

Exemption Procedures Manual

1.1 History

Pursuant to the Act and Code, the University Civil Service Merit Board (Merit Board) may delegate its authority to the Executive Director of the State Universities Civil Service System (University System) in whole or in part. Section 36d(1) of the State Universities Civil Service Act (Act) authorizes the Merit Board to approve a classification plan and delegate to the Executive Director the responsibility of assigning civil service positions to the appropriate classification (see 110 ILCS 70/36d(1)). The Executive Director is also charged with the responsibility to conduct audits of system employers to ensure compliance with all provisions of the Act and Code and to contend with issues revealed through audit reports as directed by the Merit Board (see 80 Ill. Adm. Code §250.140(c)). Section 250.140(a) of the Code further provides that the Executive Director has all the authority required to implement the Act and Code and that the Merit Board may delegate any of its authority to the Executive Director by specific authorization of the Merit Board (see 80 Ill. Adm. Code §250.140(a)).

Subsection: General Overview of Exemption from State Universities Civil Service System

The State Universities Civil Service Act (Act) (110 ILCS 70/36e) states that all employees shall be covered by the University System, except the following persons:

1. The members and officers of the Merit Board and the board of trustees, and the commissioners of the institutions and agencies covered hereunder;
2. The presidents and vice-presidents of each educational institution;
3. Other principal administrative employees of each institution and agency as determined by the Merit Board;
4. The teaching, research, and extension faculties of each institution and agency;
5. Students employed under rules prescribed by the Merit Board, without examination or certification.

As part of its statutory responsibility, the Merit Board has approved criteria that are to be used as guidelines for determining appropriate civil service exemptions. These criteria were originally drafted in 1972 by members of the Human Resource Directors Advisory Committee and the State Universities Civil Service Advisory Committee and circulated to all the Designated Employer Representatives and members of the University Civil Service Advisory Committee for comment and input. At that time, the Merit Board also approved an Administrative Advisory Committee's resolution recommending that the Merit Board's authority to approve exemptions based on the criteria be delegated to the Executive Director of the University System. The employer would then be allowed to appeal the Executive Director's decisions to the Merit Board. These criteria were expanded in 1975 and 1990.

In 1997 and in 1998, the Merit Board approved position standards that would allow the employer to exempt positions from civil service without prior approval from the Executive Director if the

position description fits within the defined position standard. This exemption process would be subject to audit by the University System.

Section 2.1 below contains the guidelines and criteria to be used in properly validating and designating those positions, and employees in those positions, as exempt from State Universities Civil Service System coverage, as categorically defined above. It is important to note that a significant amount of attention and careful consideration was taken to insure that these standards most accurately reflect and preserve the historical intentions of related statutory provisions and Merit Board actions.

When the standards for each exemption category were established, appropriate attention was given to insure that the examples and types of positions listed were consistent with statutory intention and Merit Board actions. At the same time, the examples and types of positions listed remain broad enough to hopefully encompass future positions that would be appropriate for designation under each category.

Within any complex classification plan, there are instances of overlap in position specifications, assigned duties, and responsibilities. ***However, there was never any intent to permit or condone the conversion of traditional civil service positions to exempt status by virtue of the fact that the positions may appear to correspond to the general definitions of positions contained in these exemption categories. If a position description matches the specifications for any civil service classification, the position must be designated as civil service.***

1.2 Overview

The Merit Board permits the Designated Employer Representative (DER) at each of the universities and agencies to make an initial determination as to whether a position qualifies as an exemption pursuant to §36e of the Act; however, this authority is granted and may be revoked, in whole or in part, at the sole discretion of the Merit Board. This permission does not limit the Executive Director's responsibility for ensuring compliance with statutory and procedural guidelines in this respect.

The state universities and agencies all differ in their organizational structures and within each institution the administrative offices, colleges and various departments all differ in many respects such as size and scope. As a result, institutions must utilize a process for determining exemptions.

Exemption status is determined primarily by a thorough and comprehensive review of the position description. It is therefore extremely important that employers maintain an updated, accurate and complete position description for all positions. A routine and regular position review program is necessary in order to properly assign classification designations and accurately validate exemption status.

