§ 3556. Merit system; merit board. 1. Policy and applicable law. (a) Positions in the employ of Roswell Park Cancer Institute corporation shall be subject to section six of article five of the Constitution of the state of New York.

(b) Except as provided by this title and rules issued pursuant thereto, the corporation and its employees shall be subject to the provisions of the civil service law as the same shall be amended from time-to-time and employees of the corporation shall be deemed to have the rights of state employees for the purposes of such provisions of the civil service law.

2. Definitions. When used in this section:

(a) The term "classified service" means all positions in the corporation which are not in the unclassified service.

(b) The term "merit board" means the committee established by corporation's board of directors established by this title, which shall act in the capacity and fulfill the role of the "commission", "civil service commission" and "municipal civil service commission" for the purposes of applying the civil service law to positions in the corporation.

(c) The term "director of classification and compensation" or "director" means the director of classification and compensation of the Roswell Park Cancer Institute corporation.

(d) The term "jurisdictional classification" means the assignment of positions in the classified service to the competitive, noncompetitive, exempt or labor classes.

(e) The terms "position classification", "classification", "reclassification", and "classify" mean grouping together under common and descriptive titles positions that are substantially similar in the essential character and scope of their duties and responsibilities and required qualifications.

3. Roswell Park Cancer Institute merit board. (a) Three persons, other than directors, officers, employees or the president of the corporation, shall be selected by majority vote of the board for three-year terms and shall constitute the Roswell Park Cancer Institute merit board. The terms of the members of the merit board shall be staggered so that the

term of one member expires each year. The members of the merit board shall annually elect one of the members chairperson.

(b) The members of the merit board shall receive their necessary travel and other expenses incurred in the performance of the duties of such office, and shall receive in addition such compensation for services rendered as members of such merit board as shall be determined by the board of directors of the corporation by vote of a majority of the directors.

(c) The merit board shall prescribe and amend rules and regulations subject to the applicable provisions of article fourteen of the civil service law, for effecting the provisions of this title and of section six of article five of the Constitution of the state of New York, including but not limited to (i) rules for the jurisdictional classification of offices and positions in the classified service of the corporation; (ii) rules for examinations, appointments, promotions, transfers, leaves of absence, resignations and reinstatements; (iii) rules for sick leaves, vacations, time allowances and other conditions of employment in the classified service of the corporation; (iv) rules for the hearing and determination of appeals; and (v) rules designating positions in the non-competitive class which are confidential or require the performance of functions influencing policy.

(d) The merit board shall hear and determine appeals instituted by any person believing himself or herself aggrieved by any action or determination of the director of classification and compensation, acting as such; provided, however, that no appeal shall be allowed (i) if the action or determination involved relates solely to matters of internal management of the office of the director of classification and compensation, or (ii) if the action or determination involved was considered and approved in advance by the merit board. Any appeal authorized by this subdivision shall be instituted by filing with the secretary of the merit board a written notice of appeal stating the action or determination appealed from, the grounds for the appeal, and signed by the person or persons appealing or their representative; no particular form of appeal shall be required. Any such appeal shall be filed within thirty days following the appellant's receipt from the director of classification and compensation of notice of the action or determination to be reviewed; the merit board for good cause shown may

waive such thirty-day limitation. The merit board may make such investigation or inquiry into the facts relative to the action or determination appealed from as may be deemed advisable, shall afford to the appellant and his or her representative an opportunity to be heard in person or in writing and to present evidence and argument. The merit board may affirm, modify or reverse such action or determination. The merit board shall decide each appeal filed within thirty days following the date on which the submission of facts, information and evidence is deemed complete by the merit board. The person seeking review and his or her representative shall be furnished a copy of the merit board's written decision concurrently with its filing with the secretary of the merit board. A decision of the merit board shall become final and binding when filed with the secretary of the merit board. Review of any such final decision shall be by a proceeding authorized by article seventy-eight of the civil practice law and rules; any such proceeding must be commenced within four months after the determination to be reviewed becomes final and binding.

(e) Before adopting any rule the merit board shall publish notice of the proposed rule no later than thirty days prior to the proposed effective date of such rule and shall afford an opportunity to any interested person to comment on the proposed rule.

