Information for State Employees Seeking Transfer

The Civil Service Law and rules provide the conditions under which permanent employees in the competitive class may transfer to a different title, agency or geographic location. The Department of Civil Service does not refer employees looking for a transfer. Employees must take the initiative by contacting agencies directly or by looking for vacancies on the new GOER web site at www.jobweb.goer.state.ny.us. The best way to find out about potential job vacancies is to develop an informal network of contacts in other units within your agency and within other agencies. You can start by contacting PEF stewards and members within and outside your agency as well as employees in your agency and other agencies’ Human Resources offices.

State agencies have broad discretion in choosing to fill a particular job by transfer. To convince agencies to consider them, employees should provide a current resume describing their work experience, educational background and the specific transfer to be used.

What Are Transfers?
A transfer is the movement of a permanent competitive class employee from a position in one title to a position in a different title or from a position in one agency to a position in another agency. Both positions must be within the competitive class. Transfers occur with the consent of the employee after nomination by the appointing agency and the approval of the Department of Civil Service. Approval by the agency from which the employee is transferring is not required in order for the transfer to occur.

What Are The Requirements For Transfer?
Generally employees must have had at least one year of permanent service in their current title or at their current salary grade, and the transfer can be to the same or any lower salary grade, but cannot be to a title more than two salary grades (or one M grade) higher than their current title. Transfers may not be approved if some types of lists exist for the title to which transfer is sought. Employees who are currently serving probation are eligible to transfer.

The Civil Service Law defines three different kinds of transfers

Section 70.1 allows transfer without further examination from one title to another when a sufficient degree of similarity exists between the minimum qualifications, tests and/or duties of the specific titles involved. The appropriateness of transfer is decided on a title-by-title basis by the Department of Civil Service at the request of personnel offices of state agencies. This section of the law also allows employees to transfer to another agency in the same title. The PEF Civil Service/Research Department has a list of titles that have already been approved for 70.1 transfers.

Section 70.4 allows transfer to a title which is not similar, but where the employee meets the qualifications for the title. Usually the employee must pass an examination open to the public for the title before transfer can be approved.
Section 52.6 allows transfer between administrative titles at the same or similar salary grade. Administrative titles are those involving law, personnel, budgeting, methods and procedures, management, records analysis or administrative research.

What Are The Effects Of Transfer On Employee Status?

Probation and Leave Of Absence - Employees who transfer are usually required to serve a probationary period in the new title. For titles at or below Grade 13, the probationary term is 8 to 26 weeks. For titles at or above Grade 14, the probationary term is 12 to 52 weeks. At the discretion of the new agency, the probationary period may be waived at the time of the transfer. However, employees who transfer to a title which requires a traineeship, must serve the probationary period designated for that traineeship. Employees who transfer and are serving a probationary period must be granted a leave of absence from their former title for the length of their probationary period.

Standing On Existing Eligible Lists - Employees who transfer and who are on leave from their former title remain eligible for appointment from promotion eligible lists in their former agency. Once the leave expires their names are removed. Standing on general portions of interdepartmental promotion lists or on open-competitive lists is not affected by transfer. Employees who have completed their probation and have served at least 26 weeks in their new agency may request that their names be added to their new agency's departmental portion of an interdepartmental eligible list.

Retirement Benefits - Status in the Retirement System is not affected by transfer.

Seniority - A transfer will not affect an employee's seniority date for credit in future promotion examinations or for layoff purposes. However, an employee's layoff rights will be affected after transfer because probationers must be laid off before permanent employees in the same title who are not on probation. For more information about layoffs, refer to the booklet "Information for State Employees Affected By Layoff" available in agency personnel offices.

Salary - Determining an employee's salary is a complex matter, which is handled by the Office of the State Comptroller through your agency personnel or finance office. Salary determination is further complicated by the different pay scales for the various negotiating units. In general, you will receive credit for your previous service within the salary range for each grade.

