



## Designation of Positions as Managerial/Confidential

Positions in the civil service of New York State may bear the designation of managerial or confidential (M/C). Generally, these positions are agency-specific and do not affect every title in state service. A position may be designated M/C at one agency or location, but not at another. This is because the M/C designation is specific to the responsibilities and duties of the title at an agency, and may not be expected of all employees in the title statewide.

New York State Civil Service Law defines managerial or confidential employees as such:

[...] Employees may be designated as managerial only if they are persons **(i) who formulate policy or (ii) who may reasonably be required on behalf of the public employer to assist directly in the preparation for and conduct of collective negotiations or to have a major role in the administration of agreements or in personnel administration** provided that such role is not of a routine or clerical nature and requires the exercise of independent judgment. Employees may be designated as confidential only if they are persons who **assist and act in a confidential capacity to managerial employees** described in clause (ii). CSL § 201(7)(a)

Managerial positions fall into three camps: policy-making positions, positions involved in collective bargaining, and positions responsible for high-level personnel administration.

- To be policy-making, the person in the position must have influence on the formulation of government or agency policy or objectives. They participate in the decision-making process for policy proposals. This designation does not include individuals whose role in policy-making is purely technical.
- To be involved in collective bargaining, the person in the position must participate in or be directly involved in the preparation process for negotiations. This includes forming positions and proposals. Employees in these positions are part of the decision-making process in the course of collective bargaining.
- If a position is responsible for high-level personnel administration, then the employee must be required to exercise independent judgment. This does not apply to personnel titles that that clerical or routine or whose role is solely to carry out personnel policies set by other staff.

Confidential positions are those that entail working in a confidential capacity for managerial employees, except managerial employees whose designation results from their participation in policy formation.

### Prohibition on Collective Bargaining

Pursuant to Civil Service Law, employees in M/C positions are not able to be members of employee organizations. If an employee represented by PEF is appointed to an M/C title, then they are no longer able to be a PEF member. This is codified in section 214 of the Civil Service Law.

### Designation Procedure

The Division of Classification and Compensation within the Department of Civil Service assists the Governor's Office of Employee Relations with issues and requests related to negotiating unit designations for classes and individual positions within classes, including the designation of positions as M/C. The procedures for designating a position as M/C are outlined in regulations promulgated by the Department of Civil Service.

If new classes are being created in the civil service of the state, then Classification and Compensation assess agencies' requests for the negotiating unit or M/C designation of these classes. Classification and Compensation's determination becomes the default for all future positions in the new class, unless changed by the Governor's Office of Employee Relations or the Public Employment Relations Board.

If an agency wishes to change the designation of a vacant position to M/C, they may request this and present a rationale for the designation change to Classification and Compensation, who may approve or deny the request.

If an agency wishes to change the designation of a filled position to M/C, they must make such a request to the Governor's Office of Employee Relations.

### Links

Civil Service Law § 201: <https://codes.findlaw.com/ny/civil-service-law/cvs-sect-201/>

Civil Service Law § 214: <https://codes.findlaw.com/ny/civil-service-law/cvs-sect-214/>

State Personnel Management Manual, Non-Represented Employees:

[https://www.cs.ny.gov/ssd/Manuals/SPMM/0800PositClassComp/0850e\\_non\\_represented\\_employees.htm](https://www.cs.ny.gov/ssd/Manuals/SPMM/0800PositClassComp/0850e_non_represented_employees.htm)