

OLD MERIT RULES – Expired December 31, 2003

CHAPTER 1.0000 ADOPTION, AMENDMENT AND MAINTENANCE

1.0100 Adoption

Pursuant to the authority vested in the Personnel Commission Board by 29 Del. C.  5914, the Merit Employee Relations Board prescribes and adopts these rules which shall have the force and effect of law, and are applicable to all positions and employees in the classified service. In the event of conflict with Delaware Code, Delaware Code takes precedence over these rules.

In the event of conflict with individual agency regulations, these rules take precedence.

* In the event a subject is covered in whole or in part by a collective bargaining agreement, 29 Del. C.  5938(d) provides that the Merit Rules shall not apply. These rules take precedence in matters concerning: classification, pay and fringe benefits, examination, promotion, eligibility, rejection of candidates, appointment, paid leave, veteran's preference or resident's preference; but that local collective bargaining agreements may govern matters of probation, emergency employment, transfers, reinstatement, performance records, layoff, fines, discharge, grievances, work schedules and working conditions.

In the event of conflict with Intergovernmental Merit System Standards, those standards take precedence for federally funded agencies subject to the provisions of the Intergovernmental Personnel Act. (45 CFR70)

1.0200 Amendment

These rules shall continue in effect as adopted and amended unless after public notice and public hearing they are amended or repealed, or they are amended, modified or superseded by amendment to 29 Del. C., Chapter 59.

1.0300 Director's Interpretations

In order to implement, facilitate or clarify these regulations, the Personnel Director may, subject to Board approval, issue interpretations that are not inconsistent herewith.

1.0400 Effective Date

These rules were originally adopted by the State Personnel Commission, July 1, 1968. Subsequent rules and amendments become effective upon adoption by the Merit Employee Relations Board or on such dates as the Board may specify. The most recent revision and effective date appears at the bottom of each page. Revisions are not retroactive.

1.0500 Maintenance of Merit Rules, Pay Plan and Classification System

The Director shall review the pay plan, merit rules and classification system at such intervals as shall be directed by the Board, the Governor and/or the General Assembly. Such review shall include a comprehensive survey of classification, pay and fringe benefit practices of

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other employers in the appropriate labor markets, and the development of appropriate recommendations in accordance with 29 Del. C. §5916.

1.0510

The Director is authorized to establish appropriate standing committees from among classified employees to make recommendations for the purposes stated above.

CHAPTER 2.0000 DEFINITIONS

ADJUSTED SERVICE DATE

Agency Hire Date adjusted back to reflect the date which would begin consecutive credit.

AGENCY

Agency means "any agency, board, department, bureau, commission of this State which receives an appropriation under the general appropriation act of the General Assembly" (from Del. C. 5901) (For the purpose of identifying exempt positions, other than the chief administrators, this has been interpreted to exclude any such unit that is part of a larger agency.) (Cabinet Departments are "agencies".)

AGENCY HIRE DATE (Hire Date)

The date the employee was added to the specific payroll section. (Currently maintained in computer file; based on "load" data.)

AGGREGATE SERVICE

Aggregate Service means total length of employment by the State of Delaware, minus breaks in service.

APPEAL

Appeal means a request for ruling by the Merit Employee Relations Board, in cases where the grievance procedure has not resulted in satisfactory solution or in cases where direct appeal is authorized.

APPOINTING AUTHORITY

Appointing Authority or their designees means State officials who, in their individual capacities or as a board or commission, have the authority to make appointments to positions in the classified service. The State official's designee may not dismiss an employee from a position in the classified service.

*** APPOINTMENT**

Appointment means the conferring and accepting of an offer to occupy an established position from an appointing authority. (See definitions of Full-time, Part-time and also Chapter 12.)

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AUTHORIZATION

The approval of personnel transactions by the Director except in those cases where authority has been delegated to the appointing authority through signature on appropriate personnel transaction forms.

AUTHORIZED CAREER LADDER

A hierarchy of classifications within a series, established and approved by the Office of State Personnel, to provide recognition of attainment of specific levels of technical and/or administrative competence. Movement within the series will be based upon achieving pre-established performance criteria relative to increasing levels of know-how, problem-solving and accountability.

BENEFITS

Benefits mean the various plans covering compensation, holidays, leave, health and life insurance, pension, uniforms, education and similar privileges enjoyed by virtue of employment.

BREAK IN SERVICE

Break in Service means the time period during which an individual was not in the classified service, but before and after which he was employed in the classified service. Return from such break in service is governed by the applicable section. (e.g., Layoff, Military, Resignation)

CASUAL APPOINTMENT

Casual appointment means an exempt appointment to a non-classified position pursuant to 29 Del. C. §5903(17), limited to 129 working days in a fiscal year and requiring only intermittent or irregular scheduling of less than fifteen (15) hours per week.

CERTIFICATION

Certification means the referral of eligible candidates from registers.

CERTIFIED LIST

Certified List means the list of eligible candidates used by the Appointing Authority to fill a vacant position.

CLASS

Class means all positions sufficiently similar in duties, responsibilities and qualification requirements to use the same examination in filling them, the same salary range and the same title. (See also classification, position, duty assignment.)

CLASS SERIES

Class Series means a progression of classes in the same line of work reflecting different degrees of responsibility and difficulty of duties.

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CLASS SPECIFICATION

Class Specification means a written description of the distinguishing characteristics of all positions in a class; including typical duties and responsibilities and minimum qualification requirements.

CLASS TITLE

Class Title means the descriptive name of the class, as shown in the class specification and on the payrolls and in budget preparation. (Working titles of incumbents of positions in the class may be the same or different.)

CLASSIFICATION

Classification means the analysis of the duties and responsibilities of a position and its assignment by the Director, to a specific class designation, which includes title, specifications, minimum requirements of training, experience, skills, knowledge, abilities and other qualifications necessary for entry into the class.

CLASSIFICATION PLAN

Classification Plan means the complete listing of all classes; the class specifications; and the rules for administering the plan.

CLASSIFIED SERVICE

Classified Service means all positions in State employment, except for those excluded under 29 Del. C. §5903.

CLOSING DATE

Closing Date means the deadline date fixed by the Appointing Authority for accepting applications for an examination.

COMMISSION

Commission means the five member State Personnel Commission appointed pursuant to 29 Del. C., Chapter 59. (Distinct from State Personnel Office.)

DEMOTION

Demotion means the voluntary or involuntary assignment of an employee from a position in a class of a higher paygrade to a position in a class of a lower paygrade.

DIRECTOR

Director means the Director of the State Personnel Office, appointed pursuant to 29 Del. C., Chapter 59, or a deputy or other person empowered to act for the Director.

DIRECTOR'S REGULATIONS

Director's Regulations are policies and procedures for merit system administration adopted by the Director with the approval of the Board.

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*** DISABILITY**

Disability means a physical or mental impairment that substantially limits one or more of the major life activities of an individual; a record of such an impairment or being regarded as having such an impairment.

DISMISSAL

Dismissal means separation for cause from a position in the classified service.

DUAL EMPLOYMENT

Dual Employment means the holding of more than one State position.

DUAL INCUMBENCY

The concurrent occupancy of a single position by two individuals, caused by an extended paid leave of absence.

DUTY ASSIGNMENT

Duty Assignment means the specific duties or responsibilities assigned by the supervisor within the scope of class specifications and the operational needs of the agency.

ELIGIBLE

Eligible means a person whose name is on a register.

ELIGIBLE OR ELIGIBILITY LIST

See Register.

EMERGENCY APPOINTMENT

Emergency Appointment means appointment not exceeding thirty (30) working days to positions for which the need is immediate in order to prevent stoppage of public business or serious

impairment to the public service when it is not possible to secure such persons from appropriate registers.

EMPLOYEE

Employee means any person legally holding a position in the classified service, excluding individuals or groups compensated on a fee basis.

*** ESSENTIAL FUNCTIONS**

Essential functions are the fundamental job duties of an employment position.

EXAMINATION

Examination means the process by which applicants are evaluated for appointment or promotion to positions in the classified service. An examination may consist of oral, written or performance tests, or a rating of the candidate's training and experience.

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EXEMPT SERVICE

See non-classified.

****FMLA LEAVE**

FMLA leave is leave taken in accordance with the provisions of the Family and Medical Leave Act of 1993.

For recordkeeping purposes, leave usage less than three hours shall not be recorded as FMLA.

****FMLA 12-MONTH ELIGIBILITY PERIOD**

FMLA 12-month eligibility period means the 12-month period measured forward from the date an employee first takes FMLA Leave. The next FMLA 12-month eligibility period would begin the first time FMLA Leave is taken after completion of any previous 12-month period. (An employee eligible for FMLA Leave is entitled up to 12 workweeks of leave during any 12-month period. The FMLA 12-month Eligibility Period is used to determine the 12-month period in which the 12 weeks of FMLA Leave entitlement occurs.)

FEDERAL MERIT SYSTEM STANDARDS

See Intergovernmental Merit System Standards.

FINAL SCORE

Final Score means the candidate's composite score for all parts of the examination, including any allowable points for veteran's preference.

FINAL EARNED SCORE

Final Earned Score means the score of a candidate after his scores on all tests have been weighted and averaged, as provided by the examination announcement; the final average score of a person not receiving veteran's preference is his final earned score.

FORMAL CONTACT

Formal Contact means any official document (e.g., memo, letter or standardized form) substantiating contact, discussion, counseling or other action between supervisor and employee, whether positive or negative.

*** FULL-TIME**

Full-time means the filling of an established position at an average of 37 1/2 hours per week, or 40 hours per week when applicable and authorized. This definition does not apply to casual, seasonal, temporary or emergency positions.

GRIEVANCE

Grievance means an employee complaint which remains unresolved after informal efforts at satisfaction have been attempted. A grievance may not deal with the substantive policies embodied in 29 Del. C. Chapter 59 or these rules.

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*** IMMEDIATE FAMILY**

Immediate Family is defined to include: spouse, domestic partner, parent, grandparent, brother, sister, son, son-in-law, daughter, daughter-in-law, grandson, granddaughter, step-parent, the parent, son or daughter of the employee's spouse or domestic partner and any minor child for whom the employee has assumed and carries out parental responsibility.

Domestic partner is defined as a person with whom the employee's life is interdependent, with whom the employee maintains a committed relationship and with whom the employee shares a mutual residence.

INTERGOVERNMENTAL MERIT SYSTEM STANDARDS

IMSS means those standards "promulgated by the U.S. Civil Service Commission to implement statutory and regulatory provisions requiring the establishment and maintenance of personnel standards on a merit basis in the administration of various Federal Grant in Aid programs".

INCREMENT

Increment means the difference between two successive percentile columns in a pay grade.

LAYOFF

Layoff means the involuntary separation of an employee for reasons of lack of work or funds, or abolition of the position.

LAYOFF LIST

Layoff list means a register containing names of former permanent employees who have been laid off. (See also 9.0110 and 14.0200)

LIMITED TERM APPOINTMENT

Limited term appointment means an appointment to a position that is not of a continuing nature, but is projected to exceed a period of ninety (90) days.

MERIT

Merit means the meeting of prescribed qualifications for a position including consideration of training, experience, knowledge, skill, education, conduct, and manner of performance of applicants or employees in the classified service.

MERIT FACTORS

Merit factors include, but are not limited to, consideration of training, experience, knowledge, skill, education, conduct, and manner of performance of applicants or employees in the classified service.

MERIT SYSTEM

Merit System means the personnel system provided under 29 Del. C. Chapter 59.

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MERIT RULES

Merit Rules are regulations set by the Merit Employee Relations Board pursuant to 29 Del. C. §5914 to administer the classified service.

MERIT SYSTEM LAW

Merit System Law means 29 Del. C., Chapter 59.

MINIMUM QUALIFICATIONS

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Minimum qualifications are minimum entry requirements, including selective requirements, which must be met in order for an individual to be eligible for appointment to a classified position or be eligible to take an examination. These requirements typically include minimum levels or types of education, training or experience or completion of specified examinations.

NIGHT SHIFT

A night shift for these purposes shall be a shift which includes four or more hours of work between the hours of 6:00 p.m. and 8:00 a.m. the following day.

NON-CLASSIFIED

Non-classified refers to any position which is excluded from the classified service by 29 Del. C. §5903.

OCCUPATIONAL GROUP

Occupational Group means a group of related classes requiring similar skills and training.

*** PART-TIME**

Part-time means the filling of an established position at less than full-time but at least an average of 15 hours per week. The average number of hours worked by a part-time employee shall be calculated as a percentage of the applicable full-time schedule. To permit flexibility and to meet the organizational needs of an agency this average may be computed over a period of 7, 14, or 28 consecutive calendar days. This definition does not apply to casual, seasonal, temporary or emergency positions.

PAYGRADE

Paygrade means one of the horizontal pay ranges designated on the pay plan consisting of a series of percentage of midpoint columns identifying specific values. (cf. Chapter 4.0000).

PAY PLAN

Pay Plan means the salary and wage schedules, established under 29 Del. C. §5916, the specific assignment of classes to paygrades and the applicable rules for administering the pay plan and fringe benefits.

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PAY PLAN RULES

Pay Plan Rules means those rules governing administration of the pay plan and the making of pay adjustments under the plan.

PAY RATE

Pay Rate means the dollar value of a percentage of paygrade midpoint on the pay schedule; may be calculated on an annual, monthly, semi-monthly, daily or hourly basis.

PERCENTAGE OF PAYGRADE MIDPOINT

Established dollar amounts within a paygrade to systematically identify rates of pay at intervals relative to the midpoint.

PERMANENT APPOINTMENT

Permanent Appointment means appointment to a classified position that is of a continuing nature, beginning with the date of satisfactory completion of the employee's prescribed probationary period.

PERSONNEL TRANSACTION FORM

Personnel Transaction Form means the appropriate forms designated by the Director to authorize various personnel transactions.

POSITION

Position means an aggregate of duties and responsibilities, filled or vacant, which require the services of an employee, part-time or full-time; for which funds have been budgeted and which has been assigned to a class.

PREVIOUS SERVICE CREDIT

Total amount, in years, months and days of previous State service, in accordance with Pension requirements (currently maintained only by individual or Pension Office).

PROBATIONARY PERIOD

Probationary Period means the working test or trial period of employment, pursuant to 29 Del. C. 005922, 5938(d) and the provisions of these rules.

*** PRO-RATA BASIS**

Pro-rata Basis means a proportional share based on the percent of full-time at which a position is filled, with a 100% share being the maximum allowable share. In the case of leave, a 100% share of a day is 7.5 hours (based on a 37.5 hour per week full-time position) or 8.0 hours (based on a 40 hour per week full-time position). The calculation of pro-rated leave shall be rounded up to the nearest quarter hour.

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*** PROMOTION**

Promotion means the assignment of an employee from a position in a class of a lower paygrade to a position in a class of a higher paygrade. In authorized career ladders, promotion means assignment to a higher level in the career ladder.

PROVISIONAL APPOINTMENTS

Provisional Appointment mean appointment of a person who meets minimum qualifications, but whose testing is pending, to a vacant position for which there is no appropriate register. Within six months, such appointee must meet the normal testing requirements before being considered for probational or permanent employment. (See Section 12.0230). Provisional status shall be discontinued within six months.

PUBLIC AGENCY

Public Agency is any tax supported governmental organization, whether Federal, State, county or other jurisdiction.

RATING OFFICER (Supervisor)

Rating Officer means the person who exercises direct and immediate supervision over an employee, to whom the employee is formally assigned, to whom the employee regularly reports for work instructions and who evaluates the employee's performance.

