

CHAPTER 6

LEAVES, HOURS OF WORK AND EMPLOYEE DEVELOPMENT

Authority

N.J.S.A. 11A:2-6(d), 11A:6-1 through 11A:6-28, 11A:6-29, 11A:6-31, 18A:31-2, 30:4-178, 34:11B-1 et seq., 38:23-2, 38A:1-1, 38A:4-4, 40A:14-177, and 52:14-26.2; P.L. 2001, c. 351; Executive Order No. 12 (1990) and Executive Order No. 88 (2003); 10 U.S.C. §10101, 29 U.S.C. §§2601 et seq., 38 U.S.C. §§4301 et seq. and 42 U.S.C. §§12101 et seq.; and 29 CFR 825.

Source and Effective Date

R.2009 d.9, effective December 3, 2008.
See: 40 N.J.R. 2624(a), 41 N.J.R. 123(b).

Chapter Expiration Date

Chapter 6, Leaves, Hours of Work and Employee Development, expires on December 3, 2013.

Chapter Historical Note

Chapter 6, Leaves, Hours of Work and Employee Development, Subchapters 1 through 5, was adopted as R.1988 d.13, effective January 4, 1988. See: 19 N.J.R. 1764(a), 20 N.J.R. 54(a). See, also, Historical Notes at repealed N.J.A.C. 4:1, Civil Service Rules, specifically Subchapters 17, 18, 20 and 26; repealed N.J.A.C. 4:2, State Service, specifically Subchapters 17, 18, 20 and 26; and repealed N.J.A.C. 4:3, Local Service, specifically Subchapters 17 and 20. Subchapter 6, Awards Program, was adopted as R.1988 d.11, effective January 4, 1988. See: 19 N.J.R. 1774(a), 20 N.J.R. 67(a). See, also, Historical Note and section annotations at repealed N.J.A.C. 4:4, New Jersey State Employees' Awards Committee Rules.

Pursuant to Executive Order No. 66(1978), Chapter 6, Leaves, Hours of Work and Employee Development, was readopted as R.1993 d.47, effective December 22, 1992. See 24 N.J.R. 3590(a), 25 N.J.R. 293(a).

Pursuant to Executive Order No. 66(1978), Subchapters 1 through 5 were readopted as R.1998 d.57, effective December 19, 1997; and Subchapter 6, Awards Program, was readopted as R.1998 d.58, effective December 19, 1997. See: 29 N.J.R. 4364(a), 30 N.J.R. 384(a), 29 N.J.R. 4590(a), 30 N.J.R. 384(b).

Subchapter 6, Awards Program, was readopted as R.2003 d.241, effective May 22, 2003. See: 35 N.J.R. 344(a), 35 N.J.R. 2637(b).

Chapter 6, Leaves, Hours of Work and Employee Development, Subchapters 1 through 5, were readopted as R.2003 d.261, effective June 9, 2003. See: 35 N.J.R. 339(a), 35 N.J.R. 2861(b).

Chapter 6, Leaves, Hours of Work and Employee Development, Subchapters 1 through 5, were readopted as R.2009 d.9, effective December 3, 2008. See: Source and Effective Date. See, also, section annotations.

Subchapter 6, Awards Program, was readopted as R.2009 d.10, effective December 3, 2008. See: 40 N.J.R. 3776(a), 41 N.J.R. 126(a).

Cross References

Applicability of this chapter to SES members, see N.J.A.C. 4A:3-2.6.

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See: 26 N.J.R. 3511(a), 26 N.J.R. 5002(b).

4A:6-1.2 Vacation leave

(a) Full-time State employees in the career service shall be entitled to annual paid vacation leave, credited at the beginning of each calendar year in anticipation of continued employment, based on their years of continuous State full-time or part-time service in the career, senior executive or unclassified service. See (c) below for definition of continuous service.

SUBCHAPTER 1. LEAVES OF ABSENCE

4A:6-1.1 General provisions

(a) In local service, appointing authorities shall establish types of leaves and procedures for leaves of absence.

1. Pursuant to this subchapter, employees in local service shall also be entitled to vacation leave (N.J.A.C. 4A:6-1.2(b) through (h)); sick leave (N.J.A.C. 4A:6-1.3(a) through (h)); military leave (N.J.A.C. 4A:6-1.11); gubernatorial appointment leave (N.J.A.C. 4A:6-1.12); convention leave (N.J.A.C. 4A:6-1.13); elective office leave (N.J.A.C. 4A:6-1.17); family leave under State law (N.J.A.C. 4A:6-1.21A); and Federal family and medical leave (N.J.A.C. 4A:6-1.21B).

