



New York State Governor's Office of Employee Relations Performance Evaluation Administrator's Manual

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THE PERFORMANCE EVALUATION PROGRAM FOR NEW YORK STATE EMPLOYEES



INTRODUCTION

Performance evaluation in New York State began in 1979 as a result of collective bargaining with public employee unions representing state employees. Although the program has seen several modifications and changes through the years, it remains a formal and ongoing appraisal process applicable to the majority of the State's Executive Branch workforce. Program policy is overseen by the Governor's Office of Employee Relations and the program is administered in Executive Branch State agencies by Management.

The goal of the program is to improve employee performance and job satisfaction through regular feedback. The evaluation component is based on supervisory appraisal and rating of the important tasks and standards that make up each employee's job. Open communication is the key to a clear understanding of the specific tasks assigned and performance expectations that supervisors have of their employees. Employee participation and input in the performance evaluation process has been a key component of the program since its inception.

This Manual provides information and procedures for use by State agencies in administering the Performance Evaluation Program. While there are some variations based on bargaining unit and bargaining agreement, the required elements of an effective performance evaluation program include:

- regular communication
- clear expectations
- timeliness
- documentation to support the process

IMPORTANT NOTE

Changes and modifications to this publication will appear in electronic format only.

To Whom the Program Applies

The Performance Evaluation Program for New York State employees applies to annual salaried employees in the competitive, non-competitive, exempt, and labor classes whose positions are allocated to a salary grade, or unallocated but equated to a salary grade. Exempt non-statutory (NS) Management/Confidential employees may be covered.

Full-Time

Full time employees who fall into the classes referenced above are included for evaluation and payment purposes. Employees in permanent status have the right to appeal an unsatisfactory rating.

Part-Time

Part-time employees are included for evaluation and payment purposes. Part-time employees who receive a performance-based payment are paid on a pro-rata basis, depending on the percentage of time worked each payroll period. Part-time employees in permanent status have the right to appeal an unsatisfactory rating.

Probationary

Probationary employees are included for evaluation and payment purposes. Probationary employees must be evaluated on probation reports utilizing the performance program guidelines. Employees who are in probationary status do not have the right to appeal an unsatisfactory rating. During the probationary period the supervisor should provide the employee with a clear understanding of what the job's task assignments and performance expectations are and provide feedback on the employee's strengths and areas in need of improvement.

Individuals no longer employed by the State, who are neither probationary nor a trainee at the time of termination, may continue to use the appeal process.

Employees in the following categories are not included for evaluation or payment purposes: trainee (see below), hourly, seasonal, per diem, unclassified service (see below), and those paid on other than an annual basis.

Trainees

Trainees are not included in the standard evaluation process or for payment purposes. A trainee is evaluated every six months on his or her appointment anniversary date using a special Trainee Evaluation Form. Employees serving in non-graded trainee positions may become eligible for payment under the Merit Compensation System as specified in plans developed by the Director of Classification and Compensation and approved by the Director of the Budget.

Unclassified Service

Positions in the unclassified service are specified in Section 35 of the Civil Law and are not under the jurisdiction of the Department of Civil Service. Examples are elected officers, appointees of the Governor or Legislature, including heads of departments and legislative employees, and employees in professional positions in certain colleges.



SECTION B: EMPLOYEES REPRESENTED BY PEF Professional, Scientific and Technical Services Unit

PERFORMANCE APPRAISAL AND RATING - PEF REPRESENTED EMPLOYEES

I. TIMING OF EVALUATIONS

Employees who have been in the same salary grade in the PS&T Services Unit since October 15, 1980 have an anniversary date for performance evaluation purposes of April 1, 1981.

For new employees the performance evaluation anniversary date is their date of hire. For employees who have entered a new salary grade since October 15, 1980, the performance evaluation anniversary date is the date of entry into the new grade.

An employee's evaluation must be completed annually on the employee's performance evaluation anniversary date. Additionally, that date determines an employee's eligibility for a performance advance payment.

