



**Office of  
Employee Relations**

A photograph of two women in professional business attire sitting at a table in an office. The woman on the left, with long brown hair and glasses, is wearing a grey blazer over a light blue shirt and is speaking. The woman on the right, with dark hair pulled back, is wearing a light grey blazer over a white shirt and is listening. A teal banner is overlaid on the bottom half of the image, containing the title text.

# **Supervisor's Guide to Attendance & Leave Benefits**

**SUPERVISOR'S GUIDE**

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**Supervisor’s Guide to Attendance and Leave Benefits**  
**Table of Contents**

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**A. INTRODUCTION ..... 1**

- 1. Sources of Attendance and Leave Benefits ..... 1
- 2. Purposes of Attendance and Leave Benefits ..... 1
- 3. About the Supervisor’s Guide to Attendance and Leave Benefits ..... 2
- 4. Scope of the Supervisor’s Guide to Attendance Leave Benefits ..... 3
- 5. Goals and Objectives for Supervisors ..... 3
- 6. Bargaining Unit Abbreviations ..... 4

**B. ATTENDANCE AND LEAVE BASICS ..... 6**

- 1. Basic Workweek ..... 6
- 2. Normal Workday ..... 6
- 3. Work Schedules ..... 6
- 4. Alternative Work Schedules ..... 6
- 5. Work Schedule Adjustments ..... 6
- 6. Individualized Work Schedules ..... 7
- 7. Meal and Rest Periods ..... 7
- 8. Record of Attendance ..... 8
- 9. Tardiness ..... 8
- 10. Tardiness Penalty Schedules ..... 8
- 11. Excused Tardiness and Absences for Emergency Volunteers ..... 9
- 12. Call-in Requirements ..... 9
- 13. Supervisor’s Role - Attendance and Leave Basics ..... 10
- 14. Unit Specific Provisions - Attendance and Leave Basics ..... 10

**C. HOLIDAYS ..... 12**

- 1. Holidays Observed ..... 12
- 2. Floating Holidays ..... 12
- 3. Holiday Leave ..... 12
- 4. Holiday Compensation ..... 13
- 5. Use of Holiday Leave and Floating Holidays ..... 13
- 6. Compensation for Unused Holiday Leave ..... 13
- 7. Special Holiday Benefits for Eligible Veterans & Eligible Former Reservists ..... 13
- 8. Supervisor's Role - Holidays ..... 14
- 9. Unit Specific Provisions - Holidays ..... 14

**D. VACATION LEAVE ..... 17**

- 1. Accruing Vacation Leave ..... 17
- 2. Vacation Maximum ..... 17
- 3. Use of Vacation Leave ..... 17
- 4. Vacation Scheduling ..... 17
- 5. Requests for Use of Vacation Leave ..... 18
- 6. Compensation for Unused Vacation Leave ..... 18
- 7. Supervisor's Role - Vacation Leave ..... 18

**Supervisor’s Guide to Attendance and Leave Benefits**  
**Table of Contents**

---

8. Unit Specific Provisions - Vacation Leave ..... 19

**E. PERSONAL LEAVE ..... 23**

1. Crediting Personal Leave ..... 23

2. Use of Personal Leave ..... 23

3. Supervisor's Role - Personal Leave ..... 23

4. Unit Specific Provisions - Personal Leave ..... 24

**F. SICK LEAVE ..... 25**

1. Accruing Sick Leave ..... 25

2. Proper Use of Sick Leave ..... 25

3. Family Sick Leave/Bereavement Leave ..... 26

4. Improper Use of Sick Leave ..... 27

5. Medical Documentation ..... 27

6. Medical Examination ..... 29

7. Unused Sick Leave at Time of Retirement ..... 29

8. Termination Following Extended Absence ..... 29

9. Reemployment ..... 30

10. Supervisor's Role - Sick Leave ..... 30

11. Unit Specific Provisions - Sick Leave ..... 30

**G. SICK LEAVE AT HALF-PAY ..... 36**

1. Eligibility for Sick Leave at Half-Pay ..... 36

2. Supervisor’s Role - Sick Leave at Half-Pay ..... 36

3. Unit Specific Provisions - Sick Leave at Half-Pay ..... 35

**H. INCOME PROTECTION PLAN ..... 38**

1. Program Description ..... 38

2. Eligibility for IPP ..... 38

3. Benefit Description ..... 38

4. Supervisor's Role - Income Protection Plan ..... 39

**I. WORKERS' COMPENSATION ..... 40**

1. Benefit Description ..... 40

2. Supervisor's Role - Workers’ Compensation ..... 40

3. Unit Specific Provisions - Workers’ Compensation ..... 41

**J. PREGNANCY, CHILDBIRTH AND CHILD CARE ..... 42**

1. Leave for Pregnancy and Childbirth ..... 42

2. Child Care Leave ..... 42

3. Expressing Breast Milk in the Workplace ..... 42

4. Supervisor’s Role - Leave for Pregnancy, Childbirth and Child Care ..... 43

5. Unit Specific Provisions - Leave for Pregnancy, Childbirth and Child Care ..... 43

**Supervisor’s Guide to Attendance and Leave Benefits**  
**Table of Contents**

---

<b>K. FAMILY AND MEDICAL LEAVE ACT (FMLA)</b> .....	<b>44</b>
1. Eligibility for FMLA Leave .....	45
2. FMLA Medical Documentation .....	46
3. Protection of Employees Under the FMLA .....	47
4. Supervisor's Role - Family and Medical Leave Act.....	47
<b>L. LEAVE DONATION PROGRAM</b> .....	<b>48</b>
1. Eligibility.....	48
2. Restrictions on Donations.....	49
3. Use of Donated Credits.....	49
4. Status of Recipient Employees .....	49
5. Requesting and Processing Donations.....	50
6. Supervisor's Role - Leave Donation Program .....	50
7. Unit Specific - Leave Donation Program.....	50
<b>M. OTHER LEAVES AND BENEFITS</b> .....	<b>51</b>
1. Employee Organization Leave .....	51
2. Court Appearances and Jury Duty .....	53
3. Civil Service Examinations.....	54
4. Military Leave.....	55
5. Time Off to Vote .....	56
6. Extraordinary Circumstances.....	57
7. Professional Meeting Leave/Leave for Professional Examinations.....	58
8. Leave for Licensure/Certification.....	59
9. Overtime Compensatory Time.....	61
10. Compensatory Time for Hours Worked Over 40.....	61
<b>N. SUPERVISOR'S ROLE IN MONITORING LEAVE USE</b> .....	<b>64</b>
1. Supervisor’s Role in Monitoring Leave Use .....	64
2. Definitions.....	64
3. Preventing Attendance Problems.....	66
4. Identification of Problems .....	68
5. Addressing the Problem .....	69
<b>APPENDIX 1 - FAMILY AND MEDICAL LEAVE ACT</b> .....	<b>73</b>
1. Analyzing Eligibility .....	73
2. Notification Requirements .....	80
3. Medical Certification.....	81
4. Relationship of Attendance Rules and Negotiated Agreements.....	82
5. Protection Provided by the FMLA.....	85
<b>APPENDIX 2 - COMPRESSED WORK SCHEDULE ACCRUAL CHART</b> .....	<b>87</b>

# Supervisor's Guide to Attendance and Leave Benefits

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## A. Introduction

### 1. Sources of Attendance and Leave Benefits

Attendance and leave benefits for New York State employees are derived from multiple sources:

- *Attendance Rules for Employees in New York State Departments and Institutions (Attendance Rules)*. The Attendance Rules form the foundation of the State's leave policy and are found in the Rules and Regulations of the Department of Civil Service.
- *Provisions in the collective bargaining agreements concerning attendance and leave benefits*. The Attendance Rules and related provisions in the collective bargaining agreements must be read together. If there is a conflict, the provisions of the collective bargaining agreements generally are controlling. In some instances, the collective bargaining agreements simply provide a parallel benefit.
- *State and federal laws and related rules and regulations*. These additional sources of benefits include such laws as the Family and Medical Leave Act (FMLA), the Workers' Compensation Law, and Military Law.
- *Policies and procedures of State departments and agencies*. These may vary by agency as permitted by the Attendance Rules and the provisions of the collective bargaining agreements.

### 2. Purposes of Attendance and Leave Benefits

Leave benefits protect employees from loss of earnings when time off from work becomes necessary. Each leave benefit is designed to meet specific employee needs. For example, vacation leave provides employees with a respite from work during which they may re-energize and revitalize; personal leave provides employees with time off without loss of pay to attend to matters of personal business, for religious observance or extraordinary weather conditions, and may also be used as vacation. Sick leave is for absences caused by personal illness, visits to the physician or dentist, and illness or death in the family.

When used properly, leave benefits are of value to both the State and its employees. These benefits provide employees with income protection in the event of illness and when time off is necessary to fulfill personal and family obligations. This, in turn, can reduce outside pressures that may adversely affect work performance. In addition, proper use of leave can improve employee morale and in many instances, allows the State to plan for absences in advance.

Proper use of leave makes good sense. This is especially true with sick leave. Accumulated sick leave provides a paycheck when the employee cannot work and needs it most. Accrued sick leave also pays off at retirement when up to 200 days worth of credits are factored in to calculate the employee's length of service for pension purposes. Sick leave accumulations up

# Supervisor's Guide to Attendance and Leave Benefits

State Attendance and Leave Manual  
Reference: 20.1, 20.2, 20.3

## A. Introduction

---

to 200 days may also be used to reduce the employee's portion of health insurance premiums during retirement.

The right of the employee to use leave benefits must be balanced with the need of the State to efficiently carry out its programs and services. In an effort to achieve this balance, policies and procedures governing the use of leave benefits have been developed. The supervisor, through effective administration of these policies and procedures, can ensure that leave benefits are being properly used and scheduled in a manner consistent with the operating needs of the State.

### 3. About the Supervisor's Guide to Attendance and Leave Benefits

The *Supervisor's Guide to Attendance and Leave Benefits (Guide)* was prepared to assist State supervisors in the interpretation and application of the Attendance Rules, the attendance and leave provisions of the collective bargaining agreements, and related federal and State laws.

This Guide is not applicable to all situations, nor does it supersede the Attendance Rules, provisions of collective bargaining agreements, laws, rules or regulations, or otherwise established policies or practices of State departments or agencies. This Guide is to be used by supervisors as a work-site resource. The Department of Civil Service's *State Attendance and Leave Manual (Manual)* is the primary resource document used by agency personnel offices. Accordingly, where applicable, in the upper right corner of each page of this Guide, there is a reference to the corresponding section(s) of the *Manual*.

The *Supervisor's Guide to Attendance and Leave Benefits* is divided into sections. Each section provides a broad, general discussion of an attendance and leave benefit, a description of the "Supervisor's Role" in administering that particular leave benefit, and a listing of related "Unit Specific Provisions" found in the collective bargaining agreements. Aspects of attendance and leave benefits may vary by bargaining unit; therefore, it is essential to read the general discussion and the "Unit Specific Provisions" together.

An important part of this Guide is Section N, "Supervisor's Role in Monitoring Leave Use." This Section provides supervisors with guidance on how to communicate attendance expectations to employees and how to identify and address inappropriate leave use. Since inappropriate use of sick leave may adversely affect productivity and morale, this Guide places an especially strong emphasis on every supervisor's role in ensuring the appropriate use of sick leave.

The Family and Medical Leave Act (FMLA) is a complex federal law that affects the administration of attendance and leave benefits. Therefore, throughout this Guide we have included FMLA Notes that alert the supervisor that the FMLA may be relevant. Section K of this Chapter and Appendix 1 provide background information on the FMLA.

# Supervisor's Guide to Attendance and Leave Benefits

State Attendance and Leave Manual  
Reference: 20.1, 20.2, 20.3

## A. Introduction

---

This Guide is designed to address broad policies and common procedures. Accordingly, supervisors are encouraged to discuss problems and seek guidance from appropriate level supervisors and the agency personnel and/or employee relations offices. In addition, each agency should continue providing supervisors with formal training and informal guidance on specific agency policies and procedures.

### 4. Scope of the Supervisor's Guide to Attendance Leave Benefits

This Guide covers attendance and leave benefits for *full-time annual salaried classified service employees subject to the Attendance Rules*.

It does not cover attendance and leave policies and procedures for part-time, seasonal, hourly or per diem employees, academic and professional staff in the State University system, or employees of the Division of State Police.

In addition, benefits negotiated for employees in the Division of Military and Naval Affairs Unit (DMNA) have been included in the listing of Unit Specific Provisions for reference purposes only, as those employees are not covered by the Civil Service Attendance Rules. Therefore, supervisors at DMNA should make sure they consult with their personnel office on benefit issues.

### 5. Goals and Objectives for Supervisors

The *Supervisor's Guide to Attendance and Leave Benefits* was designed as a resource and guide for New York State supervisors. Our goals and objectives for supervisors with respect to attendance and leave benefits are as follows:

1. Supervisors will be able to use the *Supervisor's Guide to Attendance and Leave Benefits* as an on-the-job resource.
2. Supervisors will understand that attendance and leave benefits for State employees are derived from multiple sources - Attendance Rules, negotiated agreements, and State and federal laws.
3. Supervisors will understand how agency-specific policies and procedures affect the administration of leave benefits.
4. Supervisors will understand their role in administering leave benefits and monitoring leave use.
5. Supervisors will understand that they are not alone and recognize when to bring issues to the attention of their personnel and/or labor relations office.

# Supervisor's Guide to Attendance and Leave Benefits

## A. Introduction

State Attendance and Leave Manual  
Reference: 20.1, 20.2, 20.3

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### 6. Bargaining Unit Abbreviations

The following bargaining unit abbreviations are used throughout this document:

#### **Administrative Services Unit (ASU)**

The ASU is composed primarily of office support staff and administrative personnel such as Keyboard Specialists, Clerks, and Computer Operators. Employees in the ASU are represented by the Civil Service Employees Association (CSEA).

#### **Agency Police Services Unit (APSU)**

The APSU, represented by PBA of NYS, is composed of personnel who have police duties and responsibilities and are employed in the Department of Environmental Conservation, Office of Parks, Recreation and Historic Preservation and the State University of New York. All titles in this unit are eligible for arbitration for salary and benefit purposes. The titles covered are the Park Police series, EnCon Officer series, University Police series, and Forest Ranger series.

#### **Division of Military and Naval Affairs Unit (DMNA)**

The DMNA unit is composed of civilian employees within the Division of Military and Naval Affairs who are involved in the administration of the New York State National Guard and Air Guard such as Armory Maintenance Workers, Armory Mechanics, Clerks and Keyboard Specialists. Employees in the DMNA unit are represented by the Civil Service Employees Association (CSEA).

#### **Institutional Services Unit (ISU)**

The ISU is composed of employees who are responsible for providing therapeutic and custodial care to persons in State institutions such as those run by the Office of Mental Health and the Office for People with Developmental Disabilities. This includes Mental Health Therapy Aides, Developmental Aides, Licensed Practical Nurses, Food Service Workers and Youth Division Aides. Employees in the ISU are represented by the Civil Service Employees Association (CSEA).

#### **Management/Confidential (M/C)**

These employees have been designated managerial or confidential by the Public Employment Relations Board (PERB) and are not members of a negotiating unit. M/C employees either formulate policy, assist directly in the conduct or preparation of negotiations, or assist in a confidential capacity those employees who have employee relations responsibilities.



# Supervisor's Guide to Attendance and Leave Benefits

State Attendance and Leave Manual  
Reference: 20.1, 20.2, 20.3

## A. Introduction

---

### **Operational Services Unit (OSU)**

The OSU is composed of employees who maintain roads, bridges and machines and other craft workers such as Maintenance Assistants, Cleaners, and Highway Maintenance Workers. Employees in the OSU are represented by the Civil Service Employees Association (CSEA).

### **Professional, Scientific and Technical Services Unit (PS&T)**

The PS&T unit is composed of professional and technical personnel. Professional experience, a license, or a degree is usually a prerequisite to being hired to most titles in this unit. The PS&T unit includes titles such as attorney, nurse, accountant, social worker and teachers in institutions. Employees in the PS&T unit are represented by the Public Employees Federation (PEF).

### **Rent Regulation Services Unit (RRSU)**

The RRSU is composed of employees in the agency NYS Homes and Community Renewal, who assist in the administration of New York City rent control and stabilization such as Rent Examiners and Inspectors, Keyboard Specialists and attorneys. Employees in the RRSU are represented by District Council 37 (DC 37).

### **Security Services Unit (SSU)**

The Security Services Unit, represented by New York State Correctional Officers and Police Benevolent Association (NYSCOPBA) includes state security personnel (other than State Police) and institution safety officers. Titles eligible for arbitration for salary and benefit purposes are Correction Officer, Correction Officer Trainee, Correction Sergeant, Community Correctional Center Assistant and Institution Safety Officer. Non-arbitration eligible security titles in this unit include Security Hospital Treatment Assistant, Safety and Security Officer, Security Services Assistant, Security Officer and Campus Public Safety Officer.

### **Security Supervisors Unit (SSpU)**

The Security Supervisors Unit, represented by Council 82, is composed of supervisory security personnel. Employees in Correction Lieutenant positions are arbitration eligible for salary and benefit purposes. Non-arbitration eligible titles within the unit include Chief Safety and Security Officer, Chief Security Officer and Security Services Assistant.

# Supervisor's Guide to Attendance and Leave Benefits

State Attendance and Leave Manual  
Reference: 20.1, 20.2, 20.3

## B. Attendance and Leave Basics

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### B. Attendance and Leave Basics

#### 1. Basic Workweek

The basic workweek establishes the minimum number of hours an employee must work each week. It does not preclude a supervisor from requiring an employee to work additional hours when necessary. The Attendance Rules establish that the basic workweek is 40 hours. The basic workweek may be reduced to 37½ hours by the appointing authority with the approval of the Division of the Budget. Overtime ineligible employees work the basic workweek of 37½ or 40 hours and any additional hours necessary to get the job done. An employee may be directed to work additional hours whether or not eligible for overtime pay.

#### 2. Normal Workday

The normal workday exclusive of mealtime is eight hours for 40 hour/week employees and 7½ hours for 37½ hour/week employees.

#### 3. Work Schedules

The normal work schedule and changes in the work schedule of bargaining unit employees may be governed by the provisions of the applicable collective bargaining agreement. Supervisors should contact their agency personnel or labor relations offices regarding establishing work schedules or when operational needs require that an employee's work schedule be changed.

#### 4. Alternative Work Schedules

Alternative work schedules deviate from the norm and are available in some, but not all, State agencies. Alternative work schedules include schedules such as staggered hours (employees have different fixed starting times), compressed workweeks (employees work fewer than five days per week, but work longer days), and compressed pay periods (employees work fewer than ten days in a biweekly payroll period, but work longer days.). Supervisors should contact their agency personnel office concerning the availability of alternative work schedules in their agency and the rules governing such schedules.

#### 5. Work Schedule Adjustments

Work schedule adjustments are available in some, but not all, State agencies. Supervisors should contact their agency personnel office concerning availability of work schedule adjustments in their agency and rules governing such schedules.

The condition precedent to a work schedule adjustment is that a supervisor requires an employee to work hours in addition to their normal 37½ or 40-hour workweek in order to meet agency operating needs. For example, an employee in the Information Technology (IT) area may be ordered to work five hours in addition to his or her normal work schedule for that day to remove a computer virus. If work schedule adjustments are used within your agency,

# Supervisor's Guide to Attendance and Leave Benefits

State Attendance and Leave Manual  
Reference: 20.1, 20.2, 20.3

## B. Attendance and Leave Basics

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an employee who is overtime eligible may request a work schedule adjustment rather than overtime. For an overtime eligible employee, the work schedule adjustment, subject to supervisory approval, must be hour for hour, and take place within the employee's Thursday through Wednesday payroll workweek. For example, with supervisory approval, the IT employee may come in five hours after his or her normal start time or leave five hours before the normal end time within that workweek.

