



ACSSQUARTERLY

Q1 2017

Out-of-Class Claims

How ACSS helps members receive their rightful compensation when working Out-of-Class.



OUT-OF-CLASS CLAIMS

I *Imagine the frustration and anger you would feel if compensation for your efforts while working out of your job classification were denied or not rightfully given to you. That's when you need ACSS on your side. In this issue, we have highlighted three cases where excluded employees had experienced severe issues while dealing with their out-of-class claim and how ACSS helped resolve it. Had ACSS not intervened, these members would not have received the compensation rightfully owed to them.*

Out-of-class work is defined (in Government Code section 599.810) as performing the full range of duties and responsibilities allocated to an existing classification more than 50 percent of the time, and the position is not allocated to the classification in which the person has a current, legal appointment. This indicates there has been an inappropriate assignment or assumption of duties of either a higher or lower classification.

An employee is entitled to out-of-class pay if:

- The excluded employee is performing duties of a higher classification.
- If the duties performed by the excluded employee are not described in a training and development assignment or by the specification for the class to which the excluded employee is appointed.
- If the duties as a whole are fully consistent with the types of jobs described in the higher classification.

An out-of-class claim is the same process as a standard excluded employee grievance. However, it is unique because unlike a grievance, it can be appealed after the fourth level.

**The following anecdotes are based on actual events experienced by real ACSS members. Names, classifications and departments have been modified to protect identities.*

AN EGREGIOUS CASE – A BIG WIN FOR ACSS

A recent example of an out-of-class claim was the case of ACSS member Stan, who won his out-of-class claim 20 years after his job duties changed to put him into a higher classification.

Stan, a Medical Officer III, is responsible for discovering and creating a medicine to cure high risk illnesses on a worldwide level. Stan has over 30 years of knowledge and experience in his field and provides information to hospitals, labs and patients statewide. He also responds, on behalf of the department, to high-profile media inquiries and requests for the medication he created and continues to manufacture worldwide. In addition, he has published numerous journal articles and literature that has been widely distributed. He is the foremost expert on one particularly severe illness and its cure in the United States. All of these duties listed here fit within the classification of a Medical Administrator I within his department and not a Medical Officer III. He also worked at the same level and with the same level of responsibility as the other Medical Administrator I's in his department.

Stan worked with his management to be promoted in place to the Medical Administrator I position. He took the test and ranked #1. But after years of promises that were not fulfilled, Stan decided to file an out-of-class claim. After Stan filed his initial out-of-class grievance, the department reorganized moving Stan's branch under a newly formed branch that included other very different programs, but his duties and responsibilities stayed the same.

The claim was denied by Stan's Supervisor. Stan's supervisor claimed that the reorganization made Stan ineligible for the higher classification. His supervisor also claimed that his work was not at the level of a Medical Administrator I. Stan appealed the denial. The appeal was elevated to the second-level and then denied again by the Assistant Division Chief of the department, who claimed that Stan's work was not at the same level as the other Medical Administrators and that the new reorganization made him ineligible. Stan appealed the second denial. The third-level appeal was heard by the Chief of Human Resources at CalHR. The Chief of Human Resources denied Stan's third level appeal. Stan appealed this denial to a fourth level claiming that decision was based on a series of assumptions, not based on evidence or the actual work that Stan performed, and the Chief of Human Resources failed to properly analyze the out of class issue.

Armed with the analysis from CalHR's Staff Services Manager I, Stan's case was presented by ACSS at a hearing before a judge. The department admitted that they did not look at the actual duties that Stan did, but only at his Duty Statement. The department also admitted that Stan's duties stayed the same, even after the reorganization, even though he was placed in a lower position on the organizational chart. The judge reviewed the evidence and ultimately awarded Stan with one year of back pay for the time period of the out of class claim. CalHR only has the authority to reward back pay for a period of one year – they cannot order the department to re-classify employees. By the time the hearing decision was received by the parties, another year had passed with Stan doing the same duties he had always done. ACSS filed an additional out-of-class grievance that the department granted and Stan received another year of back pay. Because of the high legal threshold to prove that someone is working out-of-class, this is a rare and extreme case but ended as a positive outcome for Stan. Stan could not have won his case without the support and intervention of ACSS throughout all steps of this process

ACSS INTERVENES TO UNCOVER LIES AND HALT STALL TACTICS

More commonly, out-of-class grievances require the assistance of ACSS to intervene when there are disputes between employees and their supervisors over out-of-class pay.

This example of ACSS advocating for out-of-class compensation occurred at a California State Nature Preservation Department that has various preservation station areas. In one of the areas, a Manager II was working at three preservation stations "A", "B", and "C" and was overwhelmed with a heavy workload. The Supervisor and Director of the department informed ACSS member Marcus, a Manager I, that he would be placed at Preservation Station "A" to lessen the workload of the overworked Manager II.

