Civil Service Law & Employment Regimes

What does it mean to have “civil servant” status?

The public sector comprises a range of employment regimes. Unfortunately, there is no standard definition of civil servant or civil service. Arrangements vary between countries, though generally the civil service constitutes a distinct body of staff within the public sector. (In other words, there are often numerous groups public employees in addition to civil servants.)

The essence of civil servant status is that the legal basis for employment -- the laws and regulations that shape the nature of employment contracts -- is different from that found elsewhere in the economy as defined by the general labor law. It also is generally different from that found elsewhere in the public sector, such as in the health or education sectors or in state-owned enterprises.

Historically, civil service employment was not a formal agreement between two equal parties, but rather a decision of the State. Today, civil service employment tends to share some features that are typical of a voluntary arrangement between an employer and employee in the private sector. However, several criteria continue to distinguish civil servant status from other employment arrangements. These criteria can be summarized as follows:

1. Civil servants are "appointed" by decision of an authorized public institution in accordance with the civil service law. A decision by a representative of the State to "appoint" a civil servant must conform with established rules that structure the hiring process.

2. Once appointed, there are many constraints on dismissal. This is because civil servants are not simply employees of the state; they also have a constitutional role. The intent of civil service legislation is to balance the requirement these employees be responsive to the government of the day, with the parallel requirement that they respect and maintain state institutions over time. In other words, additional job security is provided in order to prevent short-term political pressures from leading to inappropriate personnel changes.

3. There are more constraints on the actions of civil servants than on other groups. Again, this is because of the strategic and constitutional role of civil servants. The Labour Relations (Public Service) Convention, 1982 (No. 151) provides details of the fundamental labour rights of civil servants (the right to organize, to participate in consultations or negotiations in relation to their terms of employment and to settlement of disputes). Article 1 of the Convention states that its provisions apply to "all persons employed by public authorities" but permits exemptions for "high-level employees whose functions are normally considered as policy-making or managerial, or ... employees whose duties are of a highly confidential nature."

4. The employees concerned are within civilian central government or subnational government. There are many other employment arrangements in the public sector that provide something akin to civil servant status, under judicial career laws etc. However, common usage requires that civil servant status refers to employees within civilian central government, or subnational government. The judiciary can often be employed under arrangements that also provide constitutionally-based constraints on dismissal, but are rarely known as civil servants.
There are some recent signs that the distinction between civil service legislation and labor law is softening. The International Labour Organization (ILO) database of national legislation, NATLEX, contains bibliographical references to ILO Member States’ laws governing the civil service.

The definitional problems are highlighted by the deliberations of the ILO's Joint Committee on the Public Service, which has held five sessions (1970, 1975, 1983, 1988 and 1994), all of which have recorded at some stage discussions on definitions. These discussions have recognized the distinction between established civil servants (whether they are "tenured", "permanent" "titularized" or "statutory") and non-established public employees that work as contractual employees of the State. However, a number of countries treat all public service workers as contractual employees.

Applying these criteria generally reveals a group of employees in civilian central government and in subnational government that are widely recognized to be civil servants. It is of course possible that some public sectors are effectively all civil servants. However, this is rarely the case. Even in settings with the most comprehensive coverage of civil service, employees of state owned enterprises are usually subject to different legislation. (Often it is the same general labor law that governs employment contracts in the private sector.)

**What is within the scope of civil service laws?**

The substantive scope of civil service laws can vary between countries. In some cases these laws regulate everything related to employment. In others, they supplement the general labor law. In some countries, institutional arrangements for the management of the civil service are included in the civil service law. In other countries, this is regulated in other legislation. Generally, a central body is defined to be in charge of the overall management, including proposing legislation and monitoring the civil service management at ministries and agencies level. Regulations concerning trade union rights and collective bargaining are normally regulated in a separate piece of legislation.

Civil service laws can define the job duties and responsibilities of civil servants. While general labor law employees have only the responsibility to fulfill their labor contract, civil servants can be given an over-arching duty to serve the state or the government of the day.

Legislation can also set out the arrangements for tenure and job security. General labor law employees can be dismissed by the employer in line with their labor contract subject to some general minimum standards (although there can be some form of tenure in the labor law linked to age and length of employment). Civil servants generally have greater protections that require comprehensive legal and administrative due process before they can be dismissed.