Work schedule adjustments for overtime ineligible employees are not required since these employees are expected to work until the job is completed. However, in the extraordinary circumstances where an overtime ineligible employee is required by the supervisor to work a significant number of hours over and above the normal 37½ or 40-hour workweek, a work schedule adjustment may be appropriate. A work schedule adjustment is not appropriate if the overtime ineligible employee chooses to stay late each night to finish work. Work schedule adjustments for overtime ineligible employees should not be hour for hour, must occur within the biweekly payroll period and are subject to supervisory approval. For example, the IT employee who is required to work five additional hours may be approved to come in three hours after the normal start time or leave three hours before the end of the normal end time.

### 6. Individualized Work Schedules

Supervisors should contact their agency personnel office regarding availability of individualized work schedules in their agency. Under special circumstances an agency may approve an individualized work schedule that deviates from normal work schedules for a single employee on a temporary basis to accommodate employee needs. The condition precedent to an individualized work schedule is that the employee requests a change based on employee needs. For example, an employee may request that the normal beginning or end of his or her workday be temporarily modified in order to attend a class for a semester or to temporarily meet elder or child care responsibilities. Approved temporary individualized work schedules for overtime eligible employees must still account for 37½ or 40 hours in the Thursday through Wednesday payroll workweek. Approved temporary individualized work schedules for overtime ineligible employees must still account for 75 or 80 hours in the biweekly pay period.

### 7. Meal and Rest Periods

It is the responsibility of the appointing authority to establish the time allowed for meals and rest periods. The meal period should be at least one-half hour in duration. The granting of rest periods is discretionary, but recommended, especially for employees whose responsibilities are of a routine nature. Rest periods, where granted, should be of a reasonable duration. As a guide, more than two 15-minute periods per 7½ or 8-hour day would be considered excessive under normal working conditions. Employees who do not use rest periods cannot use that time to shorten the workday or extend the length of the meal period, nor can they receive overtime compensation or any type of compensatory time off.

# Supervisor's Guide to Attendance and Leave Benefits

State Attendance and Leave Manual  
Reference: 20.1, 20.2, 20.3

## B. Attendance and Leave Basics

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### 8. Record of Attendance

An adequate and accurate record of attendance (time record) must be maintained for each employee. The record of attendance must show actual hours worked including arrival and departure times at the beginning and end of the workday, meal periods, leave credits earned/used, and absences not charged to leave credits.

Pursuant to Section 20.2 of the Attendance Rules, the Department of Civil Service may exempt certain overtime ineligible positions from maintaining a detailed record of actual hours worked. Employees in positions exempted from the requirement to keep a record of actual hours worked are not required to record the times of arrivals and departures, but are required to maintain a daily record showing presence or absence and leave credits earned and used. The Department of Civil Service has the sole authority to approve such an exemption. However, the exemption is not available to employees in the PS&T unit, even if they are in overtime ineligible positions.

Employees must forward their signed record of attendance (time record) to their supervisor for review and certification. Since the time record is a payroll voucher, falsification of an employee's attendance or time record constitutes a very serious violation and is a basis for counseling and/or disciplinary action. Failure to properly sign and certify time records may also result in a delay in the processing of paychecks.

### 9. Tardiness

Tardiness is arrival for work after the scheduled beginning of an employee's workday or return to work after the expiration of the time designated for meals, without the approval of the supervisor.

The agency head may excuse tardiness when uncontrollable conditions, such as severe weather, affect the arrival time of a group of employees. However, full-day absences may not be excused without charge to credits.

### 10. Tardiness Penalty Schedules

Many agencies have adopted tardiness penalty schedules. Agencies that have tardiness penalty schedules must handle all tardiness in accordance with that schedule. When tardiness becomes excessive, agencies must continue to charge absences in accordance with the agency tardiness penalty schedule, but may simultaneously pursue disciplinary action. Specific information regarding your agency's tardiness penalty schedule may be obtained by contacting your personnel office. If your agency does not have a tardiness penalty schedule, your personnel office can advise you on the proper way to handle tardiness.

# Supervisor's Guide to Attendance and Leave Benefits

State Attendance and Leave Manual  
Reference: 20.1, 20.2, 20.3

## B. Attendance and Leave Basics

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Each agency should inform employees of its tardiness penalties, and the amount of tardiness it regards as excessive, subject to disciplinary action or assignment of a less than satisfactory performance rating.

Overtime ineligible employees are not subject to agency tardiness penalty schedules.

*FMLA Note: Tardiness which has been or should have been designated as FMLA leave should not be the subject of discipline and should not be treated as tardiness.*

### 11. Excused Tardiness and Absences for Emergency Volunteers

Tardiness, but not full-day absences or early departures, for certain emergency volunteers responding to an emergency may be excused. Employees may be required to provide acceptable documentation. Categories of eligible emergency volunteers vary by bargaining unit. In some bargaining units, the agency is required to excuse such tardiness, subject to submission of satisfactory proof. In other units, excusing the tardiness is at the agency's discretion.

Absences, in contrast to tardiness, must be charged to appropriate leave credits. However, under Section 82-a of the Civil Service Law, when the Governor declares a state of emergency, full or partial day absences may be excused for the volunteer firefighters and ambulance squad members participating in relief activities.

Section 82-b of the Civil Service Law provides up to 20 days of paid leave without charge to leave credits per calendar year for employees certified by the American Red Cross as disaster volunteers to participate in special disaster relief operations, subject to approval of the appointing authority.

### 12. Call-in Requirements

Many agencies have policies regarding calling in to work when an employee is going to be absent. While these requirements may vary from agency to agency, their essential purpose is the same: to allow the State to rearrange work and get substitutes as necessary, and to make sure services to taxpayers and clients are not impaired. If call-in requirements are clearly communicated and consistently enforced, an employee who does not follow the required procedure may, in certain circumstances, be considered to be on an unauthorized absence.

Under the Attendance Rules, employees can be required to call in on the first day of absence within two hours after the start of the scheduled workday. When the work is such that a substitute may be required, agencies may have policies regarding earlier notice, but no more than two hours before the beginning of the workday. (ISU employees whose work requires a substitute cannot be required to call in more than one hour before the start of their shift.)

# Supervisor's Guide to Attendance and Leave Benefits

State Attendance and Leave Manual  
Reference: 20.1, 20.2, 20.3

## B. Attendance and Leave Basics

---

Under agency policies, employees may be required to call in each day of the absence where the duration of the absence has not been established. Agency policies may also address to whom the employee must speak with when calling in. (Employees in the ISU cannot be denied use of sick leave solely because they did not speak with their immediate supervisor.)

### 13. Supervisor's Role – Attendance and Leave Basics

*The primary responsibilities of the supervisor are to:*

- *Become familiar with State and agency policies regarding working hours, work schedules, meal periods, rest periods and tardiness.*
- *Communicate State and agency policies regarding work hours, work schedules, meal periods, rest periods and tardiness to the employees you supervise.*
- *Determine availability in your agency of Alternative Work Schedules, Work Schedule Adjustments and Individualized Work Schedules.*
- *Ensure that the employees you supervise maintain accurate records of attendance.*
- *Discuss requests for absence or tardiness of emergency volunteers with your personnel office.*

### 14. Unit Specific Provisions – Attendance and Leave Basics

#### **Excused Tardiness for Emergency Volunteers**

##### **ASU**

The appointing authority shall excuse a reasonable amount of tardiness due to direct emergency duty as a volunteer firefighter or a volunteer ambulance squad member, subject to satisfactory documentation.

##### **DMNA, ISU, OSU**

The appointing authority shall excuse a reasonable amount of tardiness due to direct emergency duty as a volunteer firefighter, a volunteer ambulance squad member or an enrolled civil defense volunteer, subject to satisfactory documentation.

##### **M/C**

The appointing authority may excuse a reasonable amount of tardiness due to direct emergency duty as a volunteer firefighter, a volunteer ambulance squad member, an enrolled civil defense volunteer or an enrolled civil air patrol volunteer, subject to satisfactory documentation.

# Supervisor's Guide to Attendance and Leave Benefits

State Attendance and Leave Manual  
Reference: 20.1, 20.2, 20.3

## B. Attendance and Leave Basics

---

### **PS&T, RRSU**

The appointing authority shall excuse a reasonable amount of tardiness due to direct emergency duty as a volunteer firefighter, a volunteer ambulance squad member, an enrolled civil defense volunteer or civil air patrol volunteer, subject to satisfactory documentation.

### **SSpU, SSU, APSU**

The appointing authority may excuse a reasonable amount of tardiness due to direct emergency duty as a volunteer firefighter, subject to satisfactory documentation.

## C. Holidays

### C. Holidays

#### 1. Holidays Observed

The following is a list of holidays observed by the State:

New Year's Day	Labor Day
Dr. Martin Luther King, Jr. Day	Columbus Day
Lincoln's Birthday	Election Day
Washington's Birthday	Veterans' Day
Memorial Day	Thanksgiving Day
Juneteenth	Christmas Day
Independence Day	

If a holiday falls on a Sunday, the following Monday is designated as the date of observance. There is one exception to this provision. Please refer to the Unit Specific Provisions for more information.

Holidays that fall on Saturday are normally observed on Saturday. However, when a holiday falls on Saturday, the State may designate another day to be observed as the holiday.

#### 2. Floating Holidays

State employees are entitled to up to 12 paid holidays per year. The State may designate two of these as floating holidays for most employees. The designation of floating holidays is announced in April of each year. Normally, the designated floating holidays are Election Day and Lincoln's Birthday. If a holiday is so designated, it should be treated as a regular workday. On the date of the holiday, employees in full pay status for any portion of the day are credited with a 7½ or 8-hour floating holiday, as appropriate. Employees may use floating holiday credits, subject to agency procedures, for requesting time off. An employee must use a floating holiday within a 12-month period or forfeit the day.

Full time employees for whom the floating holiday falls on a pass day are eligible to be credited with a floating holiday if they are in pay status for any portion of either their last work shift before the floating holiday or their first work shift following that floating holiday.

There are no floating holidays for employees in the Security Services Unit, the Security Supervisors Unit or the Agency Police Services Unit.

#### 3. Holiday Leave

If a holiday falls on an employee's regular day off (pass day), and the employee has the day off, the employee is entitled to receive holiday leave, not to exceed 7½ or 8 hours.



## Supervisor's Guide to Attendance and Leave Benefits

State Attendance and Leave Manual  
Reference: 21.1

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### C. Holidays

Some of the negotiated agreements stipulate that holiday leave not used within one year after it is earned is forfeited. Accordingly, supervisors should encourage employees to use holiday leave as soon as possible after it is earned.

#### 4. Holiday Compensation

An employee who is required to work on a holiday is given the option once a year of receiving holiday compensation in the form of either holiday leave or holiday pay for time worked on the holiday. An employee may waive holiday pay for all holidays that fall during the period of the waiver, but may not do so for an individual holiday (see Unit Specific Provisions for an exception). M/C employees Grade 23 and above are only eligible for holiday leave and may not receive holiday pay.

For overtime eligible employees this holiday compensation is available only for work performed during the hours that fall within or correspond to the employee's normal work hours. For overtime ineligible employees, this holiday compensation is available during the first 7½ or 8 hours worked on the holiday.

An overtime eligible employee who works during the hours that correspond to his or her regular work schedule on a pass day holiday may be entitled to overtime in addition to holiday compensation (holiday pay or holiday leave).

#### 5. Use of Holiday Leave and Floating Holidays

The use of holiday leave and floating holidays is subject to prior supervisory approval, consistent with the operating needs of the agency. As with personal leave and vacation leave credits, such approval should not be arbitrarily withheld.

#### 6. Compensation for Unused Holiday Leave

Generally, employees are not entitled to cash compensation for unused accrued holiday leave upon separation from State employment. However, in the Security Services Unit, the Security Supervisors Unit and the Agency Police Services Unit, the time is added to accrued vacation credits and the rules concerning liquidation of vacation credits apply to liquidation of holiday credits.

#### 7. Special Holiday Benefits for Eligible Veterans & Eligible Former Reservists

Certain eligible veterans who have elected to receive holiday pay for work on holidays may also be entitled to a day of holiday leave under Section 63 of the Public Officers Law if required to work on Memorial Day and/or November 11, Veterans' Day. A similar benefit is available under Section 249 of the Military Law to certain eligible former reservists in connection with work on Independence Day, July 4. (See Holiday Compensation.)

# Supervisor's Guide to Attendance and Leave Benefits

State Attendance and Leave Manual  
Reference: 21.1

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## C. Holidays

### 8. Supervisor's Role – Holidays

*The primary responsibilities of the supervisor are to:*

- *Ensure that the employees you supervise are given the opportunity during the annual election period to file a waiver of holiday pay if they wish to do so.*
- *Remind employees under your supervision about applicable dates on which holiday leave and floating holiday leave will lapse if it is not used.*
- *Check with your personnel office for agency policies on eligibility to observe holidays.*

### 9. Unit Specific Provisions – Holidays

#### Holiday Observance

**ASU, DMNA, ISU, OSU, PS&T, SSpU, SSU, APSU**

When December 25 and January 1 fall on Sunday and are observed as State holidays on the following Monday, employees whose work schedule includes December 25 and/or January 1 shall observe the holiday on those dates, or may receive additional compensation or compensatory time off if required to work on those days. In such event, December 26 and January 2 will not be considered holidays for those employees.

#### Floating Holidays

**ASU, DMNA, ISU, M/C, OSU, PS&T, RRSU**

The State may designate up to two days per year as floating holidays. Employees may select, on an individual basis, the date upon which the floating holiday will be observed by them, subject to supervisory approval and the operating needs of the State.

Employees cannot be required to use floating holiday credits in units of more than one-quarter hour.

A floating holiday must be used within the 12-month period after it is earned or be forfeited by the employee.

#### Holiday Leave

**ASU, DMNA, ISU, M/C, OSU, PS&T, RRSU**

Compensatory time off granted for time worked on a holiday, or in lieu of a holiday, is recorded and maintained as holiday leave.

**SSpU, SSU, APSU**

Compensatory time off granted for work performed on a holiday, or in lieu of a holiday, is added to the employee's vacation accumulation.

# Supervisor's Guide to Attendance and Leave Benefits

State Attendance and Leave Manual  
Reference: 21.1

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## C. Holidays

### **Holiday Compensation**

#### **ASU, ISU, M/C, OSU, PS&T**

Employees who are required to work on the days observed by the State as the Thanksgiving and Christmas Day holidays are eligible to receive holiday compensation in the form of holiday pay or holiday leave at the rate of time and one-half.

#### **SSU, SSpU**

Employees in the Security Services and Security Supervisors Units, who are eligible veterans may file a separate holiday compensation election for the Memorial Day and Veterans' Day holidays, and eligible former reservists and former National Guard members in these Units may file a separate holiday compensation election for the Independence Day holiday. This provision will expire 12/31/13 unless extended by mutual agreement of the parties.

### **Use of Holiday Leave**

#### **ASU, DMNA, OSU**

Holiday leave must be used within one year of the date it is earned or prior to separation, whichever comes first, or be forfeited.

#### **ISU, M/C, PS&T, RRSU**

Employees should be given reasonable opportunity to exhaust holiday leave prior to separation from employment.

#### **SSpU, SSU, APSU**

Holiday leave is added to vacation accruals and subject to the rules governing the maximum accumulation of vacation credits.

#### **M/C, PS&T, RRSU**

The use of holiday leave is subject to prior supervisory approval. Supervisory approval should be granted at the times desired by the employee, consistent with the reasonable operating needs of the State.

#### **ASU, DMNA, ISU, OSU, SSpU, SSU, APSU**

The use and scheduling of holiday leave is governed by the same general guidelines which govern the use and scheduling of vacation.

### **Compensation for Unused Holiday Leave**

#### **ASU, DMNA, ISU, M/C, OSU, PS&T, RRSU**

There is no provision for cash compensation of unused holiday leave upon separation from employment.

## Supervisor's Guide to Attendance and Leave Benefits

State Attendance and Leave Manual  
Reference: 21.1

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### C. Holidays

#### **SSpU, SSU, APSU**

Holiday leave is added to vacation accruals and liquidated in accordance with the rules governing cash compensation of vacation upon separation from employment.

# Supervisor's Guide to Attendance and Leave Benefits

## D. Vacation Leave

### 1. Accruing Vacation Leave

State employees accrue between 13 and 25 days of vacation per year, depending on the unit, years of service and date of hire. To earn vacation credits, employees must be in full pay status for 7 of the 10 workdays in each biweekly pay period. Employees on compressed work schedules must be in full pay status for a proportionate number of days in each pay period. See Appendix 2, Compressed Work Schedule Accrual Chart.

### 2. Vacation Maximum

Vacation credits may be accumulated up to a maximum of 40 days. Most employees may exceed the maximum vacation accumulation during the fiscal or calendar year, provided that the balance does not exceed the maximum at the end of such year. There is an exception for employees in SSpU, SSU and APSU. (For further information see Unit Specific Provisions on Vacation Maximum on page 20.)

To the extent possible, supervisors should schedule employee vacations to avoid the loss of vacation credits as a result of reaching the maximum accrual. This is described in more detail in Vacation Scheduling.

### 3. Use of Vacation Leave

It is a general rule that an employee must request and obtain approval to use vacation in advance. In an emergency, the supervisor can waive the advance request requirement. Vacation must be granted at the time requested by the employee to the extent practicable in light of the needs of the department to provide the service it is charged to provide. A supervisor may not arbitrarily or unreasonably deny an employee's properly submitted request for vacation time off. A supervisor may, however, withhold authorization when the resulting absence would have a negative effect on departmental operations.

### 4. Vacation Scheduling

Consistent with contractual requirements, each agency may establish reasonable procedures to be followed by employees in requesting vacation time off. The procedures may specify, for example, how far in advance the employee must request the use of vacation credits.

Most of the negotiated agreements provide that, in instances where more employees request the same vacation time off than can reasonably be spared for operational reasons, vacation requests will be granted by order of seniority. Where this requirement exists, the agency may generally designate a date or dates or a period or periods of time by which an employee must request a block of vacation time in order to have seniority apply. Some of the negotiated agreements require that such date(s) or period(s) be worked out in understandings with the union.

# Supervisor's Guide to Attendance and Leave Benefits

## D. Vacation Leave

State Attendance and Leave Manual  
Reference: 21.2

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Agencies may develop reasonable policies designed to encourage the use of vacation credits in a manner consistent with the intent of the benefit and the needs of both the agency and employee. Such policies may encourage employees to take or schedule vacation when their accruals total a prescribed number of days, while reflecting the fact that employees are allowed to accumulate 40 days of vacation or more if eligible. For example, it would be reasonable to encourage employees to take or schedule a vacation when their vacation accruals reach 35 days.

### 5. Requests for Use of Vacation Leave

When reviewing vacation requests, a supervisor should keep in mind that employees often have to coordinate vacation schedules with other family members, make travel arrangements, plans, etc. Accordingly, the supervisor should respond to a properly submitted request within a reasonable period of time.

Under some negotiated agreements, a supervisor is required to respond to a request within a specified number of days and/or provide the employee with a written statement of the reasons for a denial. In such instances, the supervisor need only provide a brief statement outlining the reason(s) for denial. Although the written statement need not be so lengthy or explicit as to serve as justification for the denial, it should clearly outline the reasons therefore.

