

Article 14.2 - Out-of-Classification Grievances and Position Allocation Hearing Process

From the Master Agreement between the
State of California and SEIU Local 1000

14.2 Out-of-Classification Grievances and Position Allocation Hearing Process (Excludes Unit 17 and 21)

A. Definitions

1. An employee is working "out of class" when he/she spends a majority (i.e., more than fifty percent [50%]) of his/ her time over the course of at least two (2) consecutive work weeks performing duties and responsibilities associated with a higher level existing classification that do not overlap with the classification in which said employee holds an appointment.

Duties that are appropriately assigned to incumbents in the employee's current classification are not out of class. Duties appropriately assigned are based on the definition and typical tasks enumerated in the California SPB specification.

Training and Development assignments are not out-of-class work.
2. For purposes of this section, a classification is at a "higher level" if the maximum salary of the highest salary range (excluding alternate range criteria other than deep class criteria) is any amount more than the maximum salary of the highest range of the class in which the employee holds an appointment.
3. When an employee is performing the duties of a vacant position properly assigned to a higher class or the duties of an absent employee whose position is properly assigned to a higher classification, the employee shall be considered to be working out of class.

B. Authorization and Rate of Pay

1. Notwithstanding Government Code sections 905.2, 19818.8, and 19818.16, an employee may be temporarily required to perform out-of-class work by his/her department for up to one hundred twenty (120) calendar days in any twelve (12) consecutive calendar months when it determines that such an assignment:
 - a. Is of unusual urgency, nature, volume, location, duration, or other special characteristics; and,
 - b. Cannot feasibly be met through use of other civil service or administrative alternatives.
2. Departments may not use out-of-class assignments to avoid giving civil service examinations or to avoid using existing eligibility lists created as the result of a civil service examination.
3. When an employee is assigned out-of-class work, he/she shall receive the rate of pay he/she would have received pursuant to Title 2 California Code of Regulations sections 599.673, 599.674, or 599.676 if appointed to the higher classification.

4. Out-of-class work may be discontinued by departments at any time; however, departments may not rotate employees in and out of out-of-class assignments to avoid payment of out-of-class compensation.
5. Out-of-class pay shall not be considered as part of the employee's base pay when computing the rate due upon promotion to a higher level.

C. Out-of-Class Grievances and Allocation Appeals

1. The grievance and arbitration procedure described in subsection D below shall be the exclusive means by which alleged out-of-class assignments shall be remedied, including requests for review by the DPA referenced in Government Code section 19818.16 or the State Victim Compensation and Government Claims Board.
2. The grievance and arbitration procedure described in this section shall be the exclusive means for appealing position allocation or reallocation referenced in Government Code sections 19818.6 and 19818.20.
3. Employees may not separately file out-of-class grievances and position allocation or reallocation grievances pertaining to the same duties and responsibilities.
4. The only remedy that shall be available (whether claiming out-of-class work or position misallocation) is retroactive pay for out-of-class work. Said pay shall be limited to out-of-class work performed (a) during the one year calendar period before the employee's grievance was filed; and (b) the time between when the grievance was filed and finally decided by an arbitrator.
5. Arbitrators shall not have the authority to order reclassification (reallocation) of a grievant's position or discontinuance of out-of-class work assignments.

D. Grievance Procedure and Time Limits

1. An employee's grievance initially shall be discussed with the employee's supervisor.
 2. If the grievance is not resolved to the satisfaction of the grievant a formal grievance may be filed on a form provided by the State within:
 - a. Fourteen (14) calendar days after receipt of the decision rendered by the supervisor; or
 - b. Twenty-one (21) calendar days after the date the employee's duties allegedly changed such that he/she stopped working out of classification or his/her position became misallocated.
 - c. However, under no circumstances may the period in which to bring the grievance be extended beyond the twenty-one (21) calendar days in item b above.
 3. Out-of-class and misallocation grievances shall be filed with a designated supervisor or manager identified by each department head as the department level of appeal in the usual grievance procedure found in article 6.
 4. The person designated by the department head as the department level of appeal shall respond to the grievance in writing within forty-five (45) calendar days after receipt of the grievance.
 5. If the grievant is not satisfied with the decision rendered by the person designated by the department head at the department level of appeal, he/she may appeal the decision in writing within twenty-one (21) calendar days after receipt to the Director of the DPA.
 6. The Director of the DPA or designee shall respond to the grievance in writing within sixty (60) calendar days after receipt of the appealed grievance.
 7. If the grievance is not resolved by the DPA, the Union shall have the right to submit the grievance to arbitration in accordance with article 6, section 6.11.
 8. Article 6, section 6.11 (Arbitration Level) shall apply to out-of-class and misallocation grievances except as otherwise provided in this section.
- E. The arbitrator's decision regarding out-of-class and misallocation grievances shall be final and binding on the parties. Said awards shall not be subject to challenge or review in any forum, administrative or judicial, except as provided in Code of Civil Procedure section 1286.2 et seq.

