Number 5.1 - EMPLOYMENT CATEGORIES

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Applicable To: All classified employees, as well as exempt, appointed, and temporary, and contractual, with the Executive Branch of the State of Vermont.

Issued By: Department of Personnel

Approved By: William H. Sorrell, Secretary of Administration

PURPOSE AND POLICY STATEMENT

The purpose of this document is to define the various categories of employment in the Executive Branch of Vermont State Government, and to establish the employment policies and procedures applicable to each.

It is the policy of the State that each person hired by the State of Vermont shall be engaged in the appropriate category as defined herein, and his or her employment shall be in accordance with the policies relating to that particular category.

All employment with the Executive Branch of State government is either classified or exempt, and is enumerated by statute or regulation into specific categories of employment. The classified category includes permanent and limited service positions. The exempt category includes State Police, temporary, elective, appointive, appointive limited positions, and employment for the delivery of a special agreement, contract and retainer service as specified in 3 VSA, 311(a)(10).

GENERAL INFORMATION

Separation of Powers: No agency, department, or other unit within the Executive Branch of State government shall employ in a classified or temporary position, or in a contractual arrangement, any member of the Vermont Legislature during his/her term of office, except as authorized under the provisions of 21 VSA 496 and the current collective bargaining agreement (applicable to classified employees).

Simultaneous Employment: No full-time or part-time employee shall enter into a contract agreement or other employment which will result in concurrent payments from the State of Vermont under more than one employment category. For example, a full-time employee shall not be concurrently engaged under contract or as a temporary employee with the same or another department.
Exceptions may be made by the Commissioner of Personnel in special circumstances when there is documented evidence of necessity based upon lack of available qualified personnel in the open market, and when the work involved will in no way conflict with an employee’s regular working hours or performance of his/her regular duties. A classified employee shall not be granted a leave of absence from his/her regular position to accept other employment, including temporary, contractual, or special agreement employment with the State except in accordance with the applicable provisions of the appropriate collective bargaining agreement or Agency of Administration Bulletin No. 4.5 (a), whichever pertains.

Section 5.10 - Exempt

Exempt service positions are excluded from the classified service by State statute. These positions include State Police, temporary positions, elected and appointed positions.

1. **State Police Positions** - are permanent positions within the Department of Public Safety for uniformed personnel, plainclothes members of the department with powers of arrest, and certain positions in the communications, records, and fire prevention units of the department, as determined by the Commissioner of Public Safety, and to be filled in accordance with its rules and regulations applicable to the State Police.

2. **Temporary Employment Positions** - are positions of persons employed in a temporary capacity pursuant to 3 VSA 311 and 331, and as defined therein.

3. **Elected and Appointed Positions** - are permanent positions that are excluded from the classified service by statute, and are generally filled through the elective or appointive process. Such positions include, but are not limited to:
   - Agency secretaries, executive assistants, commissioners, deputy commissioners, private secretaries, and assistant attorneys general.
   - Positions in the office of the Governor.
   - Positions filled by popular vote or by the legislature.
   - Positions in the judicial branch of State government.
   - Positions in the legislative branch of State government (except certain positions in the Joint Fiscal Committee if waived by the council).
   - Boards, commissions, councils, or similar bodies, plus one principal assistant or executive secretary position for each such body, as authorized by 3 VSA 311(a).
   - Positions filled by patients or inmates in State institutions.
   - Attorneys employed as legal advisors or special counsel outside the office of the Attorney General, including special counsel for the Public Service Board.

Section 5.11 - Classified Service

A classified employee is an employee of the State of Vermont who is hired to fill a position in the classified service in accordance with merit principles as administered by
the Department of Personnel, and who is paid a salary for work performed in a position in the State classification plan.

The classified service shall include all positions and categories of employment except as otherwise provided by law. These positions are characterized by competitive appointment under a merit system of personnel administration, as defined in chapter 10 of the Rules and Regulations for Personnel Administration.

1. **Permanent Full-Time Position** - A position in the classified service with duties and responsibilities of a continuing nature which require an employee to work a full-time, year-round work schedule.

2. **Permanent Part-Time Position** - A position in the classified service with duties and responsibilities which are of a predictable, continuing nature, but which require an employee to work for less than forty (40) hours per week, and/or less than five (5) workdays per week; or, if of a seasonal nature, to work for less than fifty-two (52) weeks per year.

