

# **STATE OF DELAWARE MERIT RULES**

**Adopted by Merit Employee Relations Board  
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**Statutory Authority: 29 Delaware Code,  
Section 5914 (29 Del.C. 5914)**

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## 1.0 Introduction

1.1 Pursuant to 29 **Del.C.** Chapter 59, these Rules apply to initial probationary, Merit and limited term employees, except as otherwise specified, and shall continue in effect until such time as they are amended or modified by the Merit Employee Relations Board ("Board") or are amended, modified or superseded by amendment to 29 **Del.C.** Chapter 59.

1.2 In the event of conflict with the Delaware Code, the Code governs. In the event of conflict with individual agency regulations, these rules take precedence. In the event of conflict with Intergovernmental Merit System Standards, the Standards govern federally funded positions subject to the provisions of the Intergovernmental Personnel Act. Federal laws supersede any conflicting state laws.

1.3 If 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 to such subject matters. These Rules govern in matters of: classification, uniform pay (except in the case of collective bargaining agreements reached pursuant to §1311A of Title 19), and benefits, examination, screening and ranking, rejection of candidates, appointment, paid leave, promotional requirements and standards, and veteran's preference. Collective bargaining agreements may govern matters of bargaining unit-specific pay and benefits, probation, emergency employment, transfer and promotional selection processes, reinstatement, performance records, layoff, fines, discipline up to and including dismissal, grievances, work schedules and working conditions.

1.4 The State has the exclusive right to manage its operations and direct employees except as specifically modified by these Rules.

1.5 The Director of the Office of Management and Budget ("Director") may issue Rule interpretation and application guidelines consistent with these Rules. The Director is authorized to establish committees to make recommendations about Human Resources issues.

## **2.0 Non-Discrimination**

2.1 Discrimination in any human resource action covered by these rules or Merit system law because of race, color, national origin, sex, religion, age, disability, sexual orientation, or other non-merit factors is prohibited.

### **3.0 Classification of Positions**

3.1 The Director shall establish and maintain a method of classifying and reviewing all positions. Positions substantially alike in duties and responsibilities and requiring essentially the same knowledge, skills and abilities shall be grouped into the same class and pay grade.

3.1.1 Class specifications 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 set forth uniform job related job requirements and the knowledge, skills and abilities required to do the work.

3.1.2 Class specifications shall be mainly descriptive and not restrictive. References to particular characteristics or examples of duties shall not exclude others of similar kind and quality.

3.2 Employees may be required to perform any of the duties described in the class specification, any other duties of a similar kind and difficulty, and any duties of similar or lower classes. Employees may be required to serve in a higher position; however, if such service continues beyond 30 calendar days, the Rules for promotion or temporary promotion shall apply, and they shall be compensated appropriately from the first day of service in the higher position.

3.3 If a significant change is made in the duties and responsibilities of a position, or if there is an alleged position classification or reclassification error, the position shall be reviewed and be reclassified if justified, in accordance with procedures established by the Director consistent with the Budget Act.

3.3.1 When positions occupied by a Merit employee are reclassified, employees shall not be required to serve a probationary period if they meet the job requirements for the new class, provided they successfully completed an initial probationary period. No examination shall be required unless that examination is part of the job requirements or is related to employees' physical ability to perform the essential functions of the job.

3.3.2 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.

3.3.3 When a position is reclassified into a Career Ladder, placement of the position incumbent is based on promotional standards approved by the Director. Movement from one level to another within Approved Career Ladders is a promotion, not a reclassification.

## 4.0 Pay Plan

4.1 Uniform pay schedules based on current legislation will be issued by the Director. Each position classification shall have assigned to it a paygrade for pay purposes. The pay of employees occupying positions in the Classified Service shall follow the published rates set for the assigned paygrades.

4.2 Standard Work Week. The standard work week for full-time employees shall be 37.5 hours or 40 hours as provided in the Budget Act. Employees shall be paid on the appropriate legislated pay scale. Any future changes with Fair Labor Standards Act (FLSA) implications shall be approved by the Director.

4.3 Dual Employment. Employees covered by FLSA shall be permitted to accept additional employment in another State agency with prior written consent of the affected agencies. Overtime eligibility shall be based on the FLSA.

4.3.1 Compensation Received From Other Sources. Employees on approved annual leave may receive additional compensation from another State agency or other employer for work performed during normal duty hours. When not on such leave, any additional compensation shall be deducted from employees' normal compensation.

### 4.4 Starting Rate on Initial Appointment

4.4.1 Upon initial appointment, employees shall be paid a salary equal to the minimum for their assigned paygrade, except as hereinafter provided.

4.4.2 Agencies may approve a starting rate up to 85% of midpoint where applicants' qualifications are clearly over and above the job requirements as stated in the class specification. Upon agency request, the Director may approve a starting rate higher than the 85th percentile if supported by documentation of the applicant's qualifications.

4.4.3 Upon agency request, the Director may approve a starting rate above the minimum for the paygrade where a critical shortage of applicants exists. The Director and Controller General may provide that all lower paid, equally qualified employees in the same class within the same geographic area receiving a lower rate shall also have their pay rates set as stated above if their performance is satisfactory.

4.5 Employees who transfer or move to another class which is the same paygrade as the former class shall be paid at the same percentage of midpoint, unless their current salary is below the Selective Market Variation (SMV) range or approved alternative pay plan for the class, in which case their salary shall be increased to the minimum of the SMV range.

4.6 Promotion. Upon promotion, employees shall receive either the minimum salary of the higher paygrade or an increase of 5%, whichever is greater. Agencies may grant a greater increase not to exceed the 85th percentile under the criteria in 4.4.2. The Director may approve a greater increase that exceeds the 85th percentile under the criteria in 4.4.2.

4.7 Demotion. The rate of pay for employees demoted for reasons other than just cause shall be recommended by the agency for the Director's approval. The rate of pay for employees demoted for just cause shall be set by the agency within the pay range of the lower paygrade.

4.8 Starting Rate On Reinstatement. Reinstated employees shall receive the same salary as at the time of separation plus any general salary increases. Any request for a greater salary shall be made pursuant to 4.4.

4.9 After Military Leave. Employees returning from active military duty leave shall receive the rate of pay which they would have otherwise received but for their military duty leave.