2. An appointing authority may grant permanent employees a leave of absence without pay for a period not to exceed one year. A leave may be extended beyond one year for exceptional circumstances upon request of the appointing authority and written approval of the Department of Personnel.

3. An appointing authority may grant unpaid union leave pursuant to N.J.A.C. 4A:6-1.16.

4. Vacation and sick leaves for police officers and firefighters are established by local ordinance. See N.J.S.A. 40A:14-7 and 40A:14-118.

(b) In State service, this subchapter shall apply to career service employees, unless otherwise indicated. Temporary employees (see N.J.S.A. 11A:4-13c.) are not entitled to the leaves or benefits in this subchapter.

(c) Records of all employee leaves of absence and types of leave shall be maintained by State and local appointing authorities and reported to the Department of Personnel for the official State record in the prescribed manner and form.

(d) A leave of absence shall not disqualify an applicant for a promotional examination.

(e) Where leave procedures are not set by this subchapter, appointing authorities shall establish such procedures subject to applicable negotiations requirements.

Amended by R.1990 d.387, effective August 6, 1990.

See: 22 N.J.R. 1300(b), 22 N.J.R. 2263(a).

In (a)1: added "and family leave" with N.J.A.C. citation.
Amended by R.1994 d.620, effective December 19, 1994.

1. New employees shall only receive one working day for the initial month of employment if they begin work on the 1st through the 8th day of the calendar month, and one-half working day if they begin on the 9th through the 23rd day of the month.

2. After the initial month of employment and up to the end of the first calendar year, employees shall receive one working day for each month of service. Thereafter, employees shall receive paid vacation leave as follows:

i. From the beginning of the first full calendar year of employment and up to five years of continuous service, 12 working days;

ii. After five years of continuous service and up to 12 years of continuous service, 15 working days;

iii. After 12 years of continuous service and up to 20 years of continuous service, 20 working days;

iv. Over 20 years of continuous service, 25 working days.

3. An increase in vacation leave shall be granted at the beginning of the calendar year in which the years of service requirement will be met.

i. When there is a change in the calendar year in which the years of service requirement is met, due to an employee's leave without pay, the employee shall be liable for any increased vacation leave that was not earned.

4. Vacation leave credits shall not accrue after an employee has resigned or retired although his or her name is being retained on the payroll until exhaustion of vacation or other compensatory leave.

(b) From initial employment up to the end of the first calendar year, annual paid vacation leave for full-time local employees shall be at least the amounts specified in (a)1 and (a)2 above. Thereafter their vacation leave shall be at least:

1. From the beginning of the first full calendar year of employment and up to 10 years of continuous service, 12 working days;

2. After 10 years of service and up to 20 years of continuous service, 15 working days; and

3. After 20 years of continuous service, 20 working days.

(c) Continuous service, for purposes of this section, shall mean employment for the same jurisdiction, or, if the requirements of N.J.A.C. 4A:4-7.1A are met, employment for different jurisdictions (except as provided in (d) below), without actual interruption due to resignation, retirement or removal.

1. An employee who has been appointed from a special reemployment list shall be credited with any continuous service prior to the layoff in addition to continuous service subsequent to reemployment.

2. Periods of employment before and after a suspension or leave without pay shall be considered continuous service. However, the period of time on a suspension or leave without pay, except for military leave, furlough extension leave and voluntary furlough, shall not be included in calculating years of continuous service.

3. An unclassified State employee, who is reappointed following a layoff under the provisions of a collective negotiations agreement, shall be credited with service prior to the layoff and shall continue to accrue service upon reappointment.

(d) Continuous service, for purposes of this section, shall not mean employment for different jurisdictions in the case of an intergovernmental transfer pursuant to N.J.A.C. 4A:4-7.1A of a firefighter, or where a law enforcement officer, including a sheriff's officer and a county correction officer, has waived all accumulated seniority rights.

(e) Part-time and 10-month employees shall be entitled to a proportionate amount of paid vacation leave. See N.J.A.C. 4A:3-3.8(e) for paid vacation leave to which State employees in intermittent titles are entitled.

(f) In State service, vacation leave may be granted and shall be recorded and tracked in hours.

