

quired by the appointing authority to remain at a particular job location during lunch and/or work-break shall not be precluded from receiving SLI benefits.

Amended by R.1992 d.413, effective October 19, 1992.  
See: 24 N.J.R. 2108(a), 24 N.J.R. 3720(a).

Added new (c)4; redesignated existing (c)4-5 as (c)5-6.  
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.1994 d.620, effective December 19, 1994.

See: 26 N.J.R. 3511(a), 26 N.J.R. 5002(b).  
Amended by R.2009 d.9, effective January 5, 2009.

See: 40 N.J.R. 2624(a), 41 N.J.R. 123(b).

Added (b)5; and in (c)3, deleted the comma following "employment", substituted "that the illness was caused by a" for "the injury or illness is", and inserted "accident or condition of employment".

#### Law Review and Journal Commentaries

Sick Leave Benefits. Judith Nallin, 133 N.J.L.J. No. 8, 50 (1993).

#### Case Notes

Merit System Board acted within its statutory mandate in making policy determination to limit sick-leave injury benefits to one year from date of disability and did not abuse its discretion in applying such policy to employee who suffered from carpal tunnel syndrome. *Matter of Musick*, 143 N.J. 206, 670 A.2d 11 (1996).

Long hiatus between stages of treatment which extends its entire course beyond one year maximum will not cause loss of benefits where it is the result of medical necessity. *Matter of Dykas*, 261 N.J.Super. 626, 619 A.2d 660 (A.D.1993).

The initial date of the injury or illness referred to date disability began. *Matter of Dykas*, 261 N.J.Super. 626, 619 A.2d 660 (A.D.1993).

Initial report filed by state employee did not begin running of one-year time limitation for second surgery on right wrist for same condition. *Matter of Dykas*, 261 N.J.Super. 626, 619 A.2d 660 (A.D.1993).

Eligibility requirement for sick leave injury benefits could be met without specific work-related accident. *Matter of Dykas*, 261 N.J.Super. 626, 619 A.2d 660 (A.D.1993).

Sick leave—injury off work premises not covered (citing former N.J.A.C. 4:1-17.9). *Appleby v. Civil Service Comm'n.*, 190 N.J.Super. 249, 463 A.2d 346 (App.Div.1983).

Injury suffered off employment premises during lunch hour was not compensable under sick leave statute or regulation (citing former N.J.A.C. 4:1-17.9). *Morreale v. State Civil Service Comm'n.*, 166 N.J.Super. 536, 400 A.2d 126 (App.Div.1979), certification denied 81 N.J. 275, 405 A.2d 819.

Employee entitled to sick leave injury benefits for psychological injury arising from telephone call she received in response to filing sex discrimination action against employer. *Leeds v. New Jersey State Prison*, 96 N.J.A.R.2d (CSV) 326.

Sick leave injury benefits were not available for injury sustained outside of work. *Wills v. Department of Community Affairs*, 95 N.J.A.R.2d (CSV) 506.

Prison nurse was not entitled to sick leave benefits absent evidence of sufficient preponderance to establish that alleged injury was work related. *White v. Riverfront State Prison*, 95 N.J.A.R.2d (CSV) 384.

Equipment operator entitled to sick leave-injury benefits. *Heggan v. Department of Transportation*, 92 N.J.A.R.2d (CSV) 680.

Sick leave injury benefits for wrist pain. *Bokor v. New Jersey Department of Human Services*, 92 N.J.A.R.2d (CSV) 643.

#### 4A:6-1.7 Sick Leave Injury (SLI) reporting and appeal procedures: State service

(a) Each appointing authority shall appoint one or more SLI coordinators, as necessary, whose responsibility shall be to ensure that SLI benefits are administered in a consistent manner in accordance with N.J.A.C. 4A:6-1.6 and this section.

(b) Immediately upon occurrence or discovery, the employee shall report to his or her supervisor or supervisor's designee any work accident or condition of employment claimed to have caused disability.