### 6. Compensation for Unused Vacation Leave

An employee, or the employee's estate, may be entitled to receive cash compensation up to a maximum of 30 days of accrued credits in the event of the employee's retirement, separation from service or death. However, agencies are encouraged where possible subject to operating needs, to permit employees to liquidate vacation credits in excess of 30 days prior to separation.

### 7. Supervisor's Role – Vacation Leave

*The primary responsibilities of the supervisor are to:*

- *Become familiar with vacation scheduling provisions for the bargaining units under your supervision.*
- *Respond to vacation requests promptly in accordance with provisions applicable to the employees you supervise.*
- *Exercise good judgment in approving emergency use of vacation.*
- *Monitor employees' vacation balances and encourage employees to schedule vacation to avoid forfeiture of credits.*

# Supervisor's Guide to Attendance and Leave Benefits

## 8. Unit Specific Provisions – Vacation Leave

### Accruing Vacation Leave

**ASU, DMNA, ISU, M/C, OSU, PS&T, RRSU, SSpU, SSU, APSU**

Employees hired prior to January 3, 1957 accrue vacation at the rate of 20 days per year.

Employees hired on or after January 3, 1957 accrue 6½ days of vacation upon completion of 13 pay periods of service. Thereafter, and through their seventh year of employment, employees accrue ½ day of vacation upon completion of each pay period. In addition, upon completion of each full year of service through the seventh year employees accrue bonus days in accordance with the following schedule:

<b>Completed Years of Continuous Service</b>	<b>Bonus Days</b>
<b>1</b>	<b>1 day</b>
<b>2</b>	<b>2 days</b>
<b>3</b>	<b>3 days</b>
<b>4</b>	<b>4 days</b>
<b>5</b>	<b>5 days</b>
<b>6</b>	<b>6 days</b>
<b>7</b>	<b>7 days</b>

Thereafter, employees accrue 20 days of vacation per year.

**DMNA, ISU, OSU, PS&T, RRSU, SSpU, SSU, APSU**

Upon completion of 20 years of service, additional vacation days are credited each year as follows:

<b>Completed Years of Continuous Service</b>	<b>Additional Vacation Credits</b>
<b>20-24</b>	<b>1 day</b>
<b>25-29</b>	<b>2 days</b>
<b>30-34</b>	<b>3 days</b>
<b>35 or more</b>	<b>4 days</b>

# Supervisor's Guide to Attendance and Leave Benefits

## D. Vacation Leave

State Attendance and Leave Manual  
Reference: 21.2

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### **ASU**

Upon completion of 15 years of service, additional vacation days are credited each year as follows:

<b>Completed Years of Continuous Service</b>	<b>Additional Vacation Credits</b>
<b>15-19</b>	<b>1 day</b>
<b>20-24</b>	<b>2 days</b>
<b>25-29</b>	<b>3 days</b>
<b>30-34</b>	<b>4 days</b>
<b>35 or more</b>	<b>5 days</b>

### **M/C**

Upon completion of 20 years of service, additional vacation days are credited each year as follows:

<b>Completed Years of Continuous Service</b>	<b>Additional Vacation Credits</b>
<b>20-24</b>	<b>1 day</b>
<b>25-29</b>	<b>2 days</b>
<b>30-34</b>	<b>4 days</b>
<b>35 or more</b>	<b>5 days</b>

### **Vacation Maximum**

#### **ASU, DMNA, ISU, OSU, PS&T, RRSU**

An employee may accumulate in excess of the 40-day maximum during the fiscal year, provided the employee's balance does not exceed the limit on April 1.

#### **SSpU, SSU, APSU**

An employee who is at the 40-day maximum (or who will exceed the maximum at the next accrual period) who has a written request to use vacation denied in writing by the supervisor, may accumulate in excess of the 40-day maximum until October 1 of each year provided the employee's balance does not exceed the limit as of October 1.

#### **M/C**

An employee's accrued vacation may exceed the 40-day maximum during the calendar year; however, the employee must reduce the accrual to or below the maximum by January 1 of each year or forfeit the excess amount.



# Supervisor's Guide to Attendance and Leave Benefits

## D. Vacation Leave

State Attendance and Leave Manual  
Reference: 21.2

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### Requests for Use of Vacation

#### **PS&T**

An employee who submits a written request for the use of vacation credits is entitled to a written response to the request within five working days of receipt. If the vacation request is denied or cancelled, the employee, upon written request for the reasons, is entitled to a written statement of the reason(s) for the denial or cancellation within three working days of receipt of the employee's written request for the reasons.

#### **RRSU**

An employee who submits a written request for the use of vacation credits is entitled to a written response to the request within a reasonable period of time. If the vacation request is denied or cancelled, the employee, upon written request, is entitled to a written statement of the reasons for the denial or cancellation within five days of receipt of the written request for the reasons.

#### **ASU**

An employee who submits a written request for use of accrued vacation credits shall be answered in writing within five working days of receipt. If an employee's request for use of accrued vacation credits is denied, the employee shall receive a written statement of the reasons for such denial within five working days after such denial. Reasons must be provided automatically without any further action on the employee's part.

#### **DMNA, OSU**

An employee who submits a written request for the use of vacation credits is entitled to a written response to the request within five working days from receipt of the request. The written response must include the reasons for denial if the request is denied.

#### **ISU**

An employee who submits a written request for the use of vacation credits is entitled to a written response to the request, including the reasons for denial if denied, within six working days of receipt of the vacation request.

### Vacation Scheduling

#### **DMNA, ISU, OSU, PS&T, RRSU, SSpU, SSU, APSU**

Vacation must be scheduled at the time desired by the employee to the extent practicable in light of the operating needs of the department or agency.

In the event that more employees than can reasonably be spared for operating reasons request the same vacation time off, vacation must be granted in accordance with seniority.

## Supervisor's Guide to Attendance and Leave Benefits

### D. Vacation Leave

State Attendance and Leave Manual  
Reference: 21.2

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#### **PS&T, RRSU**

In lieu of scheduling vacation by seniority, the union and management may mutually agree to give preference to those employees who have a vacation accumulation in excess of 35 days.

#### **ASU**

Vacation must be granted by seniority where there is no distinction between employees with respect to factors relevant to their ability to do the job satisfactorily, or subject to the operating needs of the agency.

#### **OSU, PS&T, RRSU, SSpU, SSU, APSU**

To facilitate the scheduling of vacation, departments, facilities or other operating units may designate a date or dates, or specified period(s) of time during which an employee must request a block of vacation time in order to have seniority considered.

#### **OSU, PS&T, RRSU**

Establishment of such dates or periods must be worked out in understandings between the department, facility or other operating unit and the union.

#### **ISU**

Upon request by the union, the department, facility or other operating unit must, by September 1 of each year, establish an annual date or dates or periods(s) by or within which an employee must request a block of vacation time in order to have seniority considered. A block of vacation time is defined as five or more consecutive workdays.

#### **DMNA**

To assist in the scheduling of vacation time, offices and installations may establish an annual date or periods within which the employee must request vacation.

## E. Personal Leave

Personal leave, not sick leave, is intended to cover absences for reasons such as religious observance, extraordinary weather conditions and personal business. Personal leave may also be used as vacation.

### 1. Crediting Personal Leave

Employees receive five days of personal leave a year. Personal leave is not cumulative. Any unused amount expires at the close of business the day before the individual's personal leave anniversary date. There is no provision for cash payment for unused personal leave at time of separation from service.

### 2. Use of Personal Leave

The employee does not have to state a reason to use personal leave, provided prior approval is obtained. The employee must meet agency deadlines in obtaining approval to use personal leave. In the case of an emergency, approval must be sought by the employee as soon as possible.

Approval to use personal leave is normally granted subject to operating needs. However, approval for use of personal leave for religious observance must be granted unless the absence would interfere with proper conduct of governmental functions.

When a request for personal leave has been denied, an employee may be obligated to provide a reason in order to have the request reconsidered.

### 3. Supervisor's Role – Personal Leave

*The primary responsibilities of the supervisor are to:*

- *Routinely require advance approval for use of personal leave, but waive that requirement when appropriate for emergency situations.*
- *Respond promptly to requests for personal leave.*
- *Remember that employees cannot be required to provide a reason for use of personal leave.*
- *Reconsider denials of use of personal leave when employees provide additional information.*
- *Refer questions about appropriate use of personal leave to the personnel office.*

# Supervisor's Guide to Attendance and Leave Benefits

State Attendance and Leave Manual  
Reference: 21.6

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## E. Personal Leave

### 4. Unit Specific Provisions – Personal Leave

#### Requests for Use of Personal Leave

##### ISU

An employee who submits a written request for the use of personal leave is entitled to a written response to the request, including the reasons for denial, within six working days of receipt of the request.

### F. Sick Leave

Sick leave is a benefit available to employees to protect them from loss of income in the event of personal illness, visits to the physician, dentist, or other health care practitioner, and illness or death in the family. Sick leave may also be used by certain employees with disabilities to obtain and train service animals. The use of sick leave is restricted to these purposes. It is not, and may not, be used as additional vacation or personal leave.

*FMLA Note: Whenever sick leave benefits are being administered, it is important to keep in mind that some sick leave absences may also meet the criteria to be designated as FMLA leave. The FMLA is discussed further in Section K and Appendix 1.*

#### 1. Accruing Sick Leave

State employees accrue 13 or 8 days of sick leave per year, depending on bargaining unit, date of hire and whether or not the employee participates in the Income Protection Plan (IPP). (See Section H for more information on IPP.)

Employees who earn sick leave on a biweekly basis must be in full pay status (not on unpaid leave or leave at half-pay) for 7 out of the 10 workdays in each biweekly pay period. However, employees on compressed work schedules must be in full pay status for a proportionate number of days in each pay period. See Appendix 2, Compressed Work Schedule Accrual Chart.

#### 2. Proper Use of Sick Leave

It is appropriate for an employee to use sick leave to stay home or in a hospital or health care facility to recover from an illness, injury, operation or childbirth. Sick leave can also be used for visits, including reasonable travel time, to a physician, dentist or other health care practitioners due to illness, emergency, routine examination or preventive care. It may also be used for illness or death in the family.

An employee who has available sick leave credits is normally required to charge a sick leave absence to accrued sick leave credits first, except:

- Where an employee is about to lose vacation or personal leave because of an approaching anniversary date, or
- In the case of FMLA leave where employees may elect to go on leave without pay or use leave accruals even if sick leave is available.

# Supervisor's Guide to Attendance and Leave Benefits

## F. Sick Leave

State Attendance and Leave Manual  
Reference: 21.3, 21.4, 22.1

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Employees who have exhausted sick leave credits must be permitted to charge absences otherwise chargeable to sick leave to other credits (vacation, personal leave, etc.), subject to the same approval procedures and documentation requirements as apply to use of sick leave credits. (The use of other credits as sick leave may be denied for certain short-term absences to employees in the ISU who have been given prior notice that they have attendance problems.)

### 3. Family Sick Leave/Bereavement Leave

There are no separate leave categories for family sick leave or bereavement leave. However, employees may use up to 15 days of accumulated sick leave credits per calendar year for death or illness in the family. Such use is subject to the approval of the supervisor, but authorization should not be unreasonably denied.

The rule of thumb for an employee to qualify to use sick leave for family illness is that the employee's presence must be medically necessary. A few examples of appropriate use of family sick leave include:

- Providing direct care for an ill family member;
- Accompanying a family member to a medical appointment either because the family member is unable to go alone (because of age or illness) or because the employee must be present to receive the medical information concerning the family member's condition;
- Being present with a spouse on the day of delivery of a child and to provide direct care following her release from the hospital; and
- Being present at the hospital during surgery or other medical emergency of a family member.

These examples are only illustrative. Supervisors should discuss any questions about requests for family sick leave with their personnel office.

Sick leave for bereavement purposes may be properly used for a death in the employee's family. It may not be used to attend the funeral of someone other than a family member. Such absences are properly charged to personal leave or vacation.

# Supervisor's Guide to Attendance and Leave Benefits

## F. Sick Leave

State Attendance and Leave Manual  
Reference: 21.3, 21.4, 22.1

Although there are some differences among the negotiated agreements, the definition of family under the Attendance Rules is any relative or relative-in-law, regardless of place of residence, or any person who lives in the employee's household.

*FMLA Note: An employee may be eligible to take family sick leave for conditions which may not qualify as serious health conditions under the FMLA, or may be entitled to FMLA leave for serious health conditions of family members which do not qualify for the use of family sick leave. However, some family sick leave absences may also qualify as FMLA leave. The definition of eligible family members under the FMLA differs from the Attendance Rules definition. Generally, FMLA leave is available for the serious health condition of a spouse, a parent, or a child under the age of 18.*

*Employees who qualify for FMLA leave for family illness but not for family sick leave may elect to charge vacation and personal leave or may elect to go on leave without pay. Employees who qualify for both FMLA leave and family sick leave for illness in the family may elect to charge vacation and personal leave credits in lieu of or in addition to the 15 days chargeable to sick leave credits or may elect to go on leave without pay. Questions about FMLA leave for illness in the family should be directed to your personnel office. The FMLA is discussed further in Section K and Appendix 1.*

### 4. Improper Use of Sick Leave

It is not permissible to use sick leave for vacation or for such personal chores as picking up medicine at a drug store, picking up glasses from an optician or delivering a hearing aid for repair. No medical services are being performed on such trips. Nor is family sick leave appropriate when employees absent themselves to assume housekeeping or homemaking duties because no direct care is being provided for the ill family member.

### 5. Medical Documentation

Subject to the limitations set forth in the applicable negotiated agreements, the supervisor has the right to ask for satisfactory medical documentation for use of sick leave before approving use of sick leave for an absence. This documentation is at the employee's expense. It may be required either on a one-time basis or, under special circumstances, in the form of a standing order requiring documentation of every future absence during a specified period of time. Generally, documentation is not required for illnesses of a few days because an

## Supervisor's Guide to Attendance and Leave Benefits

### F. Sick Leave

State Attendance and Leave Manual  
Reference: 21.3, 21.4, 22.1

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employee does not always see a physician for a brief illness. Medical documentation requirements should be discussed with your personnel office.

When medical documentation is required, it must be satisfactory to the State. Generally, satisfactory medical documentation contains the following information:

- A brief statement of diagnosis (see Content of Medical Documentation in Unit Specific Provisions for exceptions);
- The inclusive dates of illness covered by the medical documentation and the date or dates of treatment during the period covered by the documentation;
- Certification that the employee is unable due to illness to perform his or her job duties;
- The anticipated date of return to work; and
- Signature of an appropriate medical practitioner.

Appropriate medical practitioners include physicians, dentists, psychiatrists, osteopaths, physio- and physical therapists, podiatrists, ophthalmologists, optometrists, psychologists, chiropractors, physician's assistants, nurse practitioners, Christian Science practitioners and social workers doing psychological counseling.

If medical documentation is unsatisfactory, the State does not have to accept it. Such determinations are generally made by the personnel office. If this is the case, the employee should be advised of what is required and be given a reasonable opportunity to obtain satisfactory documentation.

Medical documentation should be treated confidentially in accordance with agency policies, the New York State Human Rights Law, the Americans with Disabilities Act (ADA), and other applicable laws and policies. It should be handled so as to prevent its review by anyone who does not have a business need to see it. Some of the negotiated agreements provide that one person be designated at the local level to confidentially receive medical documentation and to authorize supervisors to grant sick leave. Questions concerning documentation should be addressed to your personnel office.



# Supervisor's Guide to Attendance and Leave Benefits

## F. Sick Leave

State Attendance and Leave Manual  
Reference: 21.3, 21.4, 22.1

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*FMLA Note: The FMLA places certain restrictions on the type and frequency of medical documentation that may be required for covered absences. Consult with the personnel office regarding appropriate certification under the FMLA.*

### 6. Medical Examination

The agency may require an employee to be examined by a physician, at agency expense, as a condition for use of sick leave or return to work after an illness. In addition or instead, an employee may be required to furnish medical certification from his or her attending physician.

The personnel office may direct an employee to undergo a medical examination by a professional selected by the State. An exam may be ordered to determine whether the employee's absence is due to illness and the employee is therefore entitled to sick leave, or whether the employee is well enough to return to work after an absence. In some cases, the personnel office may refuse to permit an employee to return to work from an extended sick leave absence until the employee submits medical documentation or is examined by a State physician. If such an examination is ordered, it will be at the State's expense. An employee's failure to report for such an examination may lead to disciplinary action.

*FMLA Note: The FMLA places certain restrictions on the conduct of medical examination that may be required for covered absences.*

### 7. Unused Sick Leave at Time of Retirement

Certain State employees, upon retirement, may continue coverage under the State health insurance plan and have the dollar value of their sick leave balance at the time of retirement, up to a maximum of 200 days, applied toward the charges for health insurance.

Certain retirees may also be granted additional retirement service credit for accumulated and unused sick leave credits, up to a maximum of 200 days.

### 8. Termination Following Extended Absence

Section 71 of the Civil Service Law allows for termination of an employee absent for one cumulative year due to an occupational injury or illness or two cumulative years in the event of an assault. Section 73 of the Civil Service Law allows for termination of an employee who has been absent for one continuous year for a non-occupational illness or injury. Supervisors should contact their personnel office or human resources office for more information regarding these provisions of the law.

# Supervisor's Guide to Attendance and Leave Benefits

## F. Sick Leave

State Attendance and Leave Manual  
Reference: 21.3, 21.4, 22.1

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### 9. Reemployment

An employee who is reemployed by the State within a year of separation, or who is reinstated at any time by the Civil Service Commission, or who is appointed while on a preferred list, will have unused sick leave credits restored.

### 10. Military Leave for Combat Related Health Care Services

Section 242 (5)(b) of the Military Law entitles State officers and employees to paid leave without charge to leave credits for up to five work days of paid leave annually for any healthcare related services associated with an illness or injury sustained while in a combat theater or combat zone of operations.

### 11. Supervisor's Role – Sick Leave

*The primary responsibilities of the supervisor are to:*

- *Communicate attendance expectations to employees under your supervision. Refer to Section N, Supervisor's Role in Monitoring Leave Use, for guidance in this area.*

*FMLA Note: Provisions of the FMLA on use of sick leave and medical documentation may supercede contract provisions.*

- *Consult with the personnel office about medical documentation requirements.*
- *Ensure that records of attendance are completed accurately.*
- *Notify your personnel office immediately if a sick leave absence may be FMLA-qualifying.*

### 12. Unit Specific Provisions – Sick Leave

#### Accumulation

##### **ASU, DMNA, ISU, OSU, PS&T, SSpU, SSU, APSU**

Employees accrue a half-day of sick leave per biweekly pay period, for a total of 13 days of sick leave per year.

##### **M/C**

Employees hired prior to January 1, 1986, who are not IPP participants, accrue 13 days of sick leave per year at the rate of a half-day per biweekly pay period.

# Supervisor's Guide to Attendance and Leave Benefits

## F. Sick Leave

State Attendance and Leave Manual  
Reference: 21.3, 21.4, 22.1

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Employees hired on or after January 1, 1986, or employees with prior service before January 1, 1986 who elected to join the IPP, are credited with four days of sick leave upon completion of each six months of service, for a total of eight days of sick leave per year.

### **RRSU**

Employees hired prior to 10/1/87 who are not IPP participants accrue 13 days of sick leave per year. Employees who were enrolled in the IPP and who opted out of the IPP accrue 13 days of sick leave per year.

Employees who are IPP participants and employees with no credible service prior to 10/1/87 who are not eligible for IPP, accrue four days of sick leave upon completion of each six months of service, for a total of eight days of sick leave per year.