4.10 Pay Rate On Return from Exempt Position. Employees who return from leaves of absence in non-classified positions described in 29 **Del.C.** '5903 (4), (5), (6) and (23) shall receive at least the rate of pay which they would have otherwise received but for such leave of absence. If they return via competition to a position in a higher paygrade than the former Merit position, the provisions of 4.6 shall apply based on their former rate of pay.

4.11 Pay Rates After Hiring Preference. Employees placed as a result of hiring preference shall be paid in accordance with 4.4.

#### 4.12 Pay Rates After Reclassification Or Grade Change

4.12.1 Any employee movement to a higher paygrade is a promotion. Any employee movement to a class of the same paygrade shall be treated in accordance with 4.5. Employees moving to a lower class and/or paygrade shall retain their former pay as long as they remain in that position.

4.12.2 Employees in positions reclassified to a lower class not qualifying for Selective Market Variation (SMV) where their former class qualified for a SMV shall retain, for pay purposes, the SMV pay range assigned annually by the State budget process to the former class as long as they remain in that position and the former class continues to qualify for SMV.

4.12.3 Employees whose positions were reclassified to classes in lower paygrades and who retain their former paygrade as provided for in 4.12.1 and 4.12.2 shall not retain the paygrade upon voluntary transfer or promotion.

4.12.4 Employees shall receive the pay increase provided in the Budget Act, unless their latest Performance Review is unsatisfactory. If the unsatisfactory performance has already resulted in a reduction in paygrade, however, they shall receive the pay increase. Employees who are denied such increase shall become eligible for it when, as evidenced by a Performance Review, their performance is no longer rated as unsatisfactory. Such an increase is not retroactive.

#### 4.13 Pay for Overtime Service

4.13.1 FLSA-covered employees with a standard work week of 37.5 hours who are authorized to perform overtime service shall be paid at 1.5 times their regular rate for each hour worked after 37.5 hours per week. FLSA-covered employees with a standard work week of 40 hours who are authorized to perform overtime service shall

be paid at 1.5 times their regular rate for each hour worked after 40 hours. The form of pay, time off or cash, is at agency discretion and shall be agreed to in advance. Only hours worked over 40 hours per week are covered by the overtime provisions of the FLSA. The regular rate of pay shall include all payments (e.g., shift differential, stand-by duty pay and hazardous duty pay). Agencies may assign reasonable periods of overtime to meet operational needs.

4.13.2 Any authorized service in excess of the standard work week or work schedule allowed by the FLSA shall be overtime service. Employees working flexible schedules shall be paid for overtime service in accordance with that schedule and not the standard schedule of 37.5 or 40 hours per week.

4.13.3 A workweek is a period of 168 hours during 7 consecutive 24-hour periods.

4.13.4 Hours worked includes paid leave plus hours actually worked by the employee.

4.13.5 Employees in FLSA exempted classes authorized to work beyond the standard work week may be paid with equal time off.

4.13.6 In unusual circumstances of overtime service by employees normally not eligible for overtime pay in cash, the agency may recommend, for approval by the Director that such employees be paid at straight time rates.

4.13.7 Merit compensatory time shall be used within 180 calendar days of accrual or be forfeited. Under extenuating circumstances, the Director may approve exceptions to this rule. FLSA compensatory time may be accrued up to 240 hours of compensatory time-off unless the employee is engaged in work in a public safety activity, an emergency response activity, or a seasonal activity in which case the employee may accrue not more than 480 hours of compensatory time-off. Hours in excess of the 240 hours FLSA maximum shall be paid overtime.

4.13.8 Agencies may request the Director review the prevailing overtime rates for one or more FLSA exempted classes where external market pressures including excessive turnover rates, recruitment problems and high vacancy rates necessitate that such employees be paid at the rate of 1.5 times the regular rate of pay for any authorized overtime service.

#### 4.14 Compensation for Holidays

4.14.1 If the holiday falls on a day employees would not have been scheduled to work, they shall receive equivalent time off on a pro-rated basis.

4.14.2 Employees eligible for holiday pay and overtime compensation who are authorized to work on a holiday shall be compensated for the hours actually worked on the holiday at 1.5 times and for the holiday on a pro-rata basis. Employees 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, except as otherwise approved by the Director. Employees' compensation for any additional hours, beyond those for which they are routinely compensated, which have

accumulated as a result of working the holiday, may be either in cash or time off or a combination of the two at agency discretion.

4.14.3 To qualify for pay for a holiday not worked, employees shall be required to be in a paid status, for any portion of the day, on their last scheduled work day prior to the holiday and on their next scheduled work day after the holiday.

4.14.4 Employees working in 7-day per week functions shall receive holiday pay for hours worked on the actual holiday rather than hours worked on the day observed as the legal holiday.

#### 4.15 Shift Differential Pay

4.15.1 Shift differential is pay for working inconvenient hours and schedules authorized at the agency's discretion. Shift differential is not authorized for flexible or compressed schedules established at the request of, and for the convenience of, employees even if the requirements of 4.15.2 are met.

4.15.2 Employees authorized by agencies to work night shifts which include four or more hours of work between the hours of 6:00 p.m. and 8:00 a.m. the following day shall receive supplemental pay for the entire shift equal to 5% of their paygrade midpoint.

4.15.3 Agencies may approve employees on a rotating shift schedule to receive shift differential pay during the whole time they are assigned to the rotating shift.

4.15.4 Shift differential is payable for single shift assignments as well as recurring shift assignments. Employees on fixed night or rotating shifts receive shift differential for all periods of overtime service. For employees not on fixed or rotating shifts, shift differential is payable for entire periods of overtime service once the minimum four hour requirement of 4.15.2 are met. For purposes of shift differential eligibility, each period of work during employees' regular schedule and each period of overtime service will be considered separately.

4.15.5 Employees on a fixed night or rotating shift shall continue to receive such adjusted pay while on paid holidays or other authorized leave with pay; provided that the night shift or rotating shift assignment pertains both before and after such leave; and further provided that sick leave of more than five consecutive work days shall terminate the shift differential for the entire period of absence. Agencies may assign employees who are receiving shift differential pay to the day shift for a period of 30 days or less without loss of shift differential.

4.15.6 An agency may request that the Director review 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 4.15.2.

4.15.7 Employees authorized and required by agencies to work split shifts shall receive supplemental pay for their entire shift equal to 5% of their paygrade midpoint.

