



Personnel and Labor Relations Directors Office Guidance

December 17, 2014

Exempt/Partially Exempt/Classified Service - General Guidelines

Disclaimer: This document provides general guidelines and should be read in conjunction with current regulations and /or CBA, as rules, regulations, and provisions may have changed.

Exempt Service 39.25.110

Exempt positions/employees are excluded from Title 39, Chapter 25, State Personnel Act and the Personnel Rules adopted under it. Therefore, positions may be classified, salaries established, and recruitment and selection conducted irrespective of the merit principle as defined in 39.25.010.

- Defined in Statute
- Not subject to the class and pay plans
- Agency selects title, but not one already used in the classified service (too confusing) and typically the duties and salary are not identical to the classified work. Class codes are different, begin with an "X".
- No salary restrictions, other than should not be paid at a pay increment hasn't earned.
- Flexible on job class and salary range
- Establishing a position needs OMB approval
- Upgrading a position more than a two ranges needs OMB approval
- Rng 16 and above need GOV Office approval to recruit and appoint
- Need GOV Office approval when an individual will be acting in a vacant position at a Deputy Director level or higher. The reason for and the expected duration of the acting status should be noted on the request.
- Need GOV Office approval when an individual will be acting in a filled position at a Deputy Director level or higher for a period extending beyond 45 days.
- All other acting status approval for EX positions above a range 16 should be approved by the Commissioner or Commissioner's designee.
- Not under the merit principle.
- Not under the recruitment and selection process and are known as "appointive" rather than career service positions.
- No access to grievance and compliant process for dismissal, demotion, and suspension.
- Discrimination complaints may be pursued thru ASCHR, EEOC, EEOP or departmental complaint process.
- Do not have injured worker rights
- Are covered under the ADA
- No authority for floating holiday
- Subject to the leave Rules; they are separate from the Personnel Rules.
- Qualify for Alternate Work Weeks (AWW)
- Telecommuting guidelines apply.
- Agency HR makes FLSA determinations.

- Temp exempt less than 120 days does not need OMB approval, does not get established through OPD, yet you will need to have enough information on the duties of the position to make an FLSA determination.

- Although the authority to provide leave and benefits to Temporary Exempts (39.25.110 (9)), is not clear, on occasion departments will receive Governor's Office approval to extend benefits to the position, such as retirement, health insurance and/or leave. If the incumbent is to receive retirement, the incumbent should be set up with a status code of EX (not TE) to ensure proper reporting to the division of Retirement & Benefits. If a temp exempt is established for more than 12 months in duration the position should be set up to accrue leave.
- Sometimes there are substitute exempt positions. Set up with an "S" on the end of the PCN like other substitute positions.
- In an Exempt Agency (i.e. AIDEA) if a request is made for a temporary position it will be established under 39.25.110 (9). If the position is range 16 or higher will need additional approval for recruitment and hire.

Clarification: Although Vessel employees on AMHS and Teachers are covered under a collective bargaining agreement they are exempt from the Personnel Act and the Personnel Rules. They do not apply. For example: Nepotism Regulation 2 AAC 07.950. (Personnel Reg.) does not apply to Vessel employees or Teachers, but the Ethic Act 39.52.010, would apply. Again, they are not considered classified service just because they are covered by a CBA. By statute they are in the Exempt service.

They do not have injured works rights.

They are covered under the ADA

PX Service 39.25.120

Partially exempt positions/employees are subject to the classification and pay plans. Therefore, positions /employees are covered by provisions of the State Personnel Act and the personnel rules relating to the classification and pay, in addition to the pay plan (AS 39.27.011). Partially exempt position/employees are not subject to rules governing recruitment and assessment, probationary periods, permanent status, nor most rules governing grievances and separations. A person holding a position in the partially exempt service is not required to be assessed or compete through recruitment, and is not eligible for a hearing by the Personnel Board in the case of a dismissal, demotion, or suspension.

- Defined in statute
- Some portions of the Personnel Act and the Personnel Rules apply to the positions.
Note: Personnel Rules are established to implement the statutes.
- They are covered under the class and pay plans.
- Do not have injured worker rights
- Are covered under the ADA
- Need a position description
- They are subject to the Personnel Rules promotion & demotion regulations
- Not subject to the recruitment and selection regulations and are known as "appointive" rather than career service positions.
- Need GOV Office approval when an individual will be acting in a filled position at a Deputy Director level or higher for a period extending beyond 45 days.
- All other acting status approval for PX positions above a range 16 should be approved by the Commissioner or Commissioner's designee.
- Not eligible for a hearing before the Personnel Board if dismissed, suspended or demoted. (may pursue court, ASCHR, EEOC)
- No probationary period or permanent status
- Subject to the leave Rules; they are separate from the Personnel Rules.
- Salary Schedule is in Statute 39.27.011. Applicable pay rates and GEO diff. articulated in Statute. Exception: DOA Office of Administrative Hearings: have a probationary period set in statute. (the type of work provides protection)

- Qualify for Alternate Work Weeks (AWW). Example: Dept. of Law has created an AWW agreement (similar to the CBA) which requires internal (not HR) approval.
- Telecommuting guidelines apply.
- PX qualify for floating holiday per 2 AAC 07.810 (d)
- Positions not identified in 39.25.120 need Personnel Board approval for PX establishment.

