§ 131. Determination of salaries. 1. Rates of compensation. An employee holding a position allocated to one of the salary grades included in section one hundred thirty of this chapter shall receive the hiring rate of the salary grade to which his position is allocated and may receive periodic performance advancement payments based on periodic evaluations of work performance in accordance with the terms of applicable agreements between the state and employee organizations reached pursuant to article fourteen of this chapter and the rules and regulations promulgated by the director of the budget. No employee shall receive an annual salary in excess of the job rate of the salary grade to which his position is allocated as a result of a performance advancement payment.

1-a. Appointment above minimum salary in certain cases. Notwithstanding any other provision of this chapter, with respect to positions allocated to salary grades in section one hundred thirty of this chapter the director of the classification and compensation division, subject to the approval of the director of the budget, may authorize an increased hiring rate, not to exceed the job rate of the salary grade of the position to which a person is to be appointed when the training or experience of such appointee substantially exceeds requirements necessary for appointment. The salaries of other employees serving in the same title in the same geographical area or location having qualifications of training or experience equivalent to those of the person appointed shall be increased by such amount as may be necessary to equal the rate of compensation of the person appointed.

2. Appointments and promotions to higher grade positions. (a) If such an employee is promoted, appointed or otherwise advanced to a position in a higher salary grade he shall receive a percentage increase in existing basic salary of one and one-half percent plus one and one-half percent times the number of grades by which he is so advanced, or he shall be paid the hiring rate of such higher grade, whichever results in a higher annual salary. For purposes of determining such increase for employees promoted, appointed or otherwise advanced to a position in one of the salary grades with the prefix M as prescribed in paragraph d of subdivision one of section one hundred thirty of this article, each such

grade with the prefix M shall be deemed to constitute a two grade advancement.

(b) Notwithstanding the provisions of paragraph (a) of this subdivision, an employee holding a position allocated to one of the salary grades prescribed in paragraph b of subdivision one of section one hundred thirty of this chapter who is promoted, appointed or otherwise advanced to a position in a higher salary grade as prescribed in such paragraph shall receive an increase in salary determined in accordance with the provisions of paragraph (a) of this subdivision, provided however that the amount of such employee's basic salary which is considered to be longevity payment in accordance with the provisions of paragraph d of subdivision three of section one hundred thirty of this chapter shall not be considered as basic salary for the purpose of determining his increase, and such amount shall be adjusted to the longevity amount appropriate for such higher salary grade and added to and become part of his basic salary in the higher grade to which he is promoted, appointed or advanced.

(c) Notwithstanding the provisions of paragraph (a) of this subdivision, if such employee is promoted, appointed or otherwise advanced to a position allocated to one of the salary grades with the prefix M as prescribed in paragraph d of subdivision one of section one hundred thirty of this chapter he shall receive an increase in salary determined in accordance with the provisions of paragraph (a) of this subdivision provided however that the appointing officer shall have the discretion, with the approval of the director of the classification and compensation division, to increase such an employee's salary by an amount not to exceed an additional three percent of the employee's basic salary in the grade from which appointed, promoted or advanced.

(d) Notwithstanding the provisions of paragraphs (a) and (c) of this subdivision, if such employee is promoted, appointed, transferred, reinstated, or otherwise placed in a position allocated to salary grade M 8 as prescribed in paragraph d of subdivision one of section one hundred thirty of this chapter he shall receive the hiring rate of that salary grade or any higher rate authorized by the director of the budget.

(e) Notwithstanding any inconsistent provision of law, officers and employees to whom the provisions of paragraph d of subdivision one of

section one hundred thirty of this article apply who are on the payroll on March thirty-first, nineteen hundred eighty-five, who are promoted, appointed or otherwise advanced to a position in a higher salary grade during the period between June sixth, nineteen hundred eighty-five for the employees on the institutional payroll and June thirteenth, nineteen hundred eighty-five for employees on the administrative payroll and March thirty-first, nineteen hundred eighty-six, shall receive the precentage increase in basic annual salary as provided in this subdivision or a basic annual salary equal to the hiring rate of such higher grade which is in effect during that time period plus five percent, whichever results in a higher annual salary.

