

Top Five Reasons to File an Out-of Title (OOT) Grievance

1 You're not getting paid for it!
And don't think that ten years later you'll get a huge back-pay check that will let you retire early. Back-pay awards for successful out-of-title grievances are only retroactive to fifteen days prior to the filing of the grievance. *So file those OOT grievances — right away!*

2 It's illegal — and with good reason!

3 Out-of-title work is bad for workplace morale!

Employees know that management is trying to avoid promotions which are already scarce enough!

4 Looking for layoffs?

Out-of-title work can lead agencies to believe they can get by with fewer employees. Don't give the state a reason to lay off you or your union brothers or sisters!

5 Nobody gets promoted if you're doing the work for free!

Getting away with out-of-title assignments gives the agency an incentive to avoid promotions — for you or anyone else.

Remember, if you are assigned out-of-title duties, you must work now, grieve later. If you simply refuse to do the work, you could face disciplinary action on the grounds of insubordination. However, do contact your PEF shop steward or field representative.

Also keep in mind that the union can be the aggrieved party in an out-of-title grievance, if for some reason the employee is unwilling or unable to do so. Therefore, even if you're not directly involved, you should bring out-of-title situations to PEF's attention.

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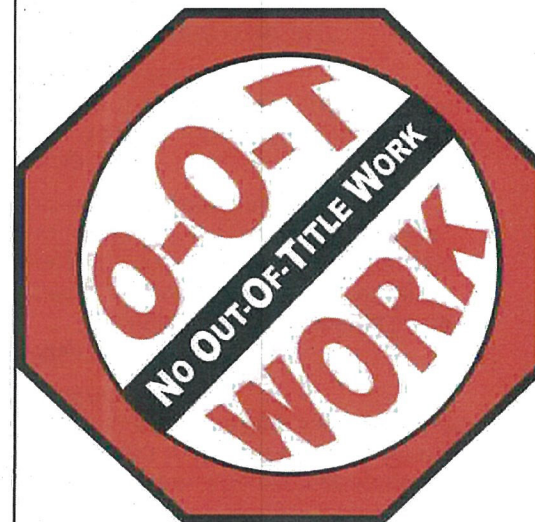
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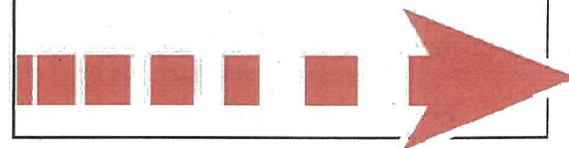
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Out-of-Title Work is Bad for Everyone!



*Take a look and see why
and what to do about it.*



What Is Out-of-Title Work?

The performance of duties not appropriate to your title absent a temporary emergency situation is out-of-title work.

A temporary emergency is defined as an unscheduled situation of limited duration which either presents a clear or imminent danger or interferes with the agency's statutory mandates or programs.

Article 17 of the PEF/NYS collective bargaining agreement and *Civil Service Law* §61(2) prohibit out-of-title work.

Is It Grievable?

Violations of the out-of-title prohibition are grievable starting at Step 2.

Remedies

Remedies are:

- "cease and desist"
- a monetary award for higher salary grade level work.

How Do I File?

It is a good idea to involve the Field Representative from the beginning. The out-of-title grievance process starts at Step 2; the original is submitted to the agency head with a copy to the facility/institution head or designee.

If denied, the Step 3 appeal or further appeal to the Governor's Office of Employee Relations (GOER), also known as Step 3½, *can only be filed by a Field Representative.*



Who Can File?

- individuals
- a class of individuals
- PEF

PS&T Unit Employees

PEF can initiate grievances *when individuals in our unit are performing out-of-title work*. In recognition of the potential problems this situation can raise, a PEF Executive Board policy was established for pursuing this type of grievance:

- only Field Representatives are authorized to file
- the Field Representative must:
 1. verify division leadership consensus.
 2. interview member(s) performing the out-of-title work to determine what objections they may have before a grievance is filed.
 3. determine if filing the grievance is consistent with principles of PEF out-of-title work grievances policy.

Non-PS&T Unit Employees

PEF can also file out-of-title grievances when *individuals or a group of individuals in another bargaining unit are doing our unit work*.

- The other bargaining unit must be notified simultaneously of the filing.
- potential Improper Practice Charge: PEF field staff needs to determine if there are grounds to file an improper practice charge with the Public Employment Relations Board (PERB).

Statement of Facts and Documentation

The detailed grievance statement of facts should include:

- official appropriate duties of the grievant(s) civil service job title(s).

- out-of-title duties being performed.

Documents, such as work schedules, job descriptions, test announcements and performance evaluation programs should be submitted to support the out-of-title claim. *This is a case of the more documentation the better* since the State resists addition of documentation in later grievance steps.

Timeframes/Process

Unlike other contract grievances, there is no Step 1 in the out-of-title grievance procedure and the Step 3 decision is not arbitrable.

Step 2

The initial grievance should be filed at Step 2 as soon as possible. The Step 2 decision is due within 10 working days unless PEF or the employee agrees to extend the timeframe.

Step 3

A Step 3 appeal, if any, must be filed within 10 working days of receipt of the Step 2 decision.

Appeal to GOER (Step 3½)

Field notifies the Legal Department immediately for review of an unfavorable Step 3 decision as to whether there is a basis for filing an appeal to GOER (Step 3½). If so, the appeal to GOER (Step 3½) must be filed within 30 calendar days of the date of the Step 3 decision.

Potential Legal Action

Field notifies the Legal Department immediately of GOER (Step 3½) decision. In exceptional cases, when the grievance decision is irrational, contrary to law, capricious or arbitrary, the PEF Legal Department may initiate an Article 78 proceeding in State court.