

## **SECTION 5**

### **TERMS AND CONDITIONS OF EMPLOYMENT**

#### **5.01 EMPLOYMENT STATUS**

**AUTHORITY:** CIVIL SERVICE ACT

**ADMINISTRATION:** PEI PUBLIC SERVICE COMMISSION  
GOVERNMENT DEPARTMENTS/AGENCIES

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## **1. PURPOSE**

1.01 The purpose of this policy is to provide information on employment status within the Civil Service and to ensure a common understanding of the terminology used in reference to employees. This policy also outlines the exclusion process.

## **2. APPLICATION**

2.01 This applies to all employees within the civil service.

## **3. POLICY**

3.01 The civil service consists of the executive division, the classified division and the casual division.

3.02 The executive division is comprised of the positions of:

- (a) deputy heads and assistant deputy ministers;
- (b) Clerk of the Executive Council;
- (b.1) the Secretary to Treasury Board;
- (c) the Comptroller
- (d) special advisors and assistants to members of the Executive Council;
- (e) the Chief Executive Officer of the Public Service Commission and such other similar positions as the Lieutenant Governor in Council may designate.

3.03 Employees in the executive division are appointed by the Lieutenant Governor in Council and shall have such remuneration and benefits as the Lieutenant Governor in Council may determine.

3.04 The classified division is comprised of the classified full-time and part-time positions.

3.05 The classified division consists of:

- (a) permanent employees;
- (b) probationary employees;
- (c) provisional employees.

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- 3.06 Appointments to positions in the classified division shall be made by the Public Service Commission.
- 3.07 The casual division consists of employees of the following descriptions holding positions which are not permanent:
- (a) “contract employee” being an employee engaged by means of a contract authorized by a department head or deputy head, for temporary employment for a fixed term. Contract employees shall not perform the jobs of employees covered by the Collective Agreement. Other restrictions may apply as outlined in Section 12 of the Treasury Board Policy and Procedures Manual.
  - (b) “relief employee” being an employee engaged to fill a position on a temporary basis as a replacement for the regular incumbent;
  - (c) “temporary employee” being an employee engaged to perform specific duties because of a temporary increase in the work load;
  - (d) “student employee” being a person employed in the period from May to September who has been in full-time attendance as a student at an educational institution and affirms at the time of his/her appointment that he/she will return to full-time attendance at an educational institution in the same year.
- 3.08 An employer may hire student, temporary or relief employees who are considered capable of performing the required work subject to article 1.25 of the Collective Agreement and 3.09 and 3.10 below.
- 3.09 Temporary employees hired by an employing authority may be retained for a maximum period of six months and their employment shall be terminated no later than the end of that period.
- 3.10 The Public Service Commission may appoint a temporary employee for such specific period as it may determine.
- 3.11 The Union of Public Sector Employees (UPSE) shall be the authorized representative of all persons employed pursuant to the Civil Service Act for the purpose of consulting and negotiating with the employer (s.43(2)), other than:
- (a) an employee of the executive division;

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- (b) an employee of the Executive Council Office, of the Public Service Commission or of Treasury Board;
- (c) an employee of the Department of Environment, Labour and Justice who is required to carry out the provisions of legislation respecting conciliation or who provides advice with respect thereto to the department head;
- (d) a solicitor;
- (e) a contract employee;
- (f) a student employee;
- (g) an employee who exercises managerial functions or who is employed in a confidential capacity in relation to labour relations.

- 3.12 The employees listed in 3.11, a - g, are called “excluded” employees. Excluded employees do not have access to collective bargaining as a mechanism for the determination of their terms and conditions of employment.
- 3.13 The terms and conditions of employment for excluded employees are determined through a consultation process where representatives from the excluded group meet with/consult with representatives appointed by the employer.
- 3.14 Employees who fall under subsection (g) of 3.11 are excluded because of the conflict which exists between their employment duties and their interests as members of the bargaining unit. The interests of neither the employer nor the bargaining unit can be served when such employees are members of the bargaining unit.
- 3.15 To be excluded pursuant to subsection (g), this conflict must be demonstrable. Evidence of such a conflict exists where:
- (a) The employee makes effective recommendations regarding policies or programs which directly impact upon the utilization or deployment of employees. (Effective recommendations are ones which can be shown to be regularly acted upon.)
  - (b) The employee has direct supervisory responsibility for a unit of subordinate employees. The supervisory elements which are relevant include, for example, scheduling, performance assessment, allocation of work and overtime, and imposition of discipline. To be excluded, the employee must have independent power to exercise these supervisory functions without reference to

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a superior.

- (c) The employee is primarily engaged in personnel administration. To be excluded, an employee must be regularly involved in the administration of the collective agreement, the Civil Service Act and regulations, personnel policies and/or employee entitlements.
- (d) The employee is required to participate in labour relations on behalf of the employer. Labour relations in this sense includes collective bargaining, grievance handling (informal grievance process) and dispute resolution. An employee who is regularly required to handle confidential or sensitive information relating to labour relations of the employer may also be excluded.

3.16 To be excluded from the bargaining unit, the employee must have more than incidental involvement in one or more of the itemized areas of conflict.

3.17 To assist in determining whether an employee should be excluded under subsection 3.10 (g), a Checklist (Attachment 4.01) has been prepared which focuses on the employee's actual duties. A completed Checklist will provide a good picture of the work being done which, in turn, will help determine whether or not an employee should be excluded from the bargaining unit.

