference between his/her salary and the salary of the higher class at the same step the employee would receive if he/she were to be promoted to the class, for that period in excess of 120 consecutive calendar days. No employee will be assigned to OOC work for more than one year. The differential shall not be considered as part of the base pay in computing the promotional step in the higher class.

5.5 Bargaining Unit 5

There is no bargaining agreement provision allowing the assignment of OOC work.

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5.6 Bargaining Unit 16

When an employee is required to work in a higher classification for more than 15 consecutive days, the employee shall receive the rate of pay the employee would have received if appointed to the higher class for the entire duration of the assignment, not to exceed one year. OOC pay shall not be considered as part of the employee's base pay when computing the rate due upon promotion to the higher level. Approved OOC grievances shall be compensated retroactively for a period no greater than one (1) year preceding the filing of the grievance.

5.7 Bargaining Unit 19

When an employee is required to work in a higher classification for more than two consecutive weeks, the employee shall receive the rate of pay, pursuant to DPA Rule 599.673, 599.674, or 599.676, the employee would have received if appointed to the higher class for the entire duration of the assignment. The OOC compensation shall not be considered as part of the base pay in computing the promotional step in the higher class. Compensation for OOC work shall not exceed one year.

6. OOO Duties - Nonrepresented Employees

Confidential, supervisory, and excluded employees are eligible to be compensated for OOC assignments based on provisions established by DPA Rule 599.810. NOTE: Individuals designated as managerial and exempt are not covered by specific provisions governing OOC assignments and, therefore, are not eligible for OOC assignment pay; and, furthermore, no authority exists to assign such individuals OOC work. (However, managerial employees who believe they have performed OOC duties may file a claim in accordance with Government Code [GC] Section 19818.16.)

In accordance with DPA Rule 599.810, confidential, supervisory, and excluded employees are eligible to be compensated for OOC assignments subject to certain provisions. Employees performing in a higher class for more than 15 consecutive workdays shall receive the rate of pay the excluded employee would receive if appointed to the higher class for the entire duration of the assignment, not to exceed one year. The rate of pay for an employee performing OOC duties to a CEA position is determined by the appointing

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power. Assignments must be made in advance and in writing. Assignments may exceed 120 calendar days with a proper certification of need statement filed with DPA (see Section 7 below).

7. Justification for OOC Assignments Which Exceed 120 Days

All OOC assignments which exceed 120 days must be reported to DPA no later than day 130 of the assignment, unless delegated to the department. DPA will not normally accept the department's failure to complete an examination as a basis for continuing the OOC assignment beyond 120 days. Extensions may be granted when the examination is in process and virtually completed. For assignments to exceed 120 calendar days, the appointing power or his/her chief deputy must file a statement with DPA on DPA Form PMS 232 (see Attachment 1) certifying that the additional OOC work is required to meet a need that cannot be met through other civil service or administrative alternatives.

8. OOO Grievances vs. OOC Claims

Employees who were not formally assigned OOC duties, but who believe they have been and/or are performing OOC work may file either an OOC grievance or an OOC claim as described below.

8.1 OOO Grievances

As stipulated in their MOUs, all represented employees (except in Bargaining Unit 5) may file grievances concerning any disputes arising from OOC assignments in accordance with the respective bargaining unit grievance procedure. The grievance process begins with the employee preparing an OOC grievance form as specified in the contract. In order for a department to approve and pay an OOC grievance, it must be reviewed and responded to at the designated department level. Grievances which are denied at the department level of review, may be appealed to DPA, the final level of review.

If an OOC grievance has been approved at the designated levels within the department, it is no longer required that the grievance be sent to DPA for a final level of review.

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8.2 OOC Claims

Represented employees in Bargaining Unit 5 and nonrepresented employees who believe that they have been assigned OOC duties may file an OOC claim within 30 days of the completion of the alleged OOC duties. Nonrepresented employees may file an Excluded Employee Grievance Form 631 (see Attachment 2).