- F. The parties agree to support legislation to amend Government Code section 19818.8 as follows. Said legislation must be enacted into law before the provisions of this section take effect.
1. Government Code section 19818.8(a) A person shall not be assigned to perform the duties of any class other than that to which his or her position is allocated, except as permitted by section 19050.8.
 2. If the provisions of this section are in conflict with the provisions of a memorandum of understanding (MOU) reached pursuant to section 3517.5, the MOU shall be controlling without further legislative action, except that if those provisions of the memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

14.2.17 Out of Classification Grievances and Position Allocation Hearing Process (Unit 17)

A. Definitions

1. An employee is working "out-of-class" when he/she spends a majority (i.e., more than fifty percent [50%]) of his/her time over the course of at least two (2) consecutive work weeks performing duties and responsibilities associated with a higher level existing classification that do not overlap with the classification in which said employee holds an appointment.

Duties that are appropriately assigned to incumbents in the employee's current classification are not out-of-class. Duties appropriately assigned are based on the definition and typical tasks enumerated in the SPB specification.

Training and Development assignments are not out-of-class work.
2. For purposes of this section, a classification is at a "higher level" if the maximum salary of the highest salary range (excluding alternate range criteria other than deep class criteria) is any amount more than the maximum salary of the highest range of the class in which the employee holds an appointment.
3. When an employee is performing the duties of a vacant position properly assigned to a higher class or the duties of an absent employee whose position is properly assigned to a higher classification, the employee shall be considered to be working out-of-class.

B. Authorization and Rate of Pay

1. Notwithstanding Government Code sections 19818.8, and 19818.16, an employee may be temporarily required to perform out-of-class work by his/her department for up to one hundred twenty (120) calendar days in any twelve (12) consecutive calendar months when it determines that such an assignment:
 - a. Is of unusual urgency, nature, volume, location, duration, or other special characteristics; and,
 - b. Cannot feasibly be met through use of other civil service or administrative alternatives.
2. Departments may not use out-of-class assignments to avoid giving civil service examinations or to avoid using existing eligibility lists created as the result of a civil service examination.
3. When an employee is assigned out-of-class work, he/she shall receive the rate of pay he/she would have received pursuant to Title 2 California Code Regs section 599.673, 599.674, or 599.676 if appointed to the higher classification.
4. Out-of-class work may be discontinued by departments at any time; however, departments may not rotate employees in and out of out-of-class assignments to avoid payment of out-of-class compensation.
5. Out-of-class pay shall not be considered as part of the employee's base pay when computing the rate due upon promotion to a higher level.

C. Out-of-Class Grievances and Allocation Appeals

1. The grievance and arbitration procedure described in subsection D below shall be the exclusive means by which alleged out-of-class assignments shall be remedied, including requests for review by the DPA referenced in Government Code section 19818.16 or the State Board of Control.

2. The grievance and arbitration procedure described in this section shall be the exclusive means for appealing position allocation or reallocation referenced in Government Code sections 19818.6 and 19818.20.
3. Employees may not separately file out-of-class grievances and position allocation or reallocation grievances pertaining to the same duties and responsibilities.
4. The only remedy that shall be available (whether claiming out-of-class work or position misallocation) is retroactive pay for out-of-class work. Said pay shall be limited to out-of-class work performed (a) during the one year calendar period before the employee's grievance was filed; and (b) the time between when the grievance was filed and finally decided by an arbitrator.
5. Arbitrators shall not have the authority to order reclassification (reallocation) of a grievant's position or discontinuance of out-of-class work assignments.

D. Grievance Procedure and Time Limits

1. An employee's grievance initially shall be discussed with the employee's supervisor.
2. If the grievance is not resolved to the satisfaction of the grievant a formal grievance may be filed on a form provided by the State within:
 - a. Fourteen (14) calendar days after receipt of the decision rendered by the supervisor; or
 - b. Twenty-one (21) calendar days after the date the employee's duties allegedly changed such that he/she stopped working out of classification or his/her position became misallocated.

However, under no circumstances may the period in which to bring the grievance be extended beyond the twenty-one (21) calendar days in item b above.
3. Out-of-class and misallocation grievances shall be filed with a designated supervisor or manager identified by each department head as the department level of appeal in the usual grievance procedure found in article 6.
4. The person designated by the department head as the department level of appeal shall respond to the grievance in writing within forty-five (45) calendar days after receipt of the grievance.
5. If the grievant is not satisfied with the decision rendered by the person designated by the department head at the department level of appeal, he/she may appeal the decision in writing within twenty-one (21) calendar days after receipt to the Director of the DPA.
6. The Director of the DPA or designee shall respond to the grievance in writing within sixty (60) calendar days after receipt of the appealed grievance.
7. If the grievance is not resolved by the DPA, the Union shall have the right to submit the grievance to arbitration in accordance with article 6, section 6.11.
8. Article 6, section 6.11 (Arbitration Level) shall apply to out-of-class and misallocation grievances except as otherwise provided in this section.
- E. The arbitrator's decision regarding out-of-class and misallocation grievances shall be final and binding on the parties. Said awards shall not be subject to challenge or review in any forum, administrative or judicial, except as provided in Code of Civil Procedure section 1286.2 et seq.
- F. Government Code section 19818.8 (a), a person shall not be assigned to perform the duties of any class other than that to which his or her position is allocated, except as permitted by section 19050.8.