#### 4.16 Call-Back Pay

4.16.1 FLSA-covered employees who have left the work site at the end of their scheduled shift and are called back for overtime service shall be paid for such service in accordance with the provisions for overtime pay, provided that minimum total payment is equivalent to four times their regular straight time hourly rate. Employees shall be paid according to this call-back provision or the overtime provision, whichever is greater, not both.

4.16.2 Social workers providing direct child or adult protective services and the State Emergency Response Team approved by the Director shall be eligible for call-back pay.

#### 4.17 Stand-by Pay

4.17.1 FLSA-covered employees assigned to critical public service approved by the Director, and authorized by agencies to be on-call regularly for emergency services for an average of 64 off-duty hours or more per week, shall receive stand-by pay equal to 5% of their 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 4.16.

4.17.2 Social workers providing direct child or adult protective services and the State Emergency Response Team approved by the Director shall be eligible for stand-by pay.

#### 4.18 Hazardous Duty Pay

4.18.1 Determination as to the positions eligible for hazardous duty pay shall be requested by agencies for the Director's approval. The agency shall notify the Director when a substantive change occurs in the duties or work conditions of any position receiving hazardous duty pay. Compensation shall be set by the State Budget Act.

4.19 Supervisory Pay. Subject to the approval of the Director, the Secretary of the Department of Health & Social Services (DHSS) may grant supplemental pay equal to 5% of the employee's paygrade midpoint to registered nurses employed in DHSS institutions or facilities who are designated as charge nurses or team leaders and are permanently assigned such responsibilities in addition to their regular staff nurse duties. 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 3.2.

4.20 Computing Overtime Pay. The hourly rate of pay for overtime, holiday and call-back payment purposes includes shift differential, stand-by and hazardous duty pay.

## 5.0 Employee Benefits

### 5.1 Holidays

5.1.1 The following days are legal holidays for employees: New Year's Day; Martin Luther King, Jr. Day; Good Friday; Memorial Day; Independence Day; Labor Day; Veterans' Day; General Election Day; Thanksgiving Day; Day after Thanksgiving; Christmas Day; and Return Day (the second day after the General Election), 3.75 hours for 37.5 hours work week schedule or 4 hours for 40 hour work week schedule for employees who live or work in Sussex County; and any other day or part of proclaimed by the Governor as a holiday.

5.1.2 When a legal holiday falls on a Saturday, the prior business day shall be the legal holiday. When a legal holiday falls on a Sunday, the next business day shall be the legal holiday. (See 4.14.3)

### 5.2 Annual Leave

5.2.1 Employees shall accrue annual leave for each month's completed service according to the following schedules:

5.2.1.1 less than 10 years: 9.5 hours (37.5 hours schedule 10 hours (40 hour schedule)

5.2.1.2 10 to less than 15 years: 11.25 hours (37.5 hour schedule) 12 hours (40 hour schedule)

5.2.1.3 15 or more years: 13.25 hours (37.5 hour schedule) 14 hours (40 hour schedule)

5.2.2 All leave requests are subject to agency approval, taking into consideration employee requests, operating requirements and seniority, and shall be answered as soon as practicable. Leave may not be taken in excess of hours earned. Absences for a fraction of an hour shall be rounded up to .25 hour increments except that within the quarter hour, absences of less than 7 minutes shall be rounded down.

5.2.3 Accrual continues during absence from work on a legal holiday; on paid leave (see exceptions 5.2.3.1 & 5.2.3.2); on unpaid leave of 30 days or less; and while receiving a salary supplement pursuant to 29 **Del.C.** '5933 (workers' compensation) and while receiving a short-term disability supplement from the State sponsored Disability Insurance program pursuant to 29 Del.C '5253 (b) (short-term disability.) Accrual is credited to the employee leave account on the first day of the month following accrual. Accrual shall be on a pro-rata basis.

5.2.3.1 Leave does not accrue when using sick leave to travel out of the United States for the purpose of adopting a child from a foreign country pursuant to 29 **Del.C.** §5116 (b) (adoption leave) see 5.3.3;

5.2.3.2 Leave does not accrue when on paid Military Serious Illness/Injury leave pursuant to 29 **Del.C.** §5933 (e) see 5.3.3;

5.2.4 Annual leave credit carried into a new calendar year may not exceed 318 hours (37.5 hours schedule) or 336 hours (40 hour schedule). Agencies may request approval from the Director to carry over annual leave in excess of the maximum amount. Upon separation only, employees shall be paid for their accumulated annual leave at their current amount, excluding all supplemental and premium pays.

5.2.5 Employees covered by practices in effect on or before June 30,1968, shall continue to earn, accumulate, carry over or be paid at a rate established by those practices, provided they remain in the service of the same employment agency or transfer for reasons beyond their control.

5.2.6 Employees approved for workers' compensation may request to use accrued annual leave when they are less than fully paid under workers' compensation. Such leave shall be charged as the difference between workers' compensation pay and their regular pay.

5.2.7 Employees who move from non-classified to classified positions shall be credited with any annual leave for which they were not paid. Employees who move from classified to non-classified positions may transfer accrued annual leave to the extent the receiving agency agrees. Such employees shall be paid by the former agency for any annual leave the receiving agency refuses to accept.

5.2.8 If an employee resigns or is terminated for any reason including dismissal, or dies with unused annual leave credit, the employee or his/her estate as applicable, shall be paid in cash for any unused annual leave.

5.2.9 Employees may utilize earned annual leave to supplement short term disability benefits to equal 100% of pre-disability creditable compensation for the maximum period of 182-calendar-days pursuant to 29 **Del.C.** '5253 (b)(4) (short term disability).

### 5.3 Sick Leave

5.3.1 Employees shall accrue sick leave for each completed month's service at the following rate: 9.5 hours (37.5 hour schedule) 10 hours (40 hour schedule).

5.3.2 Sick leave shall be requested in advance. In instances of unanticipated need to use sick leave, employees must notify their supervisor within the first hour of absence or as soon as practicable or as specified by the agency. Failure to do so or otherwise obtain approval shall result in leave denial. Agencies may require documentation which justifies absences or verifies ability to return to work. Absences for a fraction of an hour shall be rounded up to .25 increments except that within the quarter hour, absences of less than 7 minutes shall be rounded down.