The department's third level will respond within 30 calendar days of receiving the OOC claim. The claimant may appeal the response to DPA within 30 days. OOC claims must be reviewed and approved by DPA as a final level of review before they can be processed for payments. Reimbursement payments are calculated based on applicable bargaining unit OOC payment provisions and DPA Rule, respectively.

9. Timelines - Filing of OOC Grievances and Claims

An OOC grievance or claim must be determined to be timely in order to be reviewed. The grievance/claim must be dated and must be filed in writing at the first level. For **grievances**, the appropriate contract must be referenced for filing requirements (most MOUs, including CSEA, require that the grievance be filed within 14 days of the last day of the alleged OOC work). OOC **claims** must be filed within 30 days of the cessation of the alleged OOC duties (DPA Rule 599.904).

10. One-Year Limitation on Retroactive OOC Grievances/Claims

In accordance with the provisions of GC Section 19818.16(a), retroactive payment of an OOC grievance or claim shall be awarded for a period no greater than one year preceding the filing of the grievance or claim.

11. OOO Grievances/Claims - Standards of Review

11.1 General Standards

In determining whether or not the assigned work is in a higher classification, the kind and variety of duties performed, and the relative amount of time which the employee spent performing these duties must be evaluated in the same way that a position reallocation request

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is evaluated. An employee will be found to be working in a higher classification only when he/she is performing the full range of duties of the higher class on a regular and consistent basis (at least 50 percent of the time) and the position meets all of DPA's classification allocation guidelines to warrant allocation to the higher class.

11.2 Specific Standards

An employee is not considered to be working OOC if he/she meets any one of the criteria below:

- 11.2.1 He/she is performing the full range of the duties described in the employee's class. In other words, an employee who is performing the duties of his/her class the majority of the time is not considered to be working OOC even though these duties may substantially overlap those of another class at the same or higher level.
- 11.2.2 The employee is performing the prescribed duties on a compelling management need assignment, a T&D Assignment, in an apprenticeship or other training classification, or when performing duties different from the employee's regular duties because of injury, illness, or return-to-work program.
- 11.2.3 If DPA approves a change in allocation standards and an employee claims that he/she was working in a higher classification prior to the effective date of the change in the standards.
- 11.2.4 SPB establishes a new class which describes duties that were previously properly allocated to another class and an employee claims that he/she was working in a higher class prior to establishment of the class.
- 11.2.5 The claim is based upon alleged accelerated movement in a deep class series (e.g., Staff Services Analyst, Ranges A, B, and C) or from the trainee to/through journey level of a class series.

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12. **Board of Control (BOC)**

Employees should not be advised to pursue OOC claims through BOC. The proper recourse is for employees to follow the administrative process associated with OOC grievances and claims as described above. If the employee is represented by a bargaining unit contract and the contract specifies that DPA is the final level of review in OOC, then the decision rendered by DPA is the final decision.

13. **Payment of Grievances/Claims**

13.1 For OOC grievances where departments are authorized to approve and pay direct (as specified in the bargaining unit contracts), payment can be made via the Form 674 process.

13.2 For grievances and OOC claims which must be reviewed and approved by DPA as the final level of review, reimbursements are paid through the Controller's Premium Pay Unit. When DPA certifies approval of a specific time period for OOC work, the "Release of All Claims" form and the payment form are initiated by DPA and sent to the personnel office in the employee's department for calculation of the correct amount for the OOC payment.



OUT-OF-CLASS JUSTIFICATION FORM
(Complete only when out-of-class assignments exceed 120 days)

DEPARTMENT:

DIVISION:

EMPLOYEE NAME:

CURRENT CBID:

FROM: (CLASS TITLE)

TO: (CLASS TITLE)

1ST DAY OF ASSIGNMENT:

DAY 121 OF ASSIGNMENT TO BEGIN:

ENDING DATE:

DESCRIBE DUTIES TO BE PERFORMED:

SPECIFICALLY, WHY CAN'T THIS NEED BE MET THROUGH:

- ◇ A temporary or limited-term appointment?