14.2.21 Out-of-Classification Grievances and Position Allocation Hearing Process (Unit 21)

A. Definitions

1. "Working out-of-class" (a.k.a. "out-of-class work") is defined as performing, more than fifty percent (50%) of the time, for two (2) or more weeks, the full range of duties and responsibilities allocated to an existing class and not allocated to the class in which an employee has a current, legal appointment.

2. A “pre-arranged out-of-class assignment” is defined as the intentional assignment of out of class work to an employee by the employee’s appointing power, department head or designee for a defined period of time of up to one hundred twenty (120) days or, if approved by the DPA, up to one year.
 3. “On-going out-of-class work” is defined as “out-of-class work” (as defined above) that results from the evolution of an employee’s duties and responsibilities into those allocated to another existing class and not allocated to the class associated with the position in which the employee has a current legal appointment.
 4. “Terminated out-of-class work or assignment” is defined as “working out of class” (as defined above) and the out-of-class work or assignment has ceased either because the duties and responsibilities that created the out-of-class situation were removed, or the percentage of time spent performing the full range of duties and responsibilities fell below fifty percent (50%), or the employee is no longer working in the position alleged to have created the out-of-class situation.
- B. Pre-arranged Out-of-Class Assignments: Notwithstanding Government Code sections 905.2, 19818.6, 19818.8, 19818.16, and 19823 an employee may be required to perform work other than that described in the specification for his/her classification for up to one hundred twenty (120) consecutive calendar days during any twelve (12) month period. An employee may be assigned to work out-of-class for more than one hundred twenty (120) consecutive days only with the approval of the DPA. Out-of-class assignments shall not exceed one year.
- C. Rate of Pay: If an appointing power, department head or designee requires an employee to work “out-of-class” in a higher classification for more than two (2) consecutive weeks, the employee shall receive the rate of pay, pursuant to DPA Regulation 599.673, 599.674, or 559.676 that the employee would have received if appointed to the higher class for the entire duration of the assignment. The out-of class compensation shall not be considered as part of the base pay in computing the rate due upon promotion to a higher level class.
- D. Rotation to Avoid Out of Class Pay: The State shall not rotate employees in and out of out-of-class assignments for the sole purpose of avoiding payment of out-of-class compensation.
- E. Duty to File Timely Grievance: If an employee believes that he/she has been assigned out-of-class duties and responsibilities, he/she must file an out-of-class grievance no later than sixty (60) days after the conclusion of the out-of-class duties/work. Any claim for back pay concerning the out-of-class work is waived if the employee fails to timely file the grievance as provided by this section.
- F. Back Pay Limited to One Year: A timely filed grievance concerning out-of-class work which is granted under this article shall not be compensated retroactively for a period greater than one year before the filing of the grievance.
- G. Out-of-Class Grievance Procedure:
1. Disputes about working out-of-class or other allegations of performing duties not appropriate to an employee’s current class shall be reviewed exclusively by filing a contract grievance. Notwithstanding Government Code section 19815.4(e), employees shall not be entitled to a separate hearing on their claim of working out-of-class.
 2. An employee’s grievance shall initially be discussed with the employee’s supervisor.
 3. Out-of-class grievances shall be filed with a department head or designee who shall respond to the grievance in writing within forty-five (45) calendar days after receipt of the grievance.
 4. If the grievant is not satisfied with the decision rendered by the person designated by the department head or designee, he/she may appeal the decision in writing within twenty-one (21) calendar days after receipt to the Director of DPA.
 5. The Director of DPA or his/her designee shall respond to the grievance in writing within sixty (60) calendar days after receipt of the appealed grievance.
 6. If the grievance is not resolved by DPA, the union shall have the right to submit the grievance to arbitration in accordance with article 6 of this agreement.

7. The arbitrator's decision regarding out-of-class grievances shall be final and binding on the parties. Said awards shall not be subject to challenge or review in any forum, administrative or judicial, except as provided in Code of Civil Procedure section 1286.2 et seq.
8. Arbitrators shall not have the authority to order reclassification (reallocation) of a grievant's position or discontinuance of out-of-class work assignments. The only remedy that shall be available is retroactive pay for out of class work.