

# KNOW *your* RIGHTS

SPRING 2016

## OUT OF CLASS CLAIMS

### QUESTIONS AND ANSWERS:

- » **What is working out of class?** – Out of Class work is defined as performing the full range of duties and responsibilities allocated to an existing classification more than 50 percent of the time, and the position is not allocated to the classification in which the person has a current, legal appointment. This indicates that there has been an inappropriate assignment or assuming of duties of either a higher or lower classification.
- » **My employer asked me to work out of class.** – An employee can be assigned out-of-class work for more than 120 calendar days during any 12-month period “only if the appointing power or his or her designee files a written statement with the Department of Personnel Administration certifying that the additional out-of-class work is required to meet a need that cannot be met through other administrative or civil service alternatives.” The out-of-class assignment is subject to termination by DPA upon finding reasonable alternatives to the out-of-class assignment.
- » **Can I receive pay for working out of class?** – An employee can receive out of class pay if (1) the excluded employee is performing duties of a higher classification; (2) if the duties performed by the excluded employee are not described in a training and development assignment or by the specification for the class to which the excluded employee is appointed; and (3) if the duties as a whole are fully consistent with the types of jobs described in the specification for the higher classification.
- » **I believe I am working out of class. How can I get the pay?** – The first step is to determine the higher classification that takes over 50% of your time. Next, complete a desk audit. The desk audit is a detailed listing of all duties performed and the percentage one spends on those duties. It is important this document is fully completed, clear, concise and accurate. The desk audit should also obtain your supervisor’s signature and then it is submitted to your local HR. The department will review the desk audit and respond in agreement or with modifications or a denial. Should the department agree with the out of class claim CalHR will be contacted by your department for approval. Should the process fail. An out of class grievance can be filed with the help of your local ACSS Labor Relations Representative.
- » **My out of class claim was denied by my department. What can I do?** – CalHR shall have the authority to review employee claims for additional reimbursement for the performance of duties outside the scope of their present classification and to authorize additional reimbursement for those duties. The department shall award employee claims under this section for a period no greater than one year preceding the filing of a claim. Any employee affected by the allocation of his position has “a reasonable opportunity to appeal” to CalHR.
- » **CalHR denied my out of class grievance. What can I do?** – CalHR SAU has an appeals hearing process. The appeal must state the facts upon which it is based and the relief requested. The appeal must be filed within 30 days of the final grievance response. The employee bears the burden of proof in establishing that one has been working out of class. This must be proven by a preponderance of the evidence. The employee has the ability to provide evidence to the Administrative Law Judge, call witnesses to testify on his/her behalf and also question the department’s witnesses as well.
- » **Can I use my out of class experience to apply for other state positions?** – Out-of-class work experience can be applied to meet the minimum qualifications for a civil service examination, provided such out-of-class work experience is approved. California Code of Regulations specifies the procedures for approval of out-of-class work experience. It defines out-of-class experience as “work experience gained by the performance of duties outside the class concept of the employee’s class of appointment.”
- » **Can a Manager work out of class?** – Positions designated as managerial are allowed to work out of class. CalHR approval is required before the assignment can begin. The out of class assignment must be for at least 90 days. Out of class pay is received beginning the 91st day. The compensation cannot exceed 9 months.

- » **How can I get credit for my out of class work?** – A state employee is eligible to receive credit for out-of-class work experience in meeting the MQ's for a civil service examination in one of two ways:
  1. An employee's department authorizes additional compensation for an employee's performance of duties outside the scope of the employee's present classification. A department can only authorize such additional compensation for out-of-class duties for a period no greater than one year preceding an out-of-class claim.
  2. When all of the following requirements are met:
    - ▲ The employee submits a written request to their department to certify the employee accepted and performed duties assigned by the appointing authority which were not consistent with the employee's class of appointment. Such written requests cannot be made prior to performing the out-of-class for a minimum of 30 consecutive calendar days, or no later than one year after the ending date of the out-of-class duties.
    - ▲ The department must document by a written statement the employee's request for certification of out-of-class experience, and the department's statement must include (1) a description of the type and level of duties performed, (2) a conclusion whether the duties are or are not consistent with the employee's designated class of appointment and, if not consistent, an identification of the class the duties are appropriate to, (3) the beginning and ending dates of the out-of-class work experience, (4) the title of the examination the employee is applying for, if applicable, and (5) "any further information required by the executive officer."
    - ▲ The employee applicant must attach a copy of the certification statement to the application form for any examination for which the employee is applying.
    - ▲ The out-of-class duties were performed for a minimum time period generally required to assume the full range of responsibilities of the class being claimed by the employee. 30 consecutive days is the minimum.
    - ▲ Once out-of-class work experience is certified by a department, such experience may be used for any other examination without the need for re-certification. Certification statements of out-of-class work experience are required to remain on file with the department of a minimum of five years or until ordered destroyed by the executive officer.
- » **I would like to take a civil service exam but my department won't certify my out of class experience. What can I do?** – If a department denies an employee's request for certification of out-of-class work experience to meet the MQ's for a civil service examination, the employee may appeal the denial to the State Personnel Board (SPB). Appeals to the SPB to use out-of-class work experience in a civil service exam are reviewed by the board to determine if SPB jurisdiction is established and if sufficient facts are demonstrated to constitute grounds for the appeal.

**NOTES TO REMEMBER:**

If working out of class, first identify the higher classification, complete a desk audit and if necessary proceed with a grievance. ACSS LRR's are available to assist with every step of the process.

**IF YOU EVER HAVE A CAREER ISSUE,  
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