- ◇ Temporary reassignments, reorganization, or other administrative alternative?

- ◇ For recurring needs, a change in the classification plan?

ADDITIONAL COMMENTS:

SIGNED BY: _____
Department Director
(or Chief Deputy)

SEND TO:

Department of Personnel Administration
Classification and Compensation Program
1515 "S" Street, North Building, Suite 400
Sacramento, CA 95814

ATTENTION: Coordinator, Out-of-Class Review Unit

STATE OF CALIFORNIA
EXCLUDED EMPLOYEE GRIEVANCE
 STD 631 (Rev. 2/88)

GRIEVANCE PROCEDURES ON REVERSE

GRIEVANT'S NAME		HOME ADDRESS (NUMBER, STREET, CITY, ZIP CODE)		HOME PHONE NUMBER
DEPARTMENT	DIVISION/FACILITY	SECTION, BRANCH, UNIT, ETC.		WORK PHONE NUMBER
CITY	POSITION/CLASSIFICATION			NORMAL WORK HOURS

REPRESENTATION INFORMATION (Complete if applicable)		
REPRESENTATIVE'S NAME	ORGANIZATION OR AFFILIATION	PHONE NUMBER ()

GRIEVANCE INFORMATION			
DATE OF ACTION CAUSING GRIEVANCE	DATE OF INFORMAL DISCUSSION W/IMMEDIATE SUPERVISOR	NAME OF SUPERVISOR	DATE OF INFORMAL RESPONSE

CLEAR, CONCISE STATEMENT OF GRIEVANCE:

SPECIFY THE STATUTE, REGULATION, POLICY OR PRACTICE ALLEGEDLY VIOLATED:

SPECIFIC REMEDY SOUGHT:

SIGNATURE OF GRIEVANT	DATE FILED
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GRIEVANCE REVIEW LEVEL I		
DATE RECEIVED	DATE OF RESPONSE	<input type="checkbox"/> DECISION ATTACHED
SIGNATURE	TITLE	

GRIEVANCE REVIEW LEVEL II		
DATE RECEIVED	DATE OF RESPONSE	<input type="checkbox"/> DECISION ATTACHED
SIGNATURE	TITLE	

GRIEVANCE REVIEW LEVEL III DEPARTMENT DIRECTOR OR DESIGNEE		
DATE RECEIVED	DATE OF RESPONSE	<input type="checkbox"/> DECISION ATTACHED
SIGNATURE	TITLE	

GRIEVANCE REVIEW LEVEL IV		
DATE RECEIVED	DATE OF RESPONSE	<input type="checkbox"/> DECISION ATTACHED
SIGNATURE	TITLE	

Should be mailed to: DEPARTMENT OF PERSONNEL ADMINISTRATION
 1115 - 11TH STREET
 SACRAMENTO, CALIFORNIA 95814 (916) 324-0477

Section 599.859. GRIEVANCE AND APPEAL PROCEDURE.

(a) The purpose of grievance and appeal procedures is to provide for the prompt review and resolution of issues either formally or informally at the lowest possible level.

(b) Definitions.

(1) "Grievance". A grievance is a dispute of one or more employees involving the application or interpretation of a statute, regulation, policy or practice which falls under the jurisdiction of the department.

(2) "Non-Merit Statutory Appeal". A non-merit, statutory appeal is: an appeal of transfer in accordance with Government Code section 19994.2-19994.4; a petition to set aside resignation in accordance with Government Code section 19996.1; an appeal for reinstatement after automatic resignation (AWOL) in accordance with Government Code section 19996.2; or an appeal of layoff in accordance with Government Code section 19997.14.

(c) Grievance Procedures.

Each appointing power may establish in writing a procedure for the resolution of grievances of its employees and any such procedure shall be subject to the review and approval by the Department. However unless such a procedure is established, the appointing power shall follow the standard grievance procedure prescribed by the Department in Subsection (d).