Ten-month employees: Ten-month teachers and other employees in positions covered by Section 136 of the Civil Service Law have a fixed evaluation period of September 1 to June 30. For those employees whose ten-month work year starts on a date other than September 1, the evaluation period begins on the first day of their designated work year.

NOTE: Employees who begin their work year after the ten-month evaluation period has started are evaluated at the end of the designated ten-month period even though they may not have the required period of service to be eligible for a payment.

A. Promotions and Demotions

- Promotions: Employees who have a change in salary grade resulting from a promotion begin a new evaluation cycle effective on the date of promotion.
- Demotions: Employees who have a change in grade resulting from a demotion return to the original evaluation date and are credited with time served in both the higher grade and lower grade.

B. Less than Full Pay Status

When an employee is in less than full pay status for one payroll period or more (e.g., leave without pay, leave at half pay, suspension, unauthorized leave, layoff), his or her evaluation period and evaluation due date are extended by the same amount of time in multiples of full payroll periods. If an employee is in less than full pay status for less than a payroll period, the rating cycle continues unchanged.

C. Transfers

For an employee who transfers from one appointing authority to another and to a position at the same or lower grade level and in the same negotiating unit, the rating cycle continues unchanged. Such an employee is evaluated as follows:

- If three months or more remain until the employee's evaluation date, the employee is evaluated at the end of the period based on the employee's performance in the new agency or facility. Whenever possible, a supervisor should obtain input from the employee's former supervisor in evaluating the transferred employee.
- If less than three months remain until the employee's evaluation date, the supervisor should attempt to obtain information from the former supervisor to rate an employee. If the supervisor is unable to, or it is not practical to obtain this information, the employee should be assigned a rating of "Satisfactory."

D. Change in Negotiating Units

Employees who have a change in negotiating unit remain on the same evaluation cycle

unless they move to an M/C position, in which case their evaluation cycle becomes April 1 — March 31.

E. Reassignment

For an employee who is reassigned within the same appointing authority, the rating cycle continues unchanged. The supervisor responsible for the employee at the time of the employee's evaluation is responsible for appraising the employee's performance. In doing so, the supervisor should consult with the employee's previous supervisor concerning performance in the previous assignment(s) during the same evaluation period.

F. Reallocation/Reclassification

Employees who have a change in grade resulting from reallocation^{*} of their positions receive credit for service in the previous grade toward eligibility for performance advances in the subsequent grade, and their rating cycle continues unchanged. If the title is reclassified^{**} and, at the same time, the salary grade is reallocated, the reallocation is treated as a promotion (duties remain the same). The date of appointment to the new salary grade is the new evaluation date.

* Reallocate: To change the salary grade of a position with no change in title.

** Reclassify: To change the title of a position.

G. Workers' Compensation

An employee receiving workers' compensation payments for a period of disability found compensable by the Workers' Compensation Board is treated as though on the payroll for the length of the disability, not to exceed 12 months per injury, for the sole purpose of accruing seniority, continuous service, vacation, sick leave, and personal leave. Therefore, when an employee is on leave with pay, the rating cycle continues unchanged and the evaluation and rating will be based on the employee's work performance during the rating period when the employee was present.

RATING AND REVIEW PROCESS - PEF REPRESENTED EMPLOYEES

I. ROLES

The supervisor is generally the person most familiar with the employee's work and, therefore, is in the best position to evaluate day-to-day performance. This is the individual who usually assigns and reviews the employee's work. The supervisor has the responsibility for developing a performance program for the employee and recommending a rating. When an employee changes supervisors, the rating is done by the person who supervises the employee at the end of the evaluation period.

In the interest of fairness and objectivity, where a potential conflict of interest between the supervisor and employee exists, agency management may direct the next level of supervision to conduct the performance appraisal. Examples of potential conflict may include supervisors who are not State employees or provisionally appointed supervisors in the same promotional field as the employee.