5.3.3 Accrual continues during absence from work on a legal holiday; on paid leave; on unpaid leave of 30 days or less and while receiving a salary supplement pursuant to 29 **Del.C.** '5933 (workers' compensation) and while receiving a short-term disability supplement from the State sponsored Disability Insurance program pursuant to 29

Del.C '5253 (b) (short-term disability.) Accrual is credited to employee leave accounts on the first day of the month following accrual. Accrual shall be prorated.

5.3.3.1 Leave does not accrue when using sick leave to travel out of the United States for the purpose of adopting a child from a foreign country pursuant to 29 **Del.C.** §116 (b) (adoption leave) see 5.2.3;

5.3.3.2 Leave does not accrue when on paid Military Serious Illness/Injury leave pursuant to 29 **Del.C.** §5933 (e) see 5.2.3;

5.3.4 Employees shall be paid for accumulated sick leave at their current salary, excluding all supplemental and premium pays, under the following conditions:

5.3.4.1 At retirement under the State Pension Law, upon commencement of long-term disability [29 Del. Code '5253 (c) (5)], or if laid off without prejudice for lack of work at the rate of 1 hour's pay for each 2 hours of sick leave. The maximum payment is 337.5 hours (37.5 hour weekly schedule) or 360 hours (40 hour weekly schedule).

5.3.4.2 At death of the employee, at the rate of 1 hour's pay for each hour of sick leave to the employee's estate. The maximum payment is 675 hours (37.5 hour weekly schedule) or 720 hours (40 hour weekly schedule).

5.3.5 Employees covered by practices in effect on or before June 30, 1968, shall earn, accumulate, carry over or be paid at a rate established by those practices, provided they remain in the service of the same agency or transfer for reasons beyond their control.

5.3.6 Upon supervisory approval, which shall not be unreasonably denied, employees may use paid sick leave for the following reasons:

5.3.6.1 Employee illness, injury, temporary disability or exposure to contagious disease.

5.3.6.2 Employee appointments with doctors, dentists, or other similar practitioners or to accompany the following individuals when their personal attendance is required: employees' spouse or domestic partner; and parent, stepparent or child of the employee, spouse or domestic partner. In exceptional circumstances, agencies may approve the use of sick leave for someone not specifically listed. Whenever possible, such appointments should be scheduled outside of employee's normal working hours.

5.3.6.3 Serious illness or injury of the following individuals when their personal attendance is required: spouse or domestic partner; and parent, step-parent, or child of the employee, spouse or domestic partner. In exceptional circumstances, agencies may approve the use of sick leave for someone not specifically listed.

5.3.6.4 Employees approved for workers' compensation may request sick leave when they are less than fully paid under workers' compensation. Such leave shall be charged at the difference between workers' compensation pay and their regular pay.

5.3.6.5 Employees may utilize earned sick leave to supplement short-term disability benefits to equal 100% of pre-disability creditable compensation for the maximum period of 182-calendar-days pursuant to 29 **Del.C.** '5253 (b)(4) (short term disability).

5.3.6.6 Employees who have been continuously employed on a full time basis for at least 1 year at the time of application for leave may utilize accumulated sick leave to travel out of the United States for the purpose of adopting a child from a foreign country. Before the leave will be granted, employees must provide documentation that they have applied for the adoption and that the travel is required for the adoption to be approved. Once the adoption has been approved the leave will be pursuant to the Family and Medical Leave Act, >29 U.S.C. ' 2601 et seq.], see also 29 **Del.C.** '5116 (b).

5.3.6.7 In accordance with Delaware Code Title 29, '5120 eligible employees may use up to twelve weeks accumulated sick leave upon the birth of a child of the employee or the employee's spouse, or adoption by the employee of a pre-kindergarten age child. Leave for these purposes shall be used during the year immediately following the birth or adoption and be scheduled in advance whenever possible. Employees shall use such leave in accordance with Merit Rule 5.7 Family and Medical Leave Act (FMLA).

5.3.7 Employees may not take sick leave with pay in excess of the hours actually accrued. In extreme cases, agencies may allow employees with more than 5 years service, who have not abused sick leave, to "borrow ahead" up to 112.5 hours (37.5 hour weekly schedule) or 120 hours (40 hour weekly schedule) of sick leave after their sick and annual leave is exhausted.

5.3.8 Employees who are injured on the job and approved for workers' compensation will not be charged with sick leave for any portion of the day of injury.

5.3.9 Employees who move from non-classified to classified positions shall be credited with any sick leave for which they were not paid. Employees who move from classified to non-classified positions shall transfer accrued sick leave to the extent the receiving agency agrees.

#### 5.4 Compassionate Leave

5.4.1 Upon the death of an immediate family member, employees shall be granted 22.5 hours (37.5 hour weekly schedule) or 24 hours (40 hour weekly schedule) leave with pay, on a pro-rata basis normally to be used on consecutive work days. Employees may request agency approval for a person not specified as immediate family.

5.4.2 Employees shall be granted 7.5 hours (37.5 hour weekly schedule) or 8 hours (40 hour weekly schedule) leave with pay, on a pro-rata basis to attend memorial services or related activity of the following: aunt, uncle, niece, or nephew; brother/sister-in-law; grandparent-in-law; or any other relative or friend living in the employee's household.

#### 5.5 Other Leaves With Pay

5.5.1 Employees shall be excused from work with pay for the following reasons:

5.5.1.1 To attend training camp or special duty on orders as a member of the military reserves of the United States or the National Guard, not to exceed 112.5 hours (37.5 hour weekly schedule) or 120 hours (40 hour weekly schedule), on a pro-rata basis, in any calendar year.

5.5.1.2 To train and participate as a member of the United States team in any competition sanctioned by the United States Olympic Committee, in the capacity of coach, athlete, official, trainer or group leader, not to exceed 90 working days.

5.5.1.3 To donate bone marrow, not to exceed 7 days of leave in any calendar year.

5.5.1.4 To donate an organ, not to exceed 30 days of leave in any calendar year.

5.5.1.5 To serve on one veteran funeral detail per calendar year if a veteran or a member of the National Guard Reserve.

5.5.1.6 To undergo a medical procedure or operation for a serious illness/injury suffered in the line of duty that is caused or contributed to by war or act of war (declared or not), not sooner than 30 calendar days of return to active State employment nor following one year of return from active military duty and not to exceed six months of absence. Employee must be a member of the United States Military or National Guard. This leave is to run concurrent with FMLA see 5.7.