REASSIGNMENT

Reassignment means a change of duties and or work location within the same position under the same appointing authority occurring within five (5) miles of the employee's current work location.

RECLASSIFICATION

Reclassification means a change in the classification assigned to a position to reflect a significant change in the duties and responsibilities of that position. The paygrade may be adjusted either up, down, or may remain the same.

REGISTER (List of Eligibles)

Register means a list of qualified candidates ranked by score or a group of candidates equally ranked to fill vacant positions in a particular class.

REGRADING

Regrading means the changing of the paygrade assigned to an entire class (upon re-evaluation).

REGULATION

Regulation means any governing paragraph or rule contained herein or elsewhere, as appropriate in accordance with 29 Del. C. 05914.

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REHIRE

Rehire means the hiring of any former employee; see also "Break-in-Service".

REINSTATEMENT

Reinstatement means the rehiring of a former employee into the same class in the classified service after separation from State service of not more than two (2) years, which separation was not due to discreditable circumstances.

RESIGNATION

Resignation means termination of employment made at the request of the employee.

REVIEW DATE

Review date means the date on which the employee's performance evaluation is to be completed.

RULE

Rule means any governing paragraph or regulation contained herein in accordance with 29 Del. C. §5914.

ROTATING SHIFT

Rotating shift means the changing of a work schedule on a regular basis for at least two days in a work week which includes four or more hours of work daily or on a weekly basis, that involves a different schedule from week to week (i.e., 1st week day shift, 2nd week night shift, 3rd week day shift).

SCORE

Score means the candidate's rating for placement on register.

SEASONAL APPOINTMENT

Seasonal appointment means an appointment to a non-classified position pursuant to 29 Del. C. §5903(17) and limited to 129 working days in a fiscal year.

****SELECTIVE MARKET VARIATION (SMV)**

Selective Market Variation (SMV) is a process used to increase the salary range for job classifications where severe market competition makes it difficult for the State to recruit and retain qualified employees.

*** SELECTIVE REQUIREMENT**

Selective requirement means any education, training and/or experience not specifically indicated in a class specification but considered job related and necessary for effective performance in a specific position.

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SENIORITY

Seniority means length of service based on total aggregate classified service; may be used as one factor in determining promotion, demotion or layoff.

SEPARATION

Separation means any removal from the payroll for voluntary or involuntary reasons, including resignation, layoff, dismissal, retirement or death.

STATE PERSONNEL OFFICE

State Personnel Office means the operational unit and employees reporting to the Director of Personnel in accordance with 29 Del. C. §5911.

SUPERVISOR

See Rating Officer.

SUSPENSION

Suspension means an enforced leave of absence without pay for disciplinary purposes or pending investigation of charges made against an employee.

TEMPORARY APPOINTMENT

Temporary Appointment means an appointment to a classified position pursuant to 29 Del. C. §5903(17) and limited to 129 working days in a fiscal year.

TEST

Test means any measurement device which is part of a Merit System examination, pursuant to 29 Del. C. §5917.

*** TRANSFER**

Transfer means any movement between positions in the same class or a different class with the same paygrade or any change of work location of more than five (5) miles, and/or any movement in or out of the Wilmington city limits, where the class does not change.

VETERAN

Veteran means those ex-servicemen and women who have been honorably separated from the Armed Forces after either:

- a. service between April 6, 1917 to July 2, 1921; or December 7, 1941 to July 1, 1955; OR
- b. service of more than 180 consecutive days of active duty after January 31, 1955 (not counting service under an initial period of active duty for training under the "6 month" Reserve or National Guard programs); OR
- c. service in a campaign for which a campaign badge has been authorized.

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DISABLED VETERAN

Disabled Veteran means a veteran (as above) who has established the present existence of service-connected disability or who is receiving compensation, disability retirement benefits or a pension by reason of public laws administered by the Veterans' Administration or the Department of Defense, requiring the assignment of a claim number.

WORKING TITLE

Working title refers to the title of a position, which may or may not be the same as the class title, to more explicitly describe the specific duties of the position.

CHAPTER 3.0000 CLASSIFICATION POLICIES

3.0100 Classification of Positions

The Director as required by law shall establish and maintain a method of classifying all positions in the classified service. Positions substantially alike in duties and responsibilities, requiring essentially the same knowledge, skills and abilities, license or professional certification for satisfactory performance, and using the same minimum education and experience requirements, shall be grouped into the same class and the same rates of pay under similar working conditions shall be applicable thereto. A list of approved classifications will be maintained and kept current.

3.0200 Class Titles and Codes

A class title and code shall be used to identify each class in the classification plan.

3.0210

Each class title shall be generally descriptive of the work of the class and indicate its relative importance and responsibility among other classes. Where Roman numerals are affixed at the end of a title to indicate relative level, the higher numbers represent the higher levels. The Roman numerals affixed to titles in one class series have no relation to those titles of another class series, and classes having different titles with the same Roman numerals may properly be assigned to different pay grades.

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*** 3.0220**

A 5-digit numerical code shall be associated with each class in the classification plan. The Director shall publish, on an annual basis, a listing of all classes organized by class series.

3.0230

The class title and/or code shall be used to designate positions of the class or to identify incumbents in all budget estimates, payrolls, personnel records, reports and other official records, and in correspondence or other communications relative to personnel administrative processes.

3.0240

For purposes of external relations, or other purposes not relating to personnel administration, any suitable organizational title, or other title in common use, may be used provided that such title is not similar to, nor may be confused with, any standard class title other than the one by which the position involved is officially designated.

3.0300 Preparation, Content and Use of Class Specifications

Class specifications shall be developed and promulgated in a manner prescribed by the Director and shall contain the title and code identifying the class, give examples of the characteristics and indicate duties and responsibilities that may be assigned to positions of the class, and shall set forth job related minimum qualification requirements and the knowledge, skills and abilities required to do the work.

3.0400 Interpretation and Use of Class Specifications

The class specifications shall be mainly descriptive and not restrictive. The inclusion of particular expressions of characteristics or examples of duties shall not exclude others of similar kind and quality.

3.0410

Any employee may be required by competent authority to perform any of the duties described in the class specification, any other duties which are of similar kind and difficulty, and any duties of lower classes in the same occupational series or in other series which have similar characteristics. Any employee may also be required to serve in a higher position in emergencies, or in relief of another employee. However, if such higher service continues beyond 30 calendar days, the rules concerning promotion or temporary promotion shall apply. (Chapter 13) Under exceptional circumstances, an appointing authority may submit for the Director's approval, written substitution for this paragraph.

**** 3.0420**

In determining the class to which a position should be assigned, each class specification shall be considered as a whole, giving consideration

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*** to the general statement of duties, the specific examples of duties, the full performance responsibilities, the knowledge, skills, and abilities, and relationships with other classes.

3.0430

The requirement statements in each class specification establish minimum qualifications that must be held by any individual before being eligible for appointment to a position in that class. Combinations of education, training or experience, shall be established in the class specifications; however, the Director may approve documented equivalencies.

*** 3.0440**

Consistent with class specifications, appointing authorities may develop job accountabilities or objectives for specific positions, against which performance appraisals may be made.

3.0500 Classification of New Positions

The Director shall verify and analyze the duties and responsibilities of each new position prior to approving and assigning it to an appropriate class. No position shall be filled until it has been approved and classified by the Director and has been funded.

3.0600 Position Authorization

Authorization for all classified positions will be based on budgeted or other documented authorization. Authorized positions will be identified by title, class number, paygrade and other pertinent data, including name of incumbent as appropriate. No hiring in excess of such authorized strength will be approved. All revisions to authorized position complements must be accomplished in a standard manner as prescribed jointly by the Budget Director and Personnel Director.

3.0700 Underfilling of Authorized Position

3.0710

** An authorized position may be underfilled in Authorized Career Ladder classes in accordance with criteria developed by the appointing authority and approved by the State Personnel Director. Underfilling may start at any level in the Career Ladder in accordance with the approved criteria. The position incumbent may be promoted through the Career Ladder in accordance with promotional standards included in the criteria approved by the Director. Promotional standards must include written examinations, performance tests, oral examinations, performance

evaluations or other tests which demonstrate the ability to move to the next level in the Career Ladder.

3.0720

Underfill is also allowed within non-career ladder class series when a vacancy cannot be filled at the level of the position due to the lack of qualified applicants. In such case, underfilling will start at the next lower level and move consecutively to the lowest level until a qualified candidate is found. The employee shall advance to the authorized class upon meeting the minimum requirements for the classification, contingent upon satisfactory performance in the underfilled position. In the event qualified applicants are not available in the class series of the position, the position may be filled with a qualified candidate from a related classification (out-of-class series) upon recommendation of the appointing authority and approval of the Director.

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3.0730

In cases where the circumstances described in 3.0710 and 3.0720 do not apply, the appointing authority shall forward to the Director, a critical reclassification request to have the higher position level reclassified to the appropriate level prior to posting the vacancy.

3.0800 Reclassification of Positions

Whenever a significant change is made in the duties and responsibilities of a position involving either the addition of new assignments or the taking away or modification of existing assignments, such changes shall be reported by the appointing authority concerned in such a manner as the Director shall prescribe.

3.0810

The Director, upon his/her own initiative or at the request of an appointing authority, shall investigate alleged error in the classification or reclassification of a position and, if found to be justified, shall reclassify the position to the appropriate class, consistent with the requirements of the Budget Act.

3.0900 Status of Incumbent Upon Reclassification of Position

3.0910

When a position in the classified service is reclassified to another class, the incumbent shall be entitled to serve therein with permanent status provided the incumbent had such status in the former class and meets the minimum qualification requirements for the new class. In such a case, however, a written examination shall not be required.

3.0911

Should the incumbent not qualify for the position as reclassified, he/she shall be transferred to a vacant position for which qualified within the classified service. In the event extenuating circumstances exist, the appointing authority may request approval of the Director to retain the incumbent in the position for a reasonable period, in an underfill capacity, pending qualification at the higher level or pending a transfer.

3.0920

When a position in the classified service is reclassified to a class with a lower grade, the incumbent shall be entitled to transfer to a vacant position for which he/she qualifies in the

classified service and to serve therein without change in status. In the event that such transfer cannot be effected within sixty (60) calendar days, the rules related to pay under demotion shall apply.

*** 3.0930**

When a position is reclassified to a position in an Authorized Career Ladder, as defined in Merit Rule 3.0710, placement of the position incumbent in the Career Ladder is determined in accordance with promotion standards approved by the Director.

*** 3.0940**

Movement from one level to another within an Approved Career Ladder, as described in Merit Rule 3.0710, is considered a promotion, not a reclassification. Promotion along a Career Ladder is not subject to the provisions of Merit rules 3.0800 or 3.0900. Pay rate upon promotion through a Career Ladder is determined in accordance with Merit Rule 13.0111.

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3.1000 MAINTENANCE OF THE CLASSIFICATION PLAN

The Director shall establish a system and schedule for, and conduct a continuous review of, the classification plan which will assure the coverage of all positions in the classified service.

**** 3.1010**

The Director shall establish procedures for the classification maintenance review process. Such procedures shall provide for a meeting at the beginning of the review process, with the agency head, personnel administrator and applicable division directors of the agency with positions under review. The procedures shall also require a meeting with incumbents in positions under review to provide an explanation of the purpose of the review, the importance of the Position Classification Questionnaire (PCQ) completed by the incumbent, and the possible results of a reclassification. The procedures shall also require that, prior to classification decisions being finalized by the State Personnel Office, the State Personnel Office shall respond to agency comments regarding the initial classification recommendations and draft class specifications either by (1) written memorandum to the agency accepting their suggested changes, or (2) meeting with the agency head, applicable division directors and agency personnel administrator to discuss the comments.

CHAPTER 4.0000 PAY SCHEDULES

Pay schedules based on current legislation will be issued by the Director, in accordance with 29 Del. C. §5916.

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CHAPTER 5.0000 PAY PLAN POLICIES

5.0100 Pay Grades and Rates

Each position classification in the list of class titles shall have assigned to it a paygrade for compensation purposes.

5.0110

The pay of employees occupying positions in the classified service shall be according to the published rates prescribed for the paygrades assigned.

5.0200 Standard Work Week

The standard work week for all full-time employees in the classified service shall be 37 1/2 hours. Any changes made to accommodate the requirements of the Fair Labor Standards Act (FLSA) must be approved by the Director. Any other deviation must be approved by the Director with the concurrence of the Budget Director.

5.0210 Work Schedule

Work schedules shall be established by the appointing authority to meet operational needs.
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**5.0300 Part-time Employees

A part-time employee shall be paid the rate appropriate to the grade of the employee for the hours actually worked or on the appropriate pro-rata basis. (See definition Pro-Rata Basis, Chapter 2.)

5.0400 Dual Employment

A full-time or part-time employee in a classified position shall not be permitted to accept additional employment in another State agency without prior written consent of the appointing authorities concerned. Such approval of dual employment shall be conditioned on definite terms relating to hours and the effect on regular employment. Overtime eligibility shall be based only on the provisions of the FLSA.

5.0500 Partial Compensation Received From Other Sources

When on authorized annual leave an employee is authorized to receive additional compensation from another agency, private source or from another State for work performed during normal duty hours. When not on authorized leave, any such additional payment from another agency, from private sources or from other State appropriations shall be deducted from the normal compensation prescribed. See also Merit Rule 18.0200 - Outside Employment and Pecuniary Interests.

5.0600 Employee Maintenance Deductions

An employee who is provided with personal maintenance including lodging and/or meals shall have the value of such lodging or meals regularly deducted from his pay. The value shall be determined by a committee consisting of the Director, as Chairman, the Budget Director, and the Appointing Authority concerned, and shall be based on the approximate cost to the State of providing such maintenance. This committee shall insure that uniform criteria and values are applied to similar maintenance provisions throughout the classified service. Considerations may include:

- ...whether residence is required
- ...whether the employee is on-call on a 24 hour basis
- ...whether the employee has other employment
- ...the value to the State of having the employee live on the premises.

5.0700 Starting Pay Rates

5.0710 Starting Rate on Initial Appointment

Upon initial appointment to any position in the classified service, on or after July 1, 1986, an employee shall be paid a salary equal to the minimum percentage of midpoint for the assigned paygrade, except as hereinafter provided.

*** 5.0711**

The Appointing Authority, may approve a starting rate higher than the minimum for the paygrade up to 80 percent of midpoint where the applicant's qualifications are clearly over and above those required as minimum by the class specification. The Director may approve a

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starting rate higher than the 80th percentile provided that such higher rate is requested in writing by the appointing authority and is clearly justified and contains applicable documentation of the applicant's qualifications.

*** 5.0712**

The appointing authority may request, and the State Personnel Director may approve, a starting rate higher than the minimum for the paygrade where a critical shortage of applicants exists. The State Personnel Director, in concurrence with the State Budget Director and the Controller General, after specifying all equally qualified incumbents of the same classification within the same geographic area receiving a lower rate, may provide that these employees shall also have their rates increased to the rate established for entrance if their performance is satisfactory.

**** 5.0720 Starting Rate on Reinstatement**

When an employee is rehired into the same class in the classified service after separation from the State service of not more than two years, which separation was not due to discreditable circumstances, such employee shall be paid the same salary he/she received at the time of separation, plus any general salary increases since his/her separation. A salary in excess of this amount would have to be justified and authorized in accordance with 5.0711 and/or 5.0712.