(i) Publication of notice of proposed rule-making shall be accomplished by posting a copy on the main bulletin board of the corporation, by serving a copy of the notice by certified mail return receipt requested upon the designated representative of any employee union recognized to represent employees of the corporation and by mailing the copy of the notice to the temporary president of the senate and the speaker of the assembly; publication shall be complete upon the posting and mailing. Notice made pursuant to this subparagraph shall be deemed to be in compliance with the notice requirements prescribed in section one hundred one-a of the executive law.

(ii) A notice of proposed rule-making shall contain the complete text of the proposed rule, and the last date upon which the merit board will receive comment upon the proposed rule; provided, however, that if the text of the proposed rule exceeds two thousand words the notice shall contain only a description of the subject, purpose and substance of such rule, and shall state from what person the complete text may be

obtained.

(iii) The last date for submission of comments upon a proposed rule shall be not less than twenty days following the publication of notice of proposed rule-making.

(iv) The merit board may receive comments on a proposed rule in writing or, in an appropriate case, may conduct a hearing upon the proposed rule.

(v) Any rule adopted by the merit board shall take effect when signed by the chairperson of the merit board and filed with the secretary of the corporation. Notice of adoption of a rule shall be published concurrently with its adoption in the same manner as the notice of proposed rule-making.

(vi) In the exercise of its rule-making authority the merit board shall not be subject to the provisions of the state administrative procedure act.

(f) The secretary of the corporation shall be the secretary to the merit board and shall serve ex officio without vote. The secretary shall maintain minutes of the meetings of the merit board and shall maintain complete copies of the rules adopted by the merit board. Such minutes and rules shall be open to public inspection and copying during all ordinary business hours of the corporation in accordance with the applicable provisions of article six of the public officers law.

(g) The merit board shall, subject to the provisions of article seven of the public officers law, meet annually at the offices of the corporation, and shall hold such other meetings at such places within the state as may be required. A majority of the members of the merit board shall constitute a quorum.

4. Director of classification and compensation. (a) The director of classification and compensation of the corporation shall be in the competitive class of the classified service appointed by the president of the corporation. The director of classification and compensation shall not be a part of the office of human resources of the corporation.

(b) The director of classification and compensation shall be charged with the duty and shall have the power, subject to appeal to the merit board:

(i) to classify and reclassify all positions in the classified service

of the corporation; and

(ii) to allocate and reallocate to an appropriate salary grade all positions in the competitive, noncompetitive and labor classes of the classified service of the corporation including temporary and seasonal positions; provided that notwithstanding any inconsistent provisions of section one hundred thirty of the civil service law, employees of the corporation in the classified service of the corporation shall also be deemed to be in the classified civil service of the state of New York for purposes of section one hundred thirty of the civil service law.

(c) The principle of fair and equal pay for similar work shall be followed in the classification and reclassification and the allocation and reallocation of positions pursuant to this section and all positions having the same title shall be allocated to the same salary grade.

(d) The director of classification and compensation shall also have the following powers and duties:

(i) To ascertain and record the duties and responsibilities of all positions in the classified service of the corporation, establish adequate specifications showing the qualifications for and the nature and extent and scope of the duties and responsibilities of such positions, and assign uniform titles to positions that are so substantially similar in the essential character and scope of their duties and responsibilities and in the qualification requirements thereof that the same descriptive title may be used to designate them; that the same qualifications for appointment thereto may be reasonably required; that the same tests of fitness may be established, and that the same rate of compensation may be reasonably applied;

(ii) To investigate all matters affecting the classification and compensation of positions, to hear and determine all complaints and grievances with respect to the classification and compensation of positions, and from time to time to review the duties, responsibilities, qualification requirements and compensation of positions and to make such revisions in the classification or compensation of positions as changes in the service of the corporation may require;

(iii) To afford to any person aggrieved by the classification or allocation of a position a reasonable opportunity to present facts in support of or in relation to such classification or allocation, at a time and in such manner as may be specified by the director, and to

render and furnish to the person aggrieved a written decision thereon.

(e) Any classification or reclassification of a position and any allocation or reallocation of a position to a salary grade made by the director pursuant to this section shall become effective on the date approved by the president of the corporation.

5. Authority to use services of New York state department of civil service. The merit board or the director may request of the New York state department of civil service technical advice and assistance in the administration of the provisions of this title for consideration, including but not limited to the preparation and administration of examinations, and in the absence of an eligible list of the corporation, may request the New York state department of civil service to furnish it with the names of persons on an appropriate eligible list. The merit board or the director shall provide such department with any information necessary to effectuate the provisions of this section.