5.5.2 Employees shall be excused from work with pay for the following reasons: however, they shall return to work within a reasonable time after the conclusion of the following activities. Agencies shall, if possible, make shift changes to accommodate non day shift employees for their involvement in the following:

5.5.2.1 To appear under subpoena to testify, unless they are one of the parties in the proceeding or the subpoena arises from other employment or volunteer activities.

5.5.2.2 To report to serve on a jury.

5.5.2.3 To appear on their own behalf before a hearing officer or the Merit Employee Relations Board in a Merit system grievance. Excusal from work with pay is not authorized for preparation of a grievance or consultation with employees' representatives.

5.5.2.4 For a scheduled examination or interview for a Classified position in the State.

5.5.3 Employees may be excused from work with pay, at agency discretion, for the following reasons:

5.5.3.1 To serve as a delegate to conventions of unions or employee organizations or to engage in similar job related activities, not to exceed 37.5 hours (37.5 hour weekly schedule) or 40 hours (40 hour weekly schedule) on a pro-rata basis in any calendar year.

5.5.3.2 To serve as a volunteer on an advisory body or commission or similar group sponsored by local or State government or statewide organization to programs benefitting diverse segments of Delaware citizens.

5.5.3.3 To respond to volunteer emergency fire duty, if they are active firefighters or auxiliary members.

5.5.3.4 To respond to disaster relief, not to exceed 15 work days, if they are Certified Disaster Service Volunteers of the American Red Cross.

5.5.3.5 As part of a recognition program approved by the Director, not to exceed 7.5 hours (37.5 hour weekly schedule) or 8 hours (40 hour weekly schedule) per award. Such leave must be used within 1 year of being awarded and is not subject to cash payments.

## 5.6 Leave Without Pay

5.6.1 Employees shall be granted leaves of absence without pay to serve a tour of active duty in the United States military, plus 90 calendar days beyond the end of active duty. When such employees notify the agency of intent to return to work, with evidence of honorable release from military service, they shall be returned to a position in the same or comparable class for which they qualify.

5.6.2 Employees may be granted leaves of absence without pay at agency discretion for personal reasons up to 1 year. In exceptional circumstances, additional 6 month periods may be granted, but in no case shall continuous leave exceed 2 years. Employees may return to duty before the expiration of the leave only with agency approval. Employees returning from a leave of absence of 6 months or less shall be returned to the duty assignment previously held. Employees returning from a leave of absence greater than 6 months shall be returned to a position in the same class or comparable class when leave was granted.

5.7 Family and Medical Leave Act (FMLA). FMLA eligible employees will be provided with FMLA leave in accordance with the Family and Medical Leave Act of 1993. Employees shall be required to use available accrued annual leave and sick leave while on FMLA with the exception of one work week of annual leave and one work week of sick leave, which they may elect to retain for use upon return to work. Usage of accrued sick leave shall only be in accordance with M.R. 5.3. Employees on approved Military Serious Illness/Injury leave shall be eligible for wages under Military Serious Illness/Injury leave only see M.R. 5.5.1.6.

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

5.8 Educational Leave and Assistance. Agencies may approve educational leave without pay. Upon agency request, the Director may approve leave with pay. The purpose of such leave is to permit employees to pursue education or training directly related to State employment which is not available through in-service training.

5.8.1 Educational reimbursement shall be offered by agencies consistent with their budgetary allowances. Reimbursement will be made only upon submission of evidence of satisfactory completion accompanied by paid receipts. In exceptional circumstances, agencies may pay in advance of course completion. In such case, employees shall reimburse agencies if they do not submit evidence of satisfactory completion. Employees shall reimburse agencies for tuition and paid education leave if they do not submit evidence of satisfactory course completion or if they leave State employment within 6 months of course completion.

5.9 The Director may grant an agency requesting an extended leave of absence to a Classified employee to serve in any nonclassified position described in 29 **Del.C.** "5903 (4), (5), (6) and (23). At the end of that appointment, employees shall be returned within 60 days to a position for which they are qualified in the Classified Service, provided that the position is the same paygrade or lower as the position from which they left the Classified Service. They may also return to the Classified Service via the competitive process, in which case they would be considered an in-house candidate for the agency from which they originally received their leave of absence. Pay upon return to the Classified Service is set forth in 4.10.

#### 5.10 Other Leave Related Benefits

5.10.1 Employees participating in the STD program shall not be eligible to utilize paid leave in lieu of application for short-term disability.

5.10.2 An employee on approved STD, who does not supplement the 75 percent STD payment with 25 percent leave for a period greater than 30 calendar-days, will accrue leave on a pro-rata basis.

## **6.0 Recruitment and Application Policies**

6.1 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.

6.1.1 Agencies shall recruit and advertise as defined by these regulations and directives promulgated by the Office of Management and Budget.

6.1.2 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.

6.2 Job Posting. When posting a vacant position, the appointing authority shall post at least seven (7) calendar days before the closing date for receipt of applications. Job postings shall contain all pertinent information about the positions being filled. Job postings 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.

6.2.1 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.

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

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

6.3 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.

6.3.1 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.

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

6.3.3 Each applicant shall receive an acknowledgment of his/her application and general information concerning requirements for placement on lists.

6.4 Rejection of Application. Applications may be rejected if any of the following is established about the applicant:

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

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

6.4.3 The applicant is physically, mentally or otherwise unable to perform the essential functions of the job to which he/she seeks appointment.

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

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

6.4.6 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.

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

6.4.8 The applicant is unavailable.

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

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

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

6.5 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.

## **7.0 Screening and Ranking Applicants**

7.1 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.

7.2 Eligibility for Screening and Ranking. Persons who apply in accordance with the job posting are eligible for screening and ranking.

7.3 Screening and Ranking Process. Failure in one part of the screening and ranking process may be grounds for declaring such applicants as failing in the entire process or as disqualified for subsequent parts of the screening and ranking process.

7.4 Notification of Eligibility. Applicants shall be notified in writing of their screening results.

7.5 Screening and Ranking Records. The Director or the appointing authority, as applicable, shall be responsible for the maintenance of all records pertinent to the screening and ranking process and program. If an appeal is filed, screening and ranking records must be maintained for the length of the appeal process.

7.6 Screening and Ranking Results. Candidates shall have the right to inspect their screening and ranking results within ten (10) calendar days after the date on which the official notice of screening and ranking results was mailed. This time period may be extended by the Director.

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

7.6.2 Any error in computation or failure to apply uniform ranking 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 ranking was mailed, shall be corrected.