2.1 Exemptions

- a. In accordance with §36e of the Act, all positions are designated civil service, except for the following positions specified in §36e(1) and (2) of the Act:
 1. The Board of Trustees of each educational institution, State Universities Civil Service System Merit Board, Board of Trustees of the State Universities Retirement System, Board of the Illinois Community College Board, Board of the Illinois Student Assistance Commission and Board of the Illinois Board of Higher Education as set forth in §36e of the Act;
 2. The presidents and vice-presidents of each educational institution set forth in §36e of the Act.
- b. The Act specifically provides that the Merit Board has the authority to determine PAAs at each institution or agency. Section 250.30(a) of the Code further defines the Merit Board's responsibility in this regard, which provides, in part, "Exemptions under Section 36e(3) of the Statute shall be by position. When approved by the Merit Board, a position shall remain exempt until such exemption is terminated by the Merit Board. The Director shall publish guidelines for such exemptions, as approved by the Merit Board."
 1. These procedures to exempt position(s) should generally adhere to the steps outlined and described below:
 - A. Employing department contacts Human Resources (HR) Office for review of a job description.
 - B. HR may request additional information from the department if needed.
 - C. Positions within a general job category may be classified as PAA or a civil service position dependent on the scope/authority of the department.
 - D. HR reviews the duties in each job description as well as the scope, accountability, minimum requirements, organizational structure, reporting relationships, and position title.
 - i. Each position is initially determined to be designated as civil service, which includes a review of the general scope, duties, and function and/or minimum qualifications of an appropriate existing civil service classification.
 - ii. If the scope, duties, function and/or minimum qualifications do not substantially match an appropriate existing civil service classification, the job is reviewed for scope and function including what characteristics may qualify the position to be exempt from civil service.
 - iii. To be designated as exempt from civil service, the position must meet the criteria as described.
 - iv. In the event there is no appropriate civil service classification available and the duties of the proposed position do not justify exemption under the Act, the University System can determine if a revision to an existing civil service classification or creation of a new classification is required.
 2. Principal Administrative Appointments (PAA) may be exempt pursuant to §36e(3) of the Act, whose primary duties constitute senior management or senior

administrative functions for an entire university, campus, agency, administrative/business department/unit, or academic department/unit. If the position does not fit within the general scope, duties, or function of an existing civil service classification, the following criteria may be considered in determining whether the primary duties constitute senior management or senior administrative functions:

- A. Whether and to what extent the position has the authority to represent and obligate the university, campus, agency, or department/unit in matters of significance;
 - B. Exemption as an executive or administrative employee according to the Fair Labor Standards Act, 29 USC 213(A)(1) duties test is necessary, but not alone sufficient to qualify for exemption under 36e(3) of the Act.
3. Notwithstanding the above criteria, specific positions exempted under 36e(3) include:
- A. The chancellor of each educational institution;
 - B. The provost, vice provost or vice chancellor, associate and assistant chancellor, associate and assistant vice presidents, associate and assistant provost, associate and assistant vice provost, associate and assistant vice chancellor of each educational institution;
 - C. The Executive Officer/Executive Director of the Illinois Community College Board, Illinois Student Assistance Commission, State Universities Retirement System, Illinois Board of Higher Education, and State Universities Civil Service System;
 - D. Executive Director positions at each educational institution and agency;
 - E. Positions that are professionally licensed/certified to practice within their respective fields and whose primary duties constitute the practice of that field who also possess a requisite degree within the field of study such as a MD, JD and MSW. Examples of these positions include physicians, veterinarians, dentists, pharmacists, licensed advanced practice providers, audiologists, genetics counselors, attorneys, engineers and architects. Note: other licensed/certified positions such as veterinary technicians, registered nurses, credentialed nursing assistants, lab technicians and other similar positions are not intended to be exempt.
 - F. Executive policy advisors for each position identified in subparagraphs (2.1.a.2) above, and (A-D), in this section;
 - G. Positions whose primary duties constitute fundraising, advancement or development work for the institution.
4. In accordance with §36e of the Act, all positions are designated civil service, except for the following positions specified in §36e(4) of the Act:
- A. All faculty positions as determined by each university's own internal processes.
 - B. Teaching positions include those whose primary function is to instruct or counsel students of the institution or its Laboratory Schools, most specifically related to the normal academic curricula.