(f) Notwithstanding any inconsistent provision of this section, officers and employees on the payroll on May twenty-third, nineteen hundred eighty-five in the collective negotiating units designated as the security services unit and the security supervisors unit established pursuant to article fourteen of the civil service law, who are promoted, appointed or otherwise advanced to a position in a higher salary grade during the period between April twenty-fifth, nineteen hundred eighty-five for the employees on the institutional payroll and May second, nineteen hundred eighty-five for employees on the administrative payroll and March thirty-first, nineteen hundred eighty-six, shall receive the percentage increase provided in this subdivision or the performance advancement rate one of such higher salary grade which is in effect at the time of such promotion, appointment, or advancement whichever results in a higher annual salary.

(g) Notwithstanding any inconsistent provision of law, officers and employees to whom paragraph c of subdivision one of section one hundred thirty of this article apply who are on the payroll on March thirty-first, nineteen hundred eighty-five, who are promoted, appointed or otherwise advanced to a position in a higher salary grade during the period between June sixth, nineteen hundred eighty-five for the employees on the institution payroll and June thirteenth, nineteen hundred eighty-five for employees on the administration payroll and March thirty-first, nineteen hundred eighty-six, shall receive the percentage increase in basic annual salary as provided in this subdivision or a basic annual salary equal to the hiring rate of such higher grade which is in effect during that time period plus five

percent, whichever results in a higher annual salary.

(h) Notwithstanding any inconsistent provision of law, officers and employees to whom the provisions of paragraph e of subdivision one of section one hundred thirty of this article apply who are on the payroll on March thirty-first, nineteen hundred eighty-five, who are promoted, appointed or otherwise advanced to a position in a higher salary grade during the period between June thirteenth, nineteen hundred eighty-five and March thirty-first, nineteen hundred eighty-six, shall receive the percentage increase in basic annual salary as provided in this subdivision or a basic annual salary equal to the hiring rate of such higher grade which is in effect during the time period plus five percent, whichever results in a higher annual salary.

(i) Notwithstanding any inconsistent provision of law, officers and employees to whom paragraph c of subdivision one of section one hundred thirty of this title apply who are promoted, appointed or otherwise advanced to a position in a higher salary grade shall receive the percentage increase in basic annual salary as provided in this subdivision or a basic annual salary equal to the hiring rate of such higher grade which is in effect at the time of promotion, whichever results in a higher annual salary. For the purposes of such calculation, where the terms of an agreement negotiated pursuant to article fourteen of this chapter so provide, the amount of a performance award paid to such employee being promoted, appointed or advanced shall be considered as part of basic annual salary.

(j) Notwithstanding any inconsistent provision of law, officers and employees to whom paragraphs a and e of subdivision one of section one hundred thirty of this title apply, who are promoted, appointed or otherwise advanced to a position in a higher salary shall receive the percentage increase in basic annual salary as provided in this subdivision or a basic annual salary equal to the hiring rate of such higher grade which is in effect at the time of promotion, whichever results in a higher annual salary. Effective April first, two thousand twenty, for the purposes of such calculation, where the terms of an agreement negotiated pursuant to article fourteen of this chapter applicable to such officers and employees so provide, the amount of longevity paid to such employee being promoted, appointed or advanced shall be considered as part of basic annual salary.

3. Appointments, transfers, reinstatements, demotions and displacements to lower grade positions. (a) If such an employee is demoted, or displaced to a position in a lower grade pursuant to section eighty of this chapter, or is appointed, transferred or reinstated to a position in a lower grade, they shall, upon such demotion, displacement, appointment, transfer, or reinstatement, receive the rate of compensation which corresponds with the number of annual increments and the percentage value of performance advances actually received in the salary grades from which and to which they are demoted, displaced, appointed, transferred or reinstated, as the case may be.

