

OUT-OF-CLASS (OOC) WORK

1011

(No.137 March 2010)

An employee is considered working OOC only when he/she is performing the full range of duties and responsibilities of a higher classification on a regular and consistent basis (more than 50 percent of the time). Depending on which Bargaining Unit (BU) an employee is a part of, they have to work a certain amount of consecutive days in the higher classification to establish OOC work. When there is a conflict with what constitutes OOC work and the provisions of a Memorandum of Understanding (MOU), the MOU shall prevail.

REFERENCES

1011.1

(No.137 March 2010)

[Government Code Sections 19050.8; 19051; 19818.16; 19818.18](#)

[California Code of Regulations, Title 2, Administration, Division 1, Chapter 1, Sections 212, 302.3, 442](#)

[California Code of Regulations, Title 2, Administration, Division 1, Chapter 3, Section 599.810](#)

[Appropriate BU MOU](#)

[Personnel Management Liaison Memorandum \(PML\) 2007-026](#)

[State Controller's Office Payroll Procedures Manual, Section G](#)

CRITERIA

1011.2

(No.137 March 2010)

For the purposes of this section, a classification is considered to be at a "higher level" if the maximum salary of the highest salary range (excluding alternate range criteria other than deep class criteria) is any amount more than the maximum salary of the highest range of the classification in which an employee holds an appointment.

When an employee is performing the full range of duties normally assigned to a higher classification or the duties of an absent employee whose position is properly assigned to a higher classification, the employee shall be considered to be working OOC.

The "full range of duties" requires that the tasks performed for the majority of the time are outside the classification in which the employee has a current, legal appointment and are encompassed in another classification. This indicates that the employee has been assigned duties of a higher classification.

The standards for determining the full range of duties are as follows:

- The kind and variety of duties performed, and
- The relative time which the employee will spend/has spent performing the duties of a higher classification.

An employee is not considered to be working OOC if he/she meets any one of the criteria below.

- The employee is not performing the full range of duties described in the class specification. If an employee is performing the duties of his/her assigned classification the majority of the time, he/she is not considered to be working OOC. This is true even when those duties substantially overlap those of another classification at the same or higher level.
- The employee is performing the prescribed duties while on a Compelling Management Needs Assignment, a Training and Development (T&D) assignment, in an apprenticeship or other training classification, or is performing duties different from regular duties due to an injury, an illness, or participation in a return-to-work program.
- DPA approves a change in allocation standards, and an employee claims that he/she was working in a higher classification before the effective date of the change.
- A new classification which describes duties that were previously properly allocated to another classification is established by the State Personnel Board (SPB), and the employee claims that he/she was working at the higher level before establishment of the new classification.
- An OOC grievance/complaint based on an alleged accelerated movement in a deep class series (e.g., Staff Services Analyst, Ranges A, B, and C) or from the trainee to/through the journey level of a series.

AVOIDING OOC WORK

1011.3

(No.137 March 2010)

It is the department's policy to avoid OOC assignments which are not critical to the mission of the department or when work needs can be met in another manner.

Alternatives include:

- Limited-term appointments.
- Temporary reassignment of work to appropriately classified positions.
- Rotating assignments.
- Training and Development assignments.
- Acting assignments under [SPB Rule 302.3](#) (Compensable up to 60 workdays).
- Compelling Management Needs Assignments under SPB Rule 442 (Noncompensable).
- If criteria is met, Temporary Authorization Appointments (TAUs) may be assigned.

AUTHORIZATION FOR OOC WORK/PAY

1011.4

(No.137 March 2010)

Supervisors are not to independently authorize OOC work. A [Request for Personnel Action \(PO-200\)](#) package, requesting OOC must be submitted to the Classification and Pay Unit in Sacramento, where it will be reviewed and routed in the same manner as other PO-200 requests.

Regions are not to initiate any payment for OOC work without (1) having secured necessary approvals through the PO-200 process; or, (2) receiving instructions from the Classification and Pay Unit resulting from approval of an OOC grievance filed by an employee after the fact.

ASSIGNMENT AND PAY FOR OOC WORK

1011.5

(No.137 March 2010)

BU 8 EMPLOYEES

1011.5.1

(No.137 March 2010)

No BU 8 employee can be involuntarily assigned to work OOC.

If the department requires, in writing, that an employee work in a higher classification for more than 30 consecutive days (and the employee consents), the employee shall receive a pay differential of five percent over his/her normal daily rate of the classification to which he/she is appointed for that period in excess of 30 days.

If the department head or designee requires, in writing, that an employee work in a higher classification (and the employee consents) for 60 consecutive calendar days or more, the employee shall receive a pay differential of five percent over his/her normal daily rate of the classification to which he/she is appointed from the first day of the assignment. The pay differential shall not be considered as part of the base pay in computing the promotional step in the higher classification.

