§ 100. Certification of payrolls. 1. Payroll certification required. (a) Except as otherwise provided in this section, no disbursing or auditing officer of the state or of any civil division thereof shall approve or pay or take any part in approving or paying any salary or compensation for personal service to any person holding an office or position in the classified service unless the voucher or payroll therefor bears the certificate of the civil service department or municipal commission having jurisdiction that the persons named therein are employed in their respective positions in accordance with law and rules made pursuant to law. The certificate of municipal commissions shall also include a statement of membership in an appropriate retirement system where such membership is mandatory. Such certificate may be executed for and on behalf of such department or commission, as the case may be, by an officer or employee thereof duly designated in writing for that purpose. Such certificate may, for cause, be withheld from an entire payroll or from any item or items therein. If the department or municipal commission finds that any person has been promoted, transferred, assigned, reinstated or otherwise employed in violation of this chapter or rules made pursuant thereto, it shall so notify the appropriate disbursing and auditing officers who thereafter shall not pay or approve the payment of any salary or compensation to such person; and nothing contained in this section shall be construed to authorize any officer to approve or pay salary or compensation to any person contrary to such a notice. If, however, permission is granted by the department to a state agency or state department to certify directly to the department of audit and control that the persons named in the certification are employed in their respective positions in accordance with law and rules made pursuant to law, the department need not certify any voucher or payroll but may at any time thereafter examine such payroll or voucher and revoke any previous certification not made in accordance with such law and rules. Revocation of any such certification shall, in any action against the appointing officer under section one hundred two of this chapter, be presumptive evidence that such certification was improper in the respects not held to be proper by the department.

(b) The certificate of the civil service department or appropriate municipal commission shall not be required in advance of the audit and

payment of salary or compensation to temporary laborers if the appointing officer certifies that the temporary laborers named in the payroll or account therefor have been appointed or employed in accordance with law and rules made pursuant thereto, but in such case such payroll or account shall be submitted within two calendar months after certification by the appointing officer for further certification by the department or appropriate municipal commission that the appointing officer's certification was in whole or in part proper. Refusal of the department or municipal commission to certify, within thirty days of receipt of such payroll or account, that the certification by the appointing officer was in all respects proper shall, in any action against such appointing officer under section one hundred two of this chapter, be presumptive evidence that such certification was improper in the respects not certified as proper by the department or municipal commission. The department may include temporary laborers employed by a state agency or state department within permission granted pursuant to paragraph (a) of this subdivision for direct certification to the department of audit and control, subject to the terms for investigation and revocation of such certification contained in such paragraph. The term "temporary laborers", as used herein, means persons in the labor class and skilled laborers in the non-competitive class who are employed temporarily on work of repairs, maintenance and construction, and who do not constitute part of the regular force of a department or institution.

(c) Any person entitled to be certified as provided herein and refused such certificate, or from whom salary or compensation is otherwise unlawfully withheld, may maintain a proceeding under article seventy-eight of the civil practice law and rules to compel the issuance of such certificate or the payment of such salary, or both, as the case may be.

(d) Nothing contained in this section shall be construed to prevent the award of a money remedy for the violation of a provision of a collective bargaining agreement prohibiting the assignment of employees to duties substantially different from those appropriate to the title to which the employees are certified. This subdivision may be supplemented, modified or replaced by provisions of collective bargaining agreements negotiated between the state and an employee organization pursuant to

article fourteen of this chapter.

(e) Nothing contained in this section shall be construed to prevent the payment of a money remedy, which shall be for a period no longer than forty-five days prior to the filing of a grievance, pursuant to executive order forty-two, dated October fourteenth, nineteen hundred seventy, and title nine, part five hundred sixty, official compilation of codes, rules and regulations of the state of New York in resolution of the assignment of employees to duties substantially different from those appropriate to the title to which the employees are certified. The issuance of such a money remedy shall also contain a cease and desist order from continuation of the assignment of such substantially different duties to the employee involved.