In the PS&T unit, the evaluator of the employee's performance is any person designated by management as the employee's immediate supervisor, except in the following case:

- When the provisional supervisor is in the direct line of promotion of an employee, the responsibility for evaluating the employee will be assigned to the next higher level of supervision.

The reviewer is generally the first level of management in direct line above the supervisor and is typically in a position designated Management/Confidential (M/C). Where this is not the case, an M/C employee must be given ultimate responsibility as the reviewer, but may delegate this task to a non-M/C employee. The reviewer is responsible for ensuring that the appraisal process has been conducted thoroughly and in a manner consistent with the objectives of the program. This includes reviewing evaluations to make sure that tasks, objectives, and standards have been applied appropriately and equitably by each supervisor under his or her direction, resulting in ratings that appropriately describe the levels of employee performance throughout the work unit.

II. PROCESS OVERVIEW

Supervisors should complete the following steps during the performance evaluation rating period.

Step 1

Prior to developing the performance program, the supervisor must ask the employee if he or she would like to complete the Performance Program Worksheet (Form DDS-4 7/97). The worksheet is used in the development of the performance program and provides an opportunity for employees to indicate what they see as the important aspects of the job in which they will be evaluated. Completing this worksheet is optional. If an employee decides not to complete the form, it should be noted in the employee's file.

Step 2

Upon receipt of the employee's worksheet, or after the deadline of its return has passed, the supervisor, using the employee's input and assessment, completes Section 1 - Employee Identification and Section 2 - Performance Program on the evaluation form, listing the important tasks and/or objectives of the job and the standards by which the employee's performance will be evaluated.

Step 3

The proposed Performance Program is forwarded (with employee worksheet) to the reviewer, who may amend or approve the program. The reviewer should consult the supervisor regarding any changes to the proposed Performance Program.

Step 4*

Following approval by the reviewer, the employee is notified of a time for discussion of the Performance Program. The meeting must take place within six weeks of the beginning of the rating period. The supervisor discusses the Performance Program with the employee, completes Section 3 - Certification, and both the supervisor and the employee sign and date the form. The supervisor gives the employee a copy of the Performance Program, retains a copy for the file, and submits the original to the Personnel Office. At this time the supervisor should document that the employee has received a copy. If the employee wishes to attach additional written comments concerning the Performance Program he or she may do so.

Step 5

The supervisor observes and informally reviews the employee's performance throughout the evaluation period, providing feedback or counseling when appropriate. During the observation period, the supervisor documents the employee's performance with actual examples to support the appraisal.

Step 6*

The Mid-Point Six-Month Review: Within one month before or after the midpoint of the one year rating period, the supervisor formally meets with the employee to discuss performance to date, progress in meeting performance standards, any accomplishments or deficiencies, and any training, development, and/or performance improvement activities that might assist the employee in meeting tasks/objectives. The supervisor reaffirms the original performance program at this time or revises it, if necessary. (Please note that any revisions require approval of the reviewer. Also note that a six-month recertification is not required for ten-month employees.)

After the reviewer approves, signs, and dates any revisions, the supervisor meets with the employee to discuss the changes. At this time, the supervisor will advise the employee of the proposed rating. If performance is less than "Satisfactory," the supervisor advises the employee what must be done in the time remaining to achieve a final rating of "Satisfactory." At this time, the supervisor and the employee sign and date Section 4 - Six-Month Recertification, located in Part I: Performance Program.

Step 7

One month before the end of one-year rating period, the supervisor drafts an appraisal of the employee's performance during that period. If the employee has completed Part 1 of the Employee Worksheet, the supervisor returns the form to the employee for completion of Part II, the Performance Appraisal and Rating Section. After the employee has completed Part II of the form, the supervisor should draft an appraisal of the employee's performance and assign a final rating.

