

MEMORANDUM

TO: PERSONNEL MANAGEMENT LIAISONS DATE: November 5, 2001
REFERENCE CODE: 2001-053

THIS MEMORANDUM SHOULD BE DISTRIBUTED TO:

Employee Relations Officers
Personnel Officers

FROM: Department of Personnel Administration
Classification and Compensation Division

SUBJECT: Classification and Pay Guide, Revision #10

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This revision contains changes to the Out-of-Class section of the Classification and Pay Guide. These changes are a result of collective bargaining and modifications to several of the Memorandums of Understanding between various employee organizations and the State of California.

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

FILING INSTRUCTIONS:

REMOVE

INSERT

Pages 375.3 - 375.6 Pages 375.3 - 375.6

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



Michael T. Navarro, Chief
Classification and Compensation Division

Attachment



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, 15, and 17

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, 11, 14, 18, 20, and 21

An employee may be temporarily required to perform out-of-class work by his/her department for "up to 120 calendar days in any 12 consecutive calendar months." However, employees in Unit 14 may work up to "120 days calendar days" in a fiscal year. 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



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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.

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, 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.



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5.5 Bargaining Unit 5

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

5.6 Bargaining Units 10 and 16

When an employee is required to work in a higher classification for more than 15 consecutive calendar 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 12

When an employee is required in writing to work in a higher classification, the employee shall be entitled to receive the difference between his/her salary and the salary of the higher class at the same salary rate the employee would receive if the employee were to be promoted to that class along with any differentials currently earned in the lower classification. Out-of-class assignments will be typically for one-week increments. Filling in for a supervisor on a short-term basis (less than one week) does not constitute out-of-class work.

5.8 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.



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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.

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 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.



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8.1 OOC 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.

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). **OOO claims** must be filed within 30 days of the cessation of the alleged OOC duties (DPA Rule 599.904).



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- 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.

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.



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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. OOC 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 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.