(g) Appointing authorities may establish procedures for the scheduling of vacation leave. Vacation leave not used in a calendar year because of business necessity shall be used during the next succeeding year only and shall be scheduled to avoid loss of leave, provided, however, that:

1. In State service, vacation leave not taken by an employee in the career, unclassified or senior executive service in a given year because of duties directly related to a state of emergency declared by the Governor shall accumulate until, pursuant to a plan established by the employee's appointing authority and approved by the Commissioner of Personnel, the leave is used or the employee is compensated for that leave;

2. In State service, vacation leave not taken by an employee in the career, unclassified or senior executive service who is called to active duty in response to the continuing global war on terrorism, armed conflict with Iraq, or other areas of heightened tension throughout the world, including the defense of the Homeland Security of the United States, shall accumulate until, pursuant to a plan

established by the employee's appointing authority and approved by the Commissioner of Personnel, the leave is used or the employee is compensated for that leave; and

3. In local service, vacation leave not taken in a given year because of duties directly related to a state of emergency declared by the Governor may accumulate at the discretion of the appointing authority until, pursuant to a plan established by the employee's appointing authority and approved by the Commissioner of Personnel, the leave is used or the employee is compensated for that leave.

(h) An employee who leaves State government service or service with a local jurisdiction shall be paid for unused earned vacation leave, even if the employee has received an intergovernmental transfer in accordance with N.J.A.C. 4A:4-7.1A.

(i) An employee who exhausts all paid vacation leave in any one year shall not be credited with additional paid vacation leave until the beginning of the next calendar year. See N.J.A.C. 4A:6-1.5(b)2 for State service.

(j) Upon the death of an employee, unused vacation leave shall be paid to the employee's estate.

(k) See N.J.A.C. 4A:6-1.22 for the donated leave program.

Amended by R.1990 d.48, effective January 16, 1990.

See: 21 N.J.R. 3337(a), 22 N.J.R. 166(b).

In (d): revised text to include citation to N.J.A.C. 4A:3-3.8(e).

Amended by R.1993 d.47, effective January 19, 1993.

See: 24 N.J.R. 3590(a), 25 N.J.R. 293(a).

Redesignated existing (e)-(h) as (f)-(i); added new (e).

Amended by R.1994 d.73, effective February 7, 1994.

See: 25 N.J.R. 4824(a), 26 N.J.R. 795(b).

Amended by R.1995 d.12, effective January 3, 1995.

See: 26 N.J.R. 4126(a), 27 N.J.R. 145(a).

Amended by R.1996 d.368, effective August 5, 1996.

See: 28 N.J.R. 2107(a), 28 N.J.R. 3781(a).

Amended by R.2001 d.420, effective November 19, 2001.

See: 33 N.J.R. 2567(a), 33 N.J.R. 3895(b).

In (c), rewrote the introductory paragraph: rewrote (g).

Amended by R.2005 d.19, effective January 3, 2005.

See: 36 N.J.R. 4199(a), 37 N.J.R. 45(b).

Rewrote (f).

Amended by R.2007 d.358, effective November 19, 2007.

See: 39 N.J.R. 2680(a), 39 N.J.R. 4923(b).

In the introductory paragraph of (c), substituted "as provided in (d) below" for "in the case of the intergovernmental transfer of a police officer and firefighter"; added new (d); and recodified former (d) through (j) as (e) through (k).

Case Notes

State Department of Personnel regulations did not relate to school district employees. *City Ass'n of Sup'rs and Adm'rs v. State Operated School Dist. of City of Newark*, 709 A.2d 1328, 311 N.J.Super. 300 (N.J.Super. 1998).

4A:6-1.3 Sick leave

(a) Full-time State employees shall be entitled to annual paid sick leave as set forth in (a)1 and 2 below. Full-time local employees shall be entitled to a minimum of annual paid sick leave as follows:

1. New employees shall only receive one working day for the initial month of employment if they begin work on the 1st through the 8th day of the calendar month, and one-half working day if they begin on the 9th through the 23rd day of the month.

2. After the initial month of employment and up to the end of the first calendar year, employees shall be credited with one working day for each month of service. Thereafter, at the beginning of each calendar year in anticipation of continued employment, employees shall be credited with 15 working days.

(b) Part-time and 10-month employees shall be entitled to a proportionate amount of paid sick leave. See N.J.A.C. 4A:3-3.8(e) for paid sick leave to which State employees in intermittent titles are entitled.

(c) Paid sick days shall not accrue during a leave of absence without pay or suspension but shall continue to accrue during a voluntary furlough or furlough extension leave.

(d) Sick leave credits shall not accrue after an employee has resigned or retired although his or her name is being retained on the payroll until exhaustion of vacation or other compensatory leave.

(e) An employee who exhausts all paid sick days in any one year shall not be credited with additional paid sick leave until the beginning of the next calendar year.