5.0721

When the separation from State service exceeds two years, the starting rate shall be in accordance with 5.0710.

5.0722

Reinstatement applies only to class. It does not apply to duty assignment, previously accrued leave, or appointment status.

5.0723

After reinstatement, determination concerning pension, insurance eligibility and other benefits will be based on the respective regulations.

5.0724

"Grandfather privileges" based on 6.0224 and 6.0322 are not to be resumed upon reinstatement.

5.0800 Starting Rate After Layoff

When an employee is rehired into a different class in the classified service after being laid off from State service of not more than one year, such employee shall be paid in accordance with the provisions of 5.0710.

5.0810

When an employee is rehired into the same class in the classified service after being laid off from State service of not more than one year, such

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an employee shall be paid the same salary he/she received at the time of layoff, plus any general salary increases since his/her separation provided the layoff was for reasons outside the employee's control and which do not reflect discredit upon the service of the employee.

*** 5.0900 Pay Rates After Reclassification or Grade Change**

**

***** 5.0910**

In the event that a position is reclassified to a higher classification/paygrade, the rules concerning promotional pay rates shall apply in the same manner as if the incumbent had been promoted. (See Merit Rule I3.0110.)

***** 5.0920**

In the event that a position is reclassified to a class of the same grade, the rules concerning transfer pay rates shall apply in the same manner as if the incumbent had been transferred. (See Merit Rule I3.0230.)

***** 5.0930**

In the event that a position is reclassified to a lower class/paygrade, the class title/paygrade of the position shall change in accordance with the classification review results, but the position incumbent, for pay purposes, will retain the pay range of the former paygrade as long as the incumbent remains in that position.

***** 5.0931**

An incumbent in a position that was reclassified to a lower classification where the former classification qualified for a Selective Market Variation adjustment to the pay range, shall retain, for pay purposes, the Selective Market Variation pay range assigned annually through the State budget process, to the former classification as long as the incumbent remains in the position and as long as the former classification continues to qualify for a Selective Market Variation adjustment.

5.1000 Pay Increase Within a Paygrade

**

A classified employee may receive a pay increase within a paygrade as provided for in the Budget Act and procedures established and promulgated by the Director. An employee shall be denied a pay increase, for which the employee is otherwise qualified, if the employee's latest performance appraisal is unsatisfactory, unless the employee's unsatisfactory performance has already resulted in a reduction in rank and reduction in pay.

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5.1100 Pay for Exceptional Merit

The most commendable and distinguished employees of each agency who have exhibited such competence and exemplary effort for a period of at least one year, may have their pay advanced in accordance with the Budget Act and Procedures established by the Director.

*** 5.1200 Effective Date for Salary Increase**

The effective date for all advancements of pay shall be the exact day established for the advancement, the date the promotion is made, or the date of any other event authorizing the advancement.

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5.1300 Pay for Overtime Service

5.1310 Overtime Service

Any authorized service in excess of the standard work week or work schedule allowed by the Fair Labor Standards Act shall be overtime service. An appointing authority may prescribe, normally in advance, reasonable periods of overtime work to meet operational needs.

**** 5.1320 Compensation for Overtime Service**

An employee with a standard work week of 37 1/2 hours per week and in a position or a class covered by the Fair Labor Standards Act (FLSA) who is authorized to perform overtime service shall be compensated in cash at one and one-half times the regular rate of pay or granted one and one-half hours off for each one hour worked after 37 1/2 hours per week. An employee with a standard work week of 40 hours and in a position or a class covered by the FLSA who is authorized to perform overtime service shall be compensated in cash at one and one-half times the regular rate of pay or granted one and one-half hours off for each hour worked after 40 hours per week. An employee with a standard work schedule in excess of one week as allowed by the FLSA who is in a position or a class covered by the FLSA and who is authorized to perform overtime service shall be compensated pursuant to the FLSA and this rule for hours worked in excess of the standard work schedule. Hours worked is defined for these purposes to include any form of scheduled paid leave used by the employee (e.g., annual leave, sick leave, holiday, etc.) as well as hours actually worked by the employee. The method of compensation shall be agreed to in advance as cash payment is subject to availability of funds and or operational needs of the agency. Only hours worked over 40 hours per work week are covered by the overtime provisions of the FLSA. The regular hourly rate of pay for overtime payment purposes includes shift differential pay, stand-by duty pay and hazardous duty pay.

5.1321

An employee in a position or a class exempted by the FLSA who is required and authorized to work beyond the standard work week may be compensated with equal time off.

5.1322

In unusual circumstances of overtime service by employees normally not eligible for overtime compensation in cash, the appointing authority may recommend, for approval by the Director and the Budget Director, that such employees be compensated for such overtime services at straight time rates.

*** 5.1323**

An appointing authority may request a review of the prevailing overtime rates for one or more classes which are exempted by the FLSA where external market pressures including excessive turnover rates, recruitment problems and high vacancy rates necessitate that such employees be paid at the rate of one and one-half times the regular rate of pay for any authorized overtime service performed.

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* Upon receipt of the request for review of the identified classes, the designation of affected facilities or work sites and documentation that turnover-recruitment difficulties are directly related to overtime market pressures, the State Personnel Director shall survey the appropriate labor market to determine the position of the State's overtime rate within this market.

This survey information will be reviewed by the State Personnel Director, the State Budget Director, and the Controller General, who shall examine the operational need for an increased overtime rate as well as the availability of required funding and shall then approve or disapprove an adjusted overtime rate for the identified class.

5.1400 Premium Pay

**** 5.1410 Compensation for Holidays Not Worked**

All employees except seasonal, temporary, emergency and casual, shall receive pay for the appropriate number of pro-rated hours for holidays and any other day, or part of a day proclaimed by the Governor as a holiday if the employee would otherwise have been scheduled to work that day. (See Merit Rules 5.1412 and 5.1413.)

If the holiday falls on a day a full-time employee would not have been scheduled to work, the employee shall receive equivalent time off for the appropriate number of pro-rated hours.

If the holiday falls on a day a part-time employee would not have been scheduled to work, the employee shall receive either equivalent time off for the appropriate number of pro-rated hours or shall receive pay for the appropriate number of pro-rated hours, at the discretion of the appointing authority. (See definition Pro-Rata Basis in Chapter 2.)

**** 5.1411 Compensation for Holidays Worked**

An employee eligible for holiday pay (see 6.0100) and eligible for overtime compensation, required to work on a day observed as a legal holiday, shall be credited for the hours actually worked on the holiday at time and one-half and shall be credited for the holiday on a pro-rata basis. (See definition Pro-Rata Basis, Chapter 2. See Merit Rules 5.1412 and 5.1413.)

An employee eligible for holiday pay but not normally eligible for overtime compensation, required to work on a day observed as a legal holiday, shall be credited for the holiday on a pro-rata basis and may be credited for the hours actually worked on the holiday at straight time. In unusual

circumstances the appointing authority may recommend, for approval by the Director and the Budget Director, that such employees be credited for hours actually worked on the holiday at time and one-half.)

The method of compensation for any additional hours, beyond those for which the employee is routinely compensated in a pay cycle, accumulated as a result of working the holiday, may be either in cash or time off, or a combination of the two. The choice of the method of compensation

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** for the additional hours shall be determined by the appointing authority and such compensation shall be in accordance with Fair Labor Standards Act overtime provisions, when applicable, and/or with other Merit Rule overtime provisions, as applicable. (See Merit Rules Section 5.1300.)

*** 5.1412**

To qualify for pay for a holiday not worked, an employee shall be required to have worked on his/her last scheduled work day immediately preceding the holiday and on his/her next scheduled work day immediately after the holiday, unless the employee's absence on these days is an excused absence with pay within the meaning of these rules.

*** 5.1413**

**

Employees working in functions that operate on a 7-day per week, 24-hour basis shall receive holiday pay for hours worked on the actual holiday rather than hours worked on the day observed as the legal holiday.

5.1420 Shift Differential Pay

An employee who is authorized and required by the appointing authority to work a night shift as defined below, shall receive supplemental pay equal to 5% of the employee's paygrade midpoint.

5.1421

A night shift for these purposes shall be a shift which includes four or more hours of work between the hours of 6:00 p.m. and 8:00 a.m. the following day.

**** 5.1422**

An employee on a fixed night shift shall continue to receive such adjusted pay rate while on paid holidays or other authorized leave with pay; provided that the night shift assignment pertains both before and after such leave; and further provided that extended sick leave of more than five consecutive work days requiring a replacement and the granting of extended leave with pay shall terminate such pay adjustment. Management may assign employees who are receiving shift differential pay to the day shift for a period of less than a full pay period without loss of shift differential.

5.1423

An employee on a rotating shift schedule, shall receive supplemental pay equal to 5% of the employee's paygrade midpoint during the whole time the employee is assigned to the rotating shift.

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5.1424

An employee who is authorized and required by the appointing authority to work a split shift shall have his/her pay supplemented at the stated rate while so assigned, subject to the same provisions of 5.1420. A split shift for these purposes shall be any shift arrangement which is broken into two parts with two hours or more between the parts.

*** 5.1425**

An appointing authority may request a review of the prevailing shift differential rates for one or more classes where external market pressures including excessive turnover rates, recruitment problems and high vacancy rates necessitate that such employees receive shift differential payments which exceed the amounts provided for in Rule 5.1420.

Upon receipt of the request for the review of the identified classes, the designation of the affected facilities or work sites and documentation that turnover/recruitment difficulties are directly related to shift differential market pressures, the State Personnel Director shall survey the appropriate labor market to determine the position of the State's shift differential rate within this market.

This survey information shall be reviewed by the State Personnel Director, the State Budget Director, and the Controller General, who shall examine the operational need for an increased shift differential rate as well as the availability of required funding and shall then approve or disapprove an adjusted shift differential rate for all positions in the identified class.

5.1430 Call Back Pay

An employee in a position or a class that is entitled to overtime pay under the Fair Labor Standards Act who has left his/her place of work for his/her residence and is called back for overtime service, shall be paid for such service in accordance with the provisions for overtime pay, provided that he/she shall receive a minimum total payment equivalent to four times his/her regular straight time hourly rate. However, the employee shall be paid according to this call-back provision or the overtime provision, whichever is greater, not both.

5.1431

Social Workers in protective services shall be eligible for call-back pay irrespective of their level of classification.

**** 5.1432**

State Emergency Response Team (SERT) members shall be eligible for call-back pay irrespective of their level of classification.

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** Added March 10, 1988 22.

5.1440 Stand-by Duty

An employee in a position or a class that is entitled to overtime pay under the Fair Labor Standards Act who is assigned to institutional life support system service or critical public service as approved by the Director, and authorized and required by the appointing authority to be on-call regularly for emergency services for an average of 64 off-duty hours or more per week, shall receive supplemental pay equal to 5% of the employee's paygrade midpoint while so assigned. Such increased pay shall continue during absences only for paid holidays and sick leave of five

successive work days or less occurring during the period of assignment. Any call-back work required during on-call periods shall also be compensated in accordance with the call-back provisions of 5.1430.

5.1441

Social Workers in protective services shall be eligible for stand-by pay irrespective of the level of their classification.

5.1442

*** State Emergency Response Team (SERT) members shall be eligible for stand-by pay irrespective of their level of classification.

**** 5.1450 Hazardous Duty**

Pay supplements for hazardous duty will be paid only to those employees authorized to receive such pay supplement pursuant to 29 Del. C. §5916 (b) and otherwise qualified.

5.1451

Hazardous duty shall be defined as exposure to hazards. The hazards must be uncontrollable circumstances that involve an unusual risk of serious physical injury, impairment to health or death resulting from accidental, negligent or intentional causes. Except as noted, the exposure must be proximate, continuing and not incidental to the job duties or infrequent in nature. The exposure may be occasional if the employee's assigned job duties are to deal with the hazards. Two degrees of exposure are recognized.

5.1452

Two exposure levels of hazardous duty shall be defined as follows:

Exposure Level A: Continuing exposure to hazards where the employee's responsibility is to deal with the hazard as a function of assigned job duties

Exposure Level B: Proximate exposure to hazards where it is not the employee's stipulated job duty to deal with the hazard, or occasional exposure to hazards where the employee's responsibility is to deal with the hazard as a function of assigned job duties.

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** Revised FY 1988 Budget Act

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*** Added March 10, 1988 23.

**** 5.1453**

An employee who is determined to be qualified to receive hazardous duty pay will be compensated, in addition to his/her regular salary/wage, at the rate of \$100.00 per month for Exposure Level A or \$50.00 per month for Exposure Level B.

5.1454

Determination as to the positions and employees eligible for this pay supplement at each of the two exposure levels shall be requested by a State agency and approved or disapproved by the Director after evaluating the positions involved.

5.1455

Criteria for determination of positions and employees, and the work conditions covered, shall be made a matter of formal record.

5.1456

The appointing authority shall immediately notify the Director when a substantive change occurs in the duties or work conditions of any position receiving hazardous duty pay.

5.1457

The following terms and definitions shall be used to determine eligibility for hazardous duty pay for employees identified by 29 Del. C. §5916(b):

Continuing: frequency of exposure to the hazard is normally more than 50% of the employee's working time.

Occasional: frequency of exposure to the hazard is normally more than 5% but less than 50% of the employee's working time.

Uncontrollable: precautions, such as safety and life support equipment are either impractical to be used continually by the incumbent or are insufficient to assure reasonable safety.

Proximate: the location of employee's work site precludes evacuation as a means of avoiding exposure to serious physical injury, impairment to health, or death resulting from accidental, negligent or intentional cause.

*** 5.1458**

In extraordinary situations, where the Board in its discretion, determines that the risk of serious physical harm could cause continuing loss of earning potential to the family of the employees involved, family Blue Cross protection may be provided to the employees by the agency, within its appropriations, in addition to the Hazardous Duty supplement provided for in Rule 5.1453.

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**Revised FY 1988 Budget Act

Effective July 1, 1987

* Rule renumbered 23A.

*** 5.1460 Supervisory Pay**

**

Recognition of supervisory duties shall be included in assigning position classifications. In order for a position to be considered for classification purposes as a supervisor, the position must, on a regular and continuing basis, plan, assign, review, discipline, recommend hire, termination and promotion and complete and approve performance plans of two or more classified employees excluding casual, seasonal and contractual employees. Therefore, pay supplements for supervisory duties will not be made except as provided in 5.1461.

A supervisor may have subordinates who are paid at a rate higher than his rate, since pay rates do overlap as length of service varies and since a subordinate position may have the same pay grade, due to other factors of job content. However, no appointing authority shall assign a lower pay grade to supervise, even temporarily, a higher pay grade, without the written approval of the Director.

An employee receiving a supervisory supplement under the previously effective rules at the time of this revision shall not have this pay reduced, as long as he continues to qualify for that supplement under those provisions.

However, he shall receive no further increments except as herein defined.

*** 5.1461**

Subject to the approval of the State Personnel Director, the Secretary of the Department of Health & Social Services (DHSS) is authorized to grant supplemental pay equal to 5% of the employee's paygrade midpoint to registered nurses employed in DHSS institutions or facilities classified as Nurse III, Psychiatric Nurse III or Public Health Nurse III who are designated as charge nurses or team leaders and are permanently assigned such responsibilities in addition to their regular staff nurse duties. During emergency situations, approval may be granted for lower level nursing classes to qualify for this supplement. Charge Nurse/Public Health Nurse team leader responsibilities include the daily supervision and coordination of nursing or other patient care activities in a unit, ward, floor, clinic or field setting during a specified shift to ensure quality patient care and continuity of care with other shifts. This supplemental pay is not authorized for employees required to perform charge nurse/team leader functions on a temporary basis consistent with Merit Rule 3.0410.