### Section 5.12 - Limited Service

A limited service position is a non-tenured position in the classified service which, when initially established, is reasonably expected to exist for a limited duration of less than three (3) years but more than one (1) year. Such positions have a definite termination date and are usually associated with a specially funded project or program.

### Section 5.13 - Confidential

A confidential employee is a classified employee having responsibility for, knowledge of, or access to information relating to collective bargaining, personnel administration, or budgetary matters that would make membership in or representation by an employee organization incompatible with his or her official duties.

### Section 5.14 - Managerial/Supervisory

1. **Managerial** - is determined by the Vermont Labor Relations Board (VLRB) as being in an exempt or classified position which requires him/her to function as an agency, department, or institution head, a major program or division director, a major section chief, or director of a district operation.

2. **Supervisory** - means an individual finally determined by the VLRB as having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees or responsibility to direct them or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment.
The Commissioner of Personnel shall designate each permanent position accordingly and may, from time-to-time, change such designation if circumstances so warrant.

**Section 5.15 - Contractual**

Contractual service is provided to the State by agreement between an authorized representative of the State and an individual and/or organization. In no instance shall the duration of a contractual employer-employee relationship exceed twelve (12) months, except in instances of casual employment, as addressed below. The contracts are reviewed on an annual basis.

1. **Special Agreement Services** - Contracts for services are characterized by:
   - Full-time duty for special projects of up to twelve (12) months' duration which cannot be provided by current staff or temporary employees. Individuals are generally provided with work facilities and equipment and are directed by an authorized representative of the State. No special agreement shall exceed twelve (12) months.
   - Short-duration services of a continual nature which do not regularly exceed sixteen (16) hours per week; for example, janitorial services for local offices. (A continuing service need which consistently exceeds sixteen (16) hours per week although less than full-time, shall be met through the use of permanent part-time classified positions in accordance with 3 VSA 310.)
   - If the contractor is to be paid from the payroll, the agency then submits an *Employment Authorization Form* (AA-PF-2A) to the Department of Personnel. Instructions for preparing this form have been separately issued under joint memorandum by the Departments of Personnel and Finance. An *Agency Time Report Certification Form* and individual time reports must be submitted to the Department of Finance each payroll period to authorize the issuance of a check. Payment through the payroll system is normally authorized only when the contractor is to be paid on the same schedule as State employees and will have taxes or other withholdings from such payment. Contact the Department of Personnel if in doubt as to whether this method of payment is appropriate.

2. **Retainer Services** - are characterized by the State’s payment of a fee to an individual or group to ensure availability of services. There is usually no employer-employee relationship present. (Such an arrangement is usually entered into for professional services, i.e. physicians and attorneys.)

3. **Contract Services** - are characterized by an agreement to deliver services for a specific fee in a specified period. There is no employer-employee relationship created.

**Section 5.16 - Temporary**

These positions are created on request by an appointing authority to the Department of Personnel when there is a short-term need for additional employees. These positions
are outside of the classified service, but are subject to allocation to classes and assignment to pay grades of the State classification plan.

The rate of pay set for a temporary position must be the hiring rate which would apply were the position in the classified service. An exception may be made in a case of difficult recruitment, for outstanding qualifications, or for a former classified employee who is returning to service as a temporary to perform work comparable to a previous classified position. In any such case, rates above pay grade minimum, or approved hiring rate, must be approved by the Department of Personnel before an offer of employment is made.

There are six (6) categories of temporary employees: seasonal; fill-in; bona-fide emergency hires; intermittent; sporadic; or ongoing part-time (that averages less than twenty (20) hours per week during any one calendar year, not to exceed 1040 hours in one calendar year).