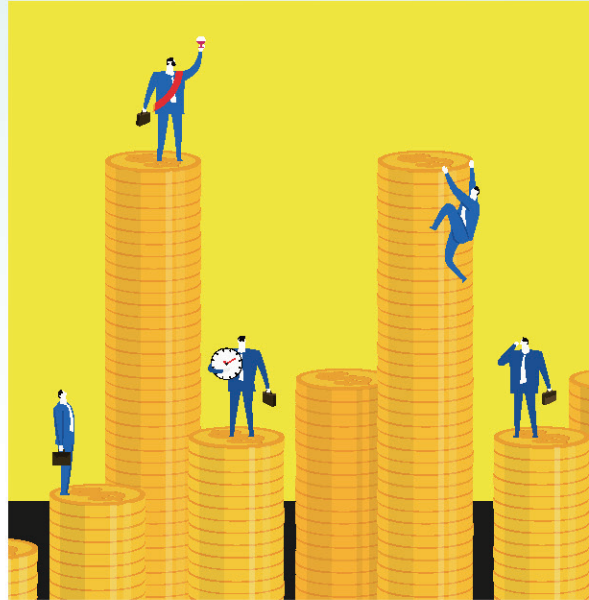
They also informed Marcus in writing of this change and that Marcus would be assuming the job duties of the Manager II for the hours Marcus

worked at Station A and subsequently, he would be paid out-of-class pay as a Manager II.

After 6 months of taking on the job duties at Station A, Marcus had not received his rightful and approved out-of-class pay for those hours. Marcus filed a grievance with the help of ACSS. The first step of this process was to do a desk-audit evaluation to determine whether Marcus was working more than 50 percent of his duties as a Manager II. Upon showing on the appropriate state form that Marcus was indeed working more than 50 percent of his duties as a Manager II, the form was then submitted to his supervisor for approval. The approved form was then submitted up the chain-of-command and signed by the appropriate parties. However, due to budget issues, Marcus was denied the out-of-class pay.

Almost two years after Marcus conducted the initial out-of-class desk audit, he was finally

officially promoted to the Manager II position, which indeed proved he was capable of assuming the responsibilities and duties of the Manager II position while previously working out of class at Station A. However, Marcus had still not received his out of class pay reimbursement for the time he had worked out of class while at Station A. At this time, ACSS intervened again on behalf of Marcus and again accomplished the desk-audit evaluation and resubmitted it to his direct supervisor who willingly signed off on the audit. But when it went to the next supervisor to be signed off on, that supervisor, the Division Chief, denied ever agreeing to pay out-of-class to Marcus. At this point, a grievance was submitted to the first-level supervisor who, under direction of the Division Chief, refused to answer the grievance. After allowing them the statutory allowed time to respond, the grievance was submitted to the Division Chief, who previously just denied ever agreeing to pay out-of-class pay to Marcus. The Division Chief began emailing Marcus' ACSS Representative denying ever agreeing to pay out-of-class pay to Marcus. Marcus, with the help of ACSS, informed the Division Chief to either deny it or approve it. When he did neither, it was sent to the Department Head with proof in a series of emails exchanged between the Director and Mar-



cus that stated otherwise. After the first level and second level grievance was ignored with no response, the ACSS Labor Relations Representative (LRR) elevated the grievance to the Department Head on appeal for review and resolution. ACSS insisted that the department Supervisor had filled out and signed the desk audit agreeing that Marcus had in fact been working as a Manager II for more than 50 percent of his duties. This documentation was provided as proof.

The Department Head submitted the information to the Department HR where it was reviewed and elevated the appeal to CalHR. The CalHR Labor Relations Analysts reviewed his case and performed a thorough audit. In October of 2016, three years after Marcus started working out-of-class, CalHR approved the appeal and awarded Marcus with reimbursement for the out-of-class pay during that time period.

Marcus was grateful for the assistance of ACSS mediating between him and his superiors, for tracking down evidence and for moving the case along in a timely manner. ACSS stood up for the rights of Marcus and was an integral part in helping him win his case.

WORKING OUT-OF-CLASS FOR EXPERIENCE CREDITS

Employees may choose to work out-of-class to help in a department that is understaffed but to also gain experience. With experience credits, employees work out-



of-class to gain credits, which in turn can be used on an application as proven minimum requirements for a promotion to a higher position. Sarah was a Health Supervisor I at the California De-

partment of Corrections and Rehabilitation (CDCR) and worked out of class for a short period of time as a Supervisor II with the knowledge and approval of her Supervisor. She was told she would get experience credit for the time she worked and she did, partially. She attempted to file a grievance on her own, but the department failed to follow up in a timely manner.

Sarah turned ACSS to help her get the official proof of the

experience credits she had worked. ACSS helped her file an out-of-class grievance. At the second level, the appeal was denied. Due to the complicated relationship between two closely-knit departments The California Correctional Health Care Services department (CCHCS) and CDCR, ACSS could not get a response at the third for several weeks. Finally, the CDCR agreed to grant her the appropriate experience credit and paid her the back-pay she was owed for the time she worked out-of-class. With these work credits, Sarah was able to apply for a promotion and use the experience credits as minimum qualifications for the new position. With the proof of experience credits, she was awarded the new position as Supervisor II.