5.1470 Computing Premium Pay

For the purpose of computing premium pay, the employee's base pay is defined as the regular paygrade plus applicable shift differential.

5.1500 Limitation of Available Funds

No provision of these rules shall be construed as authorizing any expenditure of funds in excess of those appropriated by the General Assembly for the fiscal year.

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CHAPTER 6.0000 EMPLOYEE BENEFITS

****6.0100 Holidays**

All employees except temporary, seasonal, emergency and casual shall be compensated in accordance with Chapter 5 for the following legal holidays and any other day or part of a day proclaimed by the Governor as a holiday, during which the public offices of the State are closed:

New Year's Day
Martin Luther King's Birthday
Presidents' Day
Good Friday
Memorial Day
Independence Day
Labor Day
Columbus Day
Veteran's Day
General Election Day
Thanksgiving Day
Day After Thanksgiving
Christmas Day

**** Employees who live or work in Sussex County shall be compensated for .5 days (3.75 hours for 37 1/2 hour work weeks or 4 hours for 40 hour work week) for Return Day, the second day after the General Election.

*** 6.0110**

As prescribed in the Delaware Code, when an approved holiday falls on a Saturday, the preceding business day shall be considered the legal holiday. When an approved holiday falls on a Sunday, the following business day shall be considered the legal holiday.

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6.0200 Annual Leave

6.0210 Usage

Each Appointing Authority shall schedule annual leaves with particular regard to the operating requirements of the agency, the seniority of employees, and insofar as practicable, with the requests of the employees. Employees cannot take annual leave without prior approval or in excess of the hours actually earned. The appointing authority is responsible for responding to the employee's request as soon as practicably and reasonably possible.

6.0211

Though accruing, employees shall not normally be granted paid annual leave until completion of six months of current service.

*** 6.0220 Accrual**

**

**** Employees except casual, temporary, seasonal and emergency shall accrue credit for paid annual leave as indicated below. Accrual shall be on a pro rata basis, when applicable. (See definition Pro-Rata Basis in Chapter 2.).

**** 6.0221**

Employees who work a 37.5 hour week and who have completed less than ten years aggregate service with the State as defined in these regulations shall thereafter accumulate paid annual leave credit at the rate of nine and one-half (9.50) work hours for each month's service. Employees who are authorized and work a 40 hour week, shall accrue credit for paid annual leave at the rate of ten (10) work hours for each month's service. See 6.0250 for accrual rate chart for 37.5 and authorized 40 hour work week.

**** 6.0222**

Employees who work a 37.5 hour week and have completed 10 years of aggregate service with the State as defined in these regulations shall thereafter accumulate paid annual leave credit at the rate of eleven and one-quarter (11.25) work hours for each completed calendar month of service. Employees who are authorized and work a 40 hour week and who have completed 10 years of aggregate service as defined in these regulations shall thereafter accumulate paid annual leave credit at the rate of twelve (12) work hours for each completed calendar month of service. See 6.0250 for accrual rate chart for 37.5 and authorized 40 hour work week.

**** 6.0223**

Employees who work a 37.5 hour week and have completed 15 years of aggregate service with the State as defined in these regulations shall thereafter accumulate paid annual leave credit at the rate of thirteen and one-quarter (13.25) work hours for each completed calendar month of service. Employees who are authorized and work a 40 hour week and who have completed 15 years of aggregate service as defined in these

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regulations shall thereafter accumulate paid annual leave credit at the rate of fourteen (14) work hours for each completed calendar month of service. See 6.0250 for accrual rate chart for 37.5 and authorized 40 hour work week.

**** 6.0224**

Annual leave credit carried into a new calendar year may not exceed twice the employee's annual accrual rate. This determination is made on December 31 of each year, and although it is possible to accrue in excess of twice the annual accrual rate during the year, only twice the authorized maximum accrual may be carried forward. In unusual circumstances and upon written request from the appointing authority, the Director may authorize carrying over annual leave in excess of the maximum amount. Payment for unused annual leave is not authorized except at separation (6.0260).

*** 6.0225**

**

An exception (regarding accrual rate and accumulation) applies to an employee who under established practice or regulation of an employing agency in effect on or before June 30, 1968, was entitled to earn or to accumulate annual leave credit at a rate or to a limit exceeding that provided herein. Such an employee shall continue to enjoy such rights as long as the employee remains in the service of that agency (or transfers for reasons beyond his/her control), unless by reason of length of service the employee becomes eligible to earn or accumulate annual leave credits at a higher rate or to a higher limit as defined in these regulations.

**** 6.0226**

An employee absent from work on a legal holiday, on paid leave, on disability arising from injuries sustained in the course of employment while receiving a salary supplement pursuant to 29 Del. C. §5933, or on leave without pay for a period of thirty days or less, shall continue to accumulate annual leave at the regularly prescribed rate during such absence.

6.0230 Recording and Transfer

All annual leave credit and use shall be recorded in the personnel records of the agency, shall be subject to review by the Director, and pertinent data shall be available for inspection by the employee concerned.

6.0231

Annual leave credit shall continue in effect while the employee remains in the classified service. Upon leaving the classified service, annual leave credit shall be handled in accordance with 6.0260.

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*** 6.0240 Absences for Fractional Annual Leave Hours**

**

Absences for a fraction of an hour shall be charged as indicated. However, nothing herein shall prevent a supervisor from using discretion and providing a flexible work arrangement to accommodate an employee's needs.

Duration of Absence	Amount Charged
1 - 15 minutes	.25 hour
16 - 30 minutes	.50 hour
31 - 45 minutes	.75 hour
46 - 60 minutes	1.0 hour

*** 6.0250**

**

If only a partial month is completed the following table shall be used to compute annual leave accrual for that month:

37.5 HOURS PER WEEK STANDARD WORK SCHEDULE

Total Days Worked	9.5 Hours Monthly Accrual	11.25 Hours Monthly Accrual	13.25 Hours Monthly Accrual
1	.50 hour	.50 hour	.75 hour
2	1.00	1.25	1.25
3	1.50	1.75	2.00
4	2.00	2.25	2.75
5	2.50	2.75	3.25
6	2.75	3.50	4.00
7	3.25	4.00	4.75
8	3.75	4.50	5.25
9	4.25	5.00	6.00
10	4.75	5.75	6.75
11	5.25	6.25	7.25
12	5.75	6.75	8.00
13	6.25	7.25	8.50
14	6.75	8.00	9.25
15	7.25	8.50	10.00
16	7.50	9.00	10.50
17	8.00	9.50	11.25
18	8.50	10.25	12.00
19	9.00	10.75	12.50
20 or more	9.50	11.25	13.25

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**

40 HOURS PER WEEK STANDARD WORK SCHEDULE

Total Days Worked	10.0 Hours Monthly Accrual	12.0 Hours Monthly Accrual	14.0 Hours Monthly Accrual
1	.50 hour	.50 hour	.75 hour
2	1.00	1.25	1.50
3	1.50	1.75	2.00
4	2.00	2.50	2.75
5	2.50	3.00	3.50
6	3.00	3.50	4.25
7	3.50	4.25	5.00
8	4.00	4.75	5.50
9	4.50	5.50	6.25
10	5.00	6.00	6.75
11	5.50	6.50	7.75
12	6.00	7.25	8.50
13	6.50	7.75	9.00
14	7.00	8.50	9.75
15	7.50	9.00	10.50
16	8.00	9.50	11.25
17	8.50	10.25	12.00

18	9.00	10.75	12.50
19	9.50	11.50	13.25
20 or more	10.00	12.00	14.00

6.0260 Payment

If an employee resigns or is terminated for any reason including dismissal, or dies with unused annual leave credit, the employee, or in case of his/her death, his/her estate, shall be paid in cash for any unused annual leave. If an employee transfers to the classified service from a non-classified position in the State, he/she shall be credited with any unused annual leave for which he/she was not paid, provided such accumulation is verified and is not in excess of what he/she would have accumulated had he/she been in the classified service.

If an employee transfers from the classified service to a non-classified position in the State, he/she may transfer unused annual leave to the receiving agency to the extent the receiving agency agrees, in writing, prior to the transfer, to accept such unused annual leave; the employee shall then be paid by the leaving agency for any unused annual leave that the receiving agency refuses to accept.

6.0300 Sick Leave

**** 6.0310 Usage**

An employee eligible for sick leave with pay may use such sick leave for absence due to illness, injury, temporary disability, exposure to contagious disease, or due to serious illness of a member of the employee's immediate family requiring the employee's personal attendance. (See definition Immediate Family, Chapter 2.) In addition

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** sick leave can be used for appointments with doctors, dentists or other

*** recognized practitioners, subject to prior approval of the appointing authority. An employee at his/her option may also use sick leave to provide full regular pay during periods when he/she is paid less than full pay under worker's compensation provisions. Such leave shall be charged in proportion to the difference between worker's compensation pay and full pay. Employees cannot take sick leave with pay in excess of the hours actually accrued, except as provided in 6.0324.

Under exceptional circumstances, the appointing authority may request, in writing, approval from the Director for the use of sick leave by the employee in cases requiring the employee's personal attendance for someone not included in the definition of immediate family.

*** 6.0311**

An employee needing sick leave shall inform his/her immediate supervisor of the fact and the reason in advance when possible, or otherwise before the expiration of the first hour of absence or as soon thereafter as practicable; failure to do so may be cause for denial of pay for the period of absence. Before approving pay for sick leave, an appointing authority or the Director may at their discretion require either a doctor's certificate or a written statement signed by the employee setting forth the reason for the absence. In the case of an absence of more than five consecutive days, a doctor's certificate is required as a condition of approval. (See also 6.0330)

6.0312

If an employee is ill or injured while on approved annual leave, the period of such illness or injury shall be charged to the employee's accumulated sick leave if it is documented to the satisfaction of the appointing authority.

***** 6.0313 Maternity Leave**

A pregnant employee may continue to work, providing she can perform her regular duties, or until her physician certifies she is temporarily disabled and can no longer perform her duties. (In the interest of safety, the appointing authority may request and follow additional medical opinion.)

From the date the physician certifies disability, an employee may request to use accrued sick leave during the time the certified disability continues.

At the end of the certified disability or at the expiration of accrued sick leave, whichever occurs first, annual leave may be utilized or additional leave may be requested in accordance with 6.0440.

*** 6.0320 Accrual**

**

*** Employees, who work a 37.5 hour week, except casual, temporary, seasonal and emergency, shall accrue paid sick leave credit at the rate of nine

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**** and one-half (9.50) work hours for each completed calendar month of service. Employees who are authorized and work a 40 hour week, except casual, temporary, seasonal, and emergency, shall accrue paid sick leave credit at the rate of ten (10) work hours for each completed calendar month of service. See 6.0350 for accrual rate for 37.5 hours and authorized forty (40) hours per week work schedule. Accrual shall be on a pro rata basis, when applicable (See definition Pro-Rata Basis in Chapter 2.)

**** 6.0321**

Unused sick leave credit may be accumulated without limit, but for cash payment (6.0360) a maximum of six hundred seventy-five (675) hours credit shall apply. For authorized forty (40) hours work week schedule, a maximum of seven hundred twenty (720) hours credit shall apply.

6.0322

An exception (regarding accrual rate and accumulation) applies to an employee who, under established practices or regulations of his/her employing agency in effect on or before June 30, 1968, was entitled to earn or to accumulate sick leave at a rate or to a limit exceeding that provided herein. Such an employee shall continue to enjoy such rights as long as he/she remains in the service of that agency or is transferred for reasons beyond his/her control; unless and until under the then applicable rule he/she becomes eligible to earn sick leave credits at a higher rate or to a higher limit.

*** 6.0323**

An employee absent from work on a legal holiday, on paid leave, on disability arising from injuries sustained in the course of his/her employment while receiving salary supplement pursuant to 29 Del. C. §5933, or on leave of absence without pay for a period of 30 days or less, shall continue to accumulate sick leave at the regularly prescribed rate during such absence as though he/she were on duty.

**** 6.0324**

On written request in extreme cases, the appointing authority may allow employees with more than five years service, who have not abused sick leave, to "borrow ahead" up to one hundred twelve and one-half (112.50) hours of paid sick leave after their accumulated sick leave hours and annual leave hours are exhausted.

6.0330 Records and Transfer

All sick leave credit and use shall be recorded in the personnel records of the agency and shall be subject to review by the Director. Appointing authorities will review sick leave records to reveal discernible patterns of repeated use of sick leave which may be construed as possible abuse. In such cases, supervisors should counsel, require medical evidence, make formal contact or take other appropriate action. Pertinent data shall be available for inspection by the employee concerned.

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6.0331

Sick leave credit shall continue in effect while the employee remains in the classified service. Upon leaving the classified service, sick leave credit shall be handled in accordance with 6.0360.

6.0332

Employees injured on the job will not be charged with sick leave for any portion of the day injured. Illness commencing during a work day will be charged to sick leave in accordance with 6.0340.

**** 6.0340 Absences for Fractional Sick Leave Hours**

Absences for a fraction of an hour shall be charged as indicated. However, nothing herein shall prevent a supervisor from using discretion and providing a flexible work arrangement to accommodate an employee's needs.

Duration of Absence	Amount Charged
1 - 15 minutes	.25 hour
16 - 30 minutes	.50 hour
31 - 45 minutes	.75 hour
46 - 60 minutes	1.00 hour

*** 6.0350**

**

If only a partial month is completed the following table shall be used to compute sick leave for that month:

Total Days Worked	37.5 hours week 9.5 Hours Monthly Accrual	40.0 hours week 10.0 Hours Monthly Accrual
1	.50 hour	.50 hour
2	1.00	1.00
3	1.50	1.50
4	2.00	2.00
5	2.50	2.50

6	2.75	3.00
7	3.25	3.50
8	3.75	4.00
9	4.25	4.50
10	4.75	5.00
11	5.25	5.50
12	5.75	6.00
13	6.25	6.50
14	6.75	7.00
15	7.25	7.50
16	7.50	8.00
17	8.00	8.50
18	8.50	9.00
19	9.00	9.50
20 or more	9.50	10.00

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6.0360 Payment

** An employee shall be reimbursed for unused accumulated sick leave under the following conditions, not to exceed the limits specified in Merit Rule 6.0321:

** (1) At retirement under the State Pension Law, at the rate of one hour's pay for each two hours of unused sick leave.

** (2) If laid off without prejudice for lack of work, at the rate of one hour's pay for each two hours of unused sick leave.

** (3) In the event of death of the employee, payment shall be made to his/her estate at the rate of one hour's pay for each hour of unused sick leave.

If an employee transfers to the classified service from a non-classified position in the State, the employee shall be credited with any unused sick leave for which he/she was not compensated, provided such accumulation is verified and is not in excess of what the employee would have accumulated had he/she been in the classified service.

If an employee transfers from the classified service to a non-classified position in the State, unused sick leave shall be transferred to the receiving agency only to the extent the receiving agency agrees, in writing, prior to the transfer, to accept such unused sick leave.

6.0370 Disability

Whenever an employee qualifies for worker's compensation, the employee shall not be charged sick leave for any absence during the period of disability except when the employee is paid less than full pay under worker's compensation in accordance with 6.0310. In addition to worker's compensation benefits, a disabled employee shall receive a supplement calculated in accordance with 29 Del. C. §5933 for a period not to exceed three (3) months or twelve (12) months, whichever is applicable, from the date the disability begins except in accordance with 6.0310.