### **Maximum Accumulation**

The amount of sick leave an employee may accumulate varies by unit:

#### **ASU, DMNA, ISU, M/C, OSU, PS&T, RRSU**

200 days.

#### **SSpU, SSU, APSU**

225 days.

### **Proper Use of Sick Leave**

#### **ASU, DMNA, ISU, OSU**

Absences resulting from treatment of service-connected disabilities at a facility operated by the Veterans' Administration are appropriate charges to sick leave and are not subject to review under absenteeism control programs.

### **Family Sick Leave Definitions**

#### **SSpU, SSU, APSU**

Family is defined as the employee's spouse, child, parent, grandparent, brother, sister, aunt, uncle, parent-in-law, brother-in-law, sister-in-law, grandchild or any person living in the employee's household.

#### **ASU, DMNA, ISU, OSU, M/C, PS&T, RRSU**

Family is defined as any relative or relative-in-law regardless of place of residence, or any persons with whom an employee has been making a home.

# Supervisor's Guide to Attendance and Leave Benefits

## F. Sick Leave

State Attendance and Leave Manual  
Reference: 21.3, 21.4, 22.1

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### Additional Days of Family Sick Leave

#### **Family Sick Leave (ASU/OSU/ISU/DMNA employees only)**

Effective August 8, 2017, employees may use up to 25 days of accumulated sick leave per calendar year for death or illness in the family.

#### **(NYSCOPBA only)**

Effective on January 24, 2019, employees may use up to 30 days of accumulated sick leave per calendar year for illness or death in the family.

#### **(NYSCOPBA only) -Use of Other Leave Credits for Bereavement**

Employees may request that an absence that would normally be approved as sick leave pursuant to Article 14.3 be charged against other leave credits if the employee has utilized the full amount of sick leave accruals referenced in Article 14.3(a) or has otherwise exhausted their sick leave accruals. Approval of such requests shall not be unreasonably denied.

### Requests for Use of Sick Leave

#### **ISU**

Employees who submit a written request for the use of sick leave credits are entitled to receive a written response to the request within six days of receipt of the request. The written response must include a statement of the reason(s) for denial if the request is denied.

### Requiring Medical Documentation

#### **ASU, ISU, OSU, RRSU**

Medical documentation is not routinely required for absences of four days or less.

#### **DMNA**

Medical documentation is not routinely required for absences of three days or less.

#### **ASU, DMNA, OSU, RRSU**

When medical documentation is required based solely on a review of the employee's attendance record, the requirement must follow counseling and written notice to the employee. This requirement may be imposed only for absences which occur after the employee has been provided written notice and must be of a reasonable duration.

For employees in the OSU and DMNA Units, the duration of this requirement must be specified in the written notice.

# Supervisor's Guide to Attendance and Leave Benefits

## F. Sick Leave

State Attendance and Leave Manual  
Reference: 21.3, 21.4, 22.1

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Employees in the ASU and RRSU Units must be notified of the conditions that this requirement imposes.

### **ISU**

When an employee is required to provide medical documentation, the employee must be notified of the requirement in writing.

When medical documentation is required based on a review of the employee's attendance record, the requirement may be imposed only for those absences occurring after the employee has been provided written notice.

### **SSU**

Employees shall be required, consistent with current medical documentation policy, to provide adequate documentation from the medical provider for all pre-approved medical absences including those of four hours or less. Upon the second instance of failure to provide adequate documentation, the employee shall be subject to discipline.

## **Confidentiality of Medical Documentation**

### **ASU, OSU**

One person shall be designated at the local level to confidentially receive medical documentation employees provide to support sick leave use, and to authorize supervisors to grant leave.

### **ISU**

Upon notice to the supervisor, an employee may submit a medical certificate on a confidential basis directly to the facility or agency personnel office.

### **DMNA**

Medical certificates are confidential, must be received by the immediate supervisor, and the information shall not be released to any unauthorized person.

### **M/C, SSpU, SSU, APSU**

Medical documentation must be handled in a confidential manner.

### **PS&T, RRSU**

One person may be designated at the local level to confidentially receive medical documentation employees provide to support sick leave use, and to authorize supervisors to grant leave.

# Supervisor's Guide to Attendance and Leave Benefits

## F. Sick Leave

State Attendance and Leave Manual  
Reference: 21.3, 21.4, 22.1

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### Content of Medical Documentation

#### **PS&T**

Medical certification forms shall not require an employee's physician to provide more than a brief diagnosis in describing the employee's cause of illness. This restriction applies only to the diagnosis portion of the medical documentation.

#### **ASU, ISU, OSU, DMNA, RRSU and only SSU employed by DOCCS**

A brief diagnosis will not be required as part of any required medical documentation unless the employee has been absent from work due to illness or injury for more than 30 consecutive calendar days. The 30-day restriction on diagnosis also applies to return to work examinations under Section 21.3 and applicable provisions of the negotiated agreements on determination of fitness for return to work from sick leave. This provision applies only to the content of required medical documentation and has no impact on the frequency with which medical documentation can be requested under the Attendance Rules and negotiated agreements. Agencies continue to be entitled to request a brief diagnosis as part of required medical documentation once the absence exceeds 30 consecutive calendar days.

The 30-day restriction on diagnosis does not apply to certain absences such as those covered by workers' compensation provisions or by the FMLA.

This restriction applies to all employees in the ASU, ISU, OSU, DMNA and RRSU Units in accordance with provisions of the negotiated agreements. The restriction applies only to those employees in the SSU Unit who are employed by the Department of Corrections and Community Supervision pursuant to a court settlement.

### Notice of Return to Work

#### **SSU**

For all sick leave absences of a full shift or more, returning employees shall provide at least eight hours advance notice of their intended return to work. However, this in no way is intended to otherwise alter present notification procedures.

### Verification of Physician's Statement (for determination of fitness for return to duty)

#### **ASU, DMNA, ISU, OSU, PS&T, RRSU, SSpU, SSU, APSU**

Where the agency requires that an employee be examined by a physician selected by the agency as a condition of return to work from sick leave, the agency must complete the examination within a specified time period or the employee is returned to pay status, although not returned to work, until the examination is completed and a decision is rendered. An employee found unfit to return to work is placed in the appropriate leave status. The employee is reimbursed for all actual and necessary travel expenses in connection with the examination.

# Supervisor's Guide to Attendance and Leave Benefits

## F. Sick Leave

State Attendance and Leave Manual  
Reference: 21.3, 21.4, 22.1

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### **PS&T**

Employees in this unit are considered to be in pay status without charge to credits during the period of the examination and related travel to and from the site. This does not restore the employee to duty status or have an impact on the time frames under Section 73 of the Civil Service Law.

### **Paid Family Leave**

#### **M/C and DC 37 (only)**

Paid Family Leave allows eligible employees the right to take paid leave, ***without charge to leave credits***, to participate in providing care, including physical or psychological care, for a serious health condition ***of a family member of the employee***; to bond with the employee's biological, adopted, or foster child during the first twelve months after the child's birth or placement in the home; or to attend to obligations arising because the spouse, domestic partner, child, or parent of the employee is on active duty or has been notified of an impending call to active duty in the United States armed forces (a qualifying exigency). Questions regarding Paid Family Leave should be directed to your Human Resources Office.

## G. Sick Leave at Half-Pay

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### G. Sick Leave at Half-Pay

#### 1. Eligibility for Sick Leave at Half-Pay

In addition to the paid sick leave discussed in Section F, full-time annual salaried employees who have permanent status, except M/C or Rent Regulation Services Unit employees who are enrolled in the Income Protection Plan (see Section H), are eligible for one biweekly pay period of sick leave at half-pay for each six months of service, excluding days of leave without pay. Employees who have permanent hold items are considered to be permanent for sick leave at half-pay eligibility purposes. Temporary employees are not eligible for this benefit.

To draw sick leave at half-pay an employee must have exhausted available leave credits and have at least one cumulative year of State service. Employees must be absent because of personal illness or disability. Sick leave at half-pay may not be used for sickness of a family member. Employees are required to submit satisfactory medical documentation as a condition of being granted sick leave at half-pay.

Sick leave at half-pay is not granted automatically. The employee must specifically request to be placed on sick leave at half-pay.

Sick leave at half-pay should not be terminated solely because an employee is found to be permanently disabled. Employees who are permanently disabled are entitled to sick leave at half-pay until employment ends.

#### 2. Supervisor's Role – Sick Leave at Half-Pay

*The primary responsibilities of the supervisor are to:*

- *Notify the personnel office when an employee under your supervision who is absent due to personal illness is approaching the point of exhaustion of leave credits*
- *Make sure employees you supervise are aware of agency procedures for requesting sick leave at half-pay*

#### 3. Unit Specific Provisions – Sick Leave at Half-Pay

##### **Eligibility for Sick Leave at Half-Pay**

**SSU, SSpU, M/C** (not enrolled in IPP)

Sick leave at half-pay is available under the Attendance Rules to eligible employees in these Units. Any denial of sick leave at half-pay must be defensible. It would generally be considered defensible to deny sick leave at half-pay to an employee who had been formally disciplined for leave abuse within the past year.



## Supervisor's Guide to Attendance and Leave Benefits

State Attendance and Leave Manual  
Reference: 21.5

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### G. Sick Leave at Half-Pay

#### **DMNA**

The Division may grant sick leave at half-pay to permanent and temporary employees in accordance with military regulation 690.1 and shall grant sick leave at half-pay for personal illness to eligible permanent employees as described below.

#### **ASU, DMNA, ISU, OSU, PS&T, RRSU** (not enrolled in IPP)

Sick leave at half-pay must be granted immediately following exhaustion of leave credits to eligible permanent employees, except those who have been formally disciplined for leave abuse within the preceding year.

Employees who have been formally disciplined for leave abuse within the preceding year shall be granted sick leave at half-pay following ten consecutive workdays of absence, unless such waiting period is waived by the appointing authority.

An employee is deemed to have been formally disciplined for leave abuse if any of the following conditions occurred:

- *A time and attendance notice of discipline was settled within one year preceding the request for sick leave at half-pay.*
- *The employee has been found guilty of the time and attendance charges within one year preceding the request for sick leave at half-pay.*
- *The employee did not contest the time and attendance notice of discipline served within one year preceding the request for sick leave at half-pay.*

Notices of discipline regarding issues other than time and attendance or those dismissed by an arbitrator or withdrawn by the appointing authority cannot be used for the purpose of imposing a waiting period. Warning letters, counseling memos, imposition of a one-day medical certification requirement or identification of an employee under any agency sick leave control program are not a basis for imposing a waiting period for sick leave at half-pay.

# Supervisor's Guide to Attendance and Leave Benefits

## H. Income Protection Plan

### 1. Program Description

The Income Protection Plan (IPP) is a short and long term disability insurance program that began January 1, 1986. Employees enrolled in the IPP earn less sick leave per year in exchange for disability coverage under this program. Specifically, employees who participate in the IPP receive four days of sick leave every six months on their sick leave grant dates for a total of eight days each year. IPP participants are not eligible for extended sick leave or sick leave at half-pay, but are eligible for short-term disability (STD) and long-term disability (LTD) benefits.

### 2. Eligibility for IPP

The IPP has been available to M/C employees since it was initiated on January 1, 1986. Just prior to January 1, 1986, M/C employees were given a one-time irrevocable option to either participate in the IPP or continue under the existing sick leave program, which provides 13 days of sick leave per year and sick leave at half-pay. Those who became M/C employees after January 1, 1986 participate in the IPP on a mandatory basis unless they have State service credit prior to January 1, 1986. New M/C employees who have such prior service credit are given a one-time option to enroll in the IPP.

Since October 1, 1987, Rent Regulation Services Unit (RRSU) employees have been eligible for IPP coverage.

Only annual salaried M/C and RRSU employees who work at least half-time are eligible to participate in the IPP. In addition, IPP participants must have six months of service credit with the State and be a member of a public retirement system to be eligible for LTD benefits.

### 3. Benefit Description

The IPP provides benefits in the event an employee becomes disabled due to illness or injury. Short-term disability benefits begin after 14 calendar days or the exhaustion of sick leave credits, whichever is longer. Once sick leave credits are exhausted, employees may elect to use other leave credits such as vacation and personal leave before receiving STD benefits. STD benefits are payable at 50 percent of gross salary, up to a maximum weekly benefit of \$961.54, for up to six months from the onset of disability.

Following six months of disability, or the exhaustion of sick leave credits if greater, long-term disability benefits commence. These benefits are payable at 60 percent of gross salary, up to a maximum monthly benefit of \$5,000, for the duration of disability, but not beyond age 65 or death. STD and LTD benefits are integrated with other disability income such as Workers' Compensation, retirement, Paid Family Leave and Social Security benefits.

## Supervisor's Guide to Attendance and Leave Benefits

### H. Income Protection Plan

State Attendance and Leave Manual  
Reference: Appendix F

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During STD and the first two years of LTD employees are considered disabled if they are unable to perform their own jobs. After two years of receiving LTD benefits, the definition of disability changes to the inability to perform any gainful occupation for which they are qualified based on their education, training, and experience. IPP benefits are not automatic; participants must submit claim forms to Metropolitan Life, the insurance carrier.

For details on the IPP, contact your personnel office.

#### 4. Supervisor's Role – Income Protection Plan

*The primary responsibilities of the supervisor are to:*

- *Refer questions on the IPP to the personnel office.*
- *Ensure that time records for IPP participants are correctly completed.*
- *Be aware of the waiting period and notify the personnel office when employees under your supervision may become eligible to receive benefits under the IPP.*

### I. Workers' Compensation

#### 1. Benefit Description

State employees absent due to a disability resulting from an on-the-job injury or occupational disease are protected in several ways. The type and level of protection are described in the negotiated agreements, the Civil Service Law, the Attendance Rules and the Workers' Compensation Law. Each program has different eligibility requirements and different wage benefits. The eligibility determinations are quite involved and require specialized knowledge of various laws, rules, regulations and negotiated agreements. Staff within human resources offices have this specialized knowledge and are therefore responsible for making such determinations.

State employees are covered by the Workers' Compensation Law which, under certain circumstances, provides a wage replacement benefit equivalent to 2/3 of the employee's average weekly wage, up to a maximum of \$904.74 a week, for absences resulting from job-related disabilities. The wage benefit is paid by the insurance company, which for New York State as an employer, is the State Insurance Fund (SIF). When the SIF controverts an employee's claim for benefits, no wage benefit is paid under the Workers' Compensation Law until the Workers' Compensation Board resolves the dispute.

In addition, most State employees are covered by the Civil Service Law, which guarantees eligible employees leave for up to one cumulative year for each approved job-related disability. If the disability is the result of an assault the guaranteed leave is for up to two cumulative years. However, if the employee is found to be permanently disabled before the guaranteed period has expired, then the employee can be terminated under Section 71 of the Civil Service Law.

Under the negotiated agreements, employees may be eligible for benefits in addition to those provided under the Workers' Compensation Law. The benefits an employee receives during a Workers' Compensation leave vary among units. For example, in some units employees may elect to participate in a medical evaluation and limited duty program. In some units there are restrictions on the charging of leave credits. Within bargaining units, benefits also vary by date of accident or injury. See Unit Specific Provisions for effective dates of current benefits. If an employee claims that a current absence is related to an accident for which a Workers' Compensation claim was accepted before those dates, notify your personnel office.

#### 2. Supervisor's Role – Workers' Compensation

*Although supervisors do not make the eligibility or disability determinations, their role in administration of the Workers' Compensation program is essential. The primary responsibilities of the supervisor are to:*

# Supervisor's Guide to Attendance and Leave Benefits

State Attendance and Leave Manual  
Reference: 21.8

## I. Workers' Compensation

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- *Advise the employee to seek immediate emergency medical care, if possible.*
- *Report the accident to the personnel office immediately.*
- *Make sure the accident has been reported to the Accident Reporting System (ARS), either by the supervisor or the employee (1-888-800-0029).*
- *Investigate the accident and report the findings in writing to the personnel office.*
- *Maintain a record of employee absences due to the job-related disability.*

*FMLA Note: Absences due to occupational injury or illness are appropriately designated as FMLA leave, provided the employee is eligible for FMLA leave.*

### 3. Unit Specific Provisions – Workers' Compensation

Workers' Compensation benefits vary by unit and within units, by date of accident or injury. Absences arising from injuries that occurred prior to April 15, 1993 for employees in SSpU, SSU and APSU, prior to July 1, 1992 for employees in ASU, DMNA, ISU, OSU, and RRSU, prior to July 1, 1993 for employees in the PS&T Unit and prior to September 1, 1994 for M/C employees are covered by different benefits than those currently in place.

## Supervisor's Guide to Attendance and Leave Benefits

### J. Leave for Pregnancy, Childbirth and Child Care

State Attendance and Leave Manual  
Reference: 22.1

#### J. Pregnancy, Childbirth and Child Care

Leave for pregnancy, childbirth and child care is available to permanent, temporary and provisional employees. However, such leaves do not extend employment beyond the point that it would otherwise have ended.

*FMLA Note: Leave under the FMLA is available for use by eligible employees for pregnancy, childbirth and child care in connection with the birth, adoption or foster placement of a child. Leave for child care must be concluded within one year of birth, placement for adoption or foster placement. Employees may be eligible for up to 12 weeks of FMLA leave in a calendar year. If the eligible period following birth, placement for adoption or foster placement spans two calendar years, the employee may be eligible for 12 weeks of child care leave in each calendar year. When both parents work for the same **agency**, they **may** be limited to a combined total of 12 weeks of child care leave in each calendar year. This limitation may only be applied in certain circumstances and should be discussed with your Human Resources Office.*

#### 1. Leave for Pregnancy and Childbirth

State policy recognizes disability during the four weeks prior to the anticipated due date and the six weeks following childbirth. During this period detailed medical documentation is not required; generally, confirmation of the anticipated due date and the actual date of delivery is sufficient. However, detailed medical documentation may be required for disability before and after this period. An employee may use sick leave, other credits as sick leave and sick leave at half-pay during periods of disability in connection with pregnancy and childbirth.

#### 2. Child Care Leave

Leave for pregnancy and childbirth under State policy may be followed by child care leave without pay at the employee's request. An employee is entitled to a child care leave without pay of up to seven months from the date of delivery. However, child care leave may be charged to appropriate leave credits (credits other than sick leave) at the employee's option. Child care leaves beyond the seven-month period are at the discretion of the appointing authority, but cannot exceed two years of leave without pay except with approval of the Civil Service Commission.

Under State policy, child care leave is available to either parent. Where both parents are State employees, the seven-month leave may be split into two separate blocks with each parent taking one block of leave, not to exceed a combined total of seven months of leave. However,

## Supervisor's Guide to Attendance and Leave Benefits

### J. Leave for Pregnancy, Childbirth and Child Care

State Attendance and Leave Manual  
Reference: 22.1

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agencies have the discretion to approve other arrangements, such as concurrent leaves or leaves in excess of seven months.

Under State policy, child care leave is also available to adoptive parents in connection with the placement and adoption of a child. Employees are entitled to a seven-month child care leave for adoption. The seven-month leave may **begin** anytime between placement and the effective date of the adoption. Child care leaves beyond the seven-month period are at the discretion of the appointing authority, but cannot exceed two years of leave without pay except with approval of the Civil Service Commission.

#### 3. Expressing Breast Milk in the Workplace

Certain employees who are breast feeding may be entitled to express breast milk in the workplace during meal periods and paid rest breaks, and may be entitled to certain schedule adjustments or to additional rest periods for this purpose which are unpaid unless the employee elects to charge leave credits other than sick leave.