#### **4. ATTACHMENTS**

4.01 Checklist for Exclusion

**ATTACHMENT 4.01**

**CHECKLIST FOR EXCLUSION FROM UPSE BARGAINING UNIT PURSUANT TO  
S.43 (2) (g) OF THE CIVIL SERVICE ACT**

**POSITION:** \_\_\_\_\_ **EMPLOYEE NAME:** \_\_\_\_\_

**WORKING TITLE:** \_\_\_\_\_ **CLASSIFICATION:** \_\_\_\_\_

**POSITION NO:** \_\_\_\_\_ **DEPARTMENT:** \_\_\_\_\_

**IMPORTANT NOTE:**

Regardless of the complexity of an employee's job duties, an employee will only be excluded from the bargaining unit in instances where there is fundamental conflict between the employee's duties and responsibilities to the employer and the employee's personal interests as a member of the bargaining unit. The questions below are designed to determine whether such a fundamental conflict exists.

1. Indicate which of the following functions you independently perform without reference to a superior by placing an X in the appropriate boxes.

- schedule hours/days of work for subordinates;
- authorize overtime for subordinates;
- approve leaves of absence or vacation leave for subordinates;
- interview candidates for subordinate vacancies.
- make the final decision regarding hiring of staff;
- formally appraise subordinates' performance;
- establish subordinates quality and quantity standards;
- assign or redistribute work which may result in a promotion or demotion;
- hear and render decisions on grievances;
- orally counsel subordinates on their work performance;

- plan and organize subordinate's work and determine their work procedures;
- allocate financial and human resources to achieve financial objectives;
- interpret and advise on the Civil Service Act and Regulations, and the Collective Agreement;
- interpret and advise on various personnel policies and employee benefit plans;
- prepare and submit new positions for classification and creation;
- act as staff relations liaison for department;
- provide advice to supervisors and managers on disciplinary action;
- approve employee pay transactions;
- regularly provide recommendations on the classification, configuration and utilization of staff in the department.

2 (a) Do you possess the independent power to discipline subordinates?

- yes
- no

2 (b) If yes, indicate your independent disciplinary powers by placing an X in the appropriate boxes.

- written reprimands
- suspensions
- discharge

3. Estimate the time which you spend performing the functions specified in # 1 and #2.

Estimate time percentages: 1 hour per day (13%); 1 day per week (20%); 1 week per month (23%); 4 hours per week (11%); 1 day per month (4%); 2 months per year (17%).

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4. How many employees do you supervise?

Permanent full-time equivalents \_\_\_\_\_

Non-permanent full-time equivalents \_\_\_\_\_

5 (a) Do you often make recommendations in relation to the formulation, implementation and administration of policies or programs which directly impact on the utilization or deployment of employees?

yes

no

5 (b) Are your recommendations regularly acted upon by superiors?

yes

no

5 (c) If yes, examples of recommendations you made in the last year which have been acted upon:

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5 (d) Estimate the percentage of time which you spend performing the functions described in 5 (b).

Estimated time percentages: 1 hour per day (13%) 1 day per week (20%); 1 week per month (23%); 4 hours per week (11%); 1 day per month (4%); 2 months per year (17%)

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6 (a) Indicate which of the following functions you perform by placing an X in the appropriate boxes:



- sit on management negotiating team in collective bargaining;
- develop management proposals for collective bargaining;
- formally respond to grievances on behalf of the employer;
- sit on one or more joint labour-management committees as a management representative;
- prepare or type management proposals for collective bargaining;
- prepare or type responses to grievances;
- prepare or type draft legislation or legal documents which relate to labour relations issues.

6 (b) Estimate the percentage of time which you spend performing the functions specified in 6 (a).

Estimated time percentages: 1 hour per day (13%); 1 day per week (20%); 1 week per month (23%) 4 hours per week (11%) 1 day per month (4%); 2 months pe year (17%).

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6 (c) Are there others in your work unit who perform similar functions?

- yes
- no

6 (d) If yes, please list their name(s) and title(s).

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7 (a) Are you required to perform job functions (other than those already described in the questionnaire) which conflict with your personal interests as a member of the bargaining unit.

- yes
- no

7 (b) If yes, describe the functions which create this conflict.

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7 (c) Estimate the percentage of time which you spend performing the functions described in 7 (b).

Estimate time percentages: 1 hour per day (13%); 1 day per week (20%); 1 week per month (23%); 4 hours per week (11%); 1 day per month (4%); 2 months per year (17%).

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I have reviewed and responded to Sections 1 - 7

\_\_\_\_\_  
SIGNATURE OF EMPLOYEE

\_\_\_\_\_  
DATE

8. In this section supervisors are asked to comment on the Section 1 - 7, and provide necessary clarification, elaboration or identification of concerns with the information provided. (Please use an attachment if the space below is insufficient).

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\_\_\_\_\_  
SIGNATURE OF SUPERVISOR

\_\_\_\_\_  
DATE

9. In this section Deputy Ministers/Chief Executive Officers are asked to comment on the Sections 1 - 8, and provide necessary clarification, elaboration or identification of concerns with the information provided. (Please use an attachment if the space below is insufficient).

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SIGNATURE OF DEPUTY MINISTER/  
CHIEF EXECUTIVE OFFICER

\_\_\_\_\_  
DATE