(b) Notwithstanding the provisions of paragraph (a) of this subdivision, an employee holding a position allocated to one of the salary grades prescribed in paragraph b of subdivision one of section one hundred thirty of this chapter who is demoted, displaced, appointed, transferred, or reinstated to a position in a lower salary grade as prescribed in such paragraph shall receive the rate of compensation determined in accordance with the provisions of paragraph (a) of this subdivision, provided however that the amount of such employee's basic salary which is considered to be longevity payment in accordance with the provisions of paragraph d of subdivision three of section one hundred thirty of this chapter shall not be considered as basic salary for the purpose of determining his salary in such lower grade and such amount shall be adjusted to the longevity amount appropriate for such lower salary grade and added to and become part of his basic salary in such lower grade to which he is demoted, displaced, appointed, transferred or reinstated.

(c) Notwithstanding the provisions of this section to the contrary, an employee holding a position allocated to one of the salary grades prescribed in paragraph a of subdivision one of section one hundred thirty of this title may be demoted or reinstated to a position in a lower salary grade by an arbitrator in an award pursuant to authority granted in a collectively negotiated agreement. Such arbitrator's award may place the basic annual salary of the employee demoted or reinstated to a lower salary grade anywhere within the range of the hiring rate and the job rate of the lower graded position, provided, however, for purposes of longevity payments, such employee must serve no less time in

the new position than he or she would have had to serve in the position from which demoted to be eligible.

4. Appointments, transfers and reinstatements to similar grade positions. If such an employee is appointed, transferred, or reinstated to a position in the same salary grade, he shall be paid the same salary in the new position as he received in his former position.

5. Appointments, promotions, reinstatements, and transfer of employees occupying non-allocated positions. (a) Employees serving in positions which are not allocated to one of the salary grades prescribed in section one hundred thirty of this title, and which are covered by paragraph d of subdivision one of section one hundred thirty of this title or where, and to the extent that, an agreement between the state and a certified employee organization entered into pursuant to article fourteen of this chapter so provides on behalf of positions in a collective negotiating unit represented by such employee organization: (i) an employee in the service of the state or of a public authority under the civil service jurisdiction of the department who has been continuously occupying an unallocated position, excluding a seasonal position as defined by the director of the classification and compensation division, and who is appointed, promoted, reinstated, or transferred to a position allocated to one of the salary grades in section one hundred thirty of this title, the hiring rate of which is equal to or lower than the annual rate of compensation then received by such employee, shall, upon such appointment, promotion, reinstatement, or transfer, be paid either the minimum salary of the grade of such allocated position plus an amount to be determined by the director of the classification and compensation division consistent with the performance advancement system in effect for positions in the salary grade to which he or she is appointed, promoted, reinstated, or transferred, or at a rate equal to the salary that he or she was receiving in his or her former position immediately prior to the date of such appointment, promotion, reinstatement, or transfer. In this event, such salary received in the position to which he or she is appointed, promoted, reinstated, or transferred shall not exceed the salary that he or she was receiving in his or her former position immediately prior to

the date of such appointment, promotion, reinstatement, or transfer and shall not exceed the job rate of his or her new position. However, if such unallocated position has previously been equated to a grade by the director of the division of the budget which is lower than the allocated grade of the position to which he or she is being appointed, promoted, reinstated, or transferred, subparagraph (ii) of this paragraph shall apply. The director of the classification and compensation division shall instruct the office of the state comptroller regarding the application of salary computations performed pursuant to this subparagraph. In addition, for the purposes of this subparagraph, the annual rate of compensation of the incumbent of an unallocated position compensable on an hourly or per diem basis or on any basis other than at an annual salary rate, shall be deemed to be the compensation which would have been payable if the services were required on a full time annual basis for the number of hours per day and days per week established by law or administrative rule or order; (ii) an employee in the service of the state or of a public authority under the civil service jurisdiction of the state department of civil service who has been continuously occupying an unallocated position, excluding a seasonal position as defined by the director of the classification and compensation division, and who is appointed, promoted, reinstated, or transferred to a position allocated to one of the salary grades is section one hundred thirty of this title, the hiring rate of which is greater than the annual rate of compensation then received by such employee, shall, upon such appointment, promotion, reinstatement, or transfer, be paid either the minimum salary of the grade of such allocated position, or shall be provided a salary increase as determined by the director of the classification and compensation division, not to exceed the job rate of his or her new position, except in cases where an employee receives a longevity payment or a contractually negotiated payment above the job rate. If such unallocated position has previously been equated to a grade by the director of the division of the budget, the director of the classification and compensation division shall use such grade equation in performing such salary increase calculation. For the purposes of salary increase calculations pursuant to any such agreement between the state and a certified employee organization, the director of the classification and compensation division shall,

