**A red and blue state logo

Description automatically generated**

**2023 Review of Temporary Unclassified Laws, Policies and Contract Language**

1. **What does it mean to be “Unclassified”?** Under Minnesota State law, the commissioner of Minnesota Management and Budget is required to “[maintain, revise and administer a classification plan](https://www.revisor.mn.gov/statutes/cite/43A.07#stat.43A.07.1)” that aims to classify jobs in state service for the purposes of equitable compensation and bargaining unit determination. Unclassified positions are those positions not included in that classification system. State statute [43A.08](https://www.revisor.mn.gov/statutes/cite/43A.08) lists types of positions that are to be placed in the “unclassified service” upon allocation. For those who are in unclassified positions, it can be confusing, because although the position is designated as “unclassified,” in most cases there will still be a classification listed on the job posting and offer letter. This is because state law [requires](https://www.revisor.mn.gov/statutes/cite/43A.18#stat.43A.18.8) that “compensation for positions in the classified and the unclassified service compare reasonably to one another.” The way this is functionally accomplished is by assigning a comparative classification for the unclassified position.
2. **What is Temporary Unclassified, specifically?** [43A.08 Subd. 2a.](https://www.revisor.mn.gov/statutes/cite/43A.08#stat.43A.08.2a) creates the broadest authority for MMB to designate positions in the unclassified service. The clause reads: “***Temporary unclassified positions.*** *The commissioner, upon request of an appointing authority, may authorize the temporary designation of a position in the unclassified service. The commissioner may make this authorization only for professional, managerial or supervisory positions which are fully anticipated to be of limited duration*.” An [administrative rule](https://www.revisor.mn.gov/rules/3900.1300/) clarifies that “limited” duration means a designated TUNC position cannot last longer than three years. In practice, this means that a person is usually appointed to a TUNC position for either a one- or two-year appointment, with the option to extend the position through a third year. [Administrative Procedure 8](chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https:/mn.gov/mmb/assets/8-desigofunclasspositions_tcm1059-124099.pdf) then further defines the process for the designation of TUNC positions, including the requirement that agencies require “justification for placement in the unclassified service in terms of the statutory criteria” when requesting a position. [Another statute](https://www.revisor.mn.gov/statutes/2019/cite/43A.15#stat.43A.15.7) allows MMB, under certain circumstances, to convert a TUNC employee to a probationary, classified position in the equivalent class.
3. **Leave for An Unclassified Position:** A classified employee can request a leave of absence from their classified position to take an unclassified position. Granting of this request, however, is entirely at management’s discretion.
4. **Differences in rights and contract language between permanent classified and TUNC:** There are numerous differences in rights and benefits for TUNC employees compared to unlimited unclassified. Those differences are:
   1. **Hard end date:** TUNC positions cannot go beyond three years in length. At the end of three years, a TUNC employee can either be converted to a permanent classified position (if they meet the [statutory requirements](https://www.revisor.mn.gov/statutes/2019/cite/43A.15#stat.43A.15.7)), the agency requests it and MMB signs off. Otherwise, the position ends. An employee may end up applying for a permanent position, or another TUNC position.
   2. **Appointment endings:** Permanent, classified appointments can only be ended 1) in the case of a layoff, or 2) discharge for cause. A TUNC appointment can be ended at any time without cause, and in some cases without notice.
   3. **Layoff and notice rights:** The provisions of Article 17, Layoff and Recall, explicitly do not apply to unclassified employees (Article 15, section 5, page 48). We have recently bargained 21 day notice for the ending of appointments “when practicable” for TUNC employees (Article 8, Section 6, p.10).
   4. **Just Cause:** Although TUNC employees are technically afforded just cause, discharges of TUNC employees are not arbitrable (Article 8, Section 6, p.10), which removes the incentive for the employer to follow the tenets of just cause. As a result, there is functionally no protection for employees being terminated, other than applicable discrimination protection laws. MAPE has attempted to bargain this but has been unsuccessful so far.
   5. **Severance:** Because TUNC employees are not eligible for layoff, they are not eligible for severance in the case of layoff (Article 13, Section 1, p.13).
   6. **Vacation eligibility:** A TUNC employee must be appointed for a period longer than six months to be eligible for vacation accrual (Article 10, Section 1.A, p.16).
   7. **Holiday pay eligibility:** A TUNC employee must be appointed for a period longer than six months to be eligible for vacation accrual (Article 11, Section 1, p. 20).
   8. **Sick leave eligibility:** A TUNC employee must be appointed for a period longer than six months to be eligible for vacation accrual (Article 12, Section 1, p. 22).
   9. **Medical leave:** Permanent employees have the right to up to one year of unpaid medical leave upon exhaustion of their sick leave (Article 14, Section 3.F, p. 30). TUNC employees do not have access to this leave, but in the current TA, MAPE has bargained a discretionary six month unpaid leave for TUNC employees (separate from sick leave).
   10. **Discretionary leave upon early ending:** TUNC employees sometimes have their appointments end without warning. In the current TA, MAPE bargained the language “an employee on notice that their unclassified appointment will end before the scheduled end date may continue in payroll status for forty (40) hours of paid leave.” This discretionary leave will be an option if the TA is ratified. The section will be in Article 8.
   11. **Premium coverage upon layoff:** Classified employees who are laid off with at least three years of continuous service remain eligible for the employer contribution to healthcare premiums for six months after layoff. TUNC employees are not eligible for this benefit, even if they’ve been continuously employed for 3 years. MAPE has attempted to bargain over this, but has not secured and language.
   12. **Probationary Periods:** TUNC staff, upon conversion to a permanent position, must serve a probationary period, even if they spent three full years in the job in the TUNC appointment. MAPE has bargained a shorted probationary period in that instance, of three months, rather than the standard six months for a regular appointment.