6. Classes of position established. The classified service of the corporation shall comprise all offices and positions not included in the unclassified service. The offices and positions in the classified service of the corporation shall be divided into four classes designated as the exempt class, the non-competitive class, the competitive class, and the labor class.

(a) The exempt class shall consist of such positions and offices which the merit board shall determine to be impracticable to fill by competitive or non-competitive examination.

(b) The non-competitive class shall include all positions that are not in the exempt class or labor class and for which it is found by the merit board to be not practicable to ascertain the merit and fitness of applicants by competitive examination.

(c) The labor class shall comprise all unskilled laborers in the service of the corporation.

(d) The competitive class shall include all positions for which it is found by the merit board to be practicable to determine the merit and fitness of applicants by competitive examination, and shall include all positions in the classified service of the corporation except such positions as are in the exempt class, the non-competitive class or the

labor class.

7. Examinations. (a) The merit and fitness of applicants for positions which are classified in the competitive class shall be ascertained by such examinations as may be prescribed by the merit board. The merit board shall issue an announcement of each competitive examination or promotional examination, setting forth the minimum qualifications required, the subjects of the examination, and such other information as they may deem necessary, and shall advertise such examination in such manner as the nature of the examination may require.

(b) The merit board, acting by the director, shall require prospective applicants to file during a prescribed time a formal application in which the applicant shall state such information as may reasonably be required, touching upon the applicant's background, experience and qualifications for the position sought and his or her merit and fitness for service. The application shall be subscribed by the applicant and shall contain an affirmation by the applicant that the statements therein are true under the penalties of perjury. Application forms shall be furnished without charge to all persons requesting them.

8. Abolition of positions; demotion. (a) Where, because of economy, consolidation or abolition of functions, curtailment of activities or otherwise, positions in the competitive class of service of the corporation are abolished or reduced in rank or salary grade, suspension or demotion as the case may be among incumbents holding the same or similar positions within the same jurisdictional classification shall be made in the inverse order of original appointment on a permanent basis in the grade or title; provided, however, that upon the abolition or reduction of positions in the competitive class of service of the corporation incumbents holding the same or similar positions within the same jurisdictional classification who have not completed their probationary service shall be suspended or demoted as the case may be before any permanent incumbents, and among such probationary employees the order of suspension or demotion shall be determined as if such employees were permanent incumbents.

(b) Where, because of economy, consolidation or abolition of functions, curtailment of activities or otherwise, positions in the

non-competitive class of service of the corporation are abolished or reduced in rank or salary grade, suspension or demotion as the case may be among incumbents holding the same or similar positions within the same jurisdictional classification shall be made in the inverse order of original appointment on a permanent basis in the grade or title; provided, however, that upon the abolition or reduction of positions in the non-competitive class of service of the corporation incumbents holding the same or similar positions within the same jurisdictional classification who have not completed their probationary service shall be suspended or demoted as the case may be before any permanent incumbents, and among such probationary employees the order of suspension or demotion shall be determined as if such employees were permanent incumbents.

(c) Upon the abolition or reduction of positions in the service of the corporation, suspension or demotion shall be made from among employees holding the same or similar positions within the same jurisdictional classification in the entirety of the corporation.

(d) In any case where an employee of the corporation is suspended or demoted because of economy, consolidation or abolition of functions, curtailment of activities or otherwise, the director of classification and compensation shall, upon such suspension or demotion, furnish to the merit board a statement showing the employee's name, title or position, date of appointment and the date of and reason for suspension or demotion. The merit board shall place the name of such employee upon a preferred list together with others who may have been suspended or demoted from the same or similar positions in the same jurisdictional class in the service of the corporation, and shall certify such list for filling vacancies in the same jurisdictional class, first, in the same or similar position, second, in any position in a lower grade in line of promotion, and third, in any comparable position.

(e) For purposes of the civil service law, the date of original appointment of employees of the corporation shall be the date of original appointment on a permanent basis in the classified service of the corporation; except that for those employees who transfer from state service to the service of the corporation pursuant to section thirty-five hundred fifty-seven of this title, the date of original appointment shall be the date of original appointment on a permanent

basis in the civil service of the state of New York.

9. Notwithstanding any inconsistent provision of section eighty-one of the civil service law, employees of the state who transfer to the corporation pursuant to subdivision one of section thirty-five hundred fifty-seven of this title shall be considered to be state employees under the jurisdiction of the state civil service commission for purposes of placement on and employment from preferred lists established by the state civil service commission.