6.0400 Leaves of Absence

**** 6.0410**

An appointing authority may excuse an employee from work with pay who is requested to serve on a volunteer basis on an advisory board or commission or similar group sponsored by local or state government or statewide organization offering financial assistance to programs benefitting diverse segments of Delaware citizens. In addition to other factors, prior to excusing an employee pursuant to this Rule, the appointing authority must find that the employee's absence is consistent with the operational needs of the agency and that it is more appropriate for the State employee to serve on the board, commission, etc., than another person.

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6.0420 Military Leave

6.0421 Entering Extended Service

An employee, other than casual, temporary, seasonal or emergency, entering the active military service of the United States shall be granted a leave of absence without pay for the period of time of the tour of duty, extended for 90 calendar days beyond the date of termination of active duty; upon return from military leave the employee shall be placed in a position in accordance with 6.0520.

*** 6.0422 Special Military Duty Leaves (Reserve Duty)**

Any employee, other than casual, temporary, seasonal or emergency, who is a member of the military reserves of the United States or the National Guard and who is ordered to attend training camp or to special duty during scheduled work hours in any calendar year, shall be allowed leave with pay. The maximum number of hours of paid military duty leave for a full-time employee shall be 112.5 hours (based on a 37.5 hour per week full-time position) or 120 hours (based on a 40 hour per week full-time position). For employees employed less than full-time, the maximum number of hours for which the employee is eligible to be paid shall be determined on a pro rata basis. Such military or special duty leaves shall not be deducted from annual leave or in any other way result in loss of privileges or compensation to said employee. If the active duty tour extends beyond the number of hours for which the employee is eligible to be paid, the portion of the leave beyond that time period shall be without pay or in accordance with 6.0200. (See definition Pro-Rata Basis in Chapter 2.)

6.0430 Leave for Volunteer Fire Duty

With the approval of the appointing authority any State employee, other than emergency, casual, seasonal or temporary, who is an active volunteer firefighter may, with the approval of the appointing authority, be permitted to respond to fire, rescue, ambulance or other emergency calls during his/her regular hours of employment without loss of pay, annual leave, sick leave or personal leave credit.

6.0440 Personal Leave

Upon a permanent employee's written request, an appointing authority may approve a leave without pay, up to a period of one (1) year. In exceptional cases, additional six-month periods may be granted upon request, but in no case shall continuous leave exceed two (2) years, except as provided in 6.0441.

The appointing authority shall not normally approve a leave of absence for an employee who has not completed the probationary period except to meet an extraordinary situation where it appears to be for the good of the service.

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6.0441

An appointing authority may request, and the Director may grant, an extended leave of absence to a classified employee to serve in any non-classified position described in 29 Del. C. §5903(4), (5) and (6). Upon the completion of that appointment, the employee shall be returned within sixty (60) days to a position for which the employee is qualified within the classified service, provided only that the employee shall be paid at no less than the equivalent pay grade and percentage of the paygrade midpoint from which the employee took this leave of absence.

*** 6.0442**

**

Leave with pay of up to one day, (7.5 hours or 8.0 hours, as appropriate), per award, may be granted to an employee as part of a recognition program approved by the Director. Leave credited or used shall be recorded in the personnel records. This leave is not part of the annual leave accrual and usage provisions, therefore, it will not be subject to any restrictions or limitations covered under Merit Rule 6.0200. Such leave must be used by the employee within one year of being awarded, and is not subject to any cash payments.

*** 6.0450 Jury Duty and Appearance as Witness**

**

An employee, other than temporary, casual, seasonal or emergency, who is required to report daily to serve on a jury, shall be excused with pay, but shall return to work within a reasonable time on days he/she is released from jury duty.

Any employee appearing as part of his/her work-related duty before a court, legislative committee or judicial or quasi-judicial body will be excused with pay or compensated, if applicable and as appropriate, if attendance is required during non-regular duty hours.

An employee appearing under subpoena to testify before a court, legislative committee or judicial or quasi-judicial body shall be excused with pay, unless the employee is one of the parties in the proceeding in which case an employee may be excused without pay or may take annual leave.

An employee appearing on his/her own behalf before a hearing officer or the Merit Employee Relations Board in a merit system grievance hearing shall also be excused with pay if attendance is required during regular duty hours. However, this excusal with pay does not extend to time in preparation of a grievance or consultation with an employee's representative.

**** 6.0460 Compassionate Leave**

An employee, other than casual, temporary, seasonal or emergency, shall be granted compassionate leave with pay upon the death of a member of his/her immediate family. (See definition Immediate Family, Chapter 2.) A full-time employee shall be granted 22.5 hours (based on a 37.5 hour per week full-time position) or 24 hours (based on a 40 hour per week

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** full-time position) of paid compassionate leave upon the death of a member of the employee's immediate family, to be used on consecutive work days. For employees employed less than full time, the exact number of hours of paid compassionate leave for which the employee is eligible shall be determined on a pro-rata basis. (See definition Pro-Rata Basis in Chapter 2.)

Under exceptional circumstances, the appointing authority may request, in writing, approval from the Director for the use of this leave on non-consecutive days and/or for the death of a person not specified in the definition of immediate family.

**** 6.0461**

An employee, other than casual, temporary, seasonal or emergency, shall be granted leave with pay, during any single work day, to attend the funeral of the following near-relatives: nephew, niece, aunt, uncle, brother-in-law, sister-in-law, grandparent-in-law, or any other relative or friend living in the employee's household. A full-time employee is eligible to receive 7.5 hours (based on a 37.5 hour per week full-time position) or 8.0 hours (based on a 40 hour per week full-time position) of paid leave. For employees employed less than full time, the exact number of hours for which the employee is eligible to be paid shall be determined on a pro-rata basis. (See definition Pro-Rata Basis in Chapter 2.)

6.0462

The above leave may be used -- without pay -- by temporary, seasonal, casual or emergency employees.

6.0470 Competing in Examinations

An employee shall be excused from work with pay to enable competition in a scheduled examination and associated interviews for a classified position in the State. Documentation that the employee has been approved to compete in such examination shall be presented to their immediate supervisor. The excused time shall include a reasonable period for reaching and returning from the site of the examination.

6.0480 Leave for Employee Organizations

** An employee, other than casual, temporary, seasonal or emergency, may be granted leave of absence with pay to serve as a delegate to conventions of unions or employee organizations; or to engage in other similar job-related activities provided the absence of the employee will not interfere with proper operating efficiency of the employing agency. Such leave for any individual full-time employee shall not aggregate more than 37.5 hours or 40 hours, when authorized, in any calendar year. The allowable aggregate for part-time employees shall be on a pro-rata basis. (See definition Pro-Rata Basis, Chapter 2.) Such leave and allowance must be with prior written approval of the appointing authority.

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6.0490 Leave for Olympic Competition

An employee except casual, seasonal, temporary or emergency shall be granted leave with pay to participate as a member of the United States team in any competition sanctioned by the United States Olympic Committee. Such leave shall not exceed the time required for participation in such competition, travel, and a reasonable time for precompetition training with the team, or other duties that are required of the employee in the capacity of coach, athlete, official, trainer or group leader in the official delegation of the United States. In no case shall the total leave with pay exceed ninety (90) working days at the regular rate of pay, nor shall the pay exceed the amount the employee would receive for a standard workday, nor shall the employee be paid for any day spent on such leave for which the employee would not ordinarily receive pay as part of regular employment.

6.0500 Return to Duty Following Leave of Absence Without Pay

An employee returning from leave of absence of six months or less shall be returned to the duty assignment previously held. An employee returning from leave of absence greater than six (6) months shall be returned to a position of the same classification held when leave was granted. Duty assignment will be at the discretion of the appointing authority. An employee may return to duty before the expiration of his leave only with approval of the appointing authority.

6.0510

If the job assignment of an employee on leave without pay is abolished or consolidated, the employee shall, upon return from leave of absence, be given employment in the same class or if that is not possible, in a comparable or lower class for which the employee is qualified or in accordance with 14.0200.

6.0520 Return from Military Service

Upon or prior to expiration of a military leave of absence, an employee with such leave who informs the appointing authority of their willingness and ability to return to State employment and produces evidence of his honorable release from military service shall be returned to the same or comparable position for which the employee qualifies. The employee shall be entitled to receive the rate of pay to which the employee would have progressed, assuming satisfactory performance.

6.0600 Unauthorized Absences

Any absence from duty that is not in compliance with the rules governing authorized leaves shall be considered an absence without leave and is cause for disciplinary action.

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No employee shall absent oneself from duty without authorization by the appointing authority, except in case of emergency illness, accident, or serious unforeseen circumstances. Such emergency conditions should be brought to the attention of the appointing authority as soon as practicable.

An employee who is absent from the service without a valid leave of absence for three (3) consecutive working days, may be deemed to have abandoned his position and to have resigned from the service unless in the period of three working days succeeding such three (3) days the employee proves to the satisfaction of the appointing authority that such absence was excusable. If the employee's excuse does not satisfy the appointing authority, the employee may be considered to have resigned by abandonment of position. In the event of abandonment, the employee shall be notified in writing that such abandonment constitutes voluntary resignation.

Nothing contained herein shall be construed as preventing an appointing authority from taking disciplinary actions against an employee because of unauthorized absence.

6.0700 ACCRUAL RATES AND CONTINUITY OF SERVICE

Leave accrual rates under these rules shall be based on aggregate service. Annual leave and sick leave will accrue during periods of paid leave of absence, or unpaid leave up to thirty (30) days, but will not accrue during leaves without pay greater than thirty (30) days.

6.0710

Pay and benefits (Blue Cross, pension, review date, etc.) after breaks in classified service will be governed by the regulation concerned (e.g., resignation, military, layoff, maternity, pension, sick leave, annual leave). (See also 5.0720 - Reinstatement)

*** 6.0800 Family and Medical Leave Act (FMLA) Leave**

An FMLA eligible employee may request or an appointing authority may designate up to 12 weeks of job protected leave within a FMLA 12-month eligibility period (See definition, FMLA 12 month Eligibility Period, Chapter 2) for any of the following reasons:

- I. To care for the employee's child after birth, or placement with the employee of a child for adoption or foster care;
2. To care for the employee's spouse, son or daughter, or parent, who has a serious health condition; or
3. For a serious health condition (including illness or injury), that makes the employee unable to perform the employee's job.

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* FMLA leave shall not be charged to an employee for time missed from work as a result of illness or injury covered by worker's compensation, unless requested by the employee.

Under certain circumstances, FMLA Leave (See definition, FMLA Leave, Chapter 2) may be taken on an intermittent basis rather than all at once, or the employee may work a part-time schedule. The following rules shall govern leave taken on an intermittent or part-time schedule:

- I. Where leave is taken because of a birth of an employee's child or placement with the employee of a child for adoption or foster care, an employee may take leave intermittently or on a reduced leave schedule only if the appointing authority agrees.
2. Where FMLA Leave is taken to care for a sick family member (employee's spouse, child or parent) or for an employee's own serious health condition, leave may be taken intermittently or on a reduced leave schedule when medically necessary.
3. In order to accommodate intermittent leave or part-time schedule, an appointing authority has a right to alter an existing job or transfer an employee to an alternative position with equivalent pay and benefits.

An employee ordinarily must provide 30 days advance notice when the leave is foreseeable. An appointing authority may require medical certification to support a request for leave because of a serious health condition, and may require second or third opinions (at the appointing authority's expense). The appointing authority may deny the taking of the leave if the advanced notice and medical certification requirements are not met.

An employee shall use available accrued annual leave and/or accrued sick leave while on a FMLA Leave with the exception of one workweek of annual leave and one workweek of sick leave, which the employee may elect to retain for use upon return to work. Usage of accrued

annual leave and accrued sick leave shall only be in accordance with Merit Rules 6.0200 and 6.0300.

An employee on FMLA Leave is also entitled to have pre-existing health insurance benefits (including the State of Delaware's share of the monthly cost) maintained while on FMLA Leave. If an employee was paying all or a part of the premium payments prior to leave, the employee would continue to pay that amount during the leave period. Failure to make such contribution within 30 days of the due date will result in termination of coverage. In the event the employee does not return to work for at least 30 calendar days upon expiration of an FMLA Leave or any extension of leave approved by the appointing authority, the appointing authority shall recover the contributions for any period of unpaid leave only if the employee does not return to work for the following reasons:

1. The serious health condition of the employee or the employee's spouse, son, daughter or parent, or
2. Another reason beyond the employee's control.

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An employee who fails to return to work or to request a personal leave upon expiration of an FMLA Leave, will be subject to corrective action in accordance with Chapter 15.

Employees may obtain a detailed description entitled "FMLA Leave - Employee Rights and Obligations" from their Personnel Office. An appointing authority shall provide a copy of the FMLA guidelines to all employees when requested or upon the commencement of an FMLA Leave.

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6.0900 Other Benefits

6.0910 Educational Leave

An appointing authority may recommend for the Director's approval educational leave with or without pay. Recommendation for educational leave with pay shall include specific funding confirmation.

The purpose of such leave is to permit an employee to pursue special work or training directly related to his/her employment and which will improve the employee's competence and capacity in the service. Such training must be of direct value to the State and limited to providing knowledge or skills which are not available through in-service training.

6.0911 Educational Assistance

Educational reimbursement shall be administered by the individual appointing authority consistent with agency budgetary allowances, and the following guidelines:

1. Only permanent full-time and permanent part-time employees are eligible.
2. Tuition costs and related fees are reimbursable. Books, parking fees, and/or transportation are not reimbursable.
3. The schooling must be work related.

4. Prior approval must be granted, in writing, by the appointing Authority.
5. Reimbursement will be made only upon satisfactory completion. Evidence of satisfactory completion and paid receipts must be submitted.
6. Any employee who leaves the employment of the State of Delaware within six months following the date of satisfactory completion of subject course shall return the full amount of the reimbursement.

*** 6.0920**

Information concerning benefits such as pensions, health and life insurance, savings plans, and similar benefits will be provided to the employee upon request by the appropriate agencies (e.g., agency personnel office, Pension Office, Treasurer's Office, State Personnel Office, credit unions, etc.).

****6.1000 Return to Work After Paid or Unpaid Leave**

In the case of an employee's absence of more than 14 consecutive calendar days due to an employee's illness or accident, or upon the request of the appointing authority, an employee shall provide a certificate from a doctor documenting fitness for duty prior to returning to work.

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CHAPTER 7.0000 RECRUITMENT AND APPLICATION POLICIES

7.0100 Recruitment

It is the policy of the State of Delaware to search widely and vigorously for the most qualified persons to fill positions in the classified service while providing equal employment opportunity and meeting the objectives of the State of Delaware Affirmative Action Plan.

7.0110

Agencies shall recruit and advertise as defined by these regulations and directives promulgated by the State Personnel Office.

**** 7.0111**

Appointing authorities may post a vacancy for agency employees (intra-agency and/or inter-agency) only or may announce a vacancy publicly as long as agency employees are considered in the filling of the vacancy.

****7.0200 Examination Announcement**

When posting a vacant position, the appointing authority shall post intra-agency vacant positions for a period of at least five (5) working days and inter-agency vacant positions for at least fifteen (15) calendar days before the closing date for receipt of applications. Notices shall contain all pertinent information about the positions being filled.

