

# Draft Rule Amendments—Legislative Format

## Rules in Chapter 6

### 6-2 Employee-Employer Relations Systems

#### 6-2.1 Collective Bargaining Authorized

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(c) **Intent; retention of authority.** The civil service commission intends to defer to and approve collective bargaining agreements negotiated in good faith between the employer and an exclusive representative when permitted by this chapter. However, the commission is obligated to retain and exercise its constitutional authority in all matters. The commission expressly retains the authority to do all of the following:

- (1) Review, modify, or reject, in whole or in part, each proposed collective bargaining agreement.
- (2) Determine, during the term of a collective bargaining agreement, if a provision previously approved has been applied or interpreted to violate or otherwise rescind, limit, or modify a civil service rule or regulation governing a prohibited subject of bargaining, notwithstanding any contrary provision of the agreement.

(3) Approve rules of general applicability during the term of a collective bargaining agreement.

### 6-3 Commission Authority

#### 6-3.1 Commission Relationship to Collective Bargaining

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(c) **Modification of agreement during term.** Notwithstanding that the civil service commission previously approved the provisions of a collective bargaining agreement, the commission retains the authority, during the term of a collective bargaining agreement, to modify the agreement without the approval of the parties, as provided in rules 6-3.5, 6-3.8(c), and 6-3.8(e);10.

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#### 6-3.2 Prohibited Subjects of Bargaining

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(b) **Prohibited subjects of bargaining.** The civil service authority, policy, rules, regulations, procedures, and practices governing or regulating any of the following are prohibited subjects of bargaining:

- (1) **Classification.** ~~The establishment~~ Establishment and maintenance of the classification plan ~~and the determination of the-, including all position~~-classification ~~and grade assignment of a new or existing position in the classified service~~ issues, working-out-of-class issues, class clusters, and preauthorized transfer lists. A collective bargaining agreement cannot confer exclusive authority to perform specific duties to a classification or bargaining unit. ~~Although the rates of compensation for an existing class of positions are a mandatory subject of bargaining, the~~ The state personnel director ~~retains the~~ has sole authority to ~~establish~~ set the

initial rate of compensation for a ~~newly created classification of positions~~ when ~~the new classification is included in~~ [first added to](#) the official classification plan.

- (2) **Selection.** ~~The determination~~ [Determination](#) of the qualifications of candidates for positions in the classified service, including, but not limited to, appraisal, probation, and appointment.
- ~~(3) **Class clusters.** The determination of classification equivalency or eligibility, including, but not limited to, the creation of class clusters and preauthorized lateral job change lists.~~
- ~~(4) **Working out of class.** All working out of class issues, including (1) whether an employee has worked out of class, (2) the duration of any working out of class assignment, (3) the classification and level of the duties and responsibilities performed while working out of class, (4) the amount of any working out of class pay or benefits due an employee, (5) the rights of an employee seeking review of a working out of class claim, and (6) the authority of an appointing authority to make working out of class assignments.~~
- ~~(5)~~ [\(3\) \*\*Assignment of staff.\*\* The employer's rights under rule 6-4.1\(d\) to assign staff, including non-disciplinary transfers, employment preference, recall, working out of class, scheduling, shift assignment, overtime assignment, and defining seniority.](#)
- [\(4\) \*\*Disbursements for personal services.\*\* Review and approval or disapproval of requests by agencies to make disbursements for personal services outside the classified service. Notwithstanding this subsection, the following are proper subjects of bargaining:](#)
  - (A) Notice to the exclusive representative of a request for permission by the appointing authority to make disbursements for personal services outside the classified service.
  - (B) The obligations to meet and confer regarding the impact of a decision to make disbursements for personal services outside the classified service.
  - (C) Reasonable efforts on the part of the employer, not involving a delay in implementation, to reduce the impact on current classified employees of a decision to make disbursements for personal services outside the classified service.
- ~~(6)~~ [\(5\) \*\*Political or union activity.\*\* Political activity or union activity by classified employees during actual-duty time; \[requirements and limitations on union leave in rule 6-3.9\\(c\\)\]\(#\); and \[requirements and limitations on strikes and strike-related grievances in rule 6-15.\]\(#\)](#)
- ~~(7)~~ [\(6\) \*\*Civil service authority.\*\* The authority of the civil service commission, the state personnel director, or civil service staff established by law, including the civil service rules and regulations.](#)
- ~~(8)~~ [\(7\) \*\*System of collective bargaining.\*\* The system of collective bargaining created in the ~~civil service rules, the bargaining relationships authorized in the rules, and~~ \[rules and regulations, including\]\(#\) the limitations, restrictions, and obligations on ~~the~~ collective bargaining parties, \[eligible employees\]\(#\), collective bargaining agreements, and ~~eligible employees established in the civil service rules and regulations.~~](#)
- ~~(9)~~ [\(8\) \*\*Outside the bargaining unit.\*\* ~~Conditions~~ \[bargaining over conditions\]\(#\) of employment outside the bargaining unit.](#)

