

Exempt Employment Return Rights

HR Managers Meeting

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What can cause an exempt appointment to end?

- Employee chooses to resign from the exempt position;

or

- The exempt appointment is ended by the employer.

Does an employee have exempt return rights?

- Any employee who was appointed to an exempt position from a classified position and held permanent status in classified service has return rights.
 - Classified service includes higher education service, Washington general service and Washington management service.
 - Appointment from classified service to exempt service must be consecutive without a break in service.
- If the exempt appointment is ended for reasons of gross misconduct or malfeasance, the employee's return rights are severed.

When must an employee apply to return to classified service from exempt service?

- The employee must apply to return to classified service within 30 calendar days of:
 - Separation from employment in the exempt position, or
 - Separation from employment in any subsequent exempt position if there is no break in state service of more than 30 calendar days between initial and subsequent exempt appointments.
- Employees who apply for return to classified service within 30 calendar days must be returned to a position at the time of separation from the exempt appointment or the time of application, whichever is later.

What is an employee's exempt return right?

- The employee's right is to be returned to the “highest class of position previously held, or to a position of similar nature and salary.”
 - “**Class**” means classification, e.g. Forest Nursery Laborer or WMS Band 1
 - “**Similar in Nature**” means work that is generally like the functions performed in the highest class of position previously held
 - “**Similar in Salary**” means the same salary range of the highest classification of position
- A position in the highest class does not necessarily mean return to the most recent employer or the exact position previously held.

Example of an employee's exempt return right

Employee's appointment history:

<u>Hire Date</u>	<u>Title</u>	<u>Status</u>	<u>Agency</u>
1/1/18	Budget Analyst 3	WGS Classified	Revenue
1/1/20	Transportation Program Manager	WMS 2 Classified	Transportation
1/1/23	Budget Analyst 2	WGS Classified	Health
1/1/24	Budget Director	Exempt	Corrections

- Department of Corrections ends the employee's appointment to the Budget Director exempt position. Because Transportation Program Manager WMS Band 2 is the highest position held the employee's return right is to a WMS Band 2 position at the Department of Transportation.

Example of when a position, in which the employee held the highest classified position, no longer exists

- Reduction of an exempt employee who held permanent status in classified service at the time of appointment. Prior position has been abolished but the job classification still exists.

Hire Date	Title	Status	Agency
1/1/2015	Budget Analyst 5	WGS Classified	Revenue
1/1/2016	Budget Director	Exempt	Revenue

- The return right is to the highest job classification the employee held in classified service. In this example, Budget Analyst 5 is still a current classification; however, the position the employee was in has been abolished. The employee must be returned to a different Budget Analyst 5 position or to a job classification that is similar in nature and salary.

Example of when an agency in which the employee held the highest classified position no longer exists

Employee's appointment history:

<u>Hire Date</u>	<u>Title</u>	<u>Status</u>	<u>Agency</u>
1/1/09	Budget Analyst 3	WGS Classified	Revenue
1/1/10	Facilities Program Manager	WMS 2 Classified	Facilities
1/1/18	Budget Director	Exempt	Corrections

- Department of Corrections ends the employee's appointment to the Budget Director exempt position. Because WMS Band 2 is the highest position held, the employee's return right is to a WMS Band 2 position at the Facilities Department.
- Facilities Department was abolished and consolidated with two other agencies. Corrections human resource office would need to review legislative language which abolished the Facilities Department, and they would need to track the history and work performed of the Facilities Program Manager position to determine which agency to return the employee.

