

Chapter 24: Transfer of Governmental Functions and Acquisitions

Overview

Occasionally, the legislature or other legal authority may change the structure of state agencies. This might involve merging agencies or moving a function from one state agency to another. In addition, the operation of a private or local organization may be transferred to the state through some type of legal action. When such changes occur, the provisions of this chapter govern how the transfer of operations will affect the employees involved.

If classified employees are performing the function being moved to another state agency, the employees move with the function. After the employees have moved, if their new agency makes changes in assignments, organizational structure, or staffing levels, including the elimination of positions, it must do so in accordance with the applicable rules.

NOTE: Authority for unclassified positions granted by the Commission or the Director to one agency cannot be transferred to another agency when a function moves. If the receiving agency wishes to establish unclassified positions, it must obtain new authorizations from the Commission or the Director.

If a nonstate entity is acquired by the state, the employees of that entity are moved into the classified service through the specific provisions of Rule 24.2.

HR Impact – Each Transfer or Acquisition Presents Unique Challenges

Transfers of function and acquisitions are often complex and always unique. The challenges presented in effecting such transfers require considerable cooperation and coordination among all agencies involved. Confidential consultations with the Director should be sought as early in the process as possible.

Rule-By-Rule Review

Rule 24.1 Transfer of Governmental Positions

When any function of one department is moved to another department, or when one state department is replaced by one or more departments, the positions and employees of the classified service will transfer to the new department or departments. The employees' allocation and pay will remain the same upon transfer. Once the transfer is complete, if the new agency determines that

any of the transferred positions need to be changed or abolished, then the employees may be subject to a layoff in accordance with [Chapter 17](#).

Rule 24.2 Status of Nonclassified Employees whose Positions are Declared to be in the State Classified Service or are Acquired by a State Agency

(a) When a nongovernment private organization or position that does not have classified state employees, is acquired by a state agency due to a legislative act, a constitutional amendment or a judicial decree or an executive order,

OR

A governmental organization or position is created by an executive order of the Governor, legislation or constitutional amendment,

OR

A local authority is declared to be in the state classified service by court order or by order of the Commission,

The employee in the affected position will come into the classified service if the following:

1. The position is retained by the agency and the appointing authority certifies in writing that retaining the position is necessary for the continued functioning of the agency and the position falls within the state classified service.
2. The employee is eligible for employment in the classified service.
3. The employee is in the position or is an employee of the acquired entity and has at least one year of continuous service as of the effective date of the transfer. The effective date of the transfer is the date of the legislation, constitutional amendment, court order, or Commission order that moved the position to the classified service.
4. The employee meets the minimum qualifications for the position on the date the position is allocated for original probationary appointment.
5. The employee has attained a passing score of any test within 180 days of the notice of original appointment. The Director may waive the test after notifying the Commission if:
 - A test is not available or a review indicates the test would be unnecessary;
 - The person has successfully performed the duties of the position for two years; or
 - The appointing authority certifies the employee's performance rating is "Successful."
6. If a layoff occurs after the agency acquires these duties, the agency cannot exempt the acquired employees from the layoff, nor can the agency use the acquisition of these people to prevent appointing a person from the DPRL.

(b) If an employee entering the state classified service as a result of this rule was employed in a classified system from which the position was acquired, the employee will be placed in the state classified system with the same appointment status and will be exempt from the requirements of one year in the position, meeting the minimum qualification of the original appointment, and does

not have to take a test for the position. All other employees who come into the state service under this rule will be probational employees.

(c) An employee who enters the state classified service in accordance with this rule and is employed with the entity being acquired in its entirety for the first time, may, by order of the Director, be exempt from requirements of the original appointment, meeting the minimum qualifications, and testing under the following conditions:

1. The Director conducts a review of the hiring and personnel practices of the acquired organization.
2. The Director notifies the Commission he intends to apply these provisions and files a written report with the Commission explaining why he is using these provisions.
3. The Director may still require some employees to meet the minimum qualifications and take any required tests.
4. Any employee acquired under this provision, except those whom the Director requires to meet the minimum qualifications and test, will be deemed to meet the minimum qualifications of the job.

(d) An employee who enters the classified service under this rule will have his pay set in accordance with Civil Service [Rule 6.17](#).

(e) An employee who enters the classified service under this rule will have his leave credits determined as follows:

1. A classified employee in a civil service system will have annual and sick leave credits assumed by the acquiring agency, provided that only the amount of leave earned minus the amount taken in the first year of appointment may be paid on separation in that year, except for separations caused by layoff, medical disability, death, or retirement. Once in the state civil service system, the employee will earn leave according to the Civil Service Rules.
2. An employee of the state, who worked under an official system of leave earning and use policy when he came into the classified service, will have his leave credits set in accordance with Civil Service [Rule 11.19\(d\)](#).
3. Any other employee added to the state classified service under this rule will be credited up to a maximum of 240 hours of annual and sick leave provided that the former employer had an official system of leave earning and use; however, only the amount of leave earned minus the amount of leave taken in the first year of the appointment may be paid upon separation in that year, except for separations caused by layoff, medical disability, death, or retirement.

(f) Compensatory time will not be credited to an employee who enters the classified service under this rule upon transfer except as required by the Fair Labor Standards Act.

(g) An employee who enters the state classified service pursuant to this rule will have his eligibility for performance adjustments and leave earnings determined based upon his original date of hire with the former employer. However, the Director may make exceptions to this rule for all employees of an entity acquired by the state that had a well-established merit pay policy.

(h) This rule will not apply to anyone who was illegally hired in the state unclassified or classified service as determined by the Commission after a public hearing, or who is hired in the state unclassified service or someone who is seeking voluntary employment in the state classified service.

(i) Upon request by an appointing authority, the Commission may, when sufficient and compelling reasons are given, apply this rule to situations not addressed in this rule.

(j) The Director may order an employee subject to this rule to be placed on a special provisional appointment, as defined in [Chapter 1](#), in order to complete the process necessary to determine if the employee may remain in the classified service to determine what provisions of this rule or others may be required to be met. This special provisional appointment will expire either upon appointment of probational status or two years after the date the special provisional appointment was made, or upon order of the Director.