(f) Unused sick leave shall accumulate from year to year without limit, whether or not it was accrued prior to an intergovernmental transfer in accordance with N.J.A.C. 4A:4-7.1A, provided, however, that:

1. In the case of an intergovernmental transfer, the sick leave of a firefighter, or a law enforcement officer, including a sheriff's officer and a county correction officer, who has waived all accumulated sick leave, shall accrue from the effective date of the transfer.

(g) Sick leave may be used by employees who are unable to work because of:

1. Personal illness or injury (see N.J.A.C. 4A:6-21B for Federal family and medical leave);

2. Exposure to contagious disease (see N.J.A.C. 4A:6-1.21B for Federal family and medical leave);

3. Care, for a reasonable period of time, of a seriously ill member of the employee's immediate family (see N.J.A.C. 4A:1-1.3 for definition of immediate family, see N.J.A.C. 4A:6-1.21A for family leave under State law and see N.J.A.C. 4A:6-1.21B for Federal family and medical leave); or

4. Death in the employee's immediate family, for a reasonable period of time.

(h) Sick leave may be used by an employee with a disability for absences related to the acquisition or use of an aid for the disability when the aid is necessary to function on the job. In such cases, reasonable proof may be required by the appointing authority.

(i) See N.J.A.C. 4A:6-1.22 for the donated leave program.

Amended by R.1990 d.48, effective January 16, 1990.

See: 21 N.J.R. 3337(a), 22 N.J.R. 166(b).

In (b): revised text to include citation to N.J.A.C. 4A:3-3.8(e).

Amended by R.1990 d.387, effective August 6, 1990.

See: 22 N.J.R. 1300(b), 22 N.J.R. 2263(a).

In (g)3: added family leave N.J.A.C. citation.

Amended by R.1993 d.47, effective January 19, 1993.

See: 24 N.J.R. 3590(a), 25 N.J.R. 293(a).

Added new (i).

Amended by R.1994 d.72, effective February 7, 1994.

See: 25 N.J.R. 4821(b), 26 N.J.R. 794(b).

Amended by R.1994 d.620, effective December 19, 1994.

See: 26 N.J.R. 3511(a), 26 N.J.R. 5002(b).

Amended by R.1995 d.12, effective January 3, 1995.

See: 26 N.J.R. 4126(a), 27 N.J.R. 145(a).

Amended by R.1996 d.368, effective August 5, 1996.

See: 28 N.J.R. 2107(a), 28 N.J.R. 3781(a).

Amended by R.2001 d.420, effective November 19, 2001.

See: 33 N.J.R. 2567(a), 33 N.J.R. 3895(b).

Rewrote (f).

Amended by R.2007 d.358, effective November 19, 2007.

See: 39 N.J.R. 2680(a), 39 N.J.R. 4923(b).

In the introductory paragraph of (f), substituted "provided, however, that:" for "except that the sick leave of a police officer or a firefighter who receives an intergovernmental transfer shall accrue from the effective date of the transfer."; and added (f)1.

Case Notes

Portion of court reporters' unused sick time which accrued during time they were paid by counties was subject to reimbursement upon retirement. *Matter of Wargo*, 229 N.J.Super. 284, 551 A.2d 205 (A.D.1988).

Restoration of teacher's sick leave due to harassment by principal affirmed. *Dorfman v. Board of Education of the Township of Neptune, Monmouth County*, 97 N.J.A.R.2d (EDU) 512.

Cessation of continued sick leave injury benefits was proper. *Shaub v. North Princeton Developmental Center*, 94 N.J.A.R.2d (CSV) 521.

Aggravation of preexisting back condition was not compensable where it was reasonably foreseeable. *Gilmartin v. Division of State Police*, 93 N.J.A.R.2d (CSV) 288.

4A:6-1.4 Sick leave procedures: State service

(a) The provisions in this section are applicable to State service.

(b) An employee whose work schedule is other than a 24-hour or shift coverage shall, by the scheduled reporting time, notify a contact person designated by the agency of any absence due to illness.

(c) An employee whose work unit requires 24-hour or shift coverage shall, at least one hour before the scheduled starting time, notify the designated contact person of any absence due to illness. In case of sudden illness or emergency, exceptions may be granted by the designated contact person.

(d) An appointing authority may require proof of illness or injury when there is a reason to believe that an employee is abusing sick leave; an employee has been absent on sick leave for five or more consecutive work days; or an employee has been absent on sick leave for an aggregate of more than 15 days in a 12-month period.