10. Notwithstanding any inconsistent provisions of sections eighty-one-a and eighty-one-b of the civil service law, employees of the state who transfer to the corporation pursuant to subdivision one of section thirty-five hundred fifty-seven of this title shall be considered to be state employees for purposes of placement upon and employment from reemployment rosters pursuant to section eighty-one-a of the civil service law and for purposes of placement upon and employment from placement rosters pursuant to section eighty-one-b of the civil service law.

11. Reemployment rosters within the corporation. (a) Where an employee is to be suspended or demoted in accordance with subdivision eight of this section, the president of the corporation shall, upon such employee's suspension or demotion place the name of such employee upon a reemployment roster for filling vacancies in any comparable position as determined by the director of classification and compensation, except that employees suspended or demoted from positions in the non-competitive and labor classes may not be certified to fill vacancies in the competitive class. Such reemployment roster shall be certified for filling a vacancy in any such position before certification is made from any other list, including a promotion eligible list, but not prior to a preferred list. Eligibility for reinstatement of a person whose name appears on any such reemployment roster shall not continue for a period longer than four years from the date of suspension or demotion provided, however, in no event shall eligibility for reinstatement from a reemployment roster continue once the person is no longer eligible for reinstatement from a preferred list.

(b) The names of persons on a reemployment roster shall be certified therefrom with equal ranking for reinstatement.

(c) All reinstatements from a reemployment roster shall require completion of a probationary term in accordance with rules promulgated by the merit board pursuant to subdivision two of section sixty-three of the civil service law.

(d) The merit board shall adopt rules providing for the relinquishment of eligibility for reinstatement upon reinstatement or upon failure or refusal to accept reinstatement from a preferred list or a reemployment roster.

(e) Notwithstanding any other provision of this title, the corporation may disqualify for reinstatement and remove from a reemployment roster the name of any otherwise eligible person who, by reason of physical or mental incapacity, is found to be unable to satisfactorily perform the duties of the position for which such roster has been established, or who has engaged in such misconduct as would warrant their dismissal from public employment, except that a person who is not completely physically incapacitated and who is suspended or demoted pursuant to section eighty of the civil service law because their position has been abolished or reduced, but who is certified for reinstatement to any position having the same physical requirements as the position from which such person was suspended or demoted, shall not be disqualified because of their incapacity, unless upon medical examination their incapacity has worsened to a degree that they would not be able to satisfactorily perform in such position. No person shall be disqualified pursuant to this subdivision unless they are first given a written statement of the reasons therefor and an opportunity to be heard at a hearing at which satisfactory proof of such reasons must be established by appropriate evidence, and at which such person may present independent evidence and be entitled to representation by counsel. The corporation shall designate a person to hold such hearing and report thereon.

(f) Notwithstanding any other provision of this title, any person may voluntarily remove his or her name from a reemployment roster by application to the corporation.

12. Placement rosters within the corporation. (a) Where an employee is to be suspended or demoted in accordance with subdivision eight of this

section, the president of the corporation shall, upon such employee's suspension or demotion place the name of such employee upon a reemployment roster for filling vacancies in any comparable position as determined by the director of classification and compensation except that employees suspended or demoted from position in the non-competitive and labor classes may not be certified to fill vacancies in the competitive class. Such placement roster shall be certified for filling a vacancy in any such position before certification is made from any other list, including a promotion eligible list, but not prior to a preferred list or a reemployment roster. Eligibility for appointment of an employee whose name appears on any such placement roster shall terminate at such time as the employee is suspended or demoted in accordance with the provisions of subdivision eight of this section. Upon such employee's suspension or demotion, the corporation shall place the name of such employee upon a preferred list, and a reemployment roster as appropriate, in accordance with the provisions of subdivision eight of this section.

(b) The names of employees on a placement roster shall be certified therefrom with equal ranking for appointment.

(c) All appointments from a placement roster shall require completion of a probationary term in accordance with rules promulgated by the civil service commission pursuant to subdivision two of section sixty-three of the civil service law.

(d) The merit board shall adopt rules providing for the relinquishment of eligibility for appointment upon appointment or upon failure or refusal to accept appointment from a placement roster.

(e) Notwithstanding any other provision of this title, any employee may voluntarily remove his or her name from a placement roster by application to the corporation.

