

"Classified vs. Unclassified Civil Service Status. What does it mean in 2018?"

Civil Service Training
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Overview

The Louisiana constitution divides the civil service into “classified” and “unclassified” employees and states that “Persons not included in the unclassified service are in the classified service.” The constitution designates certain specific categories of employees as unclassified. The Civil Service rules give the Civil Service Commission the authority to designate other positions as unclassified as it deems appropriate.

Overview

The Louisiana state constitution defines the “civil service” as everyone employed by a state agency or by a joint state/federal or state/local agency.

Such status is not dependent on the source of funds used to pay for such employment.



Trivia Time

Approximately how many Unclassified Employees are employed by the City ?

- a) 350
- b) 500
- c) 650
- d) 800

LEGAL AUTHORITY FOR CIVIL SERVICE

- Louisiana Constitution Article X, Provides for the creation of the State and various city civil service commissions.
- City systems based on population.
- Constitution specifically provides that positions are in the classified service unless the position is one of the numerated positions listed in the Constitution.

Article X Section 2 of the 1974 state Constitution

The unclassified service shall include the following officers and employees in the state and city civil service:

- (1) elected officials and persons appointed to fill vacancies in elective offices;
- (2) the heads of each principal executive department appointed by the governor, the mayor, or the governing authority of a city; (Charter)
- (3) city attorneys;
- (4) registrars of voters;

Article X Section 2 of the 1974 state Constitution

- (5) members of state and city boards, authorities, and commissions;
- (6) one private secretary to the president of each college or university;
- (7) one person holding a confidential position and one principal assistant or deputy to any officer, board, commission, or authority mentioned in (1), (2), (4), or (5) above, except civil service departments;
- (8) members of the military or naval forces;

Article X Section 2 of the 1974 state Constitution

(9) teaching and professional staffs, and administrative officers of schools, colleges, and universities of the state, and bona fide students of those institutions employed by any state, parochial, or municipal agency;

(10) employees, deputies, and officers of the legislature and of the offices of the governor, lieutenant governor, attorney general, each mayor and city attorney, of police juries, school boards, assessors, and of all offices provided for in Article V of this constitution except the **offices of clerk of the municipal and traffic courts in New Orleans**;

(11) commissioners of elections, watchers, and custodians and deputy custodians of voting machines; and

(12) railroad employees whose working conditions and retirement benefits are regulated by federal agencies in accordance with federal law.

HR Impact – The differences between classified and unclassified positions

Classified positions are subject to the provisions of the Civil Service Rules

- Must be hired in an open, competitive manner prescribed by Civil Service
- Must meet citywide minimum qualification standards set by Civil Service

HR Impact – The differences between classified and unclassified positions

- **Must be paid in accordance with the rules.**
- May only be disciplined (for cause) or removed after being provided due process.
- May NOT participate in political activities related to the support of any political candidate, party or faction at any level of government.

Whereas Unclassified employees:

- May participate in political activities (not during work time)
- May be separated without cause or due process; and
- Serve at the pleasure of the appointing authority, i.e. they are “at will” employees.

New Orleans City Charter: Section 8-105 The Classified and Unclassified Service.

Repeats the Constitutional provisions but adds

Unclassified employees shall include....

(d) Employees in the office of the mayor and city attorney.



Trivia Time

What office is not mentioned in the Charter ?

- a) Sewerage and Water Board
- b) Department of Civil Service
- c) Police Secondary Employment
- d) Office of Housing and Community and Development
- e) New Orleans Recreation Development Corporation

Adding and Revoking Unclassified Positions

Additional positions may be added to the unclassified service and those positions may be revoked by rules adopted by the Commission.

Adding Unclassified Position CS Rule III, Section 7.1

At its discretion, the City Civil Service Commission may add additional positions to the unclassified service, if:

- (a) after a thorough review and analysis of the duties and responsibilities of the position, the Commission has determined that they neither are appropriate for, nor should they be performed by, a classified employee and
- (b) the position is essentially of a sensitive nature, having considerable discretion and policy-making authority, which is not subject to further review or modification and

Adding Unclassified Position

CS Rule III, Section 7.1

c) the position is audited on a regular basis by the Civil Service Department to determine the continuing appropriateness of the unclassified status.



Q? Wait can't the City Council add unclassified positions ?

- Since the commission's authority to add to the unclassified service is exclusive, the city council cannot do so without prior approval of the Civil Service Commission.

Time for a question?

Director Eldrick Woods receives a federal grant that will pay for a Nurse Practitioner for a 6 month period. Can Mr. Woods fill the position with an unclassified position ?

REVOKING UNCLASSIFIED POSITIONS

Rule III, Section 7.2

The Commission may revoke a position previously allocated to the unclassified service if:

- (a) the Commission determines that the position no longer meets the prerequisites for continuing in the unclassified service, or
- (b) appropriate classifications and/or registers of eligibles are now in existence which can be utilized to fill the position in the merit system, or
- (c) after further review it has been determined that organizational changes warrant either abolishing the position or reallocating the duties and responsibilities to other position(s) in the classified service.