#### 4. Supervisor's Role – Leave for Pregnancy, Childbirth and Child Care

*The primary responsibility of the supervisor is to refer questions concerning pregnancy, childbirth and child care leave to your personnel office.*

#### 5. Unit Specific Provisions – Leave for Pregnancy, Childbirth and Child Care

##### Maternity and Child Rearing Leave

###### ASU, DMNA, ISU, M/C, OSU, PS&T, RRSU

Employees may delay the start of child care leave until a newborn is released from the hospital following birth or may interrupt a period of child care leave after it has commenced for a single continuous period of hospitalization. That period does not count toward the calculation of the seven-month period. When child care leave is interrupted, entitlement to mandatory child care leave expires one year from the date of birth of the child.

Employees on child care leave in connection with an adoption may suspend child care leave after it has commenced for a single, continuous period of hospitalization if the child is required to be admitted to a hospital for treatment. That period does not count toward the calculation of the seven-month period. When child care leave is interrupted, entitlement to mandatory child care leave expires one year from the date the leave originally began.

## Supervisor's Guide to Attendance and Leave Benefits

### K. Family and Medical Leave Act (FMLA)

State Attendance and Leave Manual  
Reference: Appendix I

#### K. Family and Medical Leave Act (FMLA)

*FMLA Note: The purpose of this section is to provide supervisors with background information on the FMLA. All determinations regarding the FMLA are made by the personnel office, not the supervisor. Supervisors are not expected to become FMLA experts. See Appendix 1 of this Guide for more detailed background information about the FMLA.*

***As a matter of State policy, agencies are required to use the FMLA forms developed by the U.S. DOL. Any additional information agencies need to provide employees should be included in an attachment or in a cover letter as described in Department of Civil Service Policy Bulletin 2009-01 on Revised FMLA Regulations.***

The Family and Medical Leave Act (FMLA) is a federal law that gives eligible employees the right to take unpaid leave or paid leave charged to appropriate leave credits under certain circumstances, for a period of up to 12 workweeks in a calendar year. Employees cannot exceed a combined total of 12 workweeks of FMLA leave per calendar year for all qualifying reasons combined, excluding military caregiver leave.

Leave is available for absences due to the birth, adoption or foster care placement of a child, the need to care for a family member with a serious health condition or the employee's own serious health condition which makes the employee unable to perform the functions of his or her job. The determination as to what constitutes a serious health condition is made by the personnel office, not by the supervisor. The definition of what constitutes a serious health condition under the FMLA is included in Appendix 1.

The revised FMLA regulations which became effective in January 2009 include two new military family leave entitlements, qualifying exigency leave and military caregiver leave.

Qualifying exigency leave allows eligible employees to take up to 12 weeks of FMLA leave per calendar year for a qualifying exigency because the employee's spouse, son, daughter or parent in the Armed Forces (including the National Guard or Reserves) is on covered active duty (deployment to a foreign country) or has been notified of an impending call or order to covered active duty. The leave is available for such purposes as to attend official ceremonies, events or programs sponsored by the military that are related to the call to active duty, to make or update financial or legal arrangements, for certain school activities and urgent childcare arising from the military deployment, and to spend time (up to five days per



## Supervisor's Guide to Attendance and Leave Benefits

### K. Family and Medical Leave Act (FMLA)

State Attendance and Leave Manual  
Reference: Appendix I

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instance) with a military member who is on a short-term temporary leave during the period of deployment.

Military caregiver leave allows eligible employees to take up to 26 weeks of military caregiver leave under the FMLA in a single 12-month period to care for a covered servicemember with a serious injury or illness that was incurred in the line of duty while on active duty in the Armed Forces (including the National Guard or Reserves). This leave is available to eligible employees who are the spouse, parent, son, daughter or next of kin of a covered servicemember. Employees cannot exceed a combined total of 26 weeks of FMLA leave for any qualifying reason during the designated 12-month period.

These leave categories are described in greater detail in Appendix 1.

An employee is deemed to have given notice of the need for FMLA leave whenever the employee tells the supervisor that the absence is due to a condition that meets the FMLA definition. The employee does not have to specifically ask for FMLA leave by name so long as the employee gives sufficient information so that the agency knows that the reason for the absence is FMLA-qualifying. **Therefore, it is critical that the supervisor notify the personnel office immediately of any possible FMLA situation.**

Generally, FMLA leave will run concurrently with an employee's entitlements under the State's leave policies. However, employees do have the option of whether to take FMLA leave as leave without pay or to charge appropriate leave credits, including the option to determine which appropriate leave credits to charge and in what sequence.

#### 1. Eligibility for FMLA Leave

An employee is eligible to receive FMLA leave if the employee has been employed for 12 cumulative months (52 weeks) and has actually worked a minimum of 1,250 hours of service during the 12 months immediately preceding the date the leave is requested to begin. An employee's total State service must be counted when determining if the employee has completed the required 52 weeks of service and includes any periods of short-term disability leave and sick leave at half-pay. However, with the exception of ordered military duty and employee organizational leave (but not union leave), neither paid nor unpaid leave counts toward the 1,250-hour threshold.

When an employee requests FMLA leave it is the agency's responsibility to determine:

- If the request is a qualifying event under the FMLA based on the verbal or written information the employee provides, even if the employee does not specifically request the leave as FMLA leave;

## Supervisor's Guide to Attendance and Leave Benefits

### K. Family and Medical Leave Act (FMLA)

State Attendance and Leave Manual  
Reference: Appendix I

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- Whether the employee has been employed for 12 cumulative months as of the date the leave is expected to begin;
- Whether the employee has met the requirement of completing 1,250 hours of service within the 52 weeks immediately preceding the date the leave is to begin; and
- Whether the employee has FMLA entitlement remaining in the calendar year.

Upon receipt of information from an employee that an absence may be FMLA-qualifying, a supervisor must act quickly and pass along such information to the personnel office. (Under State policy, the agency must designate the first 12 weeks of qualifying absence in a calendar year as FMLA leave. This is not a matter of employee option.)

In some cases, such as pregnancy and certain chronic medical conditions, the personnel office may designate intermittent absences for a specified period as FMLA leave. In such cases, the employee need only provide notice when calling in sick that the particular absence is related to the FMLA-qualifying condition. The supervisor should make sure that such absences are properly noted on the employee's time record.

For intermittent absences due to a single serious health condition, the employee must meet the 1250-hour requirement at the beginning of the period of designated intermittent leave, not for each individual absence. If an employee requests an extension of the designated period of leave for the same condition within the same calendar year, the employee continues to have met the 1250-hour requirement. However, for all FMLA absences, the designated period ends at the end of the calendar year and the employee must again meet the 1250-hour requirement if absent in the new calendar year, even for the same serious health condition.

## 2. FMLA Medical Documentation

The FMLA places certain restrictions on the type and frequency of medical documentation that may be required for covered absences as well as the amount of time the employee must be given to provide documentation.

Upon receipt of the medical certification, certain employer representatives, including human resources professionals, leave administrators and management officials, or a health care provider representing the agency (but not the direct supervisor) may contact the employee's health care provider with the employee's permission for the limited purposes of clarifying the information in the medical certification and/or authenticating the certification. Additional information on the employee's condition may not be sought. For purposes of authentication, an employee may be required to execute a HIPAA waiver to authorize that contact. For purposes of clarification, prior to making any contact with the health care provider, the employer must first provide the employee an opportunity to cure any deficiencies in the

## Supervisor's Guide to Attendance and Leave Benefits

### K. Family and Medical Leave Act (FMLA)

State Attendance and Leave Manual  
Reference: Appendix I

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certification. If the employee does not do so, the employee may be required to execute a HIPAA waiver to authorize employer representatives to contact the employee's health care provider to clarify the information in the medical certification.

The FMLA further provides a 15-day time period for the employee to submit medical documentation from the point at which it is requested. Any questions about medical documentation should be referred to your personnel office.

### 3. Protection of Employees Under the FMLA

It is important to remember that employees may not be counseled or disciplined, nor may they be subject to adverse personnel actions as a result of absences which were or should have been designated as FMLA leave. Furthermore, FMLA absences cannot be counted as instances or occasions under agency sick leave control plans.

### 4. Supervisor's Role - Family and Medical Leave Act

The primary responsibilities of the supervisor are to:

- Make sure employees under your supervision are aware of the availability of leave under the FMLA and their option to use leave credits.
- Notify your personnel office immediately of any information you receive from an employee that indicates that an absence may be covered by the FMLA.
- When leave under the FMLA has been approved for intermittent absences, make sure those absences are noted as FMLA absences on the employee's time record.
- Refer questions on eligibility, entitlement and medical documentation to the personnel office.

### L. Leave Donation Program

The leave donation program is intended to assist employees who, because of long-term personal illness, have exhausted their leave benefits. It provides for the donation of vacation credits from fellow employees to the ill employee for his or her use as sick leave.

Employees may elect to use donated leave in full-day units before using sick leave at half-pay or in full or half-day units after using sick leave at half-pay.

#### 1. Eligibility

The program is available to eligible employees in all bargaining units. Donations may be made to employees in the same bargaining unit or in other bargaining units, provided there are in effect Leave Donation Exchange Memoranda of Agreement between GOER and the employee organizations representing both the proposed recipient and the proposed donor, or applicable attendance rules for M/C employees, that authorize such donations. Donations may be made to employees in the same department or agency as well as to both family members and non family members employed in different agencies.

Donations are governed by the provisions of the program applicable to the donor. Receipt, crediting and use of donations are governed by the provisions of the program applicable to the recipient.

#### Eligibility Criteria - Donors

In order to donate vacation credits an employee must have a minimum vacation balance of at least ten days after making the donation, based on the donor's work schedule. Vacation credits which would otherwise be forfeited may not be donated.

#### Eligibility Criteria - Recipients

In order to receive donated leave credits, an employee must:

- Be subject to the Attendance Rules or otherwise eligible to earn leave credits;
- Be absent due to a non-occupational personal illness or disability for which medical documentation satisfactory to management is submitted as required;
- Have exhausted all leave credits;
- Be expected to continue to be absent for at least two biweekly payroll periods following exhaustion of leave credits or sick leave at half-pay;
- Must not have had any disciplinary actions or unsatisfactory performance evaluations within the employee's last three years of State employment.

# Supervisor's Guide to Attendance and Leave Benefits

## L. Leave Donation

State Attendance and Leave Manual  
Reference: Appendix H

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### 2. Restrictions on Donations

Only vacation credits which would not otherwise be forfeited may be donated. Credits must be donated in full-day units (7½ or 8 hours). There is no limit on the number of times an eligible donor may make donations. Donated credits not used by recipients are returned to the donor, provided the donor is employed in the same agency as the recipient.

There is no maximum number of days which a recipient employee may accept, provided that donated credits cannot be used to extend employment beyond the point it would otherwise end by operation of law, rule or regulation. There is no maximum number of donors from whom an eligible employee may accept donations.

An employee's continuing eligibility to participate in this program must be reviewed by the agency personnel office at least every 30 days and more frequently if appropriate, based on current standards as to what constitutes satisfactory medical documentation.

### 3. Use of Donated Credits

Donated credits may be used, at the employee's option, in full-day units after exhaustion of all leave credits and prior to sick leave at half-pay or in either full or half-day units after exhaustion of sick leave at half-pay.

An employee who opts to use donated credits prior to sick leave at half-pay is permitted to again participate in this program following exhaustion of sick leave at half-pay. Use in full or half-day units is based on the recipient employee's work schedule. (In special circumstances, an agency may permit an employee to interrupt sick leave at half-pay to use donated leave received after sick leave at half-pay began.)

Employees enrolled in the Income Protection Plan (IPP) may use donated credits only after all leave credits (not just sick leave credits) have been exhausted and prior to receiving IPP benefits. Such donated credits must be used in full-day units.

Donations made across agency lines shall be used prior to donations made within the agency.

### 4. Status of Recipient Employees

Recipient employees are deemed to be in leave without pay status while charging donated leave credits. They do not earn accruals or observe holidays, nor do they receive personal leave or vacation bonus days if their anniversary dates fall while using donated leave credits. Time charged to donated leave credits does not count as service for earning additional eligibility for sick leave at half-pay.

Employees using donated leave receive retirement service credit for days in pay status.

# Supervisor's Guide to Attendance and Leave Benefits

## L. Leave Donation

Health insurance premiums, retirement contributions and other payroll deductions continue to be withheld from the employee's paycheck so long as the check is of an amount sufficient to cover these deductions.

### 5. Requesting and Processing Donations

Donations may be solicited by the recipient employee, on his or her behalf by co-workers, or by local union representatives. The employing agency may not solicit donations on the employee's behalf. The identity of donors is confidential and may not be disclosed by agency management.

The employing department or agency is responsible for verifying medical documentation, reviewing eligibility requirements, approving and processing donations, confirming employee acceptance of donations and transferring credits. This program is not subject to contractual grievance procedures.

### 6. Supervisor's Role – Leave Donation Program

*The primary responsibilities of the supervisor are to:*

- *Ensure that eligible employees under your supervision are aware of the availability of this program.*
- *Notify your personnel office if an employee under your supervision who is absent may exhaust leave credits within a few weeks and become eligible to receive donated leave.*
- *Ensure that leave records for donors and recipients under your supervision are completed correctly.*
- *Contact your personnel office with questions.*

### 7. Unit Specific Provisions – Leave Donation Program

#### **ASU, DMNA, ISU, M/C, OSU, PS&T, RRSU**

Employees in these units may donate across agency lines to both family members and non-family members employed in other agencies.

#### **SSpU, SSU, APSU**

The entire leave donation program for these units, including the provision permitting employees in these units to donate across agency lines to non-family members, expires March 31, 2013 unless it is extended by mutual agreement of the parties.

# Supervisor's Guide to Attendance and Leave Benefits

State Attendance and Leave Manual  
Reference: 21.9, 21.10, 21.12, 23.1,  
23.3, 25.1

## M. Other Leaves and Benefits

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### M. Other Leaves and Benefits

In addition to the leaves described in detail below, the following leaves are also available subject to certain limitations: leave for cancer screening, blood donation, bone marrow donation, organ donation, certain athletic competitions, Red Cross disaster relief volunteers, and volunteer firefighters and volunteer ambulance squad members during a state of emergency declared by the Governor.

There may also be agency-specific policies concerning time to attend agency-sponsored social activities. Questions about these benefits should be directed to your personnel office.

#### 1. Employee Organization Leave

Employee Organization Leave (EOL) is release time, without charge to an employee's accumulated leave credits, which is granted to designated representatives or officers of the union for the purpose of conducting union business. The intent of EOL is to protect employees who are designated as representatives of the union from loss of earnings or leave credits for time spent conducting union business during regularly scheduled work hours. Employees are not entitled to receive any form of overtime compensation or compensatory time off for time spent conducting union business outside of the regularly scheduled workday or on a holiday. EOL is permitted for two purposes: (a) to conduct the internal affairs of the union; and (b) to directly represent employees.

##### A. Internal Union Affairs

Each collective bargaining agreement establishes blocks of time to be used by the union's designees to participate in the internal affairs of the union. Internal union affairs include such activities as Board meetings, Committee meetings, and Delegate meetings. Absences of individual employees to participate in such activities, with the time charged to the union's block of EOL days, are subject to the following: (1) The union must provide the Governor's Office of Employee Relations with advance notice as to the date and purpose of the meeting and the specific employees designated to participate; and (2) The individual employee must obtain advance approval from his or her agency to be absent on the specified day(s). Approval is subject to the operating needs of the agency, but should not be unreasonably withheld.

##### B. Employee Representation

The contracts generally provide that a "reasonable" number of employees will be granted a "reasonable" amount of EOL to engage in such activities as representation of employees in the processing of grievances, participation in negotiations with the State, and attendance at labor/management committee meetings. Although there are no specified limits on the amount of such EOL, any absences for these purposes are also

# Supervisor's Guide to Attendance and Leave Benefits

State Attendance and Leave Manual  
Reference: 21.9, 21.10, 21.12, 23.1,  
23.3, 25.1

## M. Other Leaves and Benefits

---

subject to the advance approval of the employee's supervisor. Such approval may be withheld when the resulting absence would unduly interfere with operational needs.

Employee Organization Leave for collective bargaining negotiations and for labor/management meetings is also subject to the approval of the management representatives with whom the negotiations are being held.

Employee Organization Leave for grievance representation may be granted only to authorized designees of the employee organization and may be used only for the specific purpose of investigating and processing grievances. The investigation of grievances is applicable only to the period of time prior to the filing of the grievances and through the second stage of the grievance procedure. The processing of grievances is limited to such time as is reasonable and necessary for appearances at grievance hearings or reviews.

Additional time spent preparing for grievance hearings or reviews, subsequent to time authorized for grievance investigation as described above, is not an appropriate use of EOL. However, time off which is properly charged to employee leave credits (excluding sick leave) may be granted for this purpose.

Grievance representatives, as well as other designees of employee organizations who may be entitled to use EOL for specific purposes at specified times, are required to comply with the same attendance requirements as all other employees. They are required to be at their workstations performing their assigned work duties except when they are using leave credits or are on EOL for a specified purpose at a specified time with the advance approval of their supervisors. Supervisors are entitled to know the specific reason for the use of EOL (excluding details of a particular grievance), the amount of EOL which will be required and where the employee may be reached during the absence.

### C. Supervisor's Role – Employee Organization Leave

*The primary responsibilities of the supervisor are to:*

- *Keep in mind that the primary responsibility of every State employee is to provide services to the State. Employee Organization Leave should not be granted when it would unduly interfere with the proper functioning of the department or agency. The supervisor has both the right and the responsibility to monitor the use of EOL to ensure that it is properly used and to ensure that its use does not interfere with the reasonable operating needs of the State. The supervisor also has a responsibility to ensure that employees who are*



# Supervisor's Guide to Attendance and Leave Benefits

State Attendance and Leave Manual  
Reference: 21.9, 21.10, 21.12, 23.1,  
23.3, 25.1

## M. Other Leaves and Benefits

---

*designated as eligible to use EOL are not unreasonably or arbitrarily denied the opportunity to do so.*

- *Refer questions concerning the use of EOL to your agency employee relations office.*

### **D. Unit Specific Provisions – Employee Organization Leave**

Employee Organization Leave benefits vary by bargaining unit. Supervisors should contact their agency labor relations or personnel office before approving any EOL.

## **2. Court Appearances and Jury Duty**

To allow employees to perform their civic duties without penalty, an employee who has been determined to be overtime eligible is entitled to leave with pay without charge to credits to report for jury duty or appear as a witness in a court or quasi-judicial proceeding in response to a subpoena or other order, provided the employee is not a party to the action.

Employees deemed to be ineligible for overtime are entitled to leave with pay without charge to leave credits for jury duty and for absences of less than a full workweek to appear in court or before a quasi-judicial body in response to a subpoena or other order, even if they are a party to the action. When overtime ineligible employees are absent for full workweeks to appear in court, they are entitled to paid leave only if they are not parties to the action. A workweek is the Thursday through Wednesday payroll workweek.

A supervisor may request satisfactory proof that the employee's presence is required for court appearance or jury duty. In addition, the employee may be required to provide a record of jury duty attendance from the court for each individual day of attendance.

Employees should generally be required to report for duty in their agencies at all times when their attendance for court appearance or jury duty is not required. However, employees who have devoted a full day to jury duty or a court appearance, and who are scheduled to work a full shift other than the regular day shift, may, at the discretion of the appointing authority, be granted leave with pay for the scheduled shift. The supervisor may opt to reschedule the employee to the day shift for the duration of the jury duty or court assignment in accordance with provisions in the negotiated agreements on workday/workweek. The supervisor is required to reschedule shifts, wherever practicable, for employees in the Operational, Institutional, and Administrative Services Units. Under no circumstances may an employee be granted compensatory time off in lieu of ordered appearances and jury duty attendance on a pass day or a holiday.