If the assignment to a higher classification is not terminated before it exceeds 120 consecutive calendar days, the employee shall be entitled to receive the difference between his/her salary and the salary of the higher classification (at the same step the employee would receive if he/she were to be promoted to the classification) for that period in excess of 120 consecutive days.

No BU 8 employee will be assigned to OOC work for more than one year.

Once approved by the methods described in Section 1011.7, pay will be processed by the unit Personnel Specialist. It will be done in accordance with the [Payroll Procedures Manual \(Section G\)](#) to the extent that it does not conflict with the provisions of the MOU. Where there is a conflict, the MOU shall prevail.

OTHER BU EMPLOYEES

1011.5.2

(No.137 March 2010)

Before an OOC assignment is considered by departmental supervisors, the supervisor must review the MOU. The MOU may contain varying requirements and amounts of pay.

Once approved by the methods described in Section 1011.7, the unit Personnel Specialist will process pay. It will be done in accordance with the [Payroll Procedures Manual \(Section G\)](#) to the extent that it does not conflict with the provisions of the MOU. Where there is a conflict, the MOU shall prevail.

EXCLUDED EMPLOYEES

1011.5.3

(No.137 March 2010)

In accordance with [DPA Rule 599.810](#), confidential, supervisory, and non-managerial excluded employees performing in a higher classification for more than 15 consecutive workdays shall receive the rate of pay they would receive as if they were appointed to the higher classification for the entire duration of the assignment, not to exceed one year. OOC assignments must be made in advance and in writing.

Managerial employees can reasonably be expected to complete a wide range of duties not normally part of their assignments and classification without additional compensation. Managerial OOC assignments may rarely extend beyond a short time frame, in which case additional compensation will be determined to be appropriate. Payment of managerial OOC will commence on the ninety-first day of the assignment.

It is DPA's policy that employees "acting" in lieu of an exempt employee (i.e., working OOC as an exempt) will do so without further compensation. Each OOC assignment request for exempt employees will be determined by DPA on a case-by-case basis. Once approved through the methods described in Section 1011.7, pay will be processed by the unit Personnel Specialist in accordance with the [Payroll Procedures Manual \(Section G\)](#). The employee shall be entitled to receive the difference between his/her salary and the salary of the higher classification at the same step the employee would receive if he/she were promoted to the classification.

OOO GRIEVANCES/COMPLAINTS

1011.6

(No.137 March 2010)

BU 8 EMPLOYEES

1011.6.1

(No.137 March 2010)

If a BU 8 employee believes that he/she is working OOC in a manner which violates the OOC pay section of the MOU, he/she may file a complaint.

OOO complaints will be filed through the complaint procedure described by Section 7.1 Complaint Procedure of the MOU. The claim is to be filed on the [Employee Contract Grievance \(STD. 630\)](#) (type the word "COMPLAINT" at the top of the STD. 630), within the time limits prescribed by the MOU.

If it is determined that the employee is working OOC as described in Section 1011.6, the employee shall be compensated for the OOC period as specified in the MOU.

Once the complaint procedure within the department has been exhausted, the employee or his/her representative may, within 30 days, forward the matter to DPA for a review hearing by its staff over the classification aspects of the complaint.

If DPA determines that the employee is working OOC and CDF Firefighters believes that the MOU provisions have not been properly applied, it may forward the salary issue only to arbitration. The question of whether OOC work was performed may not be arbitrated.

OTHER BU EMPLOYEES

1011.6.2

(No.137 March 2010)

If an employee believes that he/she is working OOC in conflict with departmental policy or his/her MOU, he/she may file a grievance on an [STD. 630](#). The grievance must be filed in accordance with the procedures and time limits prescribed by the MOU. If it is determined that the employee is working OOC and OOC compensation is approved through the process described in Section 1011.7, the unit Personnel Specialist will process the OOC pay.

EXCLUDED EMPLOYEES

1011.6.3

(No.137 March 2010)

Nonrepresented employees who believe they are inappropriately working OOC may file a grievance following the excluded employee grievance procedure. An [Excluded Employee Complaint \(STD. 631\)](#) should be filed no later than 30 days after the date of the last occurrence of working OOC.

If it is determined that the employee is working OOC and OOC compensation is approved through the process described in Section 1011.7, pay will be processed by the unit Personnel Specialist.

PROCESSING OOC PAYMENTS

1011.7

(No. 137 March 2010)

In accordance with [PML 2007-026](#), all departments have delegated authority to approve OOC assignments as provided in the MOU. For confidential, supervisory, managerial, and other excluded employees, departments may approve OOC for up to one year. OOC assignments to exempt positions must be sent to DPA for pre-approval.

The unit Personnel Specialists may only process OOC pay after receiving approval by the Classification and Pay Unit in Sacramento. This review is initiated by a PO-200 before the assignment of out-of-class work occurs. A review can also occur as a result of an employee grievance during or after perceived OOC work.

Under [Government Code Section 19818.16](#), pay cannot be given for OOC work if more than one year has passed prior to the date of filing an OOC grievance.

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