REVOKING UNCLASSIFIED POSITIONS

Rule III, Section 7.3 and 7.4

7.3 The Commission shall have the authority to initiate such audits and investigations of positions placed in the unclassified service by the Commission, as deemed necessary to protect the integrity of the merit system and maintain an equitable relationship between positions in the classified and unclassified services.

7.4 If after a position formerly allocated to the unclassified service by the City Civil Service Commission has been revoked by action of the Commission, and no appropriate register of eligibles is in existence to fill the position in the classified service, the Commission may permit the individual who previously occupied the position to serve in a temporary appointment, subject to the provisions of Rule VI (must meet minimum qualifications) of these Rules

Bait and Switch ?

Since the unclassified status for a position is authorized by the Commission based on the justification submitted by the requesting agency, any related changes, such as altered duties, may invalidate that authorization.

Compensation of Unclassified Positions

Positions that are designated as unclassified by the state constitution are not subject to the hiring and compensation standards set by Civil Service, although they may have qualification requirements and pay limits set by city statutes. When the Commission designates a position as unclassified, they may choose to set parameters regarding qualifications or compensation as a condition of their approval of the position.



Rights Of Classified Employees

Employees in the classified civil service have specific legal protections regarding:

- Unwarranted discipline
- Termination
- Layoff
- Demotions, pay cuts and other changes in the terms and conditions of employment

Rights Of Classified Employees

- Generally, classified employees can be removed only for good cause. Further, the courts have determined that classified employees have a property interest in their positions and cannot be removed from their positions without "due process of law."

What is the “Due Process of Law”

- Due process usually means that classified employees are entitled to reasonable notice and a hearing with their employer before any significant disciplinary action is taken.

Rights Of Classified Employees

City employees in the classified civil service have a right to appeal actions that seem unfair before the Civil Service Commission.

Art X: Section 8.(A) Disciplinary Actions. No person who has gained permanent status in the classified state or city service shall be subjected to disciplinary action except for cause expressed in writing. A classified employee subjected to such disciplinary action shall have the right of appeal to the appropriate commission pursuant to Section 12 of this Part. The burden of proof on appeal, as to the facts, shall be on the appointing authority.

Rights of Unclassified Employees ?

- Employees in the unclassified service do *NOT* have a property interest in their positions.
- Employees in the unclassified civil service will never gain a property interest in their unclassified positions regardless of the amount of time they remain in their unclassified positions.
- Employees in the unclassified service serve at the pleasure of the appointing authority and may be removed from their unclassified position at any time and for any legal reason.
- Employees who are removed from positions in the unclassified service do not have appeal rights to the CSC.

Rights of Unclassified Employees ?

In 2011, the 6th Circuit reaffirmed the notion that unclassified civil servants have no federally protected property rights in their continued employment, and can thus be summarily fired without any procedural due process at all.

The case is [Kizer v. Shelby County Government, No. 10-5161](#).

Rule VIII: Section 6.1 SPECIAL LEAVE OF ABSENCE WITHOUT PAY

An appointing authority may grant a regular employee special leave of absence without pay whenever such leave is for the purpose of enabling such employee to accept an unclassified position in the city service, except an elective office. Any such leave heretofore granted by an appointing authority for the purpose herein expressed may be extended by such appointing authority from the date such leave was originally granted; provided, however, that the leave without pay herein authorized shall automatically end whenever an employee resigns from his unclassified position or his employment therein is otherwise terminated.

What happens if the person on such leave finds her position occupied by another person or if the position no longer exists ?

- You have to work backward.
- The person has rights to go back to his former position if on leave under the rule.
- The individual who filled the former position is conditional even if it is in a different classification.
- A layoff may need to be invoked.
- If a position no longer exists e.g., Police Dispatcher, you may be laid off.
- It is a good idea to get a handle on this situation in advance.

LEAST YOU FORGET:

CAO POLICY MEMO #65

A written request to hire an unclassified employee shall be submitted to the Chief Administrative Officer. The request shall include the following information:

1. Job classification and working title if applicable;
2. Starting salary;
3. Statement as to whether this is a new position, or if a replacement, the name of the former incumbent;
4. A brief description of the duties; and
5. Information concerning any prospective applicants.

What's Happening! Rule IV, Section 11.2 (d) Amendment Emergency Pay Rule (Pending)

Summary:

- Gives 5% Special Rate of Pay when assigned Emergency Related Responsibilities by the EOC
- During a declared emergency period
- Even though the city is open for business
- Up to 4 weeks.



New Form I-9 Now Effective

The new version renumbers all List C documents for new hires except the Social Security card and streamlines the certification process for certain foreign nationals. Check Out the USCIS web site for more information.