Step 8

The supervisor schedules a meeting with the reviewer, who must be a management level supervisor. The reviewer reads the employee's performance appraisal and approves it, changes it or requests additional documentation. An employee's rating is not final until this step has been completed. After the reviewer approves the final rating, both supervisor and reviewer sign and date Section 4 - Performance Rating, located in Part II: Performance Appraisal and Rating.

Step 9

The supervisor discusses the approved appraisal and rating with the employee. Both the supervisor and the employee must sign and date the document before a copy is given to the employee. Employees may choose to attach written comments concerning the evaluation at this time.

Step 10

The supervisor begins the process for the next rating period. To ensure that the performance program is in place on time, it is recommended that the supervisor give the employee the option to fill out Parts 1 and 2 of the Employee Worksheet for the next rating period.

** If either or both of these pieces are missing, the Performance Evaluation is considered to be technically deficient. If the rating is appealed at the Statewide level, the PS&T Statewide Board will overturn the "Unsatisfactory" rating based solely on this technical deficiency. Merit will not be considered.*

MERIT COMPENSATION PROCESS - PEF REPRESENTED EMPLOYEES

I. PERFORMANCE ADVANCES

Performance advances (sometimes referred to as increments) are payable to PS&T unit employees whose base annual salary is below the job rate for their current position and who were rated "Satisfactory" or its equivalent on their last annual evaluation date. Performance advance payments are added to an employee's annual salary. However, an employee's salary cannot exceed the job rate as a result of the addition of a performance advance. The Agreement between the State and the Public Employees Federation (PEF), which represents employees in the PS&T Services bargaining unit, requires that employees serve at least one year, but not longer than eighteen months, before receiving a performance advance. Performance advances are paid to eligible employees on the payroll period closest to April 1 or October 1, (pay period 1 or pay period 14) as a result of this Agreement.

Employees in positions of Institution Teacher and positions in other titles subject to the provisions of Section 136 of the Civil Service Law, who are below the job rate of their salary grade, who have been in full pay status for at least 150 work days during the designated ten-month evaluation period, and who receive a rating of "Effective or its equivalent" will receive a performance advance effective the first day of the work year immediately after the evaluation period. Employees with less than 150 work days of service receive no payment for that year.

An employee below the job rate of the salary grade who is assigned an annual performance rating of "Unsatisfactory" receives no performance advance. Subsequent "Unsatisfactory" ratings will result in withholding of performance advances as well. Continuing unsatisfactory performance should not be tolerated. A rating of "Unsatisfactory" should lead either to performance improvement or disciplinary action.

II. LONGEVITY LUMP SUM PAYMENTS

The Agreement between the State and PEF provides for a Longevity Lump Sum payment of \$1,250 or \$2,500 to certain employees. Employees in graded positions and NS positions that are equated to grade are eligible for the payment. Generally, the employee must have five or more years or 10 or more years of continuous service at a salary equal to or above the job rate, or maximum, of the grade of their position on March 31. Continuous service means paid service (including part-time annual salaried service and sick leave at half pay) or time on Workers' Compensation leave or Military leave without pay. The employee may not have received an "Unsatisfactory" during the rating period. Employees who were not rated during the period of January 01 - December 31 of any given year, will receive the payment.

Salary Schedules

Salary schedules are essential tools for the personnel manager responsible for administering an agency's classification and pay plan. Salary schedules for the various bargaining units are periodically revised as a result of agreements reached during collective negotiations between

the State and its public employee unions. These schedules are contained in the Agreements proper and are on line at www.goer.state.ny.us/CNA/agreement.html.

Additional Information

For more information on Performance Advances, refer to the appropriate payroll bulletin from the Office of the State Comptroller or view it on line at www.osc.state.ny.us/paysr/.

Questions regarding the entitlement and processing of performance advances and longevity payments should be directed to OSC's Salary Determination Unit at (518) 486-3090.

APPEALS - PEF REPRESENTED EMPLOYEES

I. GENERAL PROCEDURES

A. Eligibility

Employees rated "Unsatisfactory" may seek to raise their rating to "Satisfactory" through the appeals process. Probationary employees and trainees are not entitled to appeal.