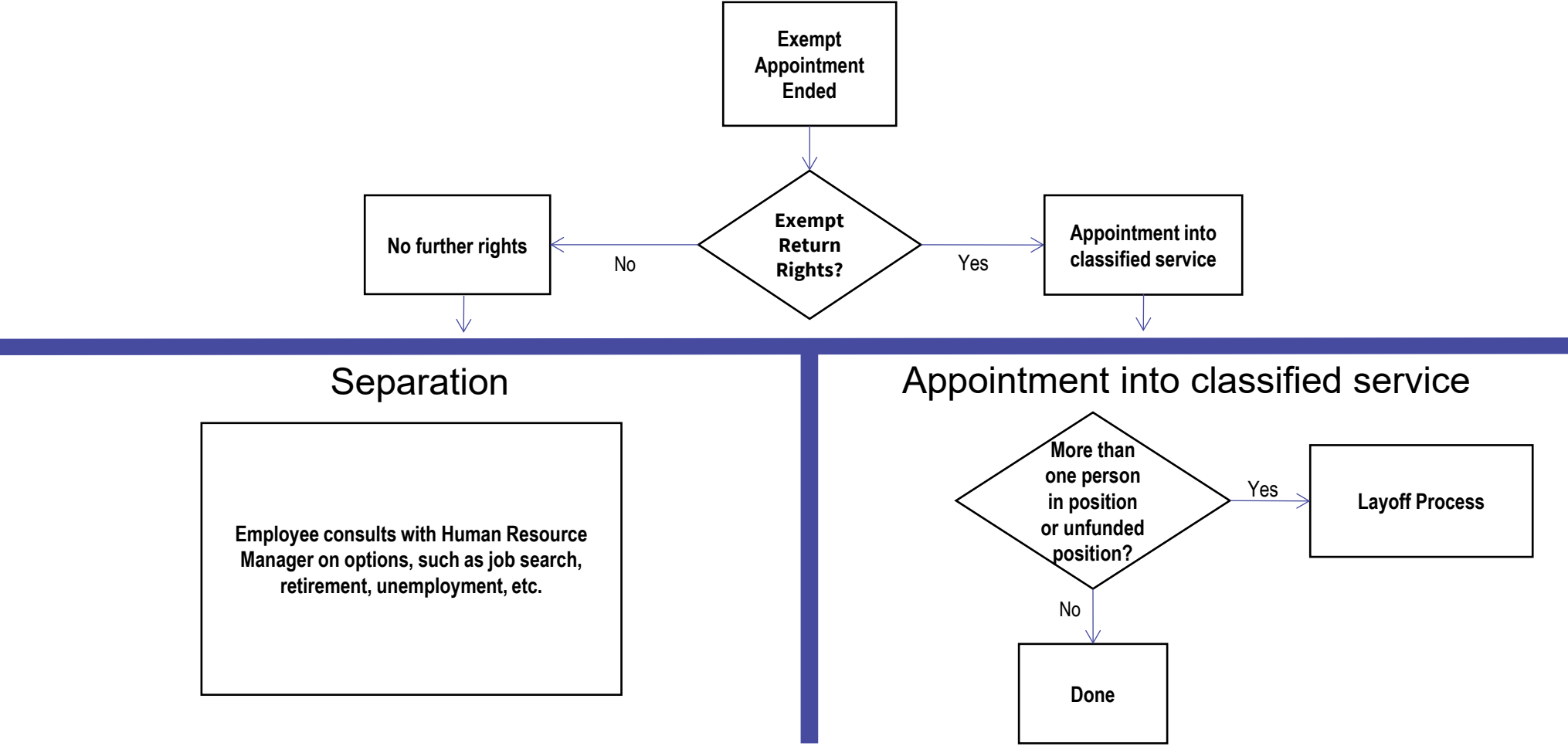
What happens if an employee is returning from exempt service, and we do not have a funded vacant position in which to return the employee?

- An employee with return rights **must** be returned to a position. If the agency does not have a funded vacant position in the highest class held or a funded vacant position of similar nature and salary, the agency must:
 - Return the employee to a filled position (i.e. double-fill a position) and lay off the least senior incumbent (or the employee with the lowest employment retention rating);

or

 - Establish a position to return the employee to and implement a layoff since the position is unfunded.
- **NOTE: For represented employees reference the applicable collective bargaining agreement as there might be a particular order of operation.**

Return Rights Flow Chart



How do you determine an employee's salary when they return from an exempt appointment?

- WAC 357-19-205 says the employee's base salary must not be less than the employee's previous base salary in classified service, adjusted according to any changes to the salary range that occurred while the employee was in exempt service.
 - An employee returning from an exempt appointment would not be given credit for PID increases that would have occurred had they not left the classified position.
 - An employee returning from an exempt appointment to the Human Resource Consultant 4 job classification who at the time when they left the HRC 4 job classification was at Range 58 M, Step M, \$80,952/yr. The HRC 4 job classification is now a Range 63. The employee would be returned to Step M in Range 63.



Title 357 WAC (Civil Service Rules)

- Website: <http://hr.wa.gov/rules/Pages/default.aspx>
 - [WAC 357-04-025](#)
 - [WAC 357-04-030](#)
 - [WAC 357-19-195](#)
 - [WAC 357-19-197](#)
 - [WAC 357-19-200](#)
 - [WAC 357-19-205](#)
 - [WAC 357-19-215](#)
 - [WAC 357-19-220](#)
 - [WAC 357-19-225](#)
 - [WAC 357-58-450](#)



Resources

- The OFM State Human Resources Office has published a guide for transition of exempt employees. You can view the guide at:

<http://hr.wa.gov/rules/Pages/default.aspx>

- Contact OFM State HR Rules office for questions related to returning employees from exempt appointments:

(360) 407 – 4102 or email rules@ofm.wa.gov