# Supervisor's Guide to Attendance and Leave Benefits

State Attendance and Leave Manual  
Reference: 21.9, 21.10, 21.12, 23.1,  
23.3, 25.1

## M. Other Leaves and Benefits

---

Although employees should generally be encouraged to fulfill their civic duties, they may be encouraged, but may not be required, to request a deferment of jury duty responsibilities when it is deemed necessary for the efficient conduct of government business.

### A. Supervisor's Role – Court Appearance and Jury Duty

*The primary responsibilities of the supervisor are to:*

- *Communicate expectations to employees concerning reporting to work before jury duty or court appearances and returning to work following jury duty or court appearances, as well as any documentation requirements that may apply.*
- *Discuss schedule adjustment issues with your personnel office.*

### B. Unit Specific Provisions – Court Appearances and Jury Duty

#### **ASU, DMNA, ISU, OSU**

To the extent practicable, and upon request, shift employees are entitled to have their shift changed to the normal day shift for the duration of the jury duty. Such shift change may not occur more frequently than once every two years.

Where the supervisor cannot change the employee's shift, the agency must provide the employee with a letter explaining why the change cannot be accommodated. This letter may be used by the employee should the employee desire to seek to be excused from jury duty.

## 3. Civil Service Examinations

Upon sufficient advance notice to their supervisors, employees are entitled to receive leave at full pay without charge to leave credits for the purpose of taking a New York State Civil Service examination which is scheduled during regular work hours or to be interviewed for a State position, provided the employee did not initiate the interview.

An interview which results from response to a canvass letter or other agency-initiated inquiry directed to a specific employee is not deemed to be employee-initiated. An employee is deemed to have initiated an interview if the interview is the result of a phone inquiry made by the employee, an unsolicited resume submitted by the employee or a response to a posting. An agency may have special policies regarding time to attend interviews within the agency.

Reasonable travel time and mealtime, if appropriate, should also be granted in connection with this leave. Some of the negotiated agreements additionally require that, under certain circumstances, the employee be given time off prior to an examination (see Unit Specific Provisions).

# Supervisor's Guide to Attendance and Leave Benefits

State Attendance and Leave Manual  
Reference: 21.9, 21.10, 21.12, 23.1,  
23.3, 25.1

## M. Other Leaves and Benefits

---

Time off for the purpose of reviewing or appealing examinations must be charged to leave credits other than sick leave. A supervisor may not disapprove use of leave for this purpose if, as a result of that disapproval, the employee is denied the opportunity to review or appeal an examination which the employee has taken.

### A. Supervisor's Role – Civil Service Exams

*The primary responsibilities of the supervisor are to:*

- *Make employees aware of procedures and requirements for requesting time off for Civil Service exams, interviews, and exam reviews/appeals.*
- *Discuss issues concerning time off and return to work with the personnel office.*

### B. Unit Specific Provisions – Civil Service Examinations

#### **ASU, ISU, OSU**

Employees who are scheduled to work during the eight-hour period immediately preceding the time they are to report for a written New York State Civil Service examination should be allowed time off without charge to leave credits, consistent with the operating needs of the agency. The need to schedule overtime may not be used as a reason to deny the time off.

#### **SSpU, SSU, APSU**

Employees cannot be required to work any shift which ends less than eight hours before they are scheduled to take a New York State Civil Service examination and cannot be required to charge such absences to leave credits.

#### **M/C**

Employees whose shift ends less than eight hours prior to the starting time of a New York State Civil Service examination may be allowed leave with pay without charge to leave credits for part or all of such shift at the discretion of the appointing authority. If the employee can be spared, such time off must be leave with pay without charge to leave credits.

## 4. Military Leave

In accordance with Section 242 of the Military Law, employees who are members of the National Guard or a reserve component of the Armed Forces are entitled to receive up to 30 calendar days or 22 workdays, whichever is greater, of military leave with full pay each calendar year or during a continuous period of absence spanning more than one calendar year for ordered military duty. Requests for military leave should be supported by copies of orders, submitted in advance where possible. Employees cannot, however, be refused leave for failure to provide orders in advance. Actual performance of ordered military duty

# Supervisor's Guide to Attendance and Leave Benefits

State Attendance and Leave Manual  
Reference: 21.9, 21.10, 21.12, 23.1,  
23.3, 25.1

## M. Other Leaves and Benefits

---

may be confirmed by requiring employees to submit a copy of their Leave and Earnings Statement or other confirmation following completion of military duty.

Military leave with full pay may not be used in less than full day units. After exhausting the 30 calendar days or 22 workdays of leave with full pay, employees are entitled to military leave without pay for this purpose. Employees must be allowed to use leave credits other than sick leave during such period of leave, at their option, after exhausting their entitlement to military leave with pay under Section 242. Regular days off and shift assignments cannot be rescheduled to avoid military drills during working hours, unless the employee requests a schedule change.

Overtime ineligible employees who have exhausted statutory military leave with pay are entitled to paid military leave without charge to credits for periods of military leave of less than a full workweek. For this purpose, the workweek is the Thursday through Wednesday payroll week.

Employees who enlist in the armed forces are eligible for military leave without pay under Section 243 of NYS Military Law and under federal military law.

Reservists and members of the National Guard activated for military service in connection with the war on terror may also be entitled to special military benefits. Such employees should contact their personnel office for details.

### **Military Leave for Combat Related Health Care Services**

Section 242 (5)(b) of the Military Law entitles State officers and employees to paid leave without charge to leave credits for up to **five** work days of paid leave annually for any healthcare related services associated with an illness or injury sustained while in a combat theater or combat zone of operations.

#### **A. Supervisor's Role – Military Leave**

*The primary responsibility of the supervisor is to refer questions concerning military leave to your personnel office.*

## **5. Time Off to Vote**

Employees who are required to work on Election Day, and who do not have sufficient time to vote outside of working hours, are entitled to receive up to two hours of leave with pay without charge to leave credits to vote. Sufficient time to vote is defined as four consecutive hours either between the opening of the polls and the start of the employee's work shift or between the end of the employee's work shift and the closing of the polls. Such time off should be granted at either the beginning or the end of the workday as designated by the appointing authority, unless otherwise mutually agreed to by the

# Supervisor's Guide to Attendance and Leave Benefits

State Attendance and Leave Manual  
Reference: 21.9, 21.10, 21.12, 23.1,  
23.3, 25.1

## M. Other Leaves and Benefits

---

supervisor and the employee. If the employee requires time off to vote, the employee is required to notify the supervisor not more than ten and not less than two days prior to Election Day.

### A. Supervisor's Role – Time Off to Vote

*The primary responsibility of the supervisor is to refer requests for time off for this purpose to your personnel office.*

## 6. Extraordinary Circumstances

Extraordinary circumstances are defined as emergency situations such as severe weather conditions or building conditions which impact the ability of employees to report to work or which make it unsafe for employees to remain in the workplace.

### A. Directed Early Departures

Employees who have reported to work and are directed by the agency head to depart early because of extraordinary circumstances beyond their control are not required to charge the remainder of their work shift to accrued leave. Directed early departures generally do not apply to essential service staff. Directed early departures apply only to employees present at work at the time the departure is directed. Employees who reported but who left work prior to the directed departure must charge leave credits from the time they left work until the end of their shift.

Early departures may only be directed by the agency head with the approval of the Governor's Office of Employee Relations. Supervisors are not authorized to direct early departures or to instruct employees not to report to work.

### B. Full-Day Absences

Full-day absences due to extraordinary circumstances must be charged to leave credits. In certain cases, the Civil Service Commission may subsequently suspend the Attendance Rules to excuse such absences without charge to leave credits.

### C. Supervisor's Role – Extraordinary Circumstances

*The primary responsibilities of the supervisor are to:*

- *Become familiar with agency policies and procedures concerning extraordinary circumstances and communicate that information to the employees you supervise.*
- *Notify the Human Resources Department of workplace conditions that may warrant a directed early departure.*

# Supervisor's Guide to Attendance and Leave Benefits

State Attendance and Leave Manual  
Reference: 21.9, 21.10, 21.12, 23.1,  
23.3, 25.1

## M. Other Leaves and Benefits

---

### D. Unit Specific Provisions – Extraordinary Circumstances

#### Directed Early Departure

##### SSpU, SSU, APSU

Employees who have reported for duty and because of extraordinary circumstances beyond their control, other than those related to weather conditions, are directed to leave work shall not be required to charge such directed absence during such day against leave credits.

##### ASU, DMNA, ISU, M/C, OSU, PS&T, RRSU

Employees who have reported for duty and because of extraordinary circumstances beyond their control are directed to leave work shall not be required to charge such directed absence during such day against leave credits.

#### Full Day Absences

##### M/C, PS&T, RRSU

When the Governor declares a state of emergency in a specified geographic area based on circumstances which affect travel **and** directs that employees whose official stations are within the specified geographic area not report to work, such absences shall be excused with no charge to leave credits.

## 7. Professional Meeting Leave/Leave for Professional Examinations

Professional meeting leave is leave with pay to attend job-related seminars and conferences of professional organizations. In the PS&T and RRSU Units, it may also be used to attend programs to meet continuing education requirements to maintain licensure or accreditation with the employee's position with the State.

Leave for professional exams is available to employees taking professional examinations in the employee's professional discipline.

Such leave is not available in all units. The types of leave, the number of days allowed per year and guidance concerning use varies by bargaining unit. However, the use of both professional meeting leave and leave for professional examinations is uniformly subject to prior supervisory approval.

### A. Supervisor's Role – Professional Meeting Leave/Leave for Professional Examinations

*The primary responsibility of the supervisor is to refer questions concerning leave for this purpose to your personnel office.*

### B. Unit Specific Provisions – Professional Meeting Leave

#### Entitlement

# Supervisor's Guide to Attendance and Leave Benefits

State Attendance and Leave Manual  
Reference: 21.9, 21.10, 21.12, 23.1,  
23.3, 25.1

## M. Other Leaves and Benefits

---

### **PS&T**

Employees are allowed up to three days per year. Professional meeting leave is not cumulative and may not be liquidated upon separation from employment. Approval of such leave, which is at the discretion of the appointing authority, will be based on a determination by the appointing authority that: (1) the activity to be undertaken will directly benefit the agency, and (2) the absence will not interfere with the proper conduct of governmental functions.

### **RRSU**

Employees are allowed up to three days per year at the discretion of the appointing authority, provided the absence will not interfere with the proper conduct of governmental functions. Professional meeting leave is not cumulative, nor may it be liquidated upon separation from employment.

### **M/C**

The number of days which may be granted to employees is at the discretion of the appointing authority. Professional meeting leave is not cumulative, nor may it be liquidated upon separation from employment.

### **Use of Professional Meeting Leave**

#### **M/C**

Professional meeting leave may be properly utilized to attend conferences or seminars of recognized professional organizations where the conference is directly related to the employee's profession or professional duties. Professional meeting leave should be approved to the extent that it will not interfere with the operating needs of the department.

#### **PS&T, RRSU**

Professional meeting leave may be properly utilized to attend conferences or seminars of recognized professional organizations where the conference is directly related to the employee's profession or professional duties. Professional meeting leave should be approved to the extent that it will not interfere with the operating needs of the department.

Employees may also use this leave to attend programs which are necessary for the employee to maintain or obtain licensure or accreditation in the employee's position with the State. The training need not be offered by a professional organization.

### **PS&T**

The use of professional meeting leave may be restricted to five percent of the operating unit at any one time.

# Supervisor's Guide to Attendance and Leave Benefits

State Attendance and Leave Manual  
Reference: 21.9, 21.10, 21.12, 23.1,  
23.3, 25.1

## M. Other Leaves and Benefits

---

### **RRSU**

The use of professional meeting leave may be restricted to ten percent of the operating unit at any one time.

### **PS&T**

Agencies shall make every effort to accommodate requests from non-day shift employees to adjust their regular work schedule to allow them to use professional meeting leave.

### **ISU**

Licensed Practical Nurses, upon request, may be allowed time off from work without charge to leave credits to attend a conference or seminar or training directly related to their profession or professional duties. Such time off is subject to prior approval and shall not interfere with the proper conduct of government functions. This policy neither limits nor guarantees the amount of time that may be approved for such purposes.

## **C. Unit Specific Provisions - Leave for Professional Examinations**

### **M/C, PS&T**

Employees are permitted leave to participate in one professional examination in their discipline per fiscal year, excluding travel time. Travel time associated with such an examination should be charged to appropriate accrued leave credits. One professional examination may include several parts.

## **8. Leave for Licensure/Certification**

Leave for licensure/certification is leave with pay for employees in the ASU, DMNA, ISU, and OSU bargaining units who work in a position which requires a certification or a professional license as a minimum qualification. Leave for licensure/certification is available to employees attending a program that is verified as a requirement for the employee to maintain such license or certification for the employee's position with the State. This does not apply to Class D driver's licenses.

Such leave is available at the discretion of the appointing authority and is subject to prior approval. Such leave is not cumulative.



# Supervisor's Guide to Attendance and Leave Benefits

State Attendance and Leave Manual  
Reference: 21.9, 21.10, 21.12, 23.1,  
23.3, 25.1

## M. Other Leaves and Benefits

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### A. Supervisor's Role – Leave for Licensure/Certification

*The primary responsibility of the supervisor is to refer questions concerning leave for this purpose to your personnel office.*

## 9. Overtime Compensatory Time

Overtime eligible employees whose basic workweek is 37½ hours, who are directed to work additional hours, accrue overtime compensatory time for hours worked between 37½ and 40 hours in a Thursday through Wednesday payroll workweek. Such overtime compensatory time must be liquidated by the end of the fiscal year following the fiscal year in which it was earned. At separation from State service, employees can be compensated for up to 30 days of overtime compensatory time.

### A. Supervisor's Role – Overtime Compensatory Time

*The primary responsibilities of the supervisor are to:*

- *Make sure that employees under your supervision are aware of dates on which unused overtime compensatory time will lapse.*
- *Ensure that time records are accurately completed.*
- *Check with your personnel office if you have questions about compensatory time.*

### B. Unit Specific Provisions

#### CSEA and PEF

When mandatory overtime is worked in the 40-hour workweek, both scheduled and unscheduled absences charged to sick leave accruals are considered time worked.

When voluntary overtime is worked, a scheduled absence charged to sick leave accruals is considered time worked, but an unscheduled absence charged in that week to sick leave accruals is not considered time worked.

## 10. Compensatory Time for Hours Worked Over 40

Employees in certain bargaining units may elect to receive compensatory time instead of overtime pay at time and one-half rate for hours worked over 40 in a workweek.

### A. Supervisor's Role – Compensatory Time for Hours Worked Over 40

*The primary responsibilities of the supervisor are to:*

# Supervisor's Guide to Attendance and Leave Benefits

State Attendance and Leave Manual  
Reference: 21.9, 21.10, 21.12, 23.1,  
23.3, 25.1

## M. Other Leaves and Benefits

---

- *Make sure that eligible employees under your supervision are aware of the availability of this option.*
- *Ensure that time records are accurately completed.*
- *Check with your personnel office if you have questions.*

## B. Unit Specific Provisions

### **Over40 Comp Time II Pilot Program ASU, ISU, OSU, DMNA**

The Over40 Comp Time II pilot program allows eligible employees the option to earn compensatory time at the rate of time and one-half in lieu of overtime pay for hours worked in excess of 40 in a workweek.

To be eligible to participate in the Program, an employee must:

- Be employed in a bargaining unit represented by CSEA or PEF
- Be employed in an overtime eligible position allocated to grade 22 or below
- Enroll in the Program

The maximum accrual for Over40 Comp Time II is 240 hours. Over40 Comp Time II has no expiration date. Over40 Comp Time II accruals are not available for use as leave accruals. However, employees have the opportunity once a year to cash out up to 120 hours of accrued Over40 Comp Time II credits.

Employees represented by CSEA who participated in the Over40 Comp Time I pilot program and who enroll in Over40 Comp Time II have their Over40 Comp Time I accrual balances converted to Over40 Comp Time II credits and, under the provisions of that program, those converted credits are no longer available for use as leave accruals.

Employees represented by CSEA who participated in the Over40 Comp Time I pilot program and who do not enroll in Over40 Comp Time II retain their Over40 Comp Time I balances and those credits continue to be available for use as leave accruals subject to prior approval. However, employees are no longer eligible to earn any additional credits under the discontinued Over40 Comp Time I program.

# Supervisor's Guide to Attendance and Leave Benefits

State Attendance and Leave Manual  
Reference: 21.9, 21.10, 21.12, 23.1,  
23.3, 25.1

## M. Other Leaves and Benefits

---

### **FLSA Overtime Compensatory Time**

#### **M/C**

Overtime eligible employees can earn FLSA Overtime Compensatory Time at the rate of time and one-half in lieu of overtime pay for hours worked in excess of 40 in a workweek.

The maximum accrual for FLSA Overtime Compensatory Time is 240 hours.

# Supervisor's Guide to Attendance and Leave Benefits

## N. Supervisor's Role in Monitoring Leave Use

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### N. Supervisor's Role in Monitoring Leave Use

*FMLA Note: The following discussion does NOT apply to absences which were or should have been designated as leave under the Family Medical Leave Act (FMLA). Special medical documentation provisions apply to FMLA leave. Employees may not be counseled or disciplined, nor may they be subject to adverse personnel actions as a result of having taken FMLA leave. Furthermore, FMLA absences cannot be counted as instances or occasions under agency sick leave control plans.*

#### 1. Supervisor's Role in Monitoring Leave Use

The supervisor plays a critical role in communicating attendance policies and requirements to employees. The supervisor also plays a key role in identifying attendance problems and preventing their further development.

The purpose of this section is to assist supervisors in carrying out those responsibilities. This section contains a discussion of definitions as well as information on how to communicate expectations, identify attendance problems and ways to informally address such problems.

This section also touches on further action such as counseling and discipline that supervisors may be asked to take in conjunction with their agency personnel and/or labor relations offices when attendance problems require more formal intervention.

#### 2. Definitions

**Authorized Absence** - An authorized absence is one which is approved by the supervisor in advance or, under certain circumstances, at the time the absence occurs or after it has occurred.

**Scheduled Absence** - A scheduled absence is one for which advance notice can be given, such as use of vacation or personal leave, or use of sick leave for a routine dentist appointment. These also constitute authorized absences, if approved by the supervisor.

**Authorized but Unscheduled Absence** - An authorized but unscheduled absence is one for which approval was not obtained in advance but for which the supervisor subsequently grants approval. For example, an employee telephones the supervisor to say, "I don't feel well. I seem to have intestinal flu. I need to stay home," and the supervisor approves use of leave. Or the employee might say, "My furnace blew up last night, and I need to be here to meet the repair people. I'd like to take the day off and charge it to personal leave," and the supervisor agrees. These constitute authorized absences if approved by the supervisor.

## Supervisor's Guide to Attendance and Leave Benefits

### N. Supervisor's Role in Monitoring Leave Use

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Although an employee is normally required to obtain prior supervisory approval for an absence, emergency circumstances may sometimes prevent the employee from doing so. For example, the employee may require emergency medical attention. In such circumstances, the supervisor may authorize the employee to charge the absence to appropriate leave credits after the fact. Post-approval of an absence is at the discretion of the supervisor based on a careful consideration of the circumstances surrounding the absence. Some factors which a supervisor might consider in making such a determination include the nature of the emergency and whether it prevented the employee from notifying the supervisor.