B. Subject of Appeal

Employees may use the appeals process to appeal only the performance rating itself. Matters concerning the rating and review process are not subject to appeal.

The Agency and Statewide Appeal Boards' consideration of an appeal consist primarily of a review of the record. Unlike other procedures where the burden of proof rests with one party, both the employee and management are responsible for placing information in the record to substantiate their positions. Clear, objective documentation by the supervisor throughout the rating and review process will aid the Appeals process.

C. Format

An employee appealing an "Unsatisfactory" evaluation must adhere to the following steps:

1. Appeals must be submitted in writing on the Performance Evaluation Appeal Form (DDS97). It is the agency/facility's responsibility to have supplies of this form available for use by employees who wish to appeal their "Unsatisfactory" rating.
2. Appeals of ratings are submitted to the person or office designated for such appeals in each agency/facility. Employees appealing a rating of "Unsatisfactory" must state specific reasons and present evidence to show why their work performance deserves a higher rating. Such evidence should focus on accomplishments during the evaluation period, whether the performance standards were adhered to, and how the completed tasks met the requirements of the performance program.
3. Employees have 15 calendar days from receipt of their rating in which to appeal. In considering the issue of timeliness, the general rule is to accept the submission of the appeal based upon either the date the rating was personally delivered to the employee or a dated postmark. It is the responsibility of the agency to verify the date the employee received the decision, and should be clearly documented at the time. If the employee refuses to sign the "Unsatisfactory" evaluation, the supervisor should document that the employee received the rating and chose not to sign or date receipt of the evaluation.
4. An employee whose appeal is denied at the Agency Appeals Board level may submit an appeal to the Statewide Performance Evaluation Appeals Board. (The Agency Board decision must be sent to the employee by certified mail, return receipt requested, to avoid any discrepancy as to when the employee received the decision).
5. Statewide Performance Evaluation Appeal: The step two appeal must be submitted in writing using the Performance Evaluation Appeal Form (under the section marked Step Two) within 15 calendar days of receipt of the Agency Appeals Board's decision.

In submitting the appeal, appellants must attach one legible copy of their Performance Program Rating Form to the appeal's form, plus the worksheets, if any, and any other documentation that supports a higher rating. Appellants must provide reasons for their disagreement with the agency/facility level decision, and evidence to show why their work performance deserves a higher rating. Employees must send these documents by certified mail - return receipt requested to the Statewide Performance Evaluation Appeals Board, c/o Governor's Office of Employee Relations, 2 Empire State Plaza, Suite 1201, Albany, NY 12223-1250. In addition, a copy of the appeal form should be mailed to the agency/facility Personnel Office.

D. Personal Appearance by Appellant

An employee appealing a rating of "Unsatisfactory" has the right to a personal appearance before both the Agency/Facility and Statewide Appeals Boards and to be represented by a person designated by the employee's union. An appellant wishing to make a personal appearance must indicate this by checking the appropriate box on the Performance Evaluation Appeal Form. Agency and Statewide Boards may allow or direct the appearance of representatives of agency management as well.

An employee making a personal appearance before an appeals board during the employee's normal working hours is allowed excused time for such an appearance, including necessary travel time. If the union representative at such a personal appearance is a State employee, the representative is also allowed excused time for the appearance and necessary travel. Any expense incurred by an employee in preparing and presenting an appeal or as an employee representative is the responsibility of the employee.

Agencies will be sent a copy of the notice scheduling the hearing. Please note that the agency will not participate in the hearing, however it is highly recommended that an agency send a representative to be available in the event that the Board seeks clarification or additional background. Agencies should notify GOER prior to the hearing date if it intends to send a representative to the hearing. On arriving at the hearing, the agency representative needs to make his or her presence known to the Board.