The following information applies to all temporary employees:

1. Temporary employees must meet the minimum qualifications established for the job that they are hired to perform, and will be compensated at the applicable rate of pay for hours actually worked, and are entitled to overtime in accordance with federal law.
2. Temporary employees are not eligible for State benefits such as group life and health insurance; sick, annual or personal leave; retirement benefits; holiday pay; and shift differential.
3. Temporary employees are not covered by any collective bargaining unit agreements.
4. Temporary employees are not necessarily covered by any departmental policies governing discipline, unless so specified.
5. Temporary employees are employees at will and have no right to continued employment or a proprietary right to a job. Temporary employment may be terminated at any time for any reason, except as prohibited by law.
6. Temporary employees may be employed, with the approval of the Department of Personnel, for a period not to exceed 1,520 hours in any one calendar year. The secretary of administration may authorize exceptions to the 1,520 hour limit in cases of a bona-fide emergency.
7. The Commissioner of Personnel will not approve a temporary hire if that approval would have the intent or effect of circumventing the policies and purposes of the classified service. Each instance in which such a question arises will be reviewed on its own merits.

**NOTE:** See Attachment A for *Statement of Employment Conditions for Temporary Employees.*
Section 5.17 - Provisional

In the absence of three (3) available names on an appropriate hiring register, the appointing authority may request the Commissioner of Personnel to approve the provisional appointment of a person meeting the minimum qualifications of the class, pending examination and/or certification requirements and establishment of a register.

1. No provisional appointment shall be made until the position has been classified and minimum qualifications established.
2. No provisional appointment shall continue for more than thirty (30) days after an appropriate certificate of eligibles is submitted to the appointing authority.
3. The acceptance of a provisional appointment shall not confer upon the appointee any rights of permanent status, transfer, reassignment, promotion or reinstatement. A provisional employee who has been tested may compete for the position but may be appointed only if his or her name appears on the certified list.
4. Time spent on provisional appointment shall count towards completion of probationary period.

Attachment A – Statement of Employment Conditions for Temporary Employees

The State of Vermont strives to keep the use of temporary employees to a minimum. Nevertheless, some State agencies have pressing logistical needs for temporary staff. You should be aware that temporary status employment carries certain restrictions. As a temporary employee, you do not have the same rights and benefits as classified or exempt status employees. The hiring of a temporary employee is covered by 3 VSA 331. We ask that you read carefully the conditions of temporary employment which follow, and sign in the space provided at the end of the document.

TEMPORARY EMPLOYMENT:

IS LIMITED TO 1,520 hours of work per calendar year, except in cases of emergency as authorized by the Commissioner of Personnel.

DOES NOT CONFER ACCESS TO PERMANENT EMPLOYMENT IN STATE GOVERNMENT. Temporary employees must compete on an equal footing (or "open competitive basis") with other non-state employee applicants for permanent employment. If hired on a permanent basis, a former TEMPORARY employee must satisfactorily complete an original probationary period, as would any newly hired employee.

IS LIMITED TO 40 weeks per calendar year if a retired State employee.

TEMPORARY EMPLOYEES:
ARE PAID ONLY FOR ACTUAL HOURS WORKED and are entitled to overtime in accordance with federal law. The State cannot guarantee how long a TEMPORARY job will last and cannot guarantee 40 hours of work per week.

ARE NOT ELIGIBLE FOR THESE STATE BENEFITS: medical benefits programs, group life insurance, sick leave, annual leave, personal leave, retirement benefits, and holiday compensation for time not actually worked.

ARE NOT COVERED BY RIGHTS, BENEFITS, PROCEDURES, AND PRIVILEGES OF CLASSIFIED EMPLOYMENT including, but not limited to those conferred by the collective bargaining agreement.

ARE NOT COVERED BY ANY DEPARTMENTAL POLICIES GOVERNING DISCIPLINE which may guarantee classified employees any review procedures before the disciplinary action is taken (unless specifically noted in the department's policy).

ARE EMPLOYED AT WILL under the law. This means that temporary employees have no right to continued employment or a proprietary right to a job. Temporary employment may be terminated at any time for any reason, except as prohibited by law. (State and federal laws governing discrimination, Workers' Compensation, fair employment practices, maternity leave, disabilities, wages and hours and the like, apply to all employees, including temporaries.)

I, ____________________________, hereby acknowledge and understand that I am being (or have been) hired as a TEMPORARY employee by the State of Vermont in the Department of _______________________________. I have read and understand the above conditions of employment. I also understand that this statement of working conditions supersedes anything inconsistent with it, and that these conditions may only be changed by law, or by written order of the Governor or his or her representative.

Employee Signature: ____________________________ Date: ____________

Hiring Manager: ________________________________ Date: __________

Dept./Location: _________________________________