- i. Positions with the primary duty of teaching, tutoring, instructing or lecturing in the activity of imparting knowledge, whether in the classroom, field, clinical, online or other similar forms of teaching. These teachers include regular academic teachers; teachers of kindergarten or nursery school pupils; teachers of gifted or disabled children; teachers of skilled and semi-skilled trades and occupations; teachers engaged in automobile driving instruction; aircraft flight instructors; home economics teachers; and vocal and instrumental music instructors; and athletic coaches or trainers. This excludes positions for which the primary duty is the teaching or training of other employees of the university or agency.
 - ii. Exemption pursuant to this subsection does not require that the position be a tenured or tenure-track position. These positions have traditionally been referred to as adjunct or extension, professor, teacher or instructor.
 - iii. Academic advising when that position is granted formal authority by an academic unit (university, college, school, or department) to approve the student's academic program of study and assist the student in progressing toward the appropriate degree.
 - iv. Positions for which the primary duty is recruiting students.
 - v. Residence hall directors.
 - vi. Deans, assistant deans, associate deans or other positions with primary administrative or supervisory responsibility for faculty exempt positions within a single department or program shall be exempt as teaching or extension faculty, respectively.
- C. Research positions primarily engaged in research activities, normally under the direct oversight of an academic department or college and are frequently funded by outside sources. Research in this context is not necessarily limited to the laboratory work typical of the physical sciences, but may also include field historical research, linguistic studies, archaeology, etc. Academic rank is not a prerequisite to inclusion of a particular position in this category. Likewise, those positions with primary administrative or supervisory responsibility for a group of employees falling within this category are considered exempt in accordance with this standard.
- D. Extension faculty positions as determined by each university's own internal processes include instructional positions created to provide both credit and non-credit instructional programs offered by the institution, which typically do not lead to a degree.
- i. The non-credit component includes instructional programs, including but not limited to Early Childhood Education, Adult Education, Continuing Education, and English as a second language.
 - ii. Positions within this exemption category may be employed solely for the duration of the specific course(s) being offered, based on

professional experience in a particular profession or industry, or may be subject-matter experts who are employed as regular academic staff members at another educational institution.

- iii. A position with primary administrative or supervisory responsibility for a group of exempt extension faculty positions within a single department or program shall be exempt as extension faculty.

- 5. Student positions - Students employed under rules prescribed by the Merit Board, without examination or certification.

3.1 Accountability Program

The Merit Board permits the Designated Employer Representative (DER) at each of the universities and agencies to make an initial determination as to whether a position qualifies as an exemption pursuant to §36e of the Act; however, this authority is granted and may be revoked, in whole or in part, at the sole discretion of the Merit Board. This permission does not limit the Executive Director's responsibility for ensuring compliance with statutory and procedural guidelines in this respect. Accountability for exemption authorization consists of various components, including, but not limited to, an internal review by the University System employer that includes various periodic reports submitted by each University System employer to the Executive Director, an external review by the University System that includes an audit process, and Merit Board review and corrective or remedial action, if necessary.

The concept of accountability as captured in this procedure is not intended to add another layer of process or procedure requirements for University System employers. Each University system employer must be able to design its exemption process to fit its unique circumstances, in accordance with these guidelines.

Consequently, the role of the University System is one of oversight through audits and review of data through quarterly or other reports submitted by each University System employer. ***Regardless of the delegation of exemption authority, the basic statutory foundation for all employees in the University System is that they are assumed civil service unless exempted by statute.***

3.2 Internal Review

Accountability for exemption authorization consists of the following components:

Internal Business Review Process – an internal position review process that will ensure efficient management of the exemption authorization process. This should include a detailed description of the internal oversight, training, review and approval, and recordkeeping components of the employer's exemption process. The internal review process must indicate that exemption requests are reviewed and approved by the DER.

Training Process – training for those human resource professionals who are responsible for implementing the employer’s exemption authorization process will be routinely provided by the University System. This should include training for any administrators or employees who will prepare or approve exemption requests for employer approval.

Position Assessment Process – a cyclic review program wherein all exempt position descriptions are reviewed by the employer for currency of job content and title no less often than once every three years. Job changes of exempted positions discovered as a result of this review should commence immediately; however, any conversion to an appropriate civil service classification should be completed in accordance with section 3.3.

Data Report – a data report of exempted positions consisting of exemption category, position number, position title, position FTE, exemption approval date or appointment date, funding source, (appropriated or non-appropriated), and any prior civil service position title and date of civil service appointment. The data report need not duplicate other human resource reports that are submitted to the University System that may contain the same information. Employers are also required to submit a periodic headcount report to the University System along with a detailed data snapshot of exemptions as described above.