~~(10) Patents and copyrights.~~ (8) Specifically prohibited compensation issues. Compensation related to patents and copyrights, performance pay, critical-position premium, and any other compensation issue specifically identified by rule or regulation as a prohibited subject of bargaining.

~~(11) Union leave.~~ The requirements and limitations on union leave in rule 6-3.9(c).

~~(12) Strikes.~~ The requirements and limitations on strikes and strike-related grievances.

~~(13) Excluded positions.~~ The requirements, limitations, and procedures regarding excluded positions in rule 6-6.4.

**(14) Abolition or creation of positions.** The Appointing authorities' constitutional authority ~~of an appointing authority~~ to create or abolish positions for reasons of administrative efficiency, the director's and commission's authority under rule 2-16 to assume positions, ~~and employees' grievance and appeal rights of classified employees aggrieved by the abolition or creation of a position.~~

~~(15) Assumptions.~~ The determinations by the state personnel director or the civil service commission authorized in rule 2-16 ~~[Assumptions], including, but not limited to, an assumption of a position, classification of an assumed position, initial appointment to an assumed position, initial treatment of an assumed employee, and initial pay and benefits of an assumed employee.~~

### 6-3.4 Modification after Approval

A primary or secondary collective bargaining agreement approved by the civil service commission remains in effect between the parties during its approved term, unless otherwise amended by the commission during its term as provided in rules 6-3.5 ~~or~~ 6-3.8(c), or 6-3.10. An amendment to an existing collective bargaining agreement is a quasi-legislative act.

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### 6-3.9 Union Leave

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**(c) Limitations and reporting requirements.** The grant of authority for union leave is expressly conditioned on compliance with the following:

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~~(5) The state employer shall report annually to the civil service commission on the state subsidy for union activities. The report must include the amount, type, and value of all state paid union leave, administrative leave banks, administrative union officer leave, and any other arrangement by which an employee receives any compensation, benefit, or benefit accrual paid in whole or in part by the state for union activities.~~

~~(6)~~ The state employer or an appointing authority are prohibited from entering into any formal or informal written or unwritten agreements permitting classified employees to engage in union activities on actual-duty time or ~~to~~ receive any compensation, benefit, or benefit

accrual paid in whole or in part by the state for union activities, ~~unless expressly included in a collective bargaining agreement approved by the civil service commission.~~

- (6) Each labor organization that has been certified as exclusive representative for at least one recognized bargaining unit shall receive paid leave credits of 2,088 hours per fiscal year to allow a single officer to be absent fulltime for union activities. All other union leave is unpaid, but an exclusive representative may fully reimburse an agency for all associated employer payroll costs, including wages, taxes, benefits, and retirement contributions, to allow an employee to receive pay and benefits while on union leave as if in pay status.

### **6-3.10 Rules of General Applicability**

The commission retains authority to approve rules of general applicability during any collective bargaining agreement's term and to apply them immediately to all employees and parties notwithstanding any agreement provision. If a rule of general applicability is proposed, the director shall give the state employer and exclusive representatives written notice at least 14 days before the meeting when the rule is considered. The notice must state that the proposed rule, if approved, could apply immediately to employees covered by collective bargaining agreements. A rule of general applicability is immediately effective if a quorum of the commission approves the amendment.

## **6-4 Rights of Employer**

### **6-4.1 Management Rights**

The employer may determine or exercise the following without engaging in collective bargaining:

- (a) Matters of managerial policy.
- (b) Mission of the agency.
- (c) Budget.
- (d) The method, means, and personnel by which government operations are to be conducted, including organizational structure and the selection, direction, assignment, and transfer of employees.
- ~~(e) Organizational structure.~~
- ~~(f)~~ (e) Standards of service and maintenance of efficiency.
- ~~(g) The right to select, direct, or assign, employees and to initiate lateral job changes.~~
- ~~(h)~~ (f) The right to discipline employees for just cause.
- (ig) The right to relieve employees from duty and abolish positions for reasons of administrative efficiency including, for example, lack of work, lack of adequate funding, change in agency mission, or reorganization of the work force.
- (jh) In case of emergency, the right to take whatever action may be necessary to carry out the agency's mission.