7.7 Appeal After Screening and Ranking. Applicants who have been screened and ranked by training and experience may appeal to the Director for review of their ranking 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 ranking was mailed. The decision of the Director shall be final.

## **8.0 Certification**

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

8.2 Referral of Eligibles. Upon receipt of a request for a referral to fill a position, the appointing authority shall certify all names from the layoff list that exists for the class, names of former employees approved for reinstatement, current employees eligible for transfer in the same classification and issue no more than thirty (30) eligible candidates. In case of ties, all equally qualified candidates will be placed on the list.

8.2.1 Any candidate whose name appears on a referral 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.

8.2.2 Referral 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 referred, names may be referred in alphabetical order. In those instances, the appointing authority must be informed that the list is in alphabetical order.

8.3 Veteran's Preference. Veterans and disabled veterans, as defined or their unremarried widows, shall receive five (5) additional and ten (10) additional points respectively upon successful completion of the screening and ranking process for initial appointment to State employment only and they may be required to present proof of honorable discharge, and in the case of disabled veterans, of disability.

## **9.0 Probation**

9.1 After successful completion of an initial, one-year probationary period, the incumbent shall be a Merit employee. Upon the Director's approval, probationary periods may be extended.

9.2 Employees may be dismissed at any time during the initial probationary period. Except where a violation of Chapter 2 is alleged, probationary employees may not appeal the decision.

9.3 Employees in the initial probationary period who move into another classified position must satisfactorily complete the probationary period for the new class but shall become Merit employees at satisfactory completion of probation, for the new class or two years of Merit service, whichever occurs first.

9.4 Merit employees serving a probationary period after promotion who fail to satisfactorily complete the probationary period, may be placed by agencies internally without loss of benefits or agencies may notify the Director who shall decide the matter. If available, the employee may be returned to his/her former position and salary without any loss of benefits.

9.5 Upon reinstatement, employees who left the Merit System shall be required to serve an initial probation period.

## **10.0 Other Appointments**

10.1 Limited Term Appointment. Limited term appointments are permitted when a Merit vacancy exists that is not of a continuing nature, but is projected to exceed 90 days. Such vacancies may be filled for a period of up to 1 year. The Director may approve a longer time period. Established selection procedures shall be followed for filling the vacancy.

10.1.1 Merit employees who accept limited term appointments shall be placed in a vacant position comparable to their former class in the present agency at the end of the limited term appointment. If agencies demonstrate that no comparable vacant position exists, employees shall be given hiring preference.

10.1.2 The period of temporary service in a Classified position immediately prior to a probationary appointment to the same class shall constitute a part of or all of the required probationary period if performance has been evaluated on the same basis as is required in 9.2 for the probationary period.

10.2 Emergency Appointment. When there is immediate need to prevent stoppage of public business or serious impairment to the public service, and it is not possible to secure such persons from appropriate competitive recruitment, agencies may make emergency appointments. Such appointments shall not exceed 30 days.

10.3 Exceptional Appointment. The Director shall establish procedures for exceptional employment, which shall occur without competitive recruitment or a Referral List. Exceptional appointees shall successfully complete a trial work period, or pass a screening process, before being considered for Merit or probationary employment in the Classified Service.

10.4 Promotion. Candidates selected for promotion shall meet the position's job requirements. Vacancies shall be filled by promotion wherever practical and in the best interest of the classified service. Consideration shall be given to qualifications, performance record, seniority, conduct and, where applicable, the results of the screening and ranking process.

10.5 Demotion. Employees may be placed in a position in a lower paygrade upon voluntarily requesting such action, when subject to layoff, or for just cause, if they meet the job requirements for the lower paygrade position. When agencies agree to employee requests for voluntary demotions, the Office of Management and Budget may waive job-posting requirements upon written request by the agencies, which justify such action.

10.6 Transfer. To promote the efficiency of the service, unrelated to employee performance, employees may be transferred to another position for which they meet job requirements in the same paygrade within the same agency with or without competition.

10.6.1 Upon mutual consent between agencies and employees, employees may be transferred from one position to another position in the same paygrade for which they meet job requirements without competition.

### **10.7 Underfill**

10.7.1 Temporary underfilling is permitted for operational necessity, demotion or other valid reasons with the approval of the Director.

10.7.2 A position may be underfilled at any level in a Career Ladder in accordance with criteria approved by the Director. The position incumbent may be promoted through the Career Ladder based on the promotional standards.

10.8 Dual Incumbency. With the approval of the Director, employees may temporarily occupy the same position as a paid primary incumbent.

10.9 To resolve litigation issues, grievances, or disputes between agencies about the placement of employees, the Director may move employees from one position to another position for which they qualify in the same or lower paygrade within the Merit System without competition.

10.10 Agencies shall make every effort, based on organizational needs, to place temporarily disabled employees in alternate duty assignments, subject to medical restrictions, for a period of 90 days. Extensions may be granted contingent upon expectations of employees' release to full duty within a time frame that meets agencies' operational needs. Such requests for extensions shall not be unreasonably denied.

## **11.0 Layoff Procedures**

11.1 Agencies may choose to lay off Merit employees for legitimate substantiated reasons (e.g., loss of funding, abolishment of the position) unrelated to their conduct or performance.

11.2 The Director shall determine the boundaries of the layoff field.

11.3 Employees who have been identified as layoff candidates shall be given at least 30 days written notification by the agency, unless an emergency condition exists.

11.4 Employees identified as layoff candidates shall be given hiring preference.

11.5 Employees who cannot be placed via hiring preference shall be placed in any vacancy for which they qualify in their class or occupational series, which is equal to or no more than 3 paygrades lower than their current paygrade within the layoff field. Employees may choose to be placed in a vacancy that is more than 3 paygrades lower.

11.6 Employees shall be presumed to exercise bumping rights in their county of employment only, unless they provide notice to the agency authority within 10 calendar days of receiving the layoff notice. Employees may waive their bumping rights.

11.7 If placement is not possible under 11.5, bumping shall begin. Employees may only bump employees having less seniority. Employees, in order of seniority, shall bump the least senior employee in their present class, and, as necessary, bump the least senior employee in each succeeding lower class until there are no positions within the same occupational series into which employees may bump.

11.7.1 Career ladder employees shall bump employees within their career ladder who are at the same or lower paygrade and have the least seniority.