(e) When an illness is of a chronic or recurring nature causing occasional absences of one day or less, one proof of illness shall be required for every six month period. The proof of illness must specify the nature of the illness and that it is likely to cause periodic absences from employment.

(f) In case of sick leave due to exposure to a contagious disease, a death in the employee's immediate family or to care for a seriously ill member of the employee's immediate family, reasonable proof may be required.

(g) An appointing authority may require an employee to be examined by a physician designated and compensated by the appointing authority as a condition of the employee's continuation of sick leave or return to work.

1. Such an examination shall establish whether the employee is capable of performing his or her work duties and whether return to employment would jeopardize the health of the employee or that of other employees.

2. The appointing authority shall set the date of the examination to assure that it does not cause undue delay in the employee's return to work.

(h) Failure to follow sick leave notification and verification procedures may result in a denial of sick leave for that

specific absence, be considered an abuse of sick leave and/or constitute cause for disciplinary action.

(i) An appointing authority shall provide the Department of Personnel with a record of an employee's unused sick leave when the employee separates from State service. The Department of Personnel shall provide an appointing authority with a record of an employee's unused sick leave if an employee is reemployed. Upon reemployment, an employee is entitled to utilize any unused sick leave from the previous period of employment. Such unused leave carried over shall be used before any leave accrued after reemployment. However, such unused leave carried over shall not be counted for purposes of Supplemental Compensation on Retirement. See N.J.A.C. 4A:6-3.2.

(j) In accordance with the Americans with Disabilities Act, 42 U.S.C. 12101 et seq., information obtained pursuant to this section regarding the medical condition or history of an employee shall be collected and maintained on separate forms and in separate medical files and treated as a confidential medical record, except that:

1. Such information shall be available to appropriate appointing authority representatives in connection with inquiries into the ability of an employee to perform job-related functions;

2. Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

3. Authorized first aid and safety personnel may be informed, when appropriate, if the condition might require emergency treatment, or if any specific procedures are needed in the case of fire or other evacuation; and

4. Government officials investigating compliance with the Americans with Disabilities Act, or any other Federal or State law prohibiting discrimination on the basis of disability or handicap, shall be provided relevant information on request.

Amended by R.1993 d.47, effective January 19, 1993.

See: 24 N.J.R. 3590(a), 25 N.J.R. 293(a).

Added new (j).

Petition for Rulemaking.

See: 32 N.J.R. 1871(a), 32 N.J.R. 2957(a).

4A:6-1.5 Vacation, administrative and sick leave adjustments: State service

(a) Employees in State service are liable for vacation and sick leave days taken in excess of their entitlements.

(b) An employee who leaves State service or goes on a leave of absence without pay before the end of the calendar year shall have his or her leave prorated based on time earned, except that the leave of an employee on a voluntary furlough or furlough extension leave shall not be affected. An employee who is on the payroll for greater than 23 days shall earn a full month's allowance, and earn one-half month's allowance if he or she is on the payroll from the 9th through the 23rd day of the month.

1. An employee shall reimburse the appointing authority for paid working days used in excess of his or her prorated and accumulated entitlements.

2. An employee who returns to work from a leave of absence shall not be credited with paid vacation or sick leave until the amount of leave used in excess of the prorated entitlement has been reimbursed.

(c) In State service, intermittent days off without pay other than voluntary furlough or furlough extension days shall be aggregated and considered as a continuous leave without pay for calculation of reduced vacation and sick leave credits. When intermittent days off without pay other than voluntary furlough or furlough extension days equal 11 working days, the employee's vacation and sick leave credit shall be reduced by one-half of one month's entitlement. Union leave days pursuant to a negotiated agreement shall not be included in such calculations.

(d) An employee shall not be reimbursed for accumulated sick leave when leaving State service except for separations on retirement as provided in N.J.A.C. 4A:6-3.

(e) When an employee is transferred in State service, the employee's former appointing authority shall provide the new State appointing authority with a record of an employee's unused vacation, administrative and sick leave.

(f) In State service, when an employee's workweek changes, the employee's vacation, administrative and sick leave entitlements shall be recalculated in the following manner:

1. The number of hours of vacation, administrative and sick leave for the former workweek shall be converted into days by dividing by the number of hours in the former workweek workday; and

2. This number of days shall be converted into hours for the new workweek by multiplying by the number of hours in the new workweek workday.