OUT-OF-CLASS CLAIMS - KNOW YOUR RIGHTS

Are you currently in a situation where you are not receiving fair and rightful compensation while working out-of-class? Here are some helpful pointers and things you should keep in mind before filing an out-of-class claim:

- **DOCUMENT EVERYTHING.** The more proof you have in writing, the more helpful it will be to analyze and process your case.
- Details you will need to provide ACSS are: date you started working out-of-class, where you worked out of class, who directed you to perform the out-of-class duties, and what duties you performed including what percentage of time you performed those duties.
- You may receive compensation for out-of-class duties performed for a period no greater than one year preceding filing the claim.
- Claims must be made within 30 days after the event happened.

A state employee is eligible to receive experience credits for out-of-class work. These experience credits can be used as minimum requirements for a state service examination for another position.

ACSS is here to help and understands your unique situation. Our Labor Relations Representatives are equipped with the skills and experience to guide you through these difficult times in your career. Whether you are seeking advice in a situation that just started occurring, or you are waist-deep in an ongoing claim that has elevated in difficulty, ACSS is on your side and will stand up for you in your time of need. Call your local Labor Relations Representative today

at 1-800-624-2137. 

PRESIDENT'S CORNER

It's been another year of progress and great wins for our members.

We have accomplished some great wins for ACSS members in this past year. In April 2016, ACSS sponsored AB 2735 and aggressively lobbied for the increase of paid leave buy-back hours for supervisors and confidential employees. Due to those efforts by ACSS the state changed the regulation to affect the same changes sought by ACSS' AB 2735. Since that win, CalHR has authorized an enhancement to the Paid Leave Buy-Back Program where excluded employees with annual leave balances over



640 hours have the option to request a cash-out payment or transfer accruals into a Savings Plus account. The efforts we have made in advocating for our members and building the professional relationship with CalHR have been very successful in 2016.

As you have read in this issue, ACSS had some monumental and notable wins with out of class grievances in our Representation Program. These are only a few examples of how our experienced Labor Relations Representatives help resolve conflicts for members experiencing difficult situations in their careers. These stories are powerful proof that membership with ACSS is invaluable. In 2016, our Representation Program processed **242** statewide meet and confer notices and we provided direct representational services in **353** separate cases. We are proud of our team of professional legal experts who continue to defend the rights of members and help them through their tough career issues.

The biggest ACSS accomplishment in 2016 happened in September. In an unprecedented turn of events, excluded employees throughout the state received multiple-year General Salary Increases (GSI) from CalHR before rank and file had even settled contracts at their bargaining tables. In addition, many classifications received special salary increases on top of the GSI. Some of which helped to resolve or alleviate salary compaction for classifications who were extremely affected. ACSS had worked tirelessly in numerous productive meetings with CalHR to reach this achievement and was proud to finally deliver this victorious benefit to excluded employees in 2016.

As ACSS closes the year with a record 8,763 members, we are thankful for the tremendous efforts from our Member Outreach Program. The value and benefit of membership in ACSS is becoming more widely known, and ACSS is making its presence visible more than ever, statewide.

From here, we will continue to focus on increasing our visible presence and programmatic activities that matter to YOU – the managers, supervisors and confidential employees of the state. In 2017, I promise to continue to foster new partnerships and find solutions to issues facing our members and ACSS.

We're turning the page on a great year and looking forward to 2017!

Respectfully,

Frank Ruffino, ACSS President

If you are not a member of ACSS, visit www.ACSS.org and join today!


In this issue:

- HOW ACSS HELPS MEMBERS WITH OUT-OF-CLASS CLAIMS
- PRESIDENT'S CORNER - 2016 IN REVIEW
- MEMBER BENEFITS: HOME & AUTO INSURANCE
- CHAPTER MEETING DATES

**Q1
2017**

First Name Last Name

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Address 2

City, State ZIP

Home & Auto Insurance for ACSS Members

Liberty Mutual has partnered with ACSS to offer members special savings on quality auto and home insurance.¹ And with benefits such as Multi-Policy Discount, Personal Property Replacement², and 24-Hour Claims Assistance, you'll worry less and save more. Call **1-800-699-5298** and mention your ACSS client #124567 to get a free quote.

To learn more visit:

www.calcsea.org/Member-Benefits/Insurance/Auto-and-Home



¹Discounts and savings are available where state laws and regulations allow, and may vary by state. Certain discounts apply to specific coverages only. To the extent permitted by law, applicants are individually underwritten; not all applicants may qualify.

²Optional coverage.



GET INVOLVED!

**Come to your local ACSS
Chapter's next meeting:**

512 - Jan. 26 (Ventura)

509 - Feb. 8 (Visalia)

508 - Feb. 9 (Stockton)

511 - Feb. 16 (Los Angeles)

514 - Feb. 16 (Ontario)

507 - Feb. 21 (Gonzales)

502 & 503 - Feb. 22 (Sacramento)

505 - March 2 (San Francisco)

513 - March 3 (Orange County)

504 - March 7 (TBD)

509 - March 7 (Fresno)

For more info, visit www.ACSS.org/Events

Contact ACSS Headquarters:
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