consistent with such agreement, determine the salary basis to be used by the office of the state comptroller when performing such calculations. In addition, for the purposes of this subparagraph, the annual rate of compensation of the incumbent of an unallocated position compensable on an hourly or per diem basis or on any other basis other than at an annual salary rate, shall be deemed to be the compensation which would have been payable if the services were required on a full time annual basis for the number of hours per day and days per week established by law or administrative rule or order.

(b) Employees serving in seasonal positions, as defined by the director of the classification and compensation division, which are not allocated to one of the salary grades prescribed in section one hundred thirty of this title, and which are covered by paragraph d of subdivision one of section one hundred thirty of this title or where, and to the extent that, an agreement between the state and a certified employee organization entered into pursuant to article fourteen of this chapter so provides on behalf of positions in a collective negotiating unit represented by such employee organization: (i) an employee in the service of the state or of a public authority under the civil service jurisdiction of the department who has been continuously occupying an unallocated seasonal position on a long term basis as defined by such agreement and who is appointed, promoted, reinstated, or transferred to a position allocated to one of the salary grades in section one hundred thirty of this title, the hiring rate of which is equal to or lower than the annual rate of compensation then received by such employee, shall, upon such appointment, promotion, reinstatement, or transfer, be paid at a rate equal to the salary that he or she was receiving in his or her former position for the one calendar year prior to the date of such appointment, promotion, reinstatement, or transfer, not to exceed the job rate of his or her new position. However, if such unallocated position has previously been equated to a grade by the director of the division of the budget which is lower than the allocated grade of the position to which he or she is being appointed, promoted, reinstated, or transferred, subparagraph (ii) of this paragraph shall apply. For the purposes of this subparagraph, the annual rate of compensation of the incumbent of an unallocated seasonal position compensable on an hourly or per diem basis or on any other basis other than at an annual salary

rate, shall be deemed to be the compensation which would have been payable if the services were required on a full time annual basis for the number of hours per day and days per week established by law or administrative rule or order; and (ii) an employee in the service of the state or of a public authority under the civil service jurisdiction of the state department of civil service who has been continuously occupying an unallocated seasonal position on a long term basis as defined by such agreement and who is appointed, promoted, reinstated, or transferred to a position allocated to one of the salary grades in section one hundred thirty of this title, the hiring rate of which is greater than the annual rate of compensation then received by such employee, shall, upon such appointment, promotion, reinstatement, or transfer, be paid either the minimum salary of such allocated position, or shall be provided a salary increase as determined by the director of the classification and compensation division, not to exceed the job rate of his or her new position, except in cases where an employee receives a longevity payment or a contractually negotiated payment above the job rate. If such unallocated position has previously been equated to a grade by the director of the division of the budget, the director of the classification and compensation division shall use such grade equation in performing such salary increase calculation. For the purposes of salary increase calculations pursuant to any such agreement between the state and a certified employee organization, the director of the classification and compensation division shall, consistent with any such agreement, determine the salary basis to be used by the office of the state comptroller when performing such calculations. In addition, for the purposes of this subparagraph, the annual rate of compensation of the incumbent of an unallocated seasonal position compensable on an hourly or per diem basis or on any other basis other than at an annual salary rate, shall be deemed to be the compensation which would have been payable if the services were required on a full time annual basis for the number of hours per day and days per week established by law or administrative rule or order.