EXAMPLE: Mary Smith is in a 35 hour workweek title. On January 1 of the current year, she had accumulated 245 sick leave hours from prior years and was credited with 105 sick leave hours for the current year (15 days x 7 hours), or a total of 350 sick leave hours. Effective May 1, she is appointed to a title with a 40 hour workweek. Her new sick leave entitlement is computed by dividing 350 by seven, the number of hours in a 35 hour workweek workday, to yield the result of 50 days of sick leave. The 50 days are then multiplied by eight, the number of hours in a 40 hour workweek workday. Thus, Mary Smith's converted sick leave hours are 400.

EXAMPLE: Thomas Brown is in a 40 hour workweek title. On January 1, he had accumulated 230 sick leave hours from prior years and was credited with 120 sick leave hours for the current year (15 days x 8 hours), or a total of 350 sick leave hours. Effective May 1, he is appointed to a title with a 35 hour workweek. His new sick leave entitlement is computed by dividing 350 by eight, the number of hours in a 40 hour workweek workday, to yield the result of 43.75 days of sick leave. The 43.75 days are then multiplied by seven, the number of hours in a 35 hour workweek workday. Thus, Thomas Brown's converted sick leave hours are 306 (43.75 x 7 = 306.25, rounded to 306).

(g) In State service, an employee whose status changes from part time to full time, or from full time to part time, shall receive sick leave benefits as follows:

1. If an employee's status changes from part time to full time, the amount of proportional sick leave which the employee has earned as a part time employee is added to the amount of sick leave with which he or she is credited for the remainder of the year as a full time employee.

2. If an employee's status changes from full time to part time, the amount of sick leave which he or she has earned as a full time employee is added to the amount of proportional sick leave with which the employee is credited for the remainder of the year as a part time employee.

EXAMPLE: John Jones works two days a week. Therefore, he is employed for 40 percent of the workweek. As a part time, 40 percent employee, his yearly

sick leave is calculated by taking 40 percent of 15 sick leave days; thus, John is credited with six sick leave days on January 1. On pay period 14, John becomes a full time employee. As of that time, he already has earned three sick leave days as a part time, 40 percent employee. As a full time employee for the remainder of the year, John is credited with 7.5 sick days. These are added to the three sick leave days which he earned during the first half of the year, so that he will have a total of 10.5 sick days for the year. Any accumulated sick days which John earned in previous years as a part time, 40 percent employee are added to the 10.5 sick days to which John will be entitled this year.

Amended by R.1989 d.570, effective November 6, 1989.

See: 21 N.J.R. 2429(a), 21 N.J.R. 3451(a).

Added new (f) and (g) regarding calculation of vacation and sick leave when an employee's workweek changes.

Amended by R.1995 d.12, effective January 3, 1995.

See: 26 N.J.R. 4126(a), 27 N.J.R. 145(a).

Amended by R.1999 d.346, effective October 4, 1999.

See: 31 N.J.R. 1553(a), 31 N.J.R. 2877(a).

In the caption, inserted "administrative", in (f), twice inserted "vacation, administrative and", and in the examples under (f), substituted references to the "current year" for references to the year 1989.

4A:6-1.6 Sick Leave Injury (SLI) requirements: State service

(a) The provisions concerning sick leave injury (SLI) benefits in this subchapter apply to full and part-time State employees in the career, senior executive and unclassified services. SLI benefits for employees in intermittent titles will be based on the expected length of service.

(b) An employee who is disabled due to a work-related injury or illness shall be granted a leave of absence with pay.

1. An employee who can return to work on a part-time basis shall be compensated for the hours actually worked and receive SLI benefits for the hours missed due to the disability.

2. SLI benefits shall be reduced by the amount of any temporary disability payments under N.J.S.A. 34:15-12 (Workers' Compensation) or N.J.S.A. 43:21-25 et seq. (Temporary Disability Benefits Law).

3. Benefits are limited to a period beginning on the initial date of the injury or illness and ending one year from that date.

- i. Benefits shall not be paid for any absence from work occurring more than one year from the initial date of the injury or illness, even if the aggregate period of disability does not exceed one year.

- ii. In cases of disorders as set forth in (c)4 below, the one year period shall begin with the first date of disability from work.

4. An employee receiving SLI benefits may also be entitled to medical leave under Federal law. See N.J.A.C. 4A:6-1.21B.

5. A holiday authorized by law or Executive Order shall be considered a day off with pay as provided in N.J.A.C. 4A:6-2.4 during a period in which an employee is receiving SLI benefits, and such day or days shall not be recorded as SLI.

(c) The disability must be due to an injury or illness resulting from the employment.

1. Injuries or illnesses which would not have occurred but for a specific work-related accident or condition of employment are compensable.