(c) Within 24 hours of learning of the accident or condition of employment claimed to have caused disability, the employee's supervisor or supervisor's designee shall contact the appointing authority's human resources office (HR Office) to report the accident or condition.

(d) Within five days following occurrence or discovery, the employee shall complete and have the supervisor or supervisor's designee sign a RM-2 form reporting the accident or condition, upon which the employee shall submit the form to the HR Office.

(e) Immediately upon receipt, the HR Office shall forward a hard copy of the completed and signed RM-2 form to the Division of Risk Management, Department of the Treasury.

1. The HR Office staff shall enter information into the Risk Management Information System (RMIS) regarding the employee's SLI claim.

2. A State nurse designated by the appointing authority, or other appropriate staff, shall determine whether the employee must be referred to a physician designated and compensated by the appointing authority (authorized physician).

i. A State nurse or other appropriate staff shall enter this determination into RMIS.

(f) The SLI Coordinator shall:

1. Ensure that the employee provides a report from an authorized physician including, at minimum, verification that the physician provided treatment to the employee, a description of the nature of the disability, and an opinion regarding whether the disability is work related or the result of a preexisting condition;

2. Review the RM-2 to determine whether the employee has included all required information and documentation;

3. Decide whether further investigation of the claim is warranted;

4. Evaluate the employee's eligibility for SLI benefits in accordance with the standards set forth in N.J.A.C. 4A:6-1.6; and

5. In a written determination, grant or deny the SLI claim.

i. If the SLI coordinator grants SLI benefits, HR Office staff shall update the RMIS entry with information regarding the employee's additional absences from work due to SLI benefits. The HR Office shall also enter the SLI information into the Personnel Management Information System and the appointing authority's timekeeping system.

ii. If the SLI coordinator denies SLI benefits, the written determination shall advise the employee of his or her right to appeal to the Merit System Board within 20 days of receipt of the determination in accordance with N.J.A.C. 4A:2-1. The SLI coordinator shall also notify the Division of Risk Management of this determination.

(g) The Division of Risk Management shall be responsible for ensuring that appointing authorities comply with N.J.A.C. 4A:6-1.6 and this section. If the Division of Risk Management finds that an appointing authority is not in compliance with N.J.A.C. 4A:6-1.6 and this section, the Division may review the SLI coordinator's SLI determination and, if warranted, modify or reverse the determination.

(h) An employee may appeal an appointing authority denial of SLI benefits to the Merit System Board in accordance with N.J.A.C. 4A:2-1.

(i) In all appeals, copies of all materials submitted to the Merit System Board shall be provided to all other parties.

(j) The burden of proof is on the appellant to establish entitlement to SLI benefits by a preponderance of the evidence.

(k) 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 and Department of Personnel representatives in connection with inquiries into the eligibility of the employee for benefits under this section;

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 (i).

Amended by R.2009 d.9, effective January 5, 2009.  
See: 40 N.J.R. 2624(a), 41 N.J.R. 123(b).

Deleted former (a) through (d); added new (a) through (g); recodified former (e) through (i) as (h) through (k); in (h), updated the N.J.A.C. reference; and in (k), inserted "§§".

#### Case Notes

Delay in filing accidental injury form; sick leave injury benefits. O'Brien v. Hunterdon Developmental Center, 94 N.J.A.R.2d (CSV) 617.

#### 4A:6-1.8 Pregnancy-disability and child care leave: State service

(a) A State employee in the career, senior executive or unclassified service who requests leave with or without pay for reason of disability due to pregnancy shall be granted leave under the same terms and conditions as those applicable to such employees for sick leave or leave without pay. The appointing authority may request acceptable medical evidence that the employee is unable to perform her work because of disability due to pregnancy. For medical leave under Federal law, see N.J.A.C. 4A:6-1.21B.

1. An employee may use accrued sick, vacation or administrative leave for pregnancy-disability purposes but shall not be required to exhaust accrued leave before taking a leave without pay.