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## 6-7 Dues and Service Fees

If agreed to in a collective bargaining agreement, the state may deduct the dues or service fee of a member of an exclusively represented bargaining unit through payroll deduction. ~~Notwithstanding any contrary provision of a collective bargaining agreement, a~~ An appointing authority ~~shall~~ cannot deduct membership dues or service fees unless the employee has filed a current voluntary written authorization. The director shall establish the exclusive process for employees to authorize or deauthorize deduction of dues or fees.

## 6-9 Negotiations and Impasse

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### 6-9.6 Negotiated Grievance Procedures

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#### (b) Jurisdictional limitations on arbitrators.

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- (3) ~~None of the~~ The following disputes ~~can~~ cannot be adjudicated in a grievance procedure authorized in a collective bargaining agreement, ~~but~~ They can only be adjudicated in a civil service forum under the exclusive procedures provided ~~for~~ in the ~~civil service~~ rules and regulations:
- (A) A grievance by an employee ~~who is~~ aggrieved by the a position's abolition, ~~or~~ creation, or assumption.
  - (B) A grievance by an employee aggrieved by an arbitrary and capricious lateral job change resulting in substantial harm.
  - (C) A grievance by an employee aggrieved by the application of a position-employment preference or recall rights.
  - (D) A grievance by an employee aggrieved by the employer's exercise of any other of its rights to assign staff, including scheduling, shift assignment, overtime assignment, or seniority calculation.
  - (~~B~~E) A grievance by an employee disciplined or denied ~~the~~ use of sick or annual leave for striking.
  - (~~C~~F) A grievance by an employee whose probationary appointment is rescinded.
  - (G) A complaint including, but not limited to, a grievance, technical appeal, or labor relations appeal, against the civil service commission or civil service staff.
  - (~~D~~H) A complaint including, but not limited to, a grievance, technical appeal, or labor relations appeal, arising out of or related to a prohibited subject of bargaining.
  - (~~E~~I) Any matter or dispute in which civil service rules or regulations provide an exclusive procedure or forum for the resolution of the matter or dispute.

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## Rules in Other Chapters

### 2-5 Employment Preference

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#### ~~2-5.5—Application of Employment Preference between Employees Covered by a Collective Bargaining Agreement and Employees not Covered by a Collective Bargaining Agreement~~

#### 2-5.5 Bumping Between Bargaining Units

Application of employment preference between ~~employees covered by a collective bargaining agreement and employees not covered by a collective bargaining agreement~~units is subject to the following additional conditions:

- (a) **Qualification.** An employee may only displace a less senior employee in a position for which qualified in a classification in which the employee has previously attained status.
- (b) **Application; exhaustion.** An employee not covered by a collective bargaining agreement must first exhaust all bumping rights to other positions held by employees not covered by a collective bargaining agreement. After exhausting all such rights, the employee ~~not covered by a collective bargaining agreement~~ may then bump into the position covered by a collective bargaining agreement that minimizes loss of pay, ~~subject to the terms and conditions of the collective bargaining agreement. If.~~ An employee covered by a collective bargaining agreement expressly provides for exclusively represented employees covered by the agreement to bump into must first exhaust all bumping rights to other positions ~~not covered by an~~the agreement, ~~they may do so only after. After~~ exhausting all ~~bumpingsuch~~ rights ~~under~~, the ~~agreement, and~~employee may then bump into the position not covered by the collective bargaining agreement that minimizes loss of pay in accordance with this rule. When more than one employee ~~covered by a collective bargaining agreement~~ is eligible to bump into a position ~~not covered by a collective bargaining agreement~~, the most senior employee receives bumping rights.
- (c) **Total continuous service.** Employment preference is determined by an employee's total continuous service.
- ~~(d) **Limitation on seniority.** A collective bargaining agreement cannot prohibit an employee who accepts a supervisory position or any other employee who is not covered by a collective bargaining agreement from exercising employment preference into a position covered by the agreement. In such bumping situations, seniority earned outside the unit applies, except as limited by any collective bargaining agreement provisions in effect on January 23, 1983. This subsection only applies after the employee exhausts rights to displace other employees not covered by a collective bargaining agreement.~~
- ~~(e) **Grievances.** A grievance based on the application and adverse effects of this rule is filed, processed, and resolved under the grievance procedure provisions that are applicable to the position into which the exercise of employment preference has occurred or is scheduled to occur. This rule does not preclude a nonexclusively represented employee from filing a standard~~

~~grievance, even after bumping into an exclusively represented position, if the employee contends a denial of the right to displace another nonexclusively represented employee.~~

(d) Grievances. An employee aggrieved by this rule's application may grieve as provided in rule 8-1 and applicable regulations.