3.3 Accountability for Exemption Authorization

The Legal and Compliance Services division of the University System will perform audit testing analysis and compare the duties contained in the position description performed by employees in randomly selected positions against University System class specifications. In conjunction with that review, the criteria listed above will also be considered when making a determination of the correct designation for a selected position.

This process is completed through the standard audit conducted by the Legal and Compliance Services division, as outlined in the audit charter. Results are determined and findings are released in accordance with standard audit practices.

Consistent with the audit charter, outcomes from the most recent audit conducted at each employer will be used to determine the scope of any subsequent audit(s). If circumstances warrant, and in consultation with the Merit Board, the position audit review may be expanded across multiple audit timeframes.

a. Final Outcome:

The University System and the university/agency engages in an interactive process to work through any disputed positions and attempt to agree on a resolution, prior to the final audit report issued by the University System.

Nothing in an employment contract can prohibit the conversion of a position/employee based on the below detailed remedy and process.

b. Parties in agreement:

If the University System staff and university/agency agree that a position was improperly exempted, the university/agency will have the choice to convert the position/incumbent to the appropriate civil service classification:

1. Immediately upon agreement with the employee, or
2. When the current contract ends, which includes any institutional notice of non-reappointment period, or
3. By the end of the fiscal or academic year or similar timeframe, or
4. If the position becomes vacant.

NOTE: a position/incumbent must be converted within a maximum of 16 months from the University System decision that the position should be designated as civil service.

c. Parties not in agreement:

If the University System staff and university/agency do not agree that a position was improperly exempted, the employer has the right to appeal the decision to the Merit Board.

If a request for appeal is not filed within 30 calendar days of the University System decision, the University System decision shall be the final decision of the Merit Board.

d. Appeal Process to the Merit Board:

The employer may seek a review of any University System decision. The employer must file a written request, along with a position statement and any written documentation in support thereof, with the Secretary for the Merit Board for a Merit Board review of the University System decision within 30 calendar days from the date of the decision. The request must be received by the Secretary for the Merit Board at least 30 calendar days prior to the next scheduled meeting of the Merit Board for it to be included on the agenda for that meeting; if not so received, it will be placed on the agenda for the next scheduled meeting of the Board. The burden of proof shall be on the employer. The Merit Board shall examine the record and uphold or reverse such decision, or order further review, as it may deem necessary or desirable. If appealed, the final Decision and Order of the Merit Board shall be certified by the Secretary for the Merit Board to the Executive Director and to the parties of record.

e. Position Maintenance Standards:

As a means of helping insure the maintenance of position changes, University System employers shall establish and implement a cyclic review program wherein position descriptions for all exempt positions are reviewed by the University System employer for currency of job content and title *no less often than once every three years*. Exemption status changes discovered as a result of this review shall promptly be corrected and reported to the University System.

Upon review if a position(s) meets the criteria of civil service employment, the university/agency will have the choice to convert the position/incumbent to the appropriate civil service classification:

1. Immediately upon agreement with the employee, or
2. When the current contract ends, which includes any institutional notice of non-reappointment period, or
3. By the end of the fiscal or academic year or similar timeframe, or
4. If the position becomes vacant.

NOTE: a position/incumbent must be converted within a maximum of 16 months from the University System decision that the position should be designated as civil service.

3.4 Remedial Process

Upon the recommendation of the Executive Director, or upon its own initiative, the Merit Board may take any necessary corrective or remedial action in an attempt to resolve incorrect exemption authorization issues. Such corrective or remedial action may take any specific form, as determined by the Merit Board, and will be based on the pattern of severity and history of the noncompliance issue(s). However, no remedial action will be taken that will result in interference with an employment contract, per notice rights as stated in section 3.3.

4.1 Reporting Requirements

Reports will be requested periodically by the University System regarding hiring activity during the implementation phase of the Act/Rule/Procedure review. This data will be used to review and monitor exempted positions. Information may also be used in concert with the standard audit process.