(d) Standard Grievance Procedure. Each party involved in a grievance shall attempt to resolve the grievance promptly. Every effort should be made to complete required actions within the time limits contained in the grievance procedure. However, with the mutual consent of the parties, the time limit for any step may be extended.

(1) A grievance procedure shall consist of as few levels of review as practicable; however, no procedure shall provide for more than four levels of review.

(2) Informal Discussion. The employee or the employee's representative shall discuss the grievance with the employee's immediate supervisor. If the grievance is not settled within five (5) work days, a written grievance may be filed.

(3) Formal Grievance — Level 1. A formal grievance may be filed no later than ten (10) work days after the event or circumstances occasioning the grievance. The first level of review shall respond to the grievance in writing within ten (10) work days after the receipt of the formal grievance.

(4) Formal Grievance — Level 2. The grievant may appeal the decision of the first level within ten (10) work days after receipt of the response. Within fifteen (15) work days after receipt of the appealed grievance, the person designated by the department head as the second level of review shall respond in writing to the grievance.

(5) Formal Grievance — Level 3. The grievant may appeal the decision of the second level within ten (10) work days after receipt of the response to the department head or his/her designee. Within fifteen (15) work days after receipt of the appeal, the department head or his/her designee shall respond in writing to the grievance.

(6) Formal Grievance — Level 4. The grievant may appeal the decision of the third level within ten (10) work days after receipt of the response to the Director of the Department of Personnel Administration or his/her designee. Within twenty (20) work days the Director of the Department of Personnel Administration or his/her designee shall respond in writing to the grievance.

(e) Forms.

The Department shall prescribe a standard supervisory and excluded employee grievance form and any additional forms to be used in processing grievances.

(f) Representation.

The employee and representative, recognized by the Department in accordance with the provisions of Section 599.857, may be authorized a reasonable amount of work time, as determined by the appointing power and approved by the Department, to prepare and present a grievance.

(g) Non-Merit Statutory Appeals.

(1) Disputes regarding appeals of layoff, appeals of transfer, petitions to set aside resignation, appeals for reinstatement after automatic resignation shall be filed in writing directly with the Director. Such appeals shall be filed in accordance with specific time limits prescribed by applicable statute.

(2) Such appeal may be assigned to a hearing officer for hearing or investigation. The hearing officer is the authorized representative of the Director and is fully authorized and empowered to grant or refuse extensions of time, to set such proceeding for hearing, to conduct a hearing or investigation in every such proceeding, and to perform any and all other acts in connection with such proceeding that may be authorized by law or by this article.

(3) Rehearing.

Within thirty (30) days after service of a copy of the decision any party may file a written petition for rehearing with the Director. Within thirty (30) days after such filing, the Director shall serve a copy of the petition upon the other parties to the proceeding. Within sixty (60) days after service of the petition for rehearing, the Director shall either grant or deny the petition in whole or in part. Failure to act upon a petition for rehearing within the ninety (90) day period is a denial of the petition. If a rehearing is granted, the Director may rehear the case itself on all the pertinent parts of the record of the prior hearing and such additional evidence and argument as may be permitted by the Director.

(4) Decision Becomes Final When.

Unless a proper application for rehearing is made in accordance with subsection (g)(3), every decision shall become final 30 days after service by the Department of a copy of such decision upon the parties to the proceeding in which the decision is rendered.

Note: Authority cited: Sections 3522.9, 3532, 19815.4(d) Government Code.

Reference: Sections 3522.9(f), 3532(f), 18714, 19994.4, 19996.1, 19996.2, 19997.14 Government Code.

DPA Rule 599.671 Entire Compensation

Unless otherwise indicated in the pay plan, the rates of pay set forth represent the total compensation in every form except for overtime compensation. Each employee shall be paid at one of the established rates in the salary range for the class, unless DPA or the Director of DPA in accordance with the provisions of Section 19837 authorizes a rate above the maximum of the class.

*Note: Authority cited: Sections 19815.4(d), 19816 and 19826, Government Code.
Reference; Section 19837, Government Code.*