13. Establishment of redeployment lists in the corporation; general provisions. (a) Notwithstanding any inconsistent provision of section seventy-nine of the civil service law, where, and to the extent that an agreement between the state and an employee organization entered into pursuant to article fourteen of the civil service law so provides, employees of the corporation shall be considered to be employees in state service for purposes of primary and secondary redeployment

pursuant to section seventy-nine of the civil service law and the applicable collective bargaining agreement.

(b) Where, an employee in the corporation is to be suspended or demoted in accordance with the provisions of subdivision eight of this section by reason of the corporation's exercise of its right to contract out for goods and services, and receipt of the information required pursuant to subdivision eleven of this section for purposes of establishing reemployment rosters, at least ninety days prior to the suspension or demotion of an affected employee, the corporation shall place the name of the employee upon a redeployment list. Such redeployment list shall be certified for filling positions in the same title or in any comparable title, as determined by the director of classification and compensation, before certification is made from any other eligible list, placement roster, reemployment roster or preferred list.

(c) The names of persons on a redeployment list shall be certified therefrom for appointment in the order of their original appointments, in accordance with the provisions of paragraph (e) of subdivision eight of this section.

(d) A person appointed from a redeployment list shall receive at least the same salary such person was receiving in the position from which he or she is to be or has been suspended or demoted.

(e) Probationers who are appointed from a redeployment list to a position in the same title will be required to complete their probationary term. Employees who are appointed from a redeployment list to a position in a comparable title shall be required to complete a probationary term in accordance with the rules promulgated by the merit board pursuant to subdivision two of section sixty-three of the civil service law.

(f) Eligibility for appointment of an employee whose name appears on a redeployment list shall terminate at such time as the employee is redeployed pursuant to the provisions of this section to a position in the same salary grade as the position from which they have been suspended or demoted, or has exercised their reemployment rights pursuant to the provisions of section eighty-one or eighty-one-a of the civil service law, provided, however, that eligibility for appointment shall terminate no later than six months following the suspension or

demotion of such employee in accordance with the provisions of section eighty of the civil service law. Upon such employee's suspension or demotion, the corporation shall place the name of such employee upon a preferred list, and a reemployment roster, as appropriate, in accordance with the provisions of subdivision eight of this section.

(g) Notwithstanding any other provision of this chapter, any employee may voluntarily remove his or her name from a redeployment list by application to the corporation.

(h) (1) In the event the corporation determines, in accordance with the provisions of paragraph (b) of this subdivision, that there are no positions in the same title or any comparable title to which an employee to be suspended or demoted by reason of the state's exercise of its right to contract out for goods and services can be redeployed, the corporation may place the name of such employee on a special reemployment roster, for filling positions in titles for which the employee meets the essential tests and qualifications. Such special reemployment roster may be certified immediately upon the employee's placement on the roster for filling a position before certification is made from any other eligible list, including a promotion eligible list, but not prior to a redeployment list or preferred list.

(2) Eligibility for appointment of an employee whose name appears on a special reemployment roster shall not continue for a period longer than four years from the date of suspension or demotion, provided, however, that eligibility for appointment of an employee whose name appears on any such special reemployment roster shall terminate at such time as the employee is redeployed pursuant to the provisions of this section and, in no event, shall eligibility for appointment from a special reemployment roster continue once the employee is no longer eligible for reinstatement from a preferred list.

(3) Employees placed on a special reemployment roster in accordance with the provisions of this section, shall have all the rights and privileges provided employees placed on reemployment rosters in accordance with subdivision eleven of this section.

(i) The merit board shall adopt rules for carrying into effect the provisions of this section, including rules providing for the relinquishment of eligibility for appointment upon appointment or upon failure or refusal to accept appointment from a redeployment list.

Additionally, notwithstanding any inconsistent provision of law, rule, or regulation, an agreement between the corporation and an employee organization recognized or certified pursuant to article fourteen of the civil service law can provide employment security rights and benefits where the state has exercised its right to contract out for goods and services. The merit board upon receipt of a written request of the director of the corporation is authorized to implement provisions of such agreement consistent with the terms thereof and, to the extent necessary, may adopt rules and regulations providing for the benefits to be thereunder provided. The merit board, with the approval of the president of the corporation, may extend such benefits in whole or in part, to corporation employees excluded from collective negotiating units.