## **12.0 Employee Accountability**

12.1 Employees shall be held accountable for their conduct. Disciplinary 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.

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

12.3 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.

12.4 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.

12.5 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 12.4.

12.6 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.

12.7 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.

12.8 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.

12.9 Employees who have been dismissed, demoted or suspended may file an appeal directly with the Director or the MERB within 30 days of such action. Alternatively, such employees may simultaneously file directly with the Director, who must hear the appeal within 30 days. If the employee is not satisfied with the outcome at the Director's level, then the appeal shall continue at the MERB.

## **13.0 Performance Review**

13.1 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.

13.2 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.

13.3 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.

13.4 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.

## **14.0 Employee Development and Communications**

14.1 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.

14.2 Employee Communications. The Director is authorized to publish an employee newspaper, an employee handbook, websites and other such publications as deemed appropriate.

## 15.0 Employee Responsibilities

15.1 Attendance. Appointing authorities shall be responsible for the attendance of all employees in their 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.

15.1.1 Every employee is required to report to work on time each day. When because of emergency or sudden illness employees cannot report for work, they shall notify their supervisor within the first hour of absence, or as soon as practical thereafter, giving reason for their absence.

## 15.2 Outside Employment and Pecuniary Interests

15.2.1 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.

15.2.2 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:

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

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

15.2.5 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 15.3.

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

15.3 Political Activity. In accordance with 29 **Del.C.** '5954, no employee in the classified service shall engage in the following activities:

15.3.1 "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."

15.3.2 "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."

15.3.3 "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."

15.3.4 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.

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

## **16.0 Human Resource Records**

16.1 Master Personnel Records. A master personnel record for each employee shall be established and maintained by each agency. The records shall include copies of: application for employment; each Human Resource transaction; attendance and leave records; employee Performance Review 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.

16.2 Employee Access to Records. Employees shall have controlled access to their records. After obtaining permission of the appointing authority, employees shall be scheduled to examine their records under the supervision of those charged with maintaining such records.

16.3 Human Resource Transactions. All appointments, separations, and other HR transactions shall be made as specified by the Director.

## **17.0 Payroll**

17.1 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 human resource transactions as specified by the Director.

17.2 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 an employee in accordance with Delaware Code and these rules.

17.3 Audit. The Director shall conduct such audits of State payrolls and such other investigations as deemed necessary to assure compliance with Delaware Code.

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

17.3.2 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.

17.3.3 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.

17.4 Recovery of Salaries Improperly Paid. In accordance with the provisions of Delaware Code, officials may be held liable for the return of any salaries they wrongfully authorize.

## **18.0 The Grievance Procedure**

18.1 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.

18.2 A "grievance" means an employee complaint about the application of the Rules or the Merit System law (29 **Del.C.** 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.

18.3 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 nonnegotiable pursuant to 29 **Del.C.** '5938, it shall be processed according to this Chapter.

18.4 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 18.7.

18.5 Grievances about promotions are permitted only where it is asserted that (1) the person who has been promoted does not meet the job requirements; (2) there has been a violation of Merit Rule 2.1 or any of the procedural requirements in the Merit Rules; or (3) there has been a gross abuse of discretion in the promotion.

18.6 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.

18.7 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.

18.8 Step 3: Any appeal shall be filed in writing to the 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.

18.9 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.

18.10 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.

18.11 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.

## 19.0 Definitions

**"Adjusted Service Date"**: total length of employment in State of Delaware positions used to calculate vacation accrual rates. The Director shall establish procedures for calculating this time.

**"Agency"**: any board, department, elected office or commission which receives an appropriation in accordance with 29 **Del.C.** Chapter 59. This definition does not preclude the establishing of exempt positions in organizational units within departments.

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

**"Appeal"**: a request for ruling per specified sections of the Merit Rules to the Director or the MERB as appropriate.

**"Appointing Authority"**: the official, or designee, who has the authority to make appointments to, or dismiss employees from, the Merit service. (The appointing authority is the Cabinet Secretary of the department or the agency head of those units which are not a part of a larger agency. Only the Cabinet Secretary or agency head may dismiss employees.)

**"Bumping"**: an employee identified for layoff may displace an employee in the same class grouping at the same or lower paygrade with less Merit service in the defined layoff field. The employee shall meet the job requirements. 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.

**"Career Ladder"**: a hierarchy of classes within a class series, established and approved by the Director, which permits employee movement along a career path without competition upon meeting all promotional standards.

**"Casual/Seasonal Employees"**: employees serving in positions pursuant to 29 **Del.C.** 5903(17). Such employees are not covered by the Merit Rules. Such employees may be covered by collective bargaining agreements and by other State and Federal laws such as the Fair Labor Standards Act, Title VII of the Civil Rights Act, the Family Medical Leave Act, etc.

**"Class"**: all Merit positions sufficiently similar in duties, responsibilities and job requirements to use the same salary range and title. (Example--Civil Engineer I, Office Manager, Forester)

**"Class Series"**: a progression of classes in the same line of work reflecting different degrees of responsibility and difficulty of duties. (Example--Management Analyst I, Management Analyst II, Management Analyst III)

**"Class Specification"**: a written description of the distinguishing characteristics of all positions in a class, including typical duties and responsibilities and job requirements.

**"Classification"**: the analysis of the duties and responsibilities of a position and its assignment by the Director to a class.

**"Contractual Employees"**: employees providing service through a contractual relationship with the State either directly or via another employing organization. Contractual employees are not covered by the Merit Rules.

**"Demotion"**: the movement of an employee from a position in a class of a higher paygrade to a position in a class of a lower paygrade through a process other than reclassification.

**"Director"**: the Director of the Office of Management and Budget, appointed pursuant to 29 Del.C. Chapter 59, or designee.

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

**"Domestic partner"**: the 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.

**"Eligibility List"**: a list of qualified candidates from which a referral list is issued.

**"Employee"**: any person holding a position in the Classified Service.

**"Essential Functions"**: the fundamental job duties of an employment position.

**"Examination"**: a written test.

**"Exceptional Employment"**: employment of individuals with disabilities through a special program such as the Agency Aide or Selective Placement Program.

**"FMLA Eligible Employee"**: an employee who has at least one year of state service and has been paid for at least 1,250 hours over the 12-month period prior to the first day of the FMLA leave.

**"FMLA Leave"**: leave taken in accordance with the provisions of the Family and Medical Leave Act of 1993 and its amendments.