Note: There is no authority for a temporary PX position. However, on rare occasions there may be a need for a temp PX position (i.e. attorney). The work around is to set the position up as a temp Exempt with a PX in the PCN to identify the position correctly. Temp PX positions are NOT encouraged.

Classified 39.25.100

Classified positions/employees are subject to the State Personnel Act and the Personnel Rules adopted under it, and most are covered by a collective bargaining agreement (CBA). Therefore, classified employees are subject to the merit principles.

- Defined in Statute
- Positions not in the Exempt or PX service.
- Subject to the Personnel Act, Personnel Rules and the applicable CBA.
- Subject to the merit principle

Excluded Unit

Positions in the classified service which ALRA has specifically excluded from existing bargaining units by order and decision; positions which no unit has petitioned to represent; and positions excluded from units by mutual agreement of the state and the otherwise appropriate bargaining unit representative. (i.e. ALRA positions)

Note: Student, College and Graduate Interns (except DNR interns), are excluded through collective bargaining agreements (CBA).

- Subject to the pay plan in statute: 39.27.011
- Subject to the classification plan.

Changes in Service

Changing a position between the classified, PX, and exempt services is called a change in service. It is not a reclassification, but is normally done current with a reclassification. Service changes between the exempt and classified service are a result of changes in duties and application of statute.

- PX to Exempt
Notify the Classification section when a position is moving from the PX to the Exempt. The PX position will be in OPD and the classification staff can take appropriate action in OPD to reflect the change in service. In some cases the PX PCN will be deleted and a new PCN created for the Exempt position, or the PCN may be re-used for the exempt service position.
- Exempt and PX to the Classified
Need Governor's Office approval to move position from exempt or PX to classified service. Update and submit a position description through OPD
Follow Personnel Rule 2 AAC 07.215, Transition period for employees moved to classified service, for recruitment process.
Step placement is limit by SOP Advanced Step Placement Upon Movement of Work from the Exempt Service to the Classified or Partially Exempt Service.

- Classified to PX
The Personnel Board may extend the PX service to include any position in the classified service meeting the tests outlined in AS 39.25.130.

Another example: If the department of Law decides to change a position from a Paralegal (classified) to an Attorney (PX), they would submit an updated PD with the new duties and responsibilities for reclassification. Classification Services would take the classification action based on the duties and then a separate concurrent action to change the service. In this example the change of service is a product of AS 39.25.120(c)(3).

Step Placement between the Services

- Exempt or different branch of government to classified service
When a current Exempt employee or an employee from a different branch of government (i.e. Legislative or Court system) is appointed to a classified position they are treated as a brand new appointment and are placed at A step or if justified, the applicable advanced step. Exempt, Legislative, and Court system employees do not follow the class and pay plans or personnel rules, therefore the job class and pay ranges they are coming from are not appropriate job and salary matches for the purpose of transfer, promotion, or demotion.
- Exempt to PX service
Same as above as the Exempt service does not follow the class and pay plans.
- PX to Classified service
Follow the regulations and applicable collective bargaining agreement (CBA) appropriate for the classified position.
- Classified to the PX service
Follow the Personnel Rules for step placement.
- Exempt advance step placement may be for steps up to and including F. Positions range 16 and above require Governor's Office approval.
- PX advance step request require a brief justification and steps up to and including F may be approved by the Commissioner of the agency.

Other step placement guidance

Note: For PX positions, at the request of the Governor's Office, the department must obtain confirmation of the salary range/step placement from DOPLR payroll (Payroll Services Manager or Payroll Services Assistant Manager) prior to requesting the Chief of Staff's approval to appoint for partially exempt positions. DOPLR will ensure the correct salary range/step placement in accordance with the applicable rules and regulations.

Exception: A classified employee promoting to the PX service can receive an advanced step in lieu of applying the applicable pay regulation for an initial appointment per 2 AAC 07.349.

SB 95 amended AS 39.27.011 to which the governor or a designee of the governor may, on a case-by-case basis, authorize for a partially exempt employee in the executive branch a higher pay than Step F. The authorization must be based on a determination that the action serves a critical governmental interest of the state, the employee possesses exceptional qualifications, recruitment difficulties exist, or the action is necessary due to competitive salaries in the relevant labor market. A determination made under this subsection must be in writing.

An exempt pay increase requires the agency to submit to the Payroll Services Section a memo or Personnel Action Request Form (PARF) requesting the increase for the exempt employee. The request must be signed/approved by the agency head or designee with approval authority for an exempt pay increase and will be reviewed by the Payroll Services Manager or Payroll Services Assistant Manager before the action is processed.

If an incumbent is making more upon appointment to deputy commissioner or division director position place at appropriate step and freeze salary per 2 AAC 07.316. The incumbent will receive cola and pay increments while on frozen salary.

Retirees

A retiree has to come out of PERS retirement to accept a PERS eligible position. A PERS retiree can stay in PERS retirement while working in a TRS eligible position and vice versa.