* When making public announcements of vacant positions, the appointing authority shall announce vacancies in the classified service at least fifteen calendar (15) days before the closing date for receipt of applications. Examination notices shall be given as wide a distribution as the appointing authority determines necessary, in the classified service, in the press, on radio and television and through contact with professional associations, union organizations, civic groups, educational institutions and neighborhood groups. Examination announcements and notices shall contain all pertinent information about the positions being filled.

7.0210

As necessary to assure sufficient numbers of qualified applicants, the appointing authority may continue to accept applications after the originally announced closing date provided the closing date is extended and appropriately publicized.

*** 7.0220**

The appointing authority may also decide to accept applications for certain examinations without any closing date pursuant to the procedures established by the Director.

*** 7.0230**

The appointing authority may announce a vacancy with selective requirements, provided the justification for such requirement is job-related.

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7.0300 Applications for Employment

Applications shall be made on a standard form approved by the Director. Such form shall require information concerning the applicant's past employment, education, training and other pertinent qualifications.

7.0310

No question on the application form or during interview shall be so framed as to require information concerning the race, color, religion, national origin, sex, age, or disability of the candidate, except where they are bona fide occupational requirements, or such information is required by law for statistical purposes. No question shall elicit or require information about the individual's political affiliations or beliefs.

7.0320

The applications must be signed by the candidate. Any misrepresentation or falsification may result in rejection of application, removal from register, dismissal and disqualification of future applications.

*** 7.0330**

Each applicant shall receive an acknowledgement of his/her application and general information concerning requirements for placement on lists. (See also 8.0500).

7.0400 Rejection of Application

**

Applications may be rejected if any of the following is established about the applicant:

7.0410

The applicant has made false statements or misrepresentations appear on the application.

7.0420

Applicant has cheated on an examination or has violated the confidentiality of an examination.

7.0430

The applicant is physically, mentally or otherwise unable to perform the duties of the position to which he/she seeks appointment.

7.0440

The applicant has failed to comply with the Military Selective Service Act, 50 U.S.C.A. §§451-73 et. seq.

7.0450

Criminal court convictions which renders the applicant unsuitable for the position for which application is made.

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7.0460

The applicant is or has been a member of an organization which advocates the overthrow of the government of the United States or the State of Delaware.

7.0470

The applicant does not meet the requirements of the merit system law or of these rules.

7.0480

The applicant is unavailable.

7.0490

The applicant has been separated from any branch of the armed forces under conditions other than honorable.

7.04100

The applicant has been dismissed from State service within the preceding three years.

*** 7.04110**

The applicant fails to meet the minimum qualification as stated in the class specification of position(s) for which applied.

*** 7.0500 Notification of Rejection**

Whenever an application is rejected, notice of such rejection with statement of reason shall be promptly provided to the applicant. Rejected applicants may appeal to the Director within ten (10) days of the rejection notice. The decision of the Director shall be final.

CHAPTER 8.0000 EXAMINATIONS

8.0100 Objectives of Examinations

The test used in the examination process shall fairly measure the relative capacities of the persons examined to execute the duties and responsibilities of the positions concerned, or, where appropriate, to learn to perform the duties and responsibilities thereof. Achievement, aptitude, other written tests, performance tests, physical agility and medical tests, oral interviews, evaluations of training and experience, reference checks and other tests will be used, singly or in combination, as determined by the Director, and after consultation with the appointing authorities where appropriate. Results of such evaluations shall be the basis for ranking on various eligibility lists.

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8.0200 Eligibility for Examinations

Competitive examinations are open to qualified persons who applied in accordance with the vacancy announcement.

8.0300 Ranking of Candidates

Those taking competitive examinations will be ranked on the registers in the order of their final scores for the entire examination.

In the case of ties, dates of application and home of record will be used. (See also 10.0300).

8.0400 Scoring Examinations and Qualifying Scores

A candidate's score in a given examination shall be the average of the scores on each competitive part of the examination, weighted as shown in the examination announcement. Failure in one part of the examination may be grounds for declaring such applicants as failing in the entire examination or as disqualified for subsequent parts of an examination.

8.0500 Notification of Eligibility

Applicants shall be notified in writing whether or not their name is placed on the register.

8.0600 Examination Records

The Director or the appointing authority, as applicable, shall be responsible for the maintenance of all records pertinent to the examination process and program. Applications and other necessary examination records shall be kept for one year while the applicant is on the register and at least one year thereafter. If an appeal is filed, examination records must be maintained for the length of the appeal process. All notices of changes of address shall be filed by eligibles with the appointing authority.

8.0700 Inspection of Examination Papers

Candidates shall have the right to inspect their examination papers within ten (10) calendar days after the date on which the official notice of examination results was mailed. This time period may be extended by the Director.

8.0710

Inspection of examination papers shall be permitted only during regular business hours and in accordance with procedures established by the Director. The Director will determine what examination papers may be inspected, taking into account such factors as test security, privacy, retesting procedures, and any other pertinent information.

8.0720

Any error in computation or failure to apply uniform rating procedures, if called to the attention of the Director or appointing authority, as appropriate, within ten (10) calendar days after the date on which official notification results of such rating was mailed, shall be corrected.

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8.0800 Appeal After Examination

Applicants who have taken an examination or been rated by training and experience may appeal to the Director for review of their rating in any part of such examination to assure that uniform and appropriate procedures have been applied fairly. Such appeal must be mailed to the Director within ten (10) calendar days after the date on which notification of such rating was mailed. The decision of the Director shall be final.

CHAPTER 9.0000 REGISTERS

9.0100 Kinds of Registers

**

The Director shall provide for the establishment and maintenance of such registers as are necessary for filling positions in the classified service.

9.0110

Layoff lists shall contain the names of those who have been reduced in force for reasons of lack of work or funds, or abolition of their positions. The name of any person placed on such register shall remain thereon for one (1) year from the date of separation from the service. (See also 14.0200.)

9.0120

Registers shall include in rank order of final examination score the names of persons who have passed competitive examinations. Names shall remain on such list not to exceed one (1) year from the date of examination.

Previous State employees who have left the classified service in good standing and have within two (2) years requested reinstatement shall have their names placed on registers for the class they previously held.

* 9.0130

Permanent or probationary employees desiring a transfer to another agency in the same class shall be placed on registers without a score for consideration by the appointing authority. All such names shall be equally available for consideration. Employees desiring a transfer to another agency in a different class but same paygrade shall be placed on registers after passing any competitive examination and in rank order of their final examinational score.

9.0200 Related Registers

If a vacancy exists in a position for a class where there is no appropriate list, a list may be prepared from one or more existing related registers.

9.0210

For this purpose, registers shall be used for classes for which the Director or appointing authority, as appropriate, has determined that the minimum qualifications and examinations are similar to, the existing vacancy.

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9.0300 Notice of Availability

At the time of the examination and as appropriate thereafter, information about availability shall be obtained from each applicant, giving a current address and conditions under which appointment will be accepted, including areas of the State in which they are available. Whenever an applicant submits a written statement restricting availability, their name may be withheld from all certifications which do not meet the specified conditions.

9.0400 Removal of Names from Registers

Names may be removed from registers by the appointing authority for any of the following reasons.

9.0410

One of the causes for rejection of applicants specified in 7.0400. Such applicants shall be sent written notification to their last known address.

9.0420

The applicant requests in writing that his/her name be removed.

9.0430

The applicant fails to respond to a notice of certification mailed to his/her last known address. The name may be restored to the list if a satisfactory explanation is given to the appointing authority for failure to respond.

9.0440

When the applicant has declined three offers of consideration or appointment.

9.0450

The applicant fails without valid reason to report for interview, testing or work.

CHAPTER 10.000 CERTIFICATION

10.0100 Request for Certification

Whenever an appointing authority desires to fill a position, a request for certification of eligibles shall be completed following the procedure prescribed by the Director.

10.0200 Certification of Eligibles

Upon receipt of a request for certification, the appointing authority shall certify all names from layoff list that exists for the class, names of former employees approved for reinstatement, current employees eligible for

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transfer and no more than 5 or 15% of the eligible candidates, whichever is the greater number.

10.0210

If the appointing authority requests names to fill more than one position, the number of names certified shall be increased by twice the number of additional vacancies.

* 10.0220

While an appointing authority is considering names from a certified list, subsequent requests may be received for certified lists using the same eligibility register for other vacancies. The number of names on each certified list will be determined in accordance with 10.0210, that is, the number of names shall be increased by two (from the base of 15% or 5) for each prior outstanding vacancy being considered from the same employment register.

** 10.0230

Any candidate whose name appears on a certified list may be considered to fill the vacancy for which the list was requested. Should the list be unsatisfactory, it may be returned and subsequent lists may be requested, provided the reasons for rejection accompany the returned list.

* 10.0240

Eligibility lists must be rank ordered in accordance with procedures outlined by the Director. In those circumstances where there are no ranking procedures in place and the number of qualified candidates is equal to or fewer than the maximum number to be certified, names may be certified in alphabetical order. In those instances, the appointing authority must be informed that the list is in alphabetical order.

10.0300 Residence

For tie breaking purposes, Delaware residents with identical final scores will be placed on the certified list.

10.0400 Veteran's Preference

Veterans and disabled veterans, as defined in Chapter 2 or their unremarried widows, shall receive five (5) additional and ten (10) additional points respectively upon successful completion of an examination for initial appointment to State employment only and that they may be required to present proof of honorable discharge, and in the case of disabled veterans, of disability.

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CHAPTER 11.0000 PROBATION

11.0100 Statement of Probationary Policy

All appointments shall be for an established probationary period during which the individual's fitness for appointment shall be evaluated. Appointing officers are responsible for insuring the effectiveness of this working test period and for insuring that probationary employees are given help in meeting the job requirements for appointment.

11.0200 Duration of Probationary Appointment

The Director shall determine the length of the probationary period (up to one year) for each class of positions. Upon request of the appointing authority, the Director may extend the probationary period for a particular employee, but not beyond the one (1) year maximum.

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11.0210

The following general guidelines shall apply to all State agencies subject to individual exceptions to be directed in writing with justification to the Director.

(1) 10000, 20000, and 90000 occupational branches of the classified service shall be subject to a six month probationary period.

(2) 40000 and 60000 occupational branches of the classified service shall be subject to different probationary periods according to pay grade.

- a. Pay Grades 1 - 5 --- 3 months
- b. Pay Grades 6 - 8 --- 6 months
- c. Pay Grades 9 - 26 -- 12 months

(3) 70000 occupational branch of the classified service shall be subject to a twelve month probationary period.

* 11.0300 Expiration of Initial Probationary Period

**

The appointing authority shall notify the Director, or the Director's designee, in writing within 10 days prior to the expiration of an employee's probationary period whether the employee's services are determined to be satisfactory or unsatisfactory. The appointment shall be deemed permanent if the employee's services were satisfactory, as supported by a performance appraisal completed in accordance with Chapter 16.0000 or if the appointing authority fails to send notice in writing to the Director, or the Director's designee, of satisfactory performance, unsatisfactory performance or conduct, or extension of probation within ten (10) days prior to the expiration of an employee's probationary period.

11.0400 Unsatisfactory Probationary Period

**

At any time during the initial probationary period, the appointing authority may dismiss the employee for reasons of unsatisfactory service or conduct. The appointing authority shall notify the employee in writing with reasons for the action. (See also 14.0610.)

11.0500 Appeal During Probationary Period

Except in some cases of discrimination on the basis of non-merit factors, probationary employees do not have the right under the merit system law to appeal decisions of appointing authorities not to retain their services.

11.0600 Restoration of Rejected Employee to Appropriate Register

If an employee is removed from his/her position during or at the end of the employee's probationary period, and if the Director determines that the employee is suitable for appointment to another position, the employee's name may be restored to the register from which certified.

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11.0700 Probationary Promotion or Demotion

*

Any permanent employee who is promoted, demoted for cause, or demoted not due to discreditable circumstances outside of the employee's class series, maintains permanent status but is subject to a probationary period in accordance with 13.0120. An employee demoted not due to discreditable circumstances within the employee's class series maintains permanent Merit System status and shall not be subject to a probationary period within the new classification.

*** 11.0800 Probationary Period After Transfer**

A permanent employee who is transferred to a different position (same classification, paygrade and substantially the same job duties) shall not be subject to a probationary period in the new position.

CHAPTER 12.0000 APPOINTMENT

* 12.0100 Permanent Appointment

**

Permanent appointment to classified positions will be made only after a probationary period of employment, in accordance with Merit Rule 11.0100. No appointment shall be made except in the manner prescribed by the Director, nor until the position has been classified. (See also 3.0500.)

Permanent appointments may be made on a full-time or part-time basis. (See definition of Full-Time and Part-Time in Chapter 2.)

12.0110

When considering applicants for appointments to classified positions, preference shall be given to unemployed residents of the State whenever applicable, in accordance with 29 Del. C. §5939.

12.0200 Appointment Status

12.0210 Permanent

Permanent appointment shall be made to positions that are of a continuing nature and shall become effective the date of satisfactory completion of the employee's prescribed probationary period. Permanent appointment shall not be made to positions that have been vacated as a result of approved leave of absence.

12.0220 Probationary

Probationary appointments except appointments under the provisions of 29 Del. C. §5919, unless federally required, will be made from certified lists in accordance with 10.0000 and 11.0000.

12.0230 Provisional

In accordance with 10.0000 and 11.0000, when there is urgent need for filling a vacancy in the classified service and the appointing authority is unable to certify the names of at least two eligibles, the Director may authorize the filling of the position for six months by provisional

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appointment. In order to be eligible for provisional appointment, a person must possess the necessary education, experience and other qualifications as set forth in the specification for the class concerned.

12.0231

Provisional appointments shall not be made if there are two eligibles who can be certified.

12.0232

No provisional appointment shall be made until the position has been classified and minimum qualifications established.

12.0233

Positions shall not be filled by repeated provisional appointments of the same or different individuals, and no individual shall receive successive provisional appointments. No provisional appointment shall be continued beyond six months, during which time the appointing authority, through the Director, is to arrange for appropriate examination. Provisional appointees shall compete in such examination and may then be considered in accordance with Chapter 10.0000.

12.0234

The acceptance of a provisional appointment shall not confer upon the appointee any rights of permanent status, transfer, reassignment, promotion or reinstatement. A provisional employee who has been tested may compete for the position in accordance with 10.0100 and 12.0233, but may be appointed only if his/her name appears on the certified list. If his name does not appear on the list he/she shall be removed from the position and it shall be filled from the certified list.

12.0235

The period of provisional service immediately prior to permanent appointment shall be credited toward the probationary period if performance has been evaluated on the same basis as is required in Merit Rule 11.0400 for the probationary period.

12.0240 Temporary/Casual/Seasonal/Limited Term

An appointment to an existing classified position that is not to exceed 129 working days in a fiscal year shall be temporary.

An appointment to an existing classified position that is not of a continuing nature but is projected to exceed ninety (90) days shall be limited term. Extension beyond one (1) year is subject to approval by the Director.

An appointment to a non-classified position that is not to exceed 129 working days in a fiscal year shall be seasonal.

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An appointment to a non-classified position that is not to exceed 129 working days in any fiscal year and requiring only intermittent or irregular scheduling of less than fifteen (15) hours per week shall be casual.

12.0241 Duration

Specific duration of the appointment must be indicated by the appointing authority and documentation should include pay rates and funding sources.

12.0242 Certification

Temporary, casual, and seasonal appointments need not to be made from certified lists. However, limited term appointments shall be made from certified lists, except for those made under other statutory provisions.