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## 2-16 Assumption into Classified Service

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### 2-16.7 Relation to Collective Bargaining

All determinations and actions by the state personnel director or civil service commission under this rule, including, but not limited to, an assumption of a position, classification of an assumed position, initial appointment to an assumed position, initial treatment of an assumed employee, and initial pay and benefits of an assumed employee are prohibited subjects of bargaining and are not subject to the provisions of a collective bargaining agreement. ~~However, if the director approves the transfer of seniority earned outside the classified service, the application of those seniority rights for purposes of reassignment, transfer, layoff, or recall within a unit is a mandatory subject of bargaining.~~

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## 3-2-\_\_ Applicant Pools and Recall Lists

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### 3-2.3 Recall Lists

An employee is eligible to be placed on a recall list only if the employee (1) gained status from an indefinite appointment and (2) is laid off, demoted, or otherwise displaced for reasons of administrative efficiency. Recall lists are not created or ~~maintained for~~ maintained for statewide recall, or for classifications that are protected from the application of employment preference in rule 2-5 [Employment Preference] or applicable regulations.

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## 3-4 Class Clusters

~~(a) — Approval of class clusters. If jointly requested by parties engaged in secondary negotiations, the~~ The state employer may request that the state personnel director may approve a class cluster for use in an agency. ~~The state personnel director has the discretion to approve, deny, or limit a request to create a class cluster. A decision by the state personnel director to approve, deny, or limit a request to create a class cluster is final and cannot be appealed.~~

~~(b) — Class clusters for nonexclusively represented employees. An appointing authority may use an approved class cluster for authorized transactions involving nonexclusively represented employees as provided in the civil service rules and regulations. A director's decision about a class cluster is final and cannot be appealed.~~

~~(c) — Class clusters for exclusively represented employees.~~



~~(1) Relation to collective bargaining.~~

~~(A) The creation of a class cluster is a classification and appointment issue and is a prohibited subject of bargaining. A class cluster cannot be created or included in a secondary collective bargaining agreement unless approved in advance by the state personnel director.~~

~~(B) After a class cluster has been approved by the state personnel director, the use of an approved class cluster for job changes, layoff, or recall is a mandatory subject of bargaining in secondary negotiations.~~

~~(2) Use of class cluster. An appointing authority may use the approved class cluster for job change, layoff, or recall transactions authorized in an approved secondary collective bargaining agreement.~~

### 3-5 Relation to Collective Bargaining

~~An appointing authority shall make all appointments in accordance with the civil service rules and regulations, unless a provision in a collective bargaining agreement regarding reassignment, transfer, layoff, or recall permitted by rule 3-4 or rule 6-3 provides otherwise.~~

## 5-6 Additional Compensation: Miscellaneous

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### 5-6.12 Critical-Position Premium

(a) Designation. An appointing authority may designate up to 2% of its filled non-exclusively represented positions as critical after providing the director written notice of and justification for the designation. The designation as critical or its removal cannot be grieved.

(b) Payments. The critical-position premium is up to 20% of its occupant's biweekly base pay.

(c) Expiration. The critical-position premium program ends December 31, 2018.

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## 8-3 Technical Complaints

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### 8-3.6 Exclusive Technical Appointment Reviews

(a) **Exclusive proceeding.** The technical appointment review is the exclusive proceeding for any candidate or employee, including an exclusively represented employee, to bring a complaint that arises out of (1) the selection, appointment, or certification of a candidate for a position in the classified service or (2) the revocation of an appointment after a civil service audit. A candidate, employee, and appointing authority are prohibited from using either the civil service grievance process provided in rule 8-1 [Grievances] or a negotiated grievance process permitted by rule 6-9.6 [Negotiated Grievance Procedures]. ~~This exclusive procedure is not applicable when a collective bargaining agreement permitted in rule 3-5 [Relation to Collective Bargaining] authorizes a different procedure regarding a reassignment, transfer, layoff, or recall.~~

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## 9-1 Definitions

### Rule of General Applicability

*Rule of general applicability* means a rule that applies equally to all similarly situated employees without distinction between exclusively and nonexclusively represented positions.