2. Preexisting illnesses, diseases and conditions aggravated by a work-related accident or condition of employment are not compensable when such aggravation was reasonably foreseeable.

3. Illnesses which are generally not caused by a specific work-related accident or condition of employment are not compensable except when the claim is supported by medical documentation that clearly establishes that the illness was caused by a work related accident or condition of employment.

4. Progressive, degenerative or repetitive motion disorders, such as asbestosis or carpal tunnel syndrome, are compensable only when the claim is supported by medical documentation clearly establishing that the disorder would not have occurred but for the performance of specific work duties.

5. Psychological or psychiatric illness is not compensable, except when such illness can be traced to a specific work-related accident or occurrence which traumatized the employee thereby causing the illness, and the claim is supported by medical documentation.

6. An injury or illness is not compensable when the appointing authority has established that the employee has been grossly negligent, including those injuries or illnesses arising from impairment due to alcohol or drug abuse.

(d) Any accident resulting in injury for which the employee seeks compensation must occur on the work premises.

1. Work premises are the physical area of operation of the appointing authority, including buildings, grounds and parking facilities provided by the State.

2. An injury occurring off the work premises is compensable only when the employee is engaged in authorized work activity or travel between work stations.

(e) For the injury to be compensable, it must occur during normal work hours or approved overtime.

1. Injuries which occur during normal commutation between home and the work station or home and a field assignment are not compensable.

2. Injuries which occur during lunch or break periods are not compensable. However, employees who are re-

3. "Medical leave" means a type of FMLA leave to which an employee is entitled if the employee meets the conditions set forth in (d)3 below.

4. "Parent" means a biological parent or an individual who stands or stood in loco parentis to an employee when the employee was a child. This term does not include parents "in law."

5. "Serious health condition" is an illness, injury, impairment, or physical or mental condition that involves:

i. Any period of incapacity or treatment in connection with or resulting from inpatient care in a hospital, hospice, or residential medical care facility;

ii. Any period of incapacity requiring absence from work, school, or other regular daily activities, of more than three calendar days, that also involves continuing treatment by a health care provider; or

iii. Continuing treatment by a health care provider for a chronic or long-term health condition that is incurable or so serious that, if not treated, would likely result in a period of incapacity of more than three calendar days; or for prenatal care.

(c) Public agencies, including the State of New Jersey and political subdivisions, are covered employers without regard to the number of employees employed.

(d) An eligible employee of a covered employer is entitled to 12 weeks of FMLA leave in a 12-month period:

1. Because of the birth of a child or the placement of a child for adoption or foster care, except that the entitlement expires at the end of the 12-month period beginning on the date of birth or placement;

2. Because the employee is needed to care for a child, spouse or parent with a serious health condition; or

3. Because the employee's own serious health condition makes the employee unable to do his or her job.

(e) In State service, the 12-month period begins on the first day of FMLA leave.

(f) Leave may be taken intermittently or on a reduced leave schedule when medically necessary in the case of an employee who has a serious health condition or in the case of a child, spouse or parent who has a serious health condition.

1. Intermittent leave may last for as little as one hour or for as long as several weeks. A reduced leave schedule reduces the employee's hours per workweek or workday. No limit may be placed on the size of an increment of such leave, except that an employer may limit leave increments to the shortest period of time that the employer's payroll system uses to account for use of leave.

2. An employee may take leave in this manner for the birth or placement of a child for adoption or foster care only if the employer agrees.

(g) Special conditions related to FMLA leave are as follows:

1. A husband and wife who both work for the same employer are permitted to take a combined total of 12 weeks of FMLA leave in a 12-month period for the birth or placement for adoption or foster care of a child or to care for a parent with a serious health condition. However, following the use of a portion of the 12-week leave entitlement for one of these purposes, the husband and wife will each be entitled to the difference between the leave taken individually by them and their 12-week entitlement if the additional leave is for a different FMLA purpose (such as their own serious health condition).

2. Employers shall keep FMLA records for no less than three years and shall make them available for inspection, copying and transcription by representatives of the U.S. Department of Labor upon request. These records shall include all of the following:

i. Basic payroll and identifying employee data;

ii. Dates FMLA leave is taken by employees. FMLA leave shall be designated as such in the employer's records and shall not be placed in the same category as other leaves. A general designation, such as "sick leave," does not fulfill this requirement;

iii. The hours of the FMLA leave, if the leave is taken in increments of less than one full day;

iv. Copies of employee notices of leave which fall under the FMLA;

v. Copies of all general and specific notices given to employees as required under the FMLA and 29 CFR 825.300 et seq.;

vi. Any written or electronic documents describing employee benefits or employer leave policies outside of leave provisions found in N.J.A.C. 4A:6 et seq.;

vii. Premium payments of employee benefits; and

viii. Records of any dispute between the employer and an employee regarding designation of leave as FMLA leave, including any written statement from the employer or employee of the reasons for the designation and for the disagreement.