12.0243 Leave Accrual

Temporary, casual, seasonal and emergency appointees shall not accrue leave credit.

12.0244

The acceptance or refusal of temporary, casual, seasonal or emergency appointments shall not affect a particular eligible's standing for a probationary appointment.

12.0245

In the event that the position becomes open for a permanent appointment the appointing authority will canvass appropriate certified lists. If the name of a temporary, casual, seasonal or emergency incumbent appears on the list, he/she may be considered for the appointment.

*** 12.0246**

The period of temporary service in a classified position immediately prior to a probationary appointment to the same class shall constitute a part or all of the required probationary period if

performance has been evaluated on the same basis as is required in 11.0400 for the probationary period. In such cases vacation and sick leave shall accrue retroactively.

12.0247

Except by approval of the Director, successive temporary appointments shall not be made to the same position.

12.0248

Upon approval by the Budget Director and the Director, temporary appointees may be assigned to the same position as that already

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assigned to a permanent employee who may be on extended paid leave. In such dual incumbency, both the temporary appointee and the employee on leave shall be appropriately compensated.

12.0249

At the expiration of limited term appointments, the regular procedures for layoffs shall apply, except bumping rights shall not be provided.

12.0300 Emergency Appointment

When the need is immediate to prevent stoppage of public business or serious impairment to the public service and it is not possible to secure such persons from appropriate registers, an emergency appointment may be made by the appointing authority. Such appointment shall not exceed 30 days.

12.0400 Part-time Appointments

* The appointing authority may authorize the filling of positions on a part-time basis. (See definition Part-time in Chapter 2.)

12.0410

If an employee is needed for part-time employment, a certification shall be made by the appointing authority of the names of those eligible, in the order of their places on the appropriate register, who have indicated willingness to accept part-time appointment.

CHAPTER 13.0000 PROMOTION, TRANSFER AND DEMOTION

13.0100 Promotion

Vacancies shall be filled by promotion wherever practical and in the best interest of the classified service.

Whenever a position is to be filled by promotion, the candidate shall meet the minimum requirements of the class specification. Consideration shall be given to qualifications, performance record, seniority, conduct and, where applicable, the results of competitive examinations.

No grievance may be maintained concerning a promotion except where:

- (1) the person who has been promoted does not meet the minimum qualifications;
- (2) there has been a violation of Merit Rule 19.0100 or any of the procedural requirements in the Merit Rules; or
- (3) there has been a gross abuse of discretion in the promotion.

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*** 13.0110 Pay Rate Upon Promotion**

**

Whenever an employee is promoted, the salary rate shall be the minimum entry level of the higher grade or the lowest level of the higher grade that provides an increase of at least five percent (5). In exceptional circumstances, the appointing authority may approve a greater increase not to exceed the 80th percentile when granted in accordance with the criteria under Merit Rule 5.0711. The Director may approve a starting rate higher than the normal 5% or 80th percentile when requested in accordance with the criteria established under 5.0711 or greater than the normal 5% when the provisions of Merit Rule 5.0712 apply. Requests submitted under the critical shortage criteria must include the names of all equally qualified employees in the same classification and within the same geographical area, having a salary lower than the requested rate. The State Personnel Director in concurrence with the State Budget Director and the Controller General may provide that these employees shall also have their salaries increased (leveled up) to the dollar amount approved for the promotional increase.

***** 13.0111**

Employees promoted in accordance with Authorized Career Ladder promotional standards, as described in Merit Rule 3.0710, receive the normal promotional increase to the minimum entry level of the higher paygrade or the lowest level of the higher grade that provides an increase of at least five percent (5%). There may be exceptional circumstances where promotion to the higher level historically result in significant employee retention problems (i.e., employees at the higher level become more attractive to outside employers and tend to leave State service.) In the case of such exceptional circumstances, the appointing authority may approve a greater increase not to exceed the 80th percentile. The Director may approve a starting rate higher than the normal 5% or 80% percentile based upon evidence that the turnover rate at the higher level necessitates a higher starting salary. Requests submitted under this turnover rate criteria must include the names of all employees at the same level in the same Career Ladder sequence and within the same geographic area having a salary lower than the requested rate. The State Personnel Director, in concurrence with the State Budget Director and the Controller General, may provide that these employees shall also have their salaries increased (leveled up) to the dollar amount approved for the Career Ladder promotional increase.

**** 13.0120 Probation After Promotion**

Any permanent employee who is promoted to a new job classification maintains permanent status, but shall be subject to the normal probationary period for the new position. If he/she fails to satisfactorily complete the probationary period in the new position, the appointing authority shall notify the employee in writing, giving the reasons for this action, and the appointing authority, with the approval of the Director, may choose option #1 or #2 below; option #3 shall be at the option of the employee.

(#1) The employee may be returned to his former position and salary, without any loss of benefits; or

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(#2) be placed in an available position for which he/she qualifies, without loss of benefits.

(#3) Or the employee may elect to be laid off in accordance with Merit Rule 14.0200. Should such employee elect to be laid off, he/she would not be entitled to any bumping rights as may be afforded by Merit Rule 14.0200.

**** 13.0121**

The appointing authority's decision concerning permanent appointment to the new position for which the employee has served a probationary period is not subject to appeal. As a permanent employee, all other rights remain in tact.

13.0130

A temporary promotion pursuant to Merit Rule 3.0410, may be granted by an appointing authority, for a period of time not to exceed six (6) months. When an assignment extends beyond 90 days, registers will be canvassed and selection will be made in accordance with the requirements of Merit Rule 13.0100.

13.0131

Such promotional appointment shall be limited to special circumstances where an employing agency has no certainty of continuation of the position in its present form or of the continuation of the vacancy to which the employee is being temporarily promoted.

13.0132

Should the position become permanent, the appointing authority must require a qualifying or a competitive examination, unless the temporary promotion was competitive.

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13.0133

Substitution during vacation and other similar short term assignments is not to be construed as temporary promotion.

**** 13.0140**

The promotion of a probationary employee from one agency or department to another must have the prior approval of the present and proposed appointing authorities. Such approval shall not be unreasonably withheld. The appointing authority will require the verification of leave credit and other transferring payroll information.

13.0200 Transfer

***** 13.0210**

An employee may be transferred within an agency or department by an appointing authority from one position to another position within the same class.

***** 13.0220**

A transfer of an employee from one agency or department to another must have the prior approval of the present and proposed appointing authorities. Such approval shall not be unreasonably withheld. The appointing authority will require the verification of leave credit and other transferring payroll information.

13.0230

Upon transfer an employee shall continue to be paid at the same paygrade and percentage of midpoint.

*** 13.0240**

A permanent or probationary employee may voluntarily request placement on transfer list by filing an application with the agency, department of interest or the State Personnel Office when vacancies are announced and applications are being accepted.

13.0300 DEMOTION

13.0310

A permanent employee may be demoted to a position of a lower grade for which he qualifies for any of the following reasons:

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13.0311

When an employee would otherwise be laid off because of lack of funding or his/her position is being abolished; his/her position is being reclassified to a lower grade; lack of work; or because of the return to work from authorized leave of absence of another employee to such a position.

13.0312

When an employee voluntarily requests such demotion.

13.0313

As a disciplinary action. (See 15.0200.)

13.0320

The appointing authority shall notify the incumbent in writing in advance, stating the reason for demotion. Such notice shall include information regarding appeal rights, as provided in Merit Rule 21.0100.

13.0330

In the case of a demotion for cause, the rate of pay shall be at any percentage of the midpoint of the lower paygrade deemed appropriate by the appointing authority involved. Such pay shall be a part of the demotion action and as such is subject to the application of grievance procedure.

13.0340

The rate of pay to be authorized an incumbent, demoted not due to discreditable circumstances, shall be the rate of pay in the class of the lower paygrade recommended by the appointing authority and approved by the Director. However, upon written request of such incumbent employee and written recommendation of the appointing authority, the Director, in his/her discretion, may authorize the employee to continue to receive his/her previous higher rate of pay.

CHAPTER 14.0000 SEPARATION

14.0100 Resignation

Employees who resign their position in the classified service and fail to give their employer a minimum of two (2) weeks advance notice in writing, may be denied reemployment rights.

* 14.0110

In a situation where an employee has been given written notice of intent to terminate his/her employment, the appointing authority has the discretion to accept or not to accept the resignation of such employee.

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14.0200 Layoff

The appointing authority may lay off an employee in the classified service by reason of lack of funds or work, the abolition of the position, or other material changes in the duties or organization, or for related reasons which are outside the employee's control and which do not reflect discredit upon the service of the employee. The duties performed by an employee laid off may be reassigned to other employees already working who hold positions in appropriate classes.

14.0210

Whenever layoff is considered, the appointing authority shall notify the Director, who will determine the boundaries of the layoff field, i.e., Statewide, Department, Division, Section, or other appropriate grouping.

14.0220

No permanent employee shall be laid off while another person in a classified position is employed on an emergency, temporary, provisional or probationary basis in the same class in any organizational unit of the layoff field.

* 14.0230

No permanent employee shall be laid off until all bumping opportunities in the layoff field are exhausted, except that an employee may elect to waive such opportunity.

* 14.0240

When layoff decisions are made in accordance with 14.0200, affected eligible employees may exercise their right to bump into a position for which they qualify within their present class, and then to positions for which they qualify within their present class series, and within the same layoff field, except that bumping "up" shall not be permitted. Eligibility for bumping rights shall be determined in accordance with 14.0241.

* 14.0241

The bumping/layoff process shall be based on total aggregate classified service ("seniority") among affected employees whose performance record does not contain more than one unsatisfactory appraisal within the past 3 years. Such employees shall be eligible to exercise bumping rights. Neither (a): limited term appointment employees; nor (b): employees whose performance record contains more than one unsatisfactory appraisal within the past 3 years; shall be eligible to exercise bumping rights.

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**** 14.0242**

Affected eligible employees shall be presumed to exercise bumping rights in the county where employed unless they decide not to by notifying their appointing authority that they desire to exercise bumping rights layoff field wide, including outside the county where employed. Such employees shall also give notification if they decide not to exercise any bumping rights, i.e., neither county nor layoff field wide. Such notification shall be made in writing no later than 7 days from the date of the layoff notice given pursuant to 14.0260.

**** 14.0243**

Prior to bumping any employees, eligible employees shall fill any vacancies in the applicable class or class series. Then, unless specified otherwise, eligible employees whose positions are eliminated shall exercise bumping rights in the county where employed as follows:

**** 14.02431**

In all cases, eligible employees may only bump other employees having less seniority. The specific order of bumping shall follow 14.0240 and start with affected employees, in the order of their seniority, bumping the least senior employee in their present class, and then, as necessary, bumping the least senior employee in each succeeding lower class until there are no positions within that same class series into which employees may bump. Any such remaining employees shall, in the order of their seniority, bump the least senior employee in their present class within the layoff field, and then, as necessary, bump the least senior employee in each succeeding lower class within the layoff field until there are no positions within that class series into which employees may bump. Any such remaining employees may be laid off.

**** 14.02432**

Among employees who have specified pursuant to 14.0242 that they desire to exercise bumping rights layoff field wide, the specific order of bumping shall follow the process described in 14.02431, except that bumping rights shall apply layoff field wide rather than in the county where employed, where applicable.

**** 14.0244**

Employees in Approved Career Ladders, as described in 3.0710, shall bump from the highest level of the Career Ladder to the lowest level in the same manner as 14.0240.

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*** 14.0250**

All demotions from bumping will be handled in accordance with 13.0300 and the rate of pay shall be at any lower percentage of the paygrade midpoint in the grade determined appropriate by the Appointing Authority and approved by the Director.

*** 14.0260**

Each permanent employee to be laid off shall be notified in writing at least 30 days before the date of layoff, except where emergency conditions require a shorter period of notice. A copy of such notice shall be forwarded to the Director.

*** 14.0270**

At the time of layoff the employee will be removed from the payroll, but may request a 90 calendar day suspension of payment for unused annual and sick leave. After 90 calendar days, or sooner if requested by the employee, vacation and sick leave records must be handled in accordance with 6.0260 and 6.0360.

At the time of return to the classified service after layoff, the employee's vacation and sick records will be resumed if they have been suspended. If such records had been closed out, accrual begins anew, in accordance with 6.0200 and 6.0300.

During layoff period the individual is not considered an employee and therefore shall accrue no benefits during that period.

Employees who have been laid off may request preferential placement on lists for positions of equivalent and lower paygrades for which they meet minimum qualifications, in accordance with 9.0110.

14.0300 Disability

In accordance with 29 Del. C., Chapter 55, an employee may be separated for disability when he/she cannot perform the required duties because of a physical or mental impairment. Action may be initiated by the employee, his/her legal representative, or the appointing authority, but in all cases it must be supported by medical evidence acceptable to the appointing authority.

14.0400 Retirement

In accordance with 29 Del. C., Chapter 55, retirement will be governed by the state Employees' Pension Plan.

14.0500 Death

Separation shall be effective as of the date of death. All compensation due in accordance with law shall be paid to the estate of the employee and/or to the surviving spouse. Unused sick leave and annual leave of the employee separated by death shall be paid to the surviving spouse or his estate in accordance with Section 6.0260 and 6.0360.

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CHAPTER 15 EMPLOYEE ACCOUNTABILITY

15.1

Employees shall be held accountable for their conduct. Measures up to and including dismissal shall be taken only for just cause. "Just cause" means that management has sufficient reasons for imposing accountability. Just cause requires:

- showing that the employee has committed the charged offense;
- offering specified due process rights specified in this chapter; and
- imposing a penalty appropriate to the circumstances.

15.2

Employees shall receive a written reprimand where appropriate based on specified misconduct, or where a verbal reprimand has not produced the desired improvement.

15.3

Prior to finalizing a dismissal, suspension, fine or demotion action, the employee shall be notified in writing that such action is being proposed and provided the reasons for the proposed action.

15.4

Employees shall receive written notice of their entitlement to a pre-decision meeting in dismissal, demotion for just cause, fines and suspension cases. If employees desire such a meeting, they shall submit a written request for a meeting to their Agency's designated personnel representative within 15 calendar days from the date of notice. Employees may be suspended without pay during this period provided that a management representative has first reviewed with the employee the basis for the action and provides an opportunity for response. Where employees' continued presence in the workplace would jeopardize others' safety, security, or the public confidence, they may be removed immediately from the workplace without loss of pay.

15.5

The pre-decision meeting shall be held within a reasonable time not to exceed 15 calendar days after the employee has requested the meeting in compliance with 15.4.

15.6

Pre-decision meetings shall be informal meetings to provide employees an opportunity to respond to the proposed action, and offer any reasons why the proposed penalty may not be justified or is too severe.

15.7

Fines of not more than 10 days pay may be imposed, provided they do not cause employees to be paid less than the federal minimum wage as set forth in the Fair Labor Standards Act.

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15.8

Adverse documentation shall not be cited by agencies in any action involving a similar subsequent offense after 2 years, except if employees raise their past work record as a defense or mitigating factor.

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CHAPTER 15 STREAMLINED

RULES ON PAGES 55, 56, 57 AND 58 ELIMINATED

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CHAPTER 16 PERFORMANCE REVIEW

16.1 Purpose of Performance Review

The Director shall provide for systematic performance review to communicate expectations and responsibilities, recognize achievement, and identify areas for skill development and work performance improvement.