Leave Credits - Upon transfer from one agency to another, personal, sick and vacation leave credits are transferred and employees are entitled to cash payment for unused compensatory time (up to 30 days). However, employees transferring between units or institutions of the same department, (for example within the Office of Mental Health), cannot receive cash payments. Such credits are transferred to the new unit or institution along with personal, sick and vacation leave.
What you need to know about job transfers

By HECTOR MILLAN
The discussion of job transfers never seems to stop at PEF.

Over the years, PEF members have routinely asked PEF to take a formal position against the practice of transferring state employees into positions where the person being transferred is not on an eligible list.

In some cases, members argue these transfers are, in fact, promotions when the transfers involve a step or two up in salary.

The frustration is understandable, especially when people have worked hard to get on eligible lists, only to be passed over by someone who’s not listed.

This long debate continues, and it may be helpful to review what PEF previously has attempted to do on this issue.

PEF convention resolution
A resolution, introduced by Susan M. Kent (before she was elected president of PEF), was passed at PEF’s 2005 convention, directing the union to “challenge in court the transfer of civil service regulations ... that allow promotions in the guise of transfers and ... pursue passage of legislation to prevent transfers under both sections of the law except in those cases where the candidate is reachable on the appropriate civil service list.”

At the time, both PEF’s Office of General Counsel and Civil Service Enforcement Department pointed out, in a memo to the Executive Board and other PEF leaders, that the state “Department of Civil Service (DCS), the Civil Service Commission and the courts have consistently denied challenges to transfers ... for positions that are up to two salary grades higher than the employee’s current position.”

The state has determined transfers are proper when positions are in similar specialties or have equivalent tests or qualifications.

Court challenge to transfers
In 2005, a PEF member who was a manager of data processing technical services at the DCS, challenged in court the transfer of another employee to the title of “chief” of data processing technical services (CDPTS). The PEF member who made the challenge told the court he was ranked first, with eight others, on a competitive examination list, and said the employee who was transferred into the position was not among the top 10 on the list. He also challenged two other appointments to CDPTS positions that also were made by transfers.

The state Supreme Court found the transferred employees were “qualified for voluntary transfers to the CDPTS positions by virtue of their periods of permanent competitive service in their transfer appropriate titles ... and these appointments did not violate petitioner’s statutory or constitutional rights.”

The court said the “Legislature has determined competitive examinations are not practicable under certain circumstances, including situations where transfers are appropriate pursuant to Civil Service Law.”

And state Civil Service Law, itself, states, “Transfers shall be allowed between administrative positions in the same or collateral specialties which involve substantially equivalent tests or qualifications, subject to such conditions and limitations as the (state DCS) may prescribe.”

The member lost his lawsuit in 2006. He appealed the decision to the Court of Appeals, New York’s highest court, but it dismissed his appeal.

While PEF is also concerned about the potential to abuse transfers, the
courts have held repeatedly the DCS' transfer policy does not violate the state's Civil Service Law or its constitution.

**Promotion exception**
If there is an exception, it would involve a transfer that is actually a promotion. Civil Service regulation states, "A transfer may be made only if the position to which transfer is sought is the same, or substantially the same, or a lower salary level than the position from which it is sought."

Historically, the DCS defined "the same or substantially the same" to be positions within two salary grades or one management salary grade of each other. Some PEF members have opposed this definition, but the courts have allowed it, deferring to the agency's interpretations of its own regulations.

**You can use it**
If there is a silver lining to the DCS transfer policy, it is PEF members can take advantage of it. Employees must take the initiative by responding to agency vacancy postings, contacting agencies directly, or by looking for vacancies on the Governor's Office of Employee Relations' StateJobsNY.com website or the DCS website.

One current example of such an opportunity to transfer exists for PEF members at the state Department of Corrections and Community Supervision (DOCCS). Employees in the title of offender rehabilitation coordinator, SG-19, who wish to pursue their career in the parole officer field may be eligible for a transfer under state Civil Service Law section 70.1, into the parole officer, SG-21 title.

**DCS, CMO information on transfers**