**Unauthorized Absence** - An unauthorized absence is one for which the employee does not receive approval from the supervisor. For example, if an employee is absent without seeking permission from or reporting the absence to the supervisor, the absence is unauthorized. If the supervisor denies an employee's request to use personal or vacation leave because the unit cannot afford to have the employee take leave on the day in question and the employee is absent anyway, the absence is also unauthorized.

Unauthorized absences constitute grounds for counseling and/or disciplinary action and should, therefore, be immediately addressed by the supervisor. In determining what action is appropriate, the supervisor should consider the following factors: (1) the nature of the absence (i.e., the duration and circumstances of the absence), (2) the employee's past attendance record, and (3) whether there have been previous attempts at correcting the improper behavior. Supervisors should consult with their supervisor or the personnel or employee relations office for guidance on this matter.

**Tardiness** - Tardiness is arrival for work after the beginning of the employee's workday or return to work after the expiration of the time designated for the employee's meal period, without the approval of the supervisor.

**Tardiness Penalty Schedules** - Many agencies have adopted tardiness penalty schedules. Agencies that have tardiness penalty schedules must handle all tardiness in accordance with that schedule for employees subject to the tardiness penalty schedule. Overtime ineligible employees are not subject to agency tardiness penalty schedules. When tardiness becomes excessive, agencies must continue to charge absences in accordance with the agency tardiness penalty schedule but may simultaneously pursue disciplinary action. Specific information regarding your agency's tardiness penalty schedule may be obtained by contacting your personnel office.

**Call-in Requirements** - Many agencies have policies regarding calling in to work when an employee is going to be absent. While these requirements may vary from agency to agency, their essential purpose is the same: to allow the State to rearrange work and get substitutes as necessary, and to make sure services to taxpayers and clients are not

## Supervisor's Guide to Attendance and Leave Benefits

### N. Supervisor's Role in Monitoring Leave Use

---

impaired. If call-in requirements are clearly communicated and consistently enforced, an employee who does not follow the required procedure may, in certain circumstances, be considered to be on an unauthorized absence.

Under the Attendance Rules, employees can be required to call in on the first day of absence within two hours after the start of the scheduled workday. When the work is such that a substitute may be required, agencies may have policies regarding earlier notice, but no more than two hours before the beginning of the workday. (ISU employees whose work requires a substitute cannot be required to call in more than one hour before the start of their shift.)

Under agency policies, employees may be required to call in each day of the absence where the duration of the absence has not been established. Agency policies may also address to whom the employee must speak when calling in. (Employees in the ISU cannot be denied use of sick leave solely because they did not speak with their immediate supervisor.)

### 3. Preventing Attendance Problems

#### A. Communicating Expectations Regarding Attendance

The majority of employees use leave properly, but a number of agencies have found that improper use of sick leave is a serious problem. While improper use of any benefit is troublesome, improper use of sick leave is particularly difficult because it cannot be anticipated. It causes reassignment or delay of work, additional costs for overtime pay and deterioration of public services. In addition, inappropriate use of sick leave can create morale problems for co-workers who must pick up the slack for the absent employee. Improper use of sick leave credits can also harm the individual employee, by taking away the employee's protection against loss of income in the event of an accident or extended illness, and depriving the employee of extra service credit and health insurance premium credit upon retirement.

As a supervisor, you are responsible for making sure that employees are adequately informed about policies relating to the use of sick leave, and for monitoring the use of sick leave to ensure that it is used appropriately.

Every supervisor is expected to help set the tone concerning sick leave. By merely expressing honest interest in an employee, as in saying, "Welcome back. I hope you're feeling better," the supervisor indicates that the absence did not go unnoticed. If the expression is made in private, the employee is more likely to mention the cause of absence. If some support from the supervisor is needed, it can be given at that time.

Furthermore, supervisors should make all employees aware that attendance records are reviewed regularly, that absenteeism has a negative impact on the work unit and is one

## Supervisor's Guide to Attendance and Leave Benefits

### N. Supervisor's Role in Monitoring Leave Use

---

factor examined in evaluating individual work performance, and that failure to maintain acceptable attendance may lead to discipline or even dismissal. Supervisors should explain and enforce agency call-in procedures. Refer to the discussion of Call-in Requirements above.

Sick leave is a benefit for those who need it, but use should not be automatically approved. In appropriate situations, medical documentation may be required. Refer to Section F of this Guide, Sick Leave, for a discussion of Medical Documentation. Medical documentation requirements should be discussed with your personnel office and communicated to employees.

#### **B. Creating a Positive Work Environment**

Absenteeism can mask other problems. An employee may call in sick when illness is not the real problem. The underlying reason may be a negative attitude toward the job or work in general.

Studies have shown a definite connection between an employee's working conditions and attendance. The better the conditions, the better the attendance. A similar connection may exist between the employee's opinion of the supervisor and attendance.

Factors affecting the work environment are not always within the control of supervisors. However, the supervisor can foster an atmosphere that is pleasant and emphasizes cooperation.

It also is important for a supervisor to make a point of giving praise where it is due. Praise may be given in private or public, in the form of a memorandum to be included in the employee's personnel file, or in the form of a desirable assignment such as training a new employee. Being told when a job is done well can be instrumental in building job satisfaction and confidence.

In a related vein, it is important to let employees know the rules and regulations and the standards by which they will be judged, including those for attendance.

People generally are interested in their work and care a great deal about it. However, unless supervisors make consistent efforts to keep employees informed about developments in the work group, department and agency, turmoil and low morale may result.

Both absenteeism and high turnover may signal employee dissatisfaction with the work itself. In some instances where work is repetitive and routine, job enrichment techniques may be explored as a way of increasing employee satisfaction. Job enrichment does not mean more work; it means work that is more meaningful. For example, a clerk who

## Supervisor's Guide to Attendance and Leave Benefits

### N. Supervisor's Role in Monitoring Leave Use

---

performs only one aspect of a clerical or technical procedure may find the work more meaningful if assigned a combination of tasks which add variety, make greater use of employee skills and result in a sense of project completion.

#### 4. Identification of Problems

There is no hard and fast rule as to when sick leave use becomes inappropriate. Identification of inappropriate leave usage requires that the supervisor exercise judgment and discretion. Each case must be handled individually and the facts and circumstances surrounding the case should be carefully considered and evaluated.

When reviewing employee attendance, particular attention should be paid to frequent unscheduled absences, patterns in usage of sick leave, or situations where the supervisor has reason to believe that the sick leave was used for other than the intended or allowable purposes.

Supervisors should be alert to the following danger signals which may indicate inappropriate leave use:

- **Frequency**  
Supervisors of small units may be able to quickly spot employees with high absenteeism. But most supervisors will have to make a point of periodically examining attendance records. A supervisor checking employee records should give particular scrutiny to unscheduled absences.
- **Patterns**  
Employees who misuse sick leave may have a history of one-day "illnesses." They may have a pattern of Monday or Friday "illnesses" which extend weekends or other unscheduled days off, or they may have a pattern of using sick days to "bridge" holidays and days off.
- **Length**  
Excessively long absences usually are due to extended illnesses, occupational injury, or leaves of absences. Because medical judgments often are involved, this is one of the hardest areas of abuse to detect, although short-term absences may be harder to control. The supervisor who suspects that an employee is overextending an authorized absence should contact the personnel office for guidance.

Even if approved at the time, sick leave use which later emerges as part of a pattern of abuse may be considered part of a systematic violation.



## Supervisor's Guide to Attendance and Leave Benefits

### N. Supervisor's Role in Monitoring Leave Use

---

To monitor absenteeism, it is essential to have accurate written attendance records which show absences as well as time worked. It may also be a good idea for a supervisor to keep a personal logbook for notes and computations about employee attendance. Some supervisors find it helpful to calculate and log the rate of absenteeism monthly or quarterly.

Of course, not all extensive absence is related to abuse. Employees with good attendance records may have periods of time when illness or personal or family problems have an impact on their attendance.

Subject to certain restrictions, medical documentation may be requested to support the employee's need to be absent. Refer to the discussion of Medical Documentation in Section F, Sick Leave. Questions about medical documentation should be discussed with your personnel office. In some cases, the personnel office may require a medical examination as a condition of use of or return from sick leave.

When absenteeism is due to family or personal problems, the supervisor may consider suggesting that the employee contact the Employee Assistance Program (EAP), pointing out that it can provide referrals for help with a wide variety of problems.

## 5. Addressing the Problem

### A. Informal Intervention

Attendance problems should first be addressed informally through conversation with the employee, giving the employee an opportunity to improve attendance. Ignoring attendance problems will only allow them to continue and become worse. In fact, by ignoring problems or failing to address them promptly, a supervisor provides employees with tacit approval. This leads employees to believe that their inappropriate use of leave is acceptable and enables problems to continue.

If, after a review and analysis of the available information, a supervisor is concerned or has questions about either the frequency or appropriateness of sick leave use, it is both appropriate and necessary to address the situation with the employee through informal discussion. In doing so, the supervisor should remember that not all excessive sick leave use is due to abuse. For example, the discussion may reveal that the use of sick leave is due to underlying medical or personal problems. Depending on the results of the discussion, the supervisor should consult with the personnel office about appropriate next steps. These steps might include appropriate referral (for example, to EAP), requests for medical documentation, or formal intervention such as counseling and discipline.

### B. Formal Intervention

If the employee does not respond to informal intervention after being afforded the opportunity to improve his or her attendance, it may be necessary to consider more formal intervention. Such situations should be discussed with your personnel office or employee

## Supervisor's Guide to Attendance and Leave Benefits

### N. Supervisor's Role in Monitoring Leave Use

---

relations office. Depending on the circumstances, the following types of intervention may be undertaken:

- **Performance Evaluation Conferences**

Supervisors and employees meet to discuss and agree on performance objectives for each upcoming evaluation period, and meet again at the end of the period to discuss how well those objectives were met. Attendance is clearly a critical part of performance, and this is an ideal time for supervisors to reinforce earlier discussion about shortcomings in attendance.

- **Counseling**

Counseling is not punitive and is intended to be a positive and constructive device aimed at modifying the employee's behavior. Supervisors should consult with the employee relations office or personnel office before undertaking counseling. A helpful reference is *The Supervisor's Guide to Counseling*, which is available from the agency personnel office.

Generally, every counseling discussion after the first session should be confirmed in writing by a follow-up memorandum to the employee.

After review by proper managers, the supervisor should deliver the original memo to the employee, file a copy in the employee's personal history folder and tell the employee it has been so filed. The employee may file a rebuttal statement in the personal history folder.

- **Discipline**

When all earlier efforts have failed, the employer must turn to formal disciplinary procedures.

Discipline must be consistent and progressive to be effective. It is common sense that an employee should be notified that a problem exists and given a chance to improve before being disciplined.

But when these efforts fail, the supervisor may ask the personnel office, employee relations office or facility director to review a case history and decide whether to prepare a formal notice of discipline, specifying charges and proposing a penalty. Possible penalties include a letter of reprimand, fine, suspension, demotion or termination. Generally, a modest penalty is sought in the first disciplinary action against an employee for time and attendance problems.

## Supervisor's Guide to Attendance and Leave Benefits

### N. Supervisor's Role in Monitoring Leave Use

---

Most agencies would require a supervisor to present the actual attendance records, copies of counseling memoranda and pertinent performance evaluations for examination to determine whether disciplinary action is merited, and whether the supervisor has exhausted all other reasonable efforts to solve the problem.

A supervisor may also be asked to show that the rules have been consistently and uniformly applied to all. The foundation for action is formed by the supervisor's records substantiating systematic review of attendance patterns, notice to employees where those patterns seem to be a problem and efforts to correct problems.

A supervisor who condones or ignores violations of the attendance rules is derelict in fulfilling a major element of supervisory responsibility. Such inaction could be cause for disciplinary measures against the supervisor.

- **CSEA Time and Attendance Disciplinary Process**

CSEA contracts provide for an expedited disciplinary process for cases which involve a notice of discipline based solely on time and attendance, including tardiness. The process provides for a permanent umpire to review time and attendance disciplinary grievances in accordance with a schedule which sets forth minimum and maximum penalties for offenses. The schedule takes into account frequency of previous discipline in the time and attendance category and severity of the current charges.

The determinations of the permanent umpire are confined to the guilt or innocence of the grievant and the appropriateness of the proposed penalty. If an employee is found guilty, the umpire can uphold or reduce the proposed penalty in accordance with the schedule and, where appropriate, direct the grievant to attend counseling sessions or other programs jointly agreed upon by the State and CSEA.

The decision of the permanent time and attendance umpire is final and binding upon the parties and is not subject to appeal in any other forum, except in the case where a penalty of dismissal is upheld by the umpire. In such cases the decision and award may be reviewed in accordance with Article 75 of the NYS Civil Practice Law and Rules.

Generally, all notices of discipline based solely on time and attendance will proceed before the umpire. There is one exception. If, within the past three years, an employee has been found guilty or settled two prior notices of discipline not solely related to time and attendance, the State has the option of proceeding

## **Supervisor's Guide to Attendance and Leave Benefits**

### **N. Supervisor's Role in Monitoring Leave Use**

---

with a notice of discipline based solely on time and attendance before either the umpire or a regular disciplinary arbitrator. Thus, the employer may opt to restrict the penalty sought to those stipulated in the time and attendance schedule or propose a more serious penalty and proceed to arbitration. This exception does not apply to notices of discipline based solely on tardiness.

Additional information regarding this procedure may be obtained by contacting your employee relations office.

# Chapter I

## Supervisor's Guide to Attendance and Leave Benefits

### Appendix 1 – Family and Medical Leave Act

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#### Appendix 1 - Family and Medical Leave Act

*FMLA Note: The purpose of this section is to provide supervisors with background information on the FMLA. All determinations regarding the FMLA are made by the personnel office, **not** the supervisor. Supervisors are not expected to become FMLA experts.*

*As a matter of State policy, agencies are required to use the FMLA forms developed by the U.S. DOL. Any additional information agencies need to provide employees should be included in an attachment or in a cover letter as described in Department of Civil Service Policy Bulletin 2009-01 on Revised FMLA Regulations.*

#### 1. Analyzing Eligibility

Signed into law on February 5, 1993, the FMLA allows eligible employees of a covered employer to take job-protected, unpaid leave under certain circumstances for up to a total of 12 workweeks per calendar year. The purpose of this leave is to “balance the demands of the workplace with needs of families, to promote the stability and economic security of families, to promote national interests in preserving family integrity, to entitle employees to take reasonable leave for medical reasons, for the birth or adoption of a child, and for the care of a child, spouse, or parent with a serious health condition.” FMLA regulations were revised in January 2009 and include two new military family leave entitlements – qualifying exigency leave and military caregiver leave.

Requests for leave must be examined for eligibility.

##### A. Is the employer eligible?

For the purposes of the FMLA, the State of New York is considered a single employer and therefore, a covered employer.

##### B. Is the employee eligible?

The employee is eligible if he or she meets two requirements:

- The employee must have worked for the State of New York for at least 12 cumulative months. These months need not be consecutive nor do they have to occur within a limited or finite period of time. If an employee is maintained on the payroll for any part of a week, including any periods of paid or unpaid leave, the week counts as a week of employment. Therefore, seasonal employees who work three months per year for four years could satisfy this eligibility criteria despite the fact that they are

# Chapter I

## Supervisor's Guide to Attendance and Leave Benefits

### Appendix 1 – Family and Medical Leave Act

---

seasonal and appointed anew each year. Once this eligibility criteria is satisfied by an employee, it is satisfied for the remainder of the employee's employment.

- The employee must also have worked 1250 hours in the 12 months prior to the leave. The FMLA uses the Fair Labor Standards Act's (FLSA) definition of hours of work as that time that an employee was "suffered or permitted to work." Essentially, the employee must have actually worked 1250 hours in order to be eligible for leave. Paid and unpaid leaves are not included in this calculation. However, for purposes of meeting the 1250-hour requirement, time spent on approved Employee Organization Leave (but not on Union Leave) must be counted, as must time the employee would have worked but for the performance of ordered military duty. The 1250-hour requirement may be met by working hours in excess of the regular work schedule. An agency must determine whether an employee meets this eligibility criteria each time FMLA leave is requested. For intermittent absences due to a single serious health condition, the employee must meet the 1250-hour requirement at the beginning of the period of designated intermittent leave, not for each individual absence. If an employee requests an extension of the designated period of leave for the same condition within the same calendar year, the employee continues to have met the 1250-hour requirement. However, for all FMLA absences, the designated period ends at the end of the calendar year and the employee must again meet the 1250-hour requirement if absent in the new calendar year, even for the same serious health condition.

#### C. Does the event qualify?

Employees cannot exceed a combined total of 12 weeks of FMLA leave per calendar year for all qualifying reasons combined, excluding military caregiver leave. Subject to that limitation, employers are required to grant FMLA leave in the following circumstances:

- **Birth of a child and to care for the newborn child.**

While the regulations specifically state that FMLA leave may be taken for the birth of a child, an expectant mother may take FMLA leave before the birth of the child for prenatal care or if her condition makes her unable to work.

A husband and wife who are employed by New York State are only entitled to take a combined total of 12 weeks for the birth. If each spouse took six weeks of leave following the birth of their child, for example, each could later use six weeks for another FMLA qualifying event.

- **Placement with the employee of a child for adoption or foster care.**

FMLA leave is available to an eligible employee before the actual placement or adoption of a child if the absence from work is required for the placement to

# Chapter I

## Supervisor's Guide to Attendance and Leave Benefits

### Appendix 1 – Family and Medical Leave Act

---

proceed. Counseling sessions, court appearances, consultations with lawyers and health care professionals, or submission to a physical exam would qualify.

A husband and wife who are employed by New York State are only entitled to take a combined total of 12 weeks for the adoption or foster care placement of a child. If each spouse took six weeks of leave for the adoption of their child, for example, each could later use six weeks for another FMLA qualifying event.

- **Care for an employee's spouse, son, daughter, or parent with a serious health condition.**

The FMLA defines spouse as husband or wife as defined or recognized under State law for the purpose of marriage. In accordance with state policy, the term spouse must be interpreted to include same-sex marriages that are legally performed in jurisdictions where they are legally recognized.

Son or daughter is defined as a biological, adopted or foster child, a stepchild, legal ward, or a child of a person standing *in loco parentis*, who is either under 18 or age 18 or older and incapable of self-care because of a mental or physical disability.

Parent is defined as a biological parent or an individual who stands/stood *in loco parentis* to an employee when the employee was a son/daughter as described above. This term does not include "parents-in-law." A person *in loco parentis* includes those with day-to-day responsibilities to care for and financially support a child or who had such responsibility for the employee when the employee was a child. No biological or legal relationship is necessary.

An agency is free to ask for confirmation of any of the above relationships from an individual. Acceptable documentation includes a birth certificate, a court document or even a simple statement from the employee confirming the relationship.

Eligibility for family sick leave under the Attendance Rules differs from leave for family illness under the FMLA and, accordingly, a leave not covered by the FMLA may still be sanctioned under the Attendance Rules.

- **An employee's own serious health condition which makes the employee unable to perform the functions of his or her job.**

It is sometimes difficult to determine whether leave due to the employee's own illness qualifies as a serious health condition under the FMLA. All personal illnesses or injuries should be analyzed to determine if they fall under the definition of a serious health condition.

# Chapter I

## Supervisor's Guide to Attendance and Leave Benefits

### Appendix 1 – Family and Medical Leave Act

---

A “**serious health condition**” is an illness, injury, impairment, or physical or mental condition that involves either *inpatient care* or *continuing treatment by a health care provider*.

Inpatient care (i.e., overnight stay) is readily ascertainable by the agency and is defined as care at a hospital, hospice or residential medical care facility, including any period of incapacity, or any subsequent treatment in connection with such inpatient care.