- a. Periodic Report of Exempt Employees (minimum twice per year):

This report shall include the following for both state funded and non-state funded positions:

1. Number of employees considered exempt under Section 36e(2) -- The presidents and vice-presidents of each educational institution
2. Number of employees considered exempt under Section 36e(3) -- Other principal administrative employees of each institution and agency as determined by the Merit Board
3. Number of employees considered exempt under Section 36e(4) -- The teaching, research, and extension faculties of each institution and agency
4. Number of employees considered exempt under Section 36e(5) -- Students employed under rules prescribed by the Merit Board, without examination or certification

- b. Additional/Ad Hoc Reports

The Executive Director has the authority to request additional data as deemed necessary. Reasonable notification to the employer must be provided.

5.1 Temporary Assignment of Civil Service Employee to a Civil Service Exempt Position

This procedure is to be used when a Civil Service employee is temporarily assigned to a position exempted from the University Civil Service System or temporarily assigned additional duties commonly associated with a position exempted from the University Civil Service System in addition to those regularly assigned through their civil service classification. The exemption assignment or additional duties may be performed on a temporary or emergent basis, including but not limited to, occasions when there is a search conducted to fill the exempt position or when an exempt employee is on an extended medical or personal leave.

Employees temporarily assigned or accepting the additional duties associated with a position exempted from the University Civil Service System may receive additional compensation while serving in this capacity and will maintain their current classification status, as if they had remained in their current civil service classification during the entire temporary exempt assignment timeframe. Employees will therefore continue to accrue seniority in their current civil service classification and, at a minimum, retain their current compensation level while on temporary assignment to a civil service exempt position and/or while performing the exempt duties.

5.2 Changing an Exempt Position to a Civil Service Position

Periodic job description review and update procedures may indicate that a position originally exempted from the University Civil Service System may have incorrectly been classified or may have changed to the point whereby a department now must convert this position, and any employee currently in this position, to an identified and appropriate civil service classification. The following procedure will assist each employer in converting positions, and any employee currently occupying these positions, from an exempt position to a civil service position.

When it has been determined and established that the job responsibilities and duties of a position do not meet the criteria for a 36(e) exemption, the employer may be required to change the position from an exempt position to an appropriate civil service appointment in a recognized classification, in accordance with the following process.

- a. Establishment of appropriate civil service position:
 1. The employer will determine the appropriate civil service classification based on the defined duties and responsibilities associated with the position.
 2. The employer will then establish a pay rate or range for the classification, if one has not already been established. *(Note: The classification of positions remains subject to audit review by the University System.)*
 3. The position will then be officially changed to reflect the appropriate civil service classification and all relevant employment protocols will be followed when filling any future vacancy in this position.

- b. Transition of an exempt incumbent into a civil service position:
1. After converting the exempt position to a civil service position, any incumbent in the former exempt position will be officially moved to the designated civil service classification assigned to the converted position. At the time of this action, the employer is required to cite this procedure on the *Notice of Employment*. Appropriate notice rights, per section 3.3, shall be provided.
 2. If the incumbent does not meet the minimum acceptable qualifications of the civil service classification assigned to the converted position, a Qualification Waiver Form must be requested and must be approved by the Executive Director. See [Example 2.3a of the Examination Procedures Manual](#) for the appropriate form. The incumbent will not be required to complete a civil service examination for the designated classification provided they meet the minimum acceptable qualifications or have obtained the approved waiver form.
 3. The incumbent will be required to complete a probationary period associated with the designated civil service classification/position. Time served in the previous exempt position will count towards the completion of the probationary period. Some specific examples follow:

Example 1: An employee was hired in an exempt position and has served 4 months in the position. It is determined that the position should be a civil service classification of Human Resource Associate which has a 12-month probationary period. Upon changing the position from exempt status to civil service, the employee would be required to complete the 'remaining' 8 months of the 12-month probationary period.

Example 2: An employee was hired as in an exempt position and has served 14 months in the position. It is determined that the position should be a civil service classification of Human Resource Associate which has a 12-month probationary period. Upon converting the position from exempt status to civil service, the employee would not be required to complete any additional probationary period.
 4. Seniority is accrued from the date that it can reasonably be determined that the position description met the criteria (duties/responsibilities) of a civil service classification. This date can be determined based upon a historical evaluation of the job description for the position. In cases where there has been no significant change in the job description, seniority is accrued from the date of employment into the exempt position.
 5. Upon change to the civil service position, the employee will also begin accruing benefits no less than those prescribed in the Merit Board Policy Relating to Employee Benefits.