16.2 Changes in Performance

Recognition of effort, accomplishment, improvement or the need for further skill development shall be addressed as needed by verbal discussions, written communication, and/or formal documentation.

16.3 Unsatisfactory Performance

When an employee's work performance is considered unsatisfactory, the performance must be documented in writing, and the specific weaknesses must be made known to the employee. The employee shall be given documented assistance to improve by the designated supervisor. An opportunity for re-evaluation will be provided within a period of 3 to 6 months.

16.4 Review Appeal

The employee shall have the right to discuss any performance review or documentation with the next level of authority and may submit written comments.

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CHAPTER 16 STREAMLINED RULES ON PAGES 60 ELIMINATED
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CHAPTER 17.0000 EMPLOYEE DEVELOPMENT AND COMMUNICATIONS

17.0100 Employee Development

The Director shall encourage and assist the appointing authorities to initiate and develop programs to improve the work effectiveness and morale of the State's employees, including training, safety, health, welfare, recreation, counseling and employee and labor relations.

17.0200 Employee Communications

The Director is authorized to publish an employee newspaper, an employee handbook, and such other publications he/she deems appropriate.

CHAPTER 18.0000 EMPLOYEE CONDUCT

18.0100 Attendance

Each appointing authority shall be responsible for the attendance of all employees in his/her agency. No employee shall be paid unless he/she is at work in accordance with these rules and departmental or agency rules or he/she is on authorized paid leave as provided in Chapter 6.0000.

18.0110

Every employee is required to report to work on time each day. When because of emergency or sudden illness the employee cannot report for work, he shall notify his supervisor within the first hour of absence, or as soon as practical thereafter, giving reason for his absence. (See also 6.0311 and 6.0330.)

18.0120

Absences without authorized leave or tardiness may, at the discretion of the appointing authority, subject the employee to disciplinary action in accordance with 15.0200.

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18.0200 Outside Employment and Pecuniary Interests

18.0210

An employee in the classified service shall not engage in any outside employment or other outside activity incompatible with the proper discharge of the responsibilities of his or her position. It shall be deemed incompatible with such discharge of responsibilities for an employee to accept any fee, compensation, gift, payment of expenses or any other thing of monetary value under circumstances in which acceptance may result in a conflict with his/her public duties.

18.0220

An employee in the classified service shall not have a personal interest in any business transaction within his area of influence in State Government nor shall he/she have any private business relationship that may conflict with his/her public duties. This restriction shall not prohibit, however:

18.0221

Ownership of corporate stocks and bonds bought and sold on the public market.

18.0222

Receipt of bona fide reimbursement for actual travel expense and other necessary subsistence for which government payment or reimbursement is made.

18.0223

Participation in the affairs of charitable, religious, non-profit education, public service or civic organizations, or the activities of national or state political parties not prohibited in 18.0300.

18.0224

Awards for meritorious public contributions given by public service or civic organizations.

18.0300 Political Activity

In accordance with 29 Del. C. §5954, no employee in the classified service shall engage in the following activities:

18.0310

"No person shall use or promise to use, directly or indirectly, any official authority or influence, whether possessed or anticipated, to secure or attempt to secure for any person an appointment or advantage in appointment to a position in the classified service, or an increase in pay or other advantage in employment in any such position, for the purpose of influencing the vote or political action of any person, or for any consideration."

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18.0320

"No employee in the classified service shall engage in any political activity or solicit any political contribution, assessment or subscription during his hours of employment or while engaged in the business of the State."

18.0330

"No person shall induce, directly or indirectly, any employee in the classified service to make any contribution, assessment or subscription to a political party under the representation, actual or implied, that such assessment, subscription or contribution will have any effect on the employee's employment with the State."

18.0340

Any officer or employee in the classified service who violates any of the provisions of this section shall forfeit his office or position, and for one (1) year shall be ineligible for any office or position in the State service. The Director shall investigate any signed written charge that this section on political activity has been violated and shall take whatever steps are necessary to insure compliance with the above.

18.0350

Employees in Federally funded programs subject to I.M.S.S. are further restricted in political activity according to provisions of the Hatch Act.

CHAPTER 19.0000 NON-DISCRIMINATION POLICY

19.0100

Discrimination against any person in recruitment, examination, appointment, training, promotion, retention, discipline or any other aspect of personnel administration because of political or religious opinions or affiliations or because of race, national origin, age, sex, physical or mental disability, or other non-merit factors will be prohibited.

19.0200

Specific age, sex, physical or mental requirements which constitute a bona fide occupational qualification necessary to proper and efficient administration may be required. (See also 21.0113.)

19.0300

Grievances and appeals arising from such factors shall be made in accordance with Chapters 20.0000 and 21.0000.

CHAPTER 20: THE GRIEVANCE PROCEDURE

20.1

To promote positive working relationships and better communications, employees and their supervisors shall informally meet and discuss employee claims of Merit Rule or Merit law violations prior to filing a formal grievance. Merit employees have the right to use this grievance procedure free of threats, intimidation or retaliation, and may have union or other representation throughout the process.

20.2

A "grievance" means an employee complaint about the application of the Rules or the Merit System law (29 Delaware Code, Chapter 59), which remains unresolved after informal efforts at resolution have been attempted. A grievance shall not deal with the substantive policies embodied in the Merit System law.

20.3

An employee who is in a bargaining unit covered by a collective bargaining agreement shall process any grievance through the grievance procedure outlined in the collective bargaining agreement. However, if the subject of the grievance is non-negotiable pursuant to 29 Del. C, 5938, it shall be processed according to this Chapter.

20.4

Failure of the employing agency to comply with time limits shall automatically move the grievance to the next step unless the parties have a written agreement to delay, or grievants have opposed in writing moving the grievance automatically to the next step. Failure of the grievant to comply with time limits shall void the grievance. The parties may agree to the extension of any time limits or to waive any grievance step. Grievances about demotions for just cause, suspensions or dismissals shall start at Step 2 within 14 calendar days in the manner set forth in 20.6.

20.5

Grievances about promotions are permitted only where it is asserted that (1) the person who has been promoted does not meet the minimum qualifications; (2) there has been a violation of Merit Rule 19.0100 or any of the procedural requirements in the Merit Rules; or (3) there has been a gross abuse of discretion in the promotion.

20.6

Step 1: Grievants shall file, within 14 calendar days of the date of the grievance matter or the date they could reasonably be expected to have knowledge of the grievance matter, a written grievance which details the complaint and relief sought with their immediate supervisor. The following shall occur within 14 calendar days of receipt of the grievance: the parties shall meet and discuss the grievance and the Step 1 supervisor shall issue a written reply.

20.7

Step 2: Any appeal shall be filed in writing to the top agency personnel official or representative within 7 calendar days of receipt of the reply. The following shall occur within 30 calendar days of the receipt of the appeal: the designated management official and the employee shall meet and discuss the grievance, and the designated management official shall issue a written response.

20.8

Step 3: Any appeal shall be filed in writing to the State Personnel Director within 14 calendar days of receipt of the Step 2 reply. This appeal shall include copies of the written grievance and responses from the previous steps. The parties and the Director (or designee) may agree to meet and attempt an informal resolution of the grievance, and/or the Director (or designee) shall hear

the grievance and issue a written decision with 45 calendar days of the appeal's receipt. The Step 3 decision is final and binding upon agency management.

20.9

If the grievance has not been settled, the grievant may present, within 20 calendar days of receipt of the Step 3 decision or of the date of the informal meeting, whichever is later, a written appeal to the Merit Employee Relations Board (MERB) for final disposition according to 29 Del. C. 5931 and MERB procedures.

20.10

Retroactive remedies shall apply to the grievant only and, for a continuing claim, be limited to 30 calendar days prior to the grievance filing date. Any financial settlement shall be reduced by the amount of the grievant's earnings during the period covered by the settlement regardless of source, excluding part-time income which was received prior to the separation.

20.11

Grievants may attend any meeting held pursuant to this Chapter without loss of pay; provided, however, grievance preparation and investigation time, and any discussion time with their grievance representative shall not be done during employee work time.

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CHAPTER 21.0000 APPEALS

21.0100 Appeals to the Merit Employee Relations Board

* 21.0110 Direct Appeals

Appeals may be made directly to the Merit Employee Relations Board for the following two reasons:

* 21.0111 Appeal from Disciplinary Action

Any permanent employee who is dismissed, demoted or suspended for disciplinary reasons may within thirty (30) calendar days after such action appeal directly to the Merit Employee Relations Board. As an alternative, the employee may elect to process his/her appeal through the grievance procedure. (See also 20.0000.)

* 21.0112 Appeal from Discrimination

Any applicant or employee who has reason to believe that he/she has been discriminated against because of an interpretation or application of the Merit Rules by the Director or any procedures or regulations established by the Director for the purpose of implementing the Merit Rules may appeal directly to the Merit Employee Relations Board within ten (10) working days of the date of the action being appealed. Such appeal must be based on discrimination due to religious or political

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opinions or affiliations, national origin, race, or other non-merit factors. Any employee who has reason to believe he/she has been discriminated against by action within an agency should initiate a grievance in accordance with the grievance procedure. (See also 20.0300.)

* 21.0120 Appeals Through the Grievance Procedure

Appeals to the Merit Employee Relations Board other than those listed above shall be made only after the Merit System grievance step procedure has been followed. Appeals of this type must concern the interpretation or application of the Merit Rules or statutes and must be in writing and delivered in person or by mail to the Personnel Director. Such appeals must be submitted within fifteen (15) working days of receipt of the written statement of findings from the Personnel Director (or designee) at Step 4 of the grievance procedure. (See also 20.0340.)

** 21.0121

Any employee may request a written review of his/her performance appraisal by the Merit Employee Relations Board following an unacceptable Step 3 decision if the employee's overall performance appraisal was unsatisfactory and has directly led to the denial of a pay increase. This written review will be limited to a consideration of whether the formal appraisal procedures were followed and whether there is any factual support for the performance appraisal. The Board will uphold the evaluator's overall performance rating if it is supported by relevant facts. The Board will not substitute its judgment for that of the evaluator.

** 21.0130 Notice of Appeal

Any notice of appeal to the Board, either as a direct appeal under 21.0110 or as an appeal through the grievance procedures under 21.0120, shall be in writing and accompanied by copies of all relevant written materials from any previous steps in the grievance procedures, if any, including a statement indicating:

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- * a. The nature of the act complained of;
- b. The alleged violation of the Merit Rules complained of;
- c. The argument which the appellant wishes to present to the Board, to include the relief sought;
- d. Any legal authority the appellant intends to rely upon.

21.0200 Procedure for the Hearing

21.0210

Upon receipt of an appeal through 21.0110 or 21.0120, the Director shall notify the employee promptly of the estimated schedule for the hearing. Reasonable notice will be provided to the appellant and appointing authority of the actual scheduled date. The hearing will be held as promptly as can be arranged following receipt of the appeal.

21.0220

A verbatim record of the proceedings before the Board shall be taken by an electronic recording instrument or by Court Stenographer. The Chairman of the Board or his/her designated representative shall preside at the hearing and shall open the hearing by naming the parties, stating the nature of the appeal and the relief sought. Three members of the Board shall constitute a quorum for all proceedings before the Board.

The appellant shall have the right to be represented by counsel at the hearing.

All testimony before the Board shall be taken under oath. Any probative evidence will be admitted, except that evidence which is plainly irrelevant, immaterial or unduly repetitive shall be excluded. Technical rules of evidence shall not apply.

The Delaware Administrative Procedures Act, 29 Del. C. Chapter 101, is applicable to all proceedings before the Board.

21.0230

The Chairman shall determine the "moving party". In appeals involving disciplinary action, the moving party shall be the appointing authority. In all other appeals the moving party shall be the appellant. The moving party shall open the hearing with a brief statement of what he intends to establish. The moving party shall follow his opening statement with the production of evidence in support of its case. Following cross-examination, evidence shall be presented in support of the defending party's action. Subsequent to initial testimony and cross-examination by the appellant or appointing authority, any witness may be examined by any member of the Board.

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21.0240

Closing arguments may be presented as indicated by the Chairman. If briefs are to be presented, the Chairman will determine a reasonable date of submission of the briefs. The Merit Employee Relations Board decision will be rendered in writing to the appellant and his/her representative and the appointing authority within thirty (30) calendar days from the conclusion of the hearing or from the date briefs are to be filed.

21.0250

All appeals of a Board decision to the Superior Court shall be by the filing of a notice of appeal with the Court within thirty (30) days of the employee being notified of the final written decision of the Board.

21.0251

The costs of any transcript of record required by the Superior Court on review of a decision of the Board shall be borne by the party taking the appeal to Superior Court. Such appellant shall be responsible for the costs of any transcript(s) required by the Court, plus a copy for the appellee.

In the event a Court is called upon to make its own findings due to a tie vote within the Board, the costs of producing the transcript(s) required by the Court, plus one copy for each party shall be borne equally by the appealing and appellant sides.

If the appellant in Superior Court is successful, he is entitled to be reimbursed for the costs of the transcript, with all appellees sharing the expense equally.

CHAPTER 22.0000 PERSONNEL RECORDS AND REPORTS

*** 22.0100 Master Personnel Records**

A master personnel record for each employee shall be established and maintained by the appointing authority of each agency. The records shall include copies of: application for employment; each personnel transaction; attendance and leave records; employee performance and appraisal documents; grievance records; verification of education and employment and any other records or information considered appropriate. At the discretion of the Director, these records may be either physical (hard) copies or computer stored data. Personnel records are confidential and shall be maintained as necessary to ensure their confidentiality. These and other employee records shall be readily available for review by the Director or the Director's designee. Unauthorized disclosure of any portion of a State employee's records shall be grounds for dismissal.

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*** 22.0200 Employee Access to Records**

An employee shall have controlled access to his/her records. After obtaining permission of the appointing authority, the employee shall be scheduled to examine his/her records under the supervision of those charged with maintaining such records.

*** 22.0300 Personnel Transactions**

All appointments, separation and other personnel transactions must be made on forms designated by the Director.

*** 22.0400 Records Disposal**

The employee's personnel record is part of the permanent records of the employing agency. Upon transfer, the complete original personnel record of the employee is to be forwarded to the gaining agency. The losing agency will keep copies of transactions which took place while the employee was employed with that agency as part of that agency's permanent personnel records. An employee's complete personnel file is to be maintained by the last agency of employment.

CHAPTER 23.0000 PAYROLL

23.0100 Payroll Change

An agency head or other official may add an employee to the payroll, change his/her salary or status only upon prior execution of the properly completed personnel transaction forms, designated and approved for use by the Director.

23.0200 Review of Payrolls

No person shall make or approve payment for personal services to any employee in the classified service unless the appropriate documents are certified by the appropriate State officer to the effect that the individual is employed in accordance with 29 Del. C. §5942 and these rules.

23.0300 Audit

The Director shall conduct such audits of State payrolls and such other investigations as deemed necessary to assure compliance with 29 Del. C. §§5942-43.

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23.0310

Any violations shall be called immediately to the attention of the appropriate agency head and to the Budget Director, Auditor of Accounts and State Treasurer.

23.0320

Thereafter no payment shall be made to any employee whose salary rate has been questioned until the rate has been adjusted to the satisfaction of the Director.

23.0330

If the Director wrongfully withholds certification of the payroll account of any employee, such employee may take court action to compel the Director to certify such payroll.

23.0400 Recovery of Salaries Improperly Paid

In accordance with the provisions of 29 Del. C. §5943, officials may be held liable for the return of any salaries they wrongfully authorize.

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