Continuing treatment by a health care provider falls into five categories:

- a) A period of incapacity of more than three consecutive calendar days and any subsequent treatment or period of incapacity relating to the same condition that also involves:
  - i. treatment two or more times within 30 days of the period of initial incapacity by a health care provider, nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services under orders of or referral by a health care provider; or
  - ii. treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of a health care provider. The first visit to the health care provider must occur within 7 days of the initial incapacity.
- b) Any period of incapacity due to pregnancy or for prenatal care.
- c) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition which requires periodic visits to a health care provider (at least two visits per year), continues over an extended period of time and may cause episodic rather than a continuing period of incapacity (i.e., asthma, diabetes, epilepsy).
- d) A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective (i.e., Alzheimer's, severe stroke or the terminal stages of a disease).
- e) Any period of absence to receive multiple treatments (including any period of recovery) either for restorative surgery after an accident or other injury or for a condition that would likely result in a period of



# Chapter I

## Supervisor's Guide to Attendance and Leave Benefits

### Appendix 1 – Family and Medical Leave Act

---

incapacity of more than three consecutive days in the absence of medical intervention or treatment [i.e., cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis)].

Incapacity is defined as the inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom. An employee's inability to work is judged by whether a health care practitioner has found the employee unable to perform any one of the essential functions of his or her position within the meaning of the Americans with Disabilities Act. Note that absences attributable to incapacity under letters b, c, or d qualify for FMLA leave even though the employee or the immediate family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three days. For example, an employee with asthma may be unable to report for work due to the onset of an asthma attack or a pregnant employee may be unable to report to work due to severe morning sickness.

Treatment includes examinations to determine if a serious health condition exists and evaluations of the condition, but does not include routine physical examinations or eye or dental exams. A regimen of continuing treatment may include a course of prescription medication (e.g., antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition (e.g., oxygen). A regimen of continuing treatment that includes the taking of over-the-counter medications such as aspirin, antihistamines, or salves, or bed rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is not, by itself, sufficient to constitute a "regimen of continuing treatment" for purposes of FMLA leave. (An individual who stays home for four days with the flu taking over-the-counter medication will probably not qualify for FMLA leave.)

#### **Qualifying Exigency Leave**

Eligible employees may take up to 12 weeks of FMLA leave per calendar year for a qualifying exigency because the employee's spouse, son, daughter or parent in the Armed Forces (including the National Guard or Reserves) is on covered active duty or has been notified of an impending call or order to covered active duty. For a member of a regular component of the Armed Forces, covered active duty means duty during the deployment of the member to a foreign country. For a member of a reserve component of the Armed Forces, covered active duty means duty during the deployment of the member to a foreign country in support of a contingency operation.

# Chapter I

## Supervisor's Guide to Attendance and Leave Benefits

### Appendix 1 – Family and Medical Leave Act

---

The FMLA regulations identify eight situations for which qualifying exigency leave may be taken by an eligible employee:

1. For “short-notice deployment” where a military member is notified of an impending call or order to covered active duty seven or fewer days from the date of deployment, in which case an eligible employee may take qualifying exigency leave for a period of seven days beginning on the date when the military member is notified of the impending deployment;
2. To attend official ceremonies, events or programs sponsored by the military that are related to covered active duty or call to covered active duty of a military member, or in advance of or during deployment to attend similarly related family support or assistance programs or informational briefings sponsored or promoted by the military, military service organizations or the Red Cross;
3. For certain childcare and school activities necessitated by covered active duty or the call to covered active duty status of a military member, including to arrange for alternative childcare, provide childcare on an urgent, emergency (but not routine, regular or everyday) basis, enroll or transfer a child in a new school or day care facility, or attend meetings with school or day care staff due to circumstances arising from the deployment of the military member;
4. To make or update financial or legal arrangements to address a military member's absence while on covered active duty, and act as the military member's representative with respect to issues involving military service benefits;
5. To attend counseling provided by someone other than a health care provider due to covered active duty or call to covered active duty status of a military member;
6. To spend time with a military member who is on a short-term, temporary rest and recuperation leave during the period of deployment, limited to five days for each instance of rest and recuperation;
7. To attend certain post-deployment activities, such as arrival ceremonies and reintegration briefings and address issues arising from the death of a military member while on covered active duty status;
8. For additional activities arising out of a military member's covered active duty or call to covered active duty status where the employer and the employee agree that such leave qualifies as an exigency and agree to both the timing and duration of the leave.

# Chapter I

## Supervisor's Guide to Attendance and Leave Benefits

### Appendix 1 – Family and Medical Leave Act

---

#### **Military Caregiver Leave**

Eligible employees may take up to 26 weeks of military caregiver leave under the FMLA in a single 12-month period to care for a covered servicemember with a serious illness or injury that was incurred in the line of duty while on active duty in the Armed Forces (including the National Guard or Reserves). The term 'covered servicemember' means a **member** of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or a **veteran** who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

In the case of a **member** of the Armed Forces (including a member of the National Guard or Reserves), the term 'serious injury or illness' means an injury or illness incurred by the servicemember in the line of duty while on active duty in the Armed Forces (or that existed before the beginning of the servicemember's active duty and was aggravated by service in the line of duty while on active duty in the Armed Forces) and manifested itself before or after the servicemember became a veteran, and is:

- (i) a continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember's office, grade, rank, or rating; or
- (ii) a physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service Related Disability Rating (VASRD) of 50 percent or greater, and such VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver leave; or
- (iii) a physical or mental condition that substantially impairs the covered veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service, or would do so absent treatment; or
- (iv) an injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans' Affairs Program of Comprehensive Assistance for Family Caregivers.

# Chapter I

## Supervisor's Guide to Attendance and Leave Benefits

### Appendix 1 – Family and Medical Leave Act

---

In the case of a **veteran** who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of 5 years preceding the date on which the veteran undergoes medical treatment, recuperation or therapy for the serious injury or illness, the term 'serious injury or illness' means a qualifying (as defined by the Secretary of Labor) injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.

Leave is available to the spouse, parent, son, daughter or next of kin of the covered servicemember. Next of kin is the nearest blood relative other than spouse, parent, son or daughter as defined in the FMLA.

Leave is available in a continuous block of time or on an intermittent or reduced schedule basis as required.

Eligible employees are entitled to up to 26 weeks of leave in a single 12-month period per covered servicemember per injury. Additional periods of up to 26 weeks of leave may be taken in subsequent 12-month periods to care for a different servicemember or to care for the same servicemember who has a subsequent serious illness or injury. A husband and wife employed by the same employer are limited to a combined 26-week military caregiver leave in a single 12-month period per servicemember per injury.

The 12-month period must be measured forward from the date an employee's first military caregiver leave begins. During the designated 12-month period, employees are limited to a combined total of 26 weeks of FMLA leave for any qualifying reason. Employees continue to be limited to 12 weeks of FMLA leave per calendar year for reasons other than to care for a covered servicemember.

## 2. Notification Requirements

### A. Employer's Notice of FMLA Availability

The FMLA regulations require that an employer post, and keep posted, a notice explaining the FMLA provisions and providing information concerning the procedures for filing violation complaints with the Wage and Hour Division of the U.S. Department of Labor (USDOL). This notice (WH Publication 1420) must be posted prominently in conspicuous places where it can be readily seen by employees and applicants for employment. Electronic posting may be sufficient in certain circumstances, with paper posting for employees without electronic access. Other requirements include posting in another language if a significant portion of workers are not literate in English, and inclusion of the notice in employee handbooks or other materials about employee benefits.

# Chapter I

## Supervisor's Guide to Attendance and Leave Benefits

### Appendix 1 – Family and Medical Leave Act

---

#### **B. Employee's Notice of Need for FMLA**

An employee need not assert FMLA rights or even mention the FMLA to properly give notice to an employer of the need for FMLA leave. However, the employee has to provide at least verbal notice sufficient to make the employer aware that the employee needs leave for an FMLA-qualifying reason, the anticipated timing of such leave and the duration of the leave. An employer may inquire further of the employee if more information is needed.

#### **C. Employer's Notice of Eligibility for FMLA Leave**

Upon receipt of an employee's request for FMLA leave, or upon the agency becoming aware that a leave may be FMLA-qualifying, the agency must notify the employee concerning their eligibility for leave within 5 business days by providing the employee with a Notice of Eligibility and Rights and Responsibilities form which details the employee's eligibility for such leave, specific expectations, obligations and consequences of the employee's failure to meet those obligations. If medical certification is being sought, the employee should also be provided with the appropriate medical certification form at that time. The employee has 15 days to provide a completed medical certification form, absent extenuating circumstances.

#### **D. Employer's Notice of Designation of FMLA Leave**

Upon receipt of sufficient information to determine whether leave is FMLA-qualifying, such as receipt of satisfactory medical documentation (e.g., the requested medical certification form), the agency must notify the employee of designation of the leave as FMLA-qualifying within 5 business days by providing the employee with a Designation Notice. The Designation Notice requires that the agency provide the employee with specific information such as the amount of FMLA leave that will be counted toward the employee's FMLA leave entitlement, if it is known at the time of the designation, and whether a fitness for duty certificate will be required upon return to work.

### **3. Medical Certification**

The FMLA regulations state that it is the agency's responsibility to inform an employee, in writing, if medical certification is necessary. This notice is included in the Notice of Eligibility sent to an employee outlining the employee's rights and obligations under the FMLA.

The agency must allow the employee at least 15 days after the employer's request to provide medical certification. This certification is provided at the employee's expense.

Upon receipt of the medical certification, certain employer representatives, including human resources professionals, leave administrators and management officials or a health care provider representing the agency (but not the direct supervisor) may contact the employee's health care provider with the employee's permission for the limited purposes of

# Chapter I

## Supervisor's Guide to Attendance and Leave Benefits

### Appendix 1 – Family and Medical Leave Act

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clarifying the information in the medical certification and/or authenticating the certification. Additional information on the employee's condition may not be sought. For purposes of authentication, an employee may be required to execute a HIPAA waiver to authorize that contact. For purposes of clarification, prior to making any contact with the health care provider, the employer must first provide the employee an opportunity to cure any deficiencies in the certification. If the employee does not do so, the employee may be required to execute a HIPAA waiver to authorize representatives to contact the employee's health care provider to clarify the information in the medical certification.

In most cases, an agency will be able to verify the appropriateness of designating a leave as FMLA-qualifying from this medical certification. However, if an agency questions the adequacy of a medical certification, the FMLA grants the agency the right to obtain a second opinion. In those exceptional cases where an agency has a valid reason to question whether an employee has a serious health condition, the Employee Health Service will assist the agency in obtaining a second opinion.

If the second opinion concludes that the requested leave is not FMLA-qualifying, a third opinion must be obtained from a physician jointly chosen by the agency and the employee, which is binding on both the employee and the agency. The costs of both the second and third opinion must be borne by the agency and the agency must reimburse the employee for any expenses incurred in obtaining the required second or third opinion.

#### **4. Relationship of Attendance Rules and Negotiated Agreements**

Benefits provided under the Family and Medical Leave Act may either add to or be designated to run concurrently with benefits authorized by the Attendance Rules and the negotiated agreements. New York State policy states that the first 12 weeks of a qualifying absence in a calendar year will be designated as FMLA leave. Benefits available under the FMLA do not replace or reduce benefits otherwise available under the Rules and the negotiated agreements.

##### **A. Approval of Absence and Use of Leave Credits**

Leave under the FMLA is unpaid leave and an employee must meet only the FMLA eligibility criteria in order to have the absence approved as a designated FMLA absence. Approval of the absence must be based solely on the employee meeting the FMLA criteria. Employees cannot be required to charge leave credits during a period of FMLA. During a period of unpaid FMLA leave, employees must be permitted to charge leave credits that they would otherwise be permitted to charge under the Rules and negotiated agreements for absences of that type. For example, when an employee requests to use family sick leave for an FMLA absence, the employee must meet the eligibility requirements for use of family sick leave under the Attendance Rules and the negotiated agreements. An employee requesting Qualifying Exigency Leave under the FMLA to make legal arrangements when her spouse is

# Chapter I

## Supervisor's Guide to Attendance and Leave Benefits

### Appendix 1 – Family and Medical Leave Act

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called to active duty could elect to charge the absence to vacation or personal leave, but not to sick leave.

The FMLA specifically permits employees to charge FMLA absences to vacation or personal leave credits irrespective of the availability of sick leave credits. That entitlement supersedes the normal State policy that sick leave credits must first be exhausted before absences otherwise chargeable to sick leave can be charged to other credits.

#### **B. Medical Documentation**

The FMLA restricts the type of information that may be required on a medical certification and permits the employee 15 calendar days following a request for documentation to provide it. The FMLA also restricts the frequency with which medical documentation (recertification) may be requested.

Employees may not be counseled or disciplined for FMLA absences nor can such absences be counted under agency absenteeism control programs.

#### **C. Personal Illness**

Not all absences due to personal illness rise to the level of meeting the definition of a serious health condition under the FMLA. Sick leave may be used when the employee is unable to work because of illness, including minor illnesses, and for routine medical appointments which do not qualify as leave under the FMLA. Sick leave may also be used for FMLA absences due to serious personal health conditions and treatment for such conditions. Leave under the FMLA is available for absences due to serious personal health conditions when the employee is unable to perform the essential functions of his or her job. An employee who must be absent from work to receive medical treatment for a serious health condition is considered to be unable to perform the essential functions of the position during the absence for treatment. Treatment includes examinations to determine if a serious health condition exists and evaluations of the condition.

#### **D. Family Sick Leave**

Under the Attendance Rules, employees may use up to 15 days per calendar year of accrued sick leave credits for illness or death in the family. Family is defined as any relative or relative-in-law regardless of place of residence, or any person with whom the employee makes his or her home. Family sick leave is available to provide direct care to the ill family member or, in certain cases, to accompany a family member to medical appointments (for example, in emergencies, where medical procedures will be performed, where significant medical information will be discussed or to accompany a relative who is incapable of going to the appointment on his or her own.) Family sick leave is available for routine family sick leave instances as well as more serious conditions.

# Chapter I

## Supervisor's Guide to Attendance and Leave Benefits

### Appendix 1 – Family and Medical Leave Act

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Under the FMLA, eligible employees may take up to 12 weeks of FMLA leave per calendar year for the serious health condition of a spouse, a parent (or person who stood *in loco parentis* to the employee when the employee was a child) or a natural, adopted or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis*. Leave under the FMLA is available when the employee is needed to care for a family member with a serious health condition. This includes providing psychological comfort where the relative's health care provider believes that the employee's presence will be beneficial to the patient. FMLA leave is also available to accompany an eligible family member to treatment for a serious health condition. An employee on approved FMLA leave for the serious health condition of a parent, spouse or child is eligible to use up to 15 days of family sick leave as described above during the FMLA absence, provided the absence also meets the criteria for use of family sick leave. For example, an employee taking military caregiver leave to provide care for her wounded son is eligible to charge up to 15 days of absence in a calendar year to family sick leave and may also elect to charge other categories of leave credits.

#### **E. Child Care Leave**

Child care leave is available under State policy on a mandatory basis to either parent for a maximum of seven months from the date of birth of the child. For adoptive parents, child care leave is available for a maximum of seven months commencing any time between date of placement and the effective date of adoption. Agencies may extend additional child care leave pursuant to agency policy. Child care leave is unpaid leave. Employees may elect to charge credits other than sick leave. (Sick leave can only be used for the disability period following childbirth.) When both parents are State employees, one may take the entire leave or the seven-month leave may be split. An employee who returns to work prior to the expiration of the seven-month period forfeits entitlement to child care leave for the balance of that seven-month period, except at agency discretion. Child care leave is not available pursuant to State policy for placement of a child for foster care. See Leave for Pregnancy, Childbirth and Child Care – Unit Specific Provisions for a discussion of entitlement to delay or interrupt child care leave for a single continuous period of hospitalization of the child.

Under the FMLA, employees are entitled to up to 12 weeks of child care leave for the birth of a son or daughter and to care for the newborn child, or for placement of a child for adoption or foster care. A husband and wife who are eligible for FMLA leave and are employed by the same covered employer (the State) are limited to a combined total of 12 weeks of leave during the calendar year for the birth or placement of a child. An employee's entitlement to this leave expires at the end of the 12-month period beginning on the date of birth or placement. Any FMLA leave for this purpose must be concluded within this one-year period. When the one-year period following birth or placement spans two calendar years, the employee, if otherwise eligible, is entitled to be granted up to 12 weeks of FMLA leave in each calendar year for this purpose. Child care leave under the FMLA must be taken in a block of time unless the agency permits otherwise.



# Chapter I

## Supervisor's Guide to Attendance and Leave Benefits

### Appendix 1 – Family and Medical Leave Act

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#### 5. Protection Provided by the FMLA

The FMLA provides for and protects certain rights of eligible employees. The FMLA's greatest protection is the framework provided for employees after they have exercised or attempted to exercise their rights under the FMLA. This protection can be broken down into two parts.

##### A. Protection From Employer Interference

This protection is really threefold; specifically, it is unlawful for an employer:

- to interfere with, restrain, or deny the exercise, or the attempt to exercise, any right provided under the FMLA;
- to discharge or discriminate, in any manner, against an individual for opposing any practice made illegal by virtue of the FMLA; and
- to interfere with proceedings and inquiries into violations of the FMLA by discharging or discriminating, in any manner, against any individual who complains about, gives information about, or testifies about the violation, or alleged violation, of rights under the FMLA.

Interfering with the exercise of rights includes refusing to authorize an FMLA-qualifying leave or discouraging an employee from using FMLA leave. Failure to provide the employee with the required written notice can be considered interference with the employee's FMLA rights. Interference also includes changing the essential functions of a position to preclude the taking of leave.

It should be noted that these provisions apply to employees who attempt to exercise a right under the FMLA even though they may not be covered by its provisions. For example, an employee who has worked less than 1,250 hours in the previous 12 months is clearly ineligible for FMLA leave. However, the anti-retaliation provisions protect that individual from discharge and discrimination if the individual attempts to have his or her health condition deemed covered by the FMLA.

##### B. Protection From Negative Employment Actions

The regulations implementing the FMLA clearly state that "employers cannot use the taking of FMLA leave as a negative factor in employment actions such as hiring, promotion or disciplinary actions; nor can FMLA leave be counted under 'no fault' attendance policies." The phrase "negative factor in employment actions" is not limited to just hiring, promotion and disciplinary actions, however. Therefore, agencies cannot term an action "non-disciplinary" and then use the taking of FMLA leave as a negative factor in taking that

# Chapter I

## Supervisor's Guide to Attendance and Leave Benefits

### Appendix 1 – Family and Medical Leave Act

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action. Agencies should not make reference to FMLA-qualifying leave in counseling memoranda and performance evaluations. References to absences in both, where relevant, should be strictly limited to absences that are not FMLA-qualifying. Agencies are advised to consider whether an employee's taking of FMLA leave has been factored into any decision affecting an employee and to avoid such consideration in all circumstances.

# Chapter I

## Supervisor's Guide to Attendance and Leave Benefits

### Appendix 2 – Compressed Work Schedule Accrual Chart

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#### Appendix 2 – Compressed Work Schedule Accrual Chart

Full-time employees on alternative work schedules of less than 10 days per pay period must be in full pay status for the number of full days indicated in the following chart in order to earn leave accruals for that biweekly payroll period. Note that a full day is defined as the number of hours the employee was scheduled to work on that day.

Scheduled workdays in a biweekly pay period	Full days in full pay status
9	6
8	6
7	5
6	4
5	3
4	3
3	2
2	1½

## ***Acknowledgement***

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