

# MAINE STATE LEGISLATURE

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State Employees Pay Plan Effect on Unclassified  
STATE OF MAINE 32 M.R.S.A. 2153-11  
Employees

Inter-Departmental Memorandum Date September 21, 1976

To Marion M. Klappmeier, R.N.,  
Executive Director  
From Donald G. Alexander, Deputy

Dept. Board of Nursing  
Dept. Attorney General

Subject Impact of Pay Plan on Unclassified Employees whose Salaries are Solely Determined by their Employer

This opinion responds to your letter of July 9 in which you pose the question of whether a conflict exists between the provisions of P. & S.L. 1975, c. 147, Part D, § 2, which purports to establish pay ranges for certain unclassified employees and 32 M.R.S.A. § 2153-11 which authorizes the Board of Nursing to set salaries for its employees.\* This opinion will generally discuss the relation of Part D, § 2 of the pay plan to those statutes which permit employing authorities to set salaries for their employees without further constraint.

Part D, § 2, provides:

"Salary increases: unclassified employees not subject to Governor and Council determination. Unclassified employees not subject to Governor and Council salary determination shall be assigned to the step in the salary range in Schedule I or Schedule Ia in section 3 in which their position is assigned, as recommended by the study, or as determined by the Temporary Compensation Review Board as hereinafter provided, which results in an increase over their current actual salary, provided that in no case shall any salary of an unclassified employee be increased if his current salary exceeds step G of the recommended range, in which case such present salary shall be maintained so long as the employee remains employed in his present position."

32 M.R.S.A. § 2153-11 provides authority to the State Board of Nursing to:

"Appoint and employ qualified persons, not members of the board, to serve as executive director and assistant executive director to the board, fix their compensation and define their duties."

\* There are other similar provisions of law which allow employers to set the salary for certain unclassified employees without further outside approval. For example, the Attorney General has authority to appoint and set the salaries for research assistants. 5 M.R.S.A. § 196.

5 M.R.S.A. § 196 grants the Attorney General similar unrestricted authority regarding research assistants.

Comparing Part D § 2, with such other statutes indicates an apparent conflict. However, a cardinal rule of statutory construction is that there should be an attempt to construe statutes to form a consistent and harmonious whole if possible. Watts Detective Agency v. Inhabitants of Sagadahoc County, 137 Me. 233 (1941).

The Legislature in enacting Part D, § 2, was attempting to uniformly provide salary increases and a salary plan for unclassified employees whose salaries were not subject to Governor and Council determination. The unclassified employees of the Board of Nursing (Executive Director and Assistant Executive Director) or of the Attorney General (Research Assistants) which comes within these parameters are "unclassified employees" whose salaries are intended to be set according to Schedule I in Part D, § 3, and subject to the other rules relating to establishment of salaries and increases of salaries.

Part D, § 2, authorizes and requires the assignment of unclassified employees whose salaries are not subject to Governor and Council determination to a step in a salary range in Schedule I "in which their position is assigned, as recommended by the study, or as determined by the Temporary Compensation Review Board. . . which results in an increase over their current actual salary." This provision basically requires that the unclassified employees discussed above be assigned to a salary range as determined by the Hay Study or the Compensation Review Board. Thus, the Legislature has, through adoption of Part D, § 2, limited the capacity of appointing authorities to set salaries to steps within ranges which are established. However, the employing authority retains the capacity to set the particular step within the range at which the pay is to be computed.

Further, it must be noted that by operation of Part D, § 13, section 2 does not take effect until the first pay period of November, 1976. Accordingly, appointing authorities with capacity to set salaries without outside constraints retain complete flexibility to establish and change salaries for unclassified employees whose salaries are not subject to Governor and Council determination until the first pay period in November. Effective with the first pay period in November the employees in question must have their salaries placed in a pay range and step within that range which will result in a pay increase from the salary immediately prevailing prior to the first pay period in November unless the then current salary equals or exceeds step G of the recommended range.

Accordingly, any unclassified employee receiving an increase between now and the first pay period in November would be entitled to another increase in implementing Part D, § 2. Alternatively, if no increase were granted between now and November 1, the appointing authority would retain complete flexibility to select the step within the range at which the employee is to be paid. Increases in the first November pay period would not be given if the then current salary equals or exceeds step G of the recommended range.

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