3. If the employer has a uniformly applied policy governing outside employment, such a policy may continue to apply to an employee while on FMLA leave. Otherwise, an employer may not deny benefits to an employee who is entitled to leave because the employee has outside employment.

4. The enforcing agency for FMLA leave is the Wage and Hour Division, Employment Standards Administra-

tion, U.S. Department of Labor. Any complaints related to this leave shall be made to that agency. Standardized forms are available from that agency for use by employers.

(h) If an employee qualifies under both Federal and State law, the leave used counts against the leave's entitlement under both laws, provided that nothing in the FMLA supersedes any provision of State law that provides greater rights than those provided under the FMLA, and further provided that rights under the FMLA shall not be diminished by State law.

(i) An employer may designate an employee's paid leave as FMLA leave if the employee provides information to the employer indicating an entitlement to such leave. The employer shall notify the employee that the paid leave has been designated as FMLA leave within two work days of the time the employee gives notice of the need for leave, and before the employee commences the leave, unless the employer does not have sufficient information within that time to make a determination.

1. If the employer does not have sufficient information regarding the employee's reason for taking the paid leave, the employer shall notify the employee of the FMLA designation, if any, as soon as such information is obtained.

2. If the employer has sufficient information to make such a designation but does not do so within the timeframes indicated above, the employer shall designate the paid leave as FMLA leave prospectively as of the date of notification to the employee.

(j) In State service, FMLA leave without pay shall not be deducted from seniority for layoff purposes. For all other purposes, FMLA leave without pay shall be treated the same as other leaves without pay.

New Rule, R.1994 d.620, effective December 19, 1994.

See: 26 N.J.R. 3511(a), 26 N.J.R. 5002(b).

Amended by R.1999 d.347, effective October 4, 1999.

See: 31 N.J.R. 1555(a), 31 N.J.R. 2878(a).

In (i), substituted a two-day employer notification period for an immediate notice requirement, and added (1) and (2).

4A:6-1.22 Donated leave program

(a) A State employee shall be eligible to receive donated sick or vacation leave if the employee:

1. Has completed at least one year of continuous State service;
2. Has exhausted all accrued sick, vacation and administrative leave, all sick leave injury benefits, if any, and all compensatory time off;
3. Has not, in the two-year period immediately preceding the employee's need for donated leave, been disciplined for chronic or excessive absenteeism, chronic or excessive lateness or abuse of leave; and

4. Either:

- i. Suffers from a catastrophic health condition or injury;
- ii. Is needed to provide care to a member of the employee's immediate family who is suffering from a catastrophic health condition or injury; or
- iii. Requires absence from work due to the donation of an organ (which shall include, for example, the donation of bone marrow).

(b) For purposes of this section, a "catastrophic health condition or injury" shall be defined as follows:

1. With respect to an employee, a "catastrophic health condition or injury" is either:

- i. A life-threatening condition or combination of conditions; or
- ii. A period of disability required by his or her mental or physical health or the health of the employee's fetus which requires the care of a physician who provides a medical verification of the need for the employee's absence from work for 60 or more work days.

2. With respect to an employee's immediate family member, a "catastrophic health condition or injury" is either:

- i. A life-threatening condition or combination of conditions; or
- ii. A period of disability required by his or her mental or physical health which requires the care of a physician who provides a medical verification of the need for the family member's care by the employee for 60 or more work days.

(c) A State employee may request that the appointing authority approve his or her participation in the program, as a leave recipient or leave donor. The employee's supervisor may make such a request on behalf of the employee for his or her participation in the program as a leave recipient.

1. The employee or supervisor requesting the employee's acceptance as a leave recipient shall submit to the appointing authority medical verification from a physician or other licensed health care provider concerning the nature and anticipated duration of the disability resulting from either the catastrophic health condition or injury, or the donation of an organ, as the case may be.

2. When the appointing authority has approved an employee as a leave recipient, the appointing authority shall, with the employee's consent, post or circulate the employee's name along with those of other eligible employees in a conspicuous manner to encourage the donation of leave time, and shall provide notice to all negotiations representatives in that appointing authority.