(c) Employees in the service of the state or of a public authority under the civil service jurisdiction of the state department of civil service, for which neither paragraph (a) or (b) of this subdivision is applicable, who have been continuously occupying a position which is not

allocated to one of the salary grades prescribed in section one hundred thirty of this title and who are appointed, promoted, reinstated, or transferred to a position allocated to one of the salary grades in such section, the hiring rate of which is equal to or lower than the annual rate of compensation then received by such employee, shall, upon such appointment, promotion, reinstatement, or transfer, be paid the minimum salary of the grade of such allocated position plus an amount to be determined by the director of the classification and compensation division consistent with the performance advancement system in effect for positions in the salary grade to which he or she is appointed, promoted, reinstated, or transferred, not to exceed the job rate of his or her new position. For the purposes of this paragraph, the annual rate of compensation of the incumbent of an unallocated position compensable on an hourly or per diem basis or on any other basis other than at an annual salary rate, shall be deemed to be the compensation which would have been payable if the services were required on a full time annual basis for the number of hours per day and days per week established by law or administrative rule or order.

(d) Notwithstanding the provisions of paragraphs (a) and (c) of this subdivision, if the position held by an employee of a public authority under the civil service jurisdiction of the department has been classified and is allocated to a salary grade corresponding to the grade prescribed in section one hundred thirty of this title to which positions having the same title in the service of the state, if any, are allocated, and if the salary of such employee in such grade has been determined in accordance with the provisions of this article, the salary of such employee upon his or her appointment, promotion, reinstatement, or transfer to an allocated position in the service of the state shall be determined in the same manner as though he or she had been holding an allocated position in the service of the state.

(e) Except as otherwise provided in paragraphs (a), (b), (c), and (d) of this subdivision with respect to employees of certain public authorities who are transferred to allocated positions in the service of the state, the salary of any employee of a civil division, public authority, or other public benefit corporation who, upon the transfer of functions to the state, is transferred to a position allocated to a salary grade in section one hundred thirty of this title, and the salary

of any employee of a private institution or enterprise whose employment is continued in such an allocated position pursuant to section forty-five of this chapter upon the acquisition by the state of such institution or enterprise, shall be prescribed by the director of the budget, within amounts available therefor, at a rate between the hiring rate of the grade to which such employee's position is allocated and the job rate of such grade; provided, however, that if the salary received by such employee immediately prior to such transfer or entry into state service was an amount greater than the hiring rate of the grade to which his or her position is allocated and less than the job rate of such grade, his or her salary as prescribed by the director of the budget shall not exceed the salary received by him or her immediately prior to such transfer or entry.

6. Advancement within salary grade. (a) An employee holding a position allocated to one of the salary grades prescribed in paragraphs a, b, c, e, f, g, h or i of subdivision one of section one hundred thirty of this article whose basic annual salary is less than the job rate of such salary grade may receive periodic performance advancement payments based on periodic evaluations of work performance in accordance with the terms of agreements between the state and employee organizations reached pursuant to article fourteen of this chapter and rules and regulations promulgated by the director of the budget; provided, however, that in no event may such a payment result in a basic annual salary in excess of the job rate of such grade. Such payments shall be part of the employee's basic annual salary.

(b) Notwithstanding the provisions of paragraph (a) of this subdivision, the amount of such employee's basic annual salary which is considered to be longevity payment in accordance with the provisions of paragraph d of subdivision three of section one hundred thirty of this chapter shall not be considered as basic annual salary for the purpose of determining his eligibility for a performance advancement payment.

(c) An employee holding a position allocated to one of the salary grades prescribed in paragraph d of subdivision one of section one hundred thirty of this chapter whose basic annual salary is less than the job rate of such salary grade may receive periodic performance advancement payments based on periodic evaluations of work performance

in accordance with rules and regulations promulgated by the director of the budget; provided, however, that in no event may such a payment result in a basic annual salary in excess of the job rate of such grade. Such payments shall be part of the employee's basic annual salary.

7. Temporary and provisional employment. Except as expressly provided herein, temporary or provisional service shall be treated in the same manner as permanent service for the purpose of this section.