**"Grievance"**: Merit employee's claim that these Rules or the Merit system statute has been violated. A grievance may not deal with the content of the Rules or the Merit system statute.

**"Hazardous Duty Pay"**: uncontrollable circumstances that involve an unusual risk of serious physical injury, impairment to health or death resulting from accidental, negligent or intentional causes. Compensation for Exposure Levels A & B shall be set in the Budget Act. The following two degrees of exposure are recognized:

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

The following definitions shall be used to determine eligibility for hazardous duty pay:

**"Continuing"**: frequency of exposure is normally more than 50% of employees' working time.

**"Occasional"**: frequency of exposure is normally more than 5% but less than 50% of employees' working time.

**"Uncontrollable"**: precautions, such as safety and life support equipment, are either impractical to be used continually 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.

**"Hiring Preference"**: special placement for 1 year on a Referral List for a position at the employees' current paygrade or lower for which the employee meets job requirements. Employees shall be required to pass any written tests if the position is outside their class series. Employees with more than 1 unsatisfactory performance appraisal in the last 3 years shall not be eligible for hiring preference. Hiring preference is granted for one year or until employees are placed in the same class, whichever occurs first.

**"Human Resource (HR) Action"**: any employment action including, but not limited to the hiring process, discipline, promotion, compensation, classification, benefits, employee and labor relations.

**"Immediate Family"**: the employee's spouse or domestic partner; parent, stepparent or child of the employee, spouse or domestic partner; employee's grandparent or grandchild; employee's sibling; spouse of employee's child; or any minor child for whom the employee has assumed and carried out parental responsibilities.

**"Job Requirements"**: minimum entry requirements, including selective requirements, which must be met for an individual to be eligible for appointment to a Classified position or to take an examination. These requirements typically include minimum levels or types of education, training or experience or completion of specified examinations. The Director may approve documented equivalencies.

**"Layoff Field"**: specific boundaries, such as Department, Division, section, etc., used to determine parameters of bumping.

**"Merit Compensatory Time"**: for employees in FLSA-covered positions authorized to work a 37.5 hour week means those hours worked between 37.5 and 40 hours per week. For employees in FLSA-covered positions who are authorized to work FLSA approved specialty exemptions, means those hours worked in excess of the employee's regular schedule and less than the FLSA minimum for overtime. For employees in FLSA-exempt positions, means those hours worked beyond the employee's standard work week, either 37.5 or 40 hours.

**"Merit Employee"**: an employee who has satisfactorily completed the initial probationary period for a Classified position.

**"Merit Factors"**: include, but are not limited to, consideration of training, experience, knowledge, skill, education, conduct, and performance record of applicants or employees in the classified service.

**"Merit Service"**: length of employment by the State of Delaware in Classified position(s) minus breaks in service.

**"Merit System Law"**: refer to 29 Del.C. Chapter 59.

**"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.

**"Occupational Series"**: a group of related classes requiring similar skills and training.

**"Pay Range"**: means lowest to highest dollar value assigned to a paygrade.

**"Paygrade"**: one of the horizontal pay ranges designated on the pay plan consisting of a series of percentage of midpoint columns identifying specific values.

**"Preferential Qualification"**: any education, training and/or experience not specifically indicated in the job requirements that are desirable but not required.

**"Pro-rata Basis"**: 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. A 100% share of a day is 7.5 hours or 8 hours. The calculation of leave shall be rounded up to the nearest quarter hour.

**"Probationary Period"**: the trial period of employment. Initial probationary period occurs when an employee first enters the Merit service. Promotional-probationary period occurs when a Merit employee is promoted.

**"Ranking"**: when there are greater than 30 qualified candidates for a job posting, candidates are scored based on a rating of their education, training and experience, and written exams if applicable, against a set criterion and placed on a referral list in order of scoring results.

**"Reassignment"**: Any movement within the same budgeted position within the same county.

**"Referral List"**: the list of finalist candidates eligible to fill a vacant position.

**"Reinstatement"**: the rehiring of an individual into the same class within a 2-year period from which the individual left the position in good standing.

**"Rotating Shift"**: a change in a work schedule 1.) for at least 2 days in a workweek which includes 4 or more hours of work daily, 2.) or that involves different schedules with no more than 30 continuous days on a shift which does not qualify as night shift per 4.15.2.

**"Screening"**: the process by which applicants are evaluated for a position in the Merit System. The screening may consist of, but is not limited to, oral, written, or performance tests, or a rating of the candidate's training and experience.

**"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"**: any education, training and/or experience not specifically indicated in the job requirements of a class specification that are required as they are considered job related and essential for effective performance in a specific position at time of hire.

**"Seniority"**: total length of employment in Classified positions by the State of Delaware. This time shall be adjusted whenever an unpaid leave of absence exceeds 30 calendar days, except in the case of military leave granted in accordance with 5.5.1.

**"Shift Differential Pay"**: compensation for working inconvenient hours and schedules as authorized at the agency's discretion and described below:

**"Night Shift"**: 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.

**"Rotating Shift"**: a change in a work schedule 1.) for at least two days in a work week which includes 4 or more hours of work daily, or 2.) that involves different schedules with no more than 30 days on a shift which does not qualify as night shift per 4.15.2.

**"Split Shift"**: any shift which is broken into two parts with two or more hours between the parts. Employees authorized and required by agencies to work split shifts shall receive supplemental pay for the entire shift equal to 5% of their paygrade midpoint.

**"Supervisor"**: a person in a position who, on a regular and continuing basis, plans, assigns, reviews, disciplines, recommends hire, termination and promotion and completes and approves performance plans of two or more Classified employees excluding casual, seasonal, and contractual employees.

**"Transfer"**: Any movement between positions in the same paygrade as long as the employee meets the job requirements.

**"Underfill"**: Filling a position in a lower paygrade than the position is authorized.

**"Veteran"**: those individuals who have been honorably separated from the Armed Forces after one of the following events: Service between April 6, 1917, to July 2, 1921; or December 7, 1941, to July 1, 1955; or Service of more than 180 consecutive days 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 Service in a campaign for which a campaign badge has been authorized. (Disabled veterans are those individuals (as above) who have established the present existence of a service-connected disability or who are receiving compensation, disability retirement benefits or pensions by reason of public laws administered by the Veterans' Administration or the Department of Defense, requiring the assignment of a claim number.)