Disciplinary arrangements can also be covered by the legislation. Their employer can discipline general labor law employees in any legal manner subject to collective bargaining agreements, although judicial review is often possible under general labor law. By contrast, civil servants can be disciplined according to specific legislated disciplinary provisions. Usually these are defined as: reprimand; partial loss of salary; downgrading; or dismissal.
Rewards and wage-bargaining are often also covered by civil service legislation. General labor law employees can be rewarded in any manner subject to minimum wage legislation and collective bargaining agreements. Civil servants can have rewards packages reflecting factors other than market conditions. Generally, civil service remuneration is determined by legislation. Trade unions have usually only a consultative role.

The combined effect of the scope of civil service laws yields two different types of civil service arrangements: "career systems" and "position-based systems." In career systems, the objective is to ensure that initial entry to the civil service is based on the knowledge of the candidates, generally as indicated by a relevant university degree or academic credentials. Subsequent mobility and promotion allow movement within the civil service. In position-based systems the emphasis is placed on selecting the best-suited candidate for each position to be filled, whether by external recruitment or via internal promotion or mobility. Closed career systems make appointments through promotion from within the civil service and are characterized by limited possibilities for lateral entry and a strong emphasis on career development. By contrast, position-based systems allow more open access, with lateral entry relatively common.

Who has civil servant status?

Where there is a civil service, then this legislation always covers the permanent employees of civilian central government and, in some settings, subnational government. Often teachers, health professionals, and the police are excluded.

As noted above, there can be other arrangements that provide civil service-like protections and responsibilities for public employees that are not, in fact, civil servants.

- Employment in the education sector is also generally regulated by specific legislation.

- The health sector workforce, which usually comprises a significant element within the total public sector workforce, may be either directly employed by the public sector health system, or work in public-funded agencies or organizations (e.g., social insurance funded). In many countries health care will also be delivered by organizations in the private sector and by voluntary organizations.

- Subnational government employment often represents a substantial portion of the total public sector workforce – frequently over 50 percent in federal counties. In unitary countries, such as China and Korea, all civil servants are – at least nominally – part of one civil service. However, subnational government employment is considered a separate, legally defined civil service in many OECD countries. In federal countries like India and Malaysia, each state has its own civil service, but federal civil servants are sent to work for regional governments on a rotation basis, often in the most senior posts. In countries such as Germany and Indonesia, the subnational civil services perform central tasks as an agent of the central government (co-administration), thereby ceding some of their independence from the center.
• In most continental European countries, military and law enforcement personnel (e.g., police, customs, etc.) have their own specific legislation as the basis for employment. However, more often than not, the police are considered civil servants. (In a sample of 34 countries, this was the case for 22.)

• Employees of state owned enterprises may be subject to specific, but different legislation, or may be subject to the general labor law that governs employment contracts in the private sector.

These are generalizations, not absolutes. There are many exceptions. For example, in France and Germany, both teachers and doctors are subjects to the civil service laws. Generally, however, civil service legislation is more complex than the legal arrangements governing employment in other sectors. This is because civil servants are not simply employees of the state; they also have a constitutional role. The intent of civil service legislation is to balance the requirement these employees be responsive to the government of the day, with the parallel requirement that they respect and maintain state institutions over time.

Legal traditions and systems differ, but there is a general consensus among democratic nations that the rule of law, technical and managerial competence, reliability, predictability, accountability, transparency, and citizen’s participation are all principles that should guide public administration. In addition to transmitting general principles and standards for performance through civil service legislation, the state or state organizations must also fulfill the traditional responsibilities of an employer. This requires specific regulations covering staffing and career management policies—including systems for selection, recruitment, promotion, and remuneration.
Recommended readings


- Gow, Iain James and Maria del Carman Pardo. "Comparing different civil services: the advantages of a multi-level analysis for comparing Canada with Mexico".


Recommended websites

- The SIGMA website contains most Central and Eastern European civil service laws.
- The Global Legal Information Network (GLIN), maintained by the US Library of Congress, provides a searchable database with civil service legislation and regulations by country. From the GLIN web page:
  1. click "search"
  2. click "guest"
  3. select the country (or multiple countries using "ctrl" and clicking)
  4. type "government employees" in the subject space
  5. select a date or publication range – or leave blank for all legislation
  6. click "query"
- The International Labour Organization Department for Government and Labour Law and Administration (GLLAD) has expertise in civil service legislative reform, legal training and labour administration.
- The ILO Sectoral Activities Programme on the public service tracks changes in public sector employment.