II. PS&T AGENCY-LEVEL PERFORMANCE EVALUATION APPEALS BOARD

A. Composition of the Board

PS&T agency-level appeals boards must have three voting members: one designated by management, one designated by the union representing PS&T employees, and one jointly agreed on. (Union field representatives designate the union member of agency-level appeals boards.)

B. Hearing Procedures

Agency and Statewide boards may adopt whatever hearing procedures are appropriate or necessary.

C. Establishment of Board

Each agency will establish one or more performance evaluation appeals boards to consider appeals for ratings of "Unsatisfactory." Where there are distinct agency subdivisions (facility, institution, region, division, etc.), there should be local appeals boards by region, office, district, as appropriate, based on agency organization.

D. General Board Practices

A board member who participated in the development of an employee's evaluation should not participate in the review of the employee's appeal, nor should an agency executive, or that executive's designee, who may make the final decision in the agency concerning the employee's evaluation, participate in the deliberations of the Agency Appeals Board.

All boards make non-binding recommendations to their agency executive or commissioner. The agency executive, or designee, considers the board's recommendation and makes a final determination. (The agency executive must sign and

date his or her decision on the Performance Evaluation Appeals form under the section, Agency Head Decision). The employee is not informed of the decision of the Agency Appeals Board until the agency executive has made a final determination. The agency executive's decision should be reported to the employee promptly in writing. Agencies are required either to mail decisions by certified mail, return receipt requested, or to hand deliver them. This becomes important in instances where an employee appeals to the Statewide Board and has a time limit of 15 calendar days in which to do so.

III. STATEWIDE PERFORMANCE EVALUATION APPEALS BOARD

A. Composition of Board

The PS&T Statewide Performance Evaluation Appeals Board is a three-member panel established to review and decide upon appeals from determinations of agency-level appeals boards. One member is selected by the Director of the Governor's Office of Employee Relations (GOER), a second member is selected by The Public Employees Federation, and selection of the third member is by joint agreement of the Director of Employee Relations and PEF.

The Statewide Performance Evaluation Appeals Board reviews appeals from determinations of agency-level appeals boards only in instances of ratings of "Unsatisfactory."

B. Hearing Procedures

The Statewide Performance Evaluation Appeals Board may adopt whatever hearing procedures are appropriate or necessary.

C. Administration of The Statewide Performance Evaluation Appeals Process

Once an appeal is determined to be timely, the Board's liaison will acknowledge receipt of the appeal by notifying the employee in writing. At the same time the Agency Director of Human Resources is notified that an appeal has been filed at the Statewide level. Included in the notification letter to the Employee Relations office is a request for a copy of the file assembled by the Agency Appeals Board containing both the documentation presented and the Board's reason for denial of the appeal. In addition to the employee's Appeal file, the agency must forward the information listed below:

1. A completed Employee Performance Program and Rating Form for the evaluation period in question.
2. A copy of the employee's Appeal Form.
3. The Civil Service job description.
4. Agency Performance Evaluation Appeals Board decision.
5. Notes or minutes of the Agency Appeals Board meeting.
6. Counseling memos.
7. Notices of Discipline.
8. Production statistics, if appropriate.
9. Examples of the employee's work, if appropriate.
10. Time and attendance records, if appropriate.
11. Written confirmation of oral communications with the employee, if appropriate.
12. Other documentation, as appropriate. (Transmittal letter to the Statewide board summarizing the content of the file).

D. Common Problems with the documentation presented to the Statewide Board

1. Documentation does not refer to actions or events within the evaluation period.

2. Appeal form is incorrectly completed by appellant.
3. Appeal form is not signed by the Agency head or designee.
4. Job description is not included with documentation.
5. Transmittal letter from Agency Employee Relations Office is not included with documentation.
6. Minutes/decision of the Agency Appeals Board is not included with documentation.
7. Agency-level decision is not sent to employee by certified mail, return receipt requested.
8. Documentation confirming the employee's receipt of Agency level decision is not in the file.

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