(f) Notwithstanding the provisions of paragraph (a) of this subdivision, in cities with a population of one million or more, the municipal civil service commission may grant permission to a city agency or department to certify directly to the disbursing or auditing officer of such city that the persons named in the certification are employed in their respective positions in accordance with applicable law and rules. In such cases, the municipal civil service commission need not certify any voucher or payroll but may at any time thereafter examine such payroll or voucher and revoke any previous certification not made in accordance with such law and rules. Revocation of such certification shall, in any action against the appointing officer pursuant to section one hundred two of this title, be presumptive evidence that such certification was improper in the respects not held to be proper by the municipal civil service commission.

2. Extended certifications. (a) The state civil service commission or any municipal commission may, by rule, provide that certification of payrolls of employees of any agency, authority or civil division under its jurisdiction may be made annually or semi-annually as of the date or dates specified in such rules provided, however, that on and after July first, nineteen hundred sixty-one, each such commission shall be deemed to have adopted a rule providing for annual certification as of the first full payroll period of the fiscal year of such agency, authority or civil division, except for such periods after such date during which a rule or requirement of such commission shall be operative which

provides for other certifications, or dates therefor, consistent with the provisions of this section. Any such certification shall remain in effect until the next certification required by such rules, except as to officers or employees appointed or reinstated after such certification was made, or officers or employees whose status or salary or compensation is changed after the last certification of a payroll containing their names. In such cases the names of such officers and employees shall be submitted for certification on the first payroll on which they appear under such appointment, reinstatement, or other new status or salary or compensation; provided, however, that in the case of school districts other than city school districts, pending such certification by the department or commission as to persons not so previously certified, audit and payment of salary or compensation may be made for a period not exceeding two calendar months after the appointment, reinstatement or other change of status or salary or compensation of such persons if notice thereof in writing is forwarded to the civil service department within fifteen calendar days after such appointment, reinstatement or other change of status or salary or compensation occurs.

(b) In lieu of the procedure authorized by paragraph (a) of this subdivision the civil service department, with respect to the officers and employees of any department or agency of the state or any public authority, may issue certificates hereunder on an extended basis without time limitation or, in the case of employments subject to a time limitation, for such limited period as may be applicable. No further certification shall be necessary for the payment of compensation to any such person so long as his status remains unchanged and during the stated limited period, if any, of his employment. The civil service department, however, may at any time examine the payroll of such department, agency or authority for any pay period, and shall examine such a payroll at least once each year to determine that all persons employed in such department, agency or authority are employed in accordance with law and rules.

(c) Notwithstanding the provisions of this subdivision or of any rules adopted hereunder, the civil service department or a municipal commission may, at any time, require any such agency, authority or civil division under its jurisdiction to submit payrolls or accounts for

certification in accordance with the provisions of subdivision one of this section.

3. Certifications for certain positions in state service. Notwithstanding the provisions of this section, the civil service department, in any certificate issued pursuant to this section with respect to the employment of a person in a position classified pursuant to article eight of this chapter, shall not be required or deemed to attest that the salary or rate of compensation indicated for such person is that to which he is eligible or entitled pursuant to law. When an extended certification has been made with respect to the employment of a person in such a position, a new certification shall not be required solely because of a change in the salary or rate of compensation of such person.

4. Waiver of certification requirement for certain special or emergency employments. The president of the state civil service commission may except from the application of this section persons employed by a state agency or public authority for a period not exceeding ten days to render special or emergency service not customarily performed by the regular employees of such agency or public authority.

5. Limitation upon the certification of payrolls. Solely for the purposes of this section and in the absence of fraud, an employee having completed the applicable probationary period and holding a position in the classified service of a civil service division by appointment or promotion for at least three years shall be presumed to have been duly appointed or promoted. After such time, neither the state civil service commission nor a municipal commission shall withhold certification of such employee on a payroll or voucher by reason of a violation of this chapter or rules made pursuant thereto. The provisions of this subdivision shall not apply in cities with a population of one million or more.