2. An employee must exhaust all accrued sick leave to be eligible for New Jersey Temporary Disability Insurance.

(b) Child care leave may be granted to State employees under the same terms and conditions as all other leaves without pay. See N.J.A.C. 4A:6-1.10. For family leave under State law, see N.J.A.C. 4A:6-1.21A. For Federal family and medical leave, see N.J.A.C. 4A:6-1.21B.

Amended by R.1990 d.387, effective August 6, 1990.  
See: 22 N.J.R. 1300(b), 22 N.J.R. 2263(a).

In (b): added family leave N.J.A.C. citation.  
Administrative Correction to (b).

See: 22 N.J.R. 2682(a).

Amended by R.1994 d.620, effective December 19, 1994.  
See: 26 N.J.R. 3511(a), 26 N.J.R. 5002(b).

#### 4A:6-1.9 Administrative leave: State service

(a) Full-time State employees in the career and senior executive service and those employees of Rutgers, the State University, New Jersey Institute of Technology, and the University of Medicine and Dentistry of New Jersey who perform services similar to those performed by employees of the New Jersey State Colleges who are in the career service shall be granted three days of administrative leave in each calendar year for personal business, including emergencies and religious observances.

1. Priority in granting such leave requests shall be:

i. If the employee is unable to consent to this posting or circulation, the employee's family may consent on his or her behalf.

(d) In State service, a leave recipient must receive at least five sick days or vacation days or a combination thereof from one or more leave donors to participate in the donated leave program. A leave donor shall donate only whole sick days or whole vacation days and may not donate more than 10 such days to any one recipient.

1. A leave recipient shall receive no more than 180 sick days or vacation days, and shall not receive any such days on a retroactive basis.

2. A leave donor shall have remaining at least 20 days of accrued sick leave if donating sick leave and at least 12 days of accrued vacation leave if donating vacation leave.

3. A leave donor shall not revoke the leave donation.

4. If a leave donor is not in the same department or autonomous agency as the leave recipient, appropriate arrangements shall be made between the affected appointing authorities to verify donor eligibility and adjust leave records. However, the posting requirement set forth in (c)2 above is limited to the recipient's appointing authority.

(e) While using donated leave time in State service, the leave recipient shall accrue sick leave and vacation leave and be entitled to retain such leave upon his or her return to work.

1. Any unused, donated leave shall be returned to the leave donors on a prorated basis upon the leave recipient's return to work, except that if the proration of leave days results in less than one day per donor to be returned, that leave time shall not be returned.

2. Upon retirement, the leave recipient shall not be granted supplemental compensation on retirement for any unused sick days which he or she had received through the leave donation program.

(f) A State employee shall be prohibited from threatening or coercing or attempting to threaten or coerce another employee for the purpose of interfering with rights involving donating, receiving or using donated leave time. Such prohibited acts shall include, but not be limited to, promising to confer or conferring a benefit such as an appointment or promotion or making a threat to engage in, or engaging in, an act of retaliation against an employee.

(g) In local service, an appointing authority may establish a donated leave program which shall be consistent with the provisions of (a) through (f) above, with approval of the Commissioner.

1. The appointing authority shall submit to the Commissioner a donated leave program proposal no later than 30 days before the planned implementation of the program. The proposal shall include a summary of consultations with affected negotiations representatives concerning the pro-

gram and name the donated leave program administrator for the appointing authority.

2. The appointing authority shall not implement a donated leave program unless the program has been approved by the Commissioner.

3. The appointing authority shall retain all records concerning implementation of an approved donated leave program subject to Department of Personnel audit.

4. The appointing authority may suspend or terminate the donated leave program at any time upon 30 days written notice of such suspension or termination to the Commissioner, all affected employees and labor negotiations representatives.

New Rule, R.1993 d.47, effective January 19, 1993.

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

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

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

Added eligibility for employees with family members suffering from a catastrophic health condition, provided for leave donors not in the same department as leave recipients, and authorized donated leave programs for local service.

Administrative correction.

See: 28 N.J.R. 4577(a).

Amended by R.2001 d.26, effective January 16, 2001.

See: 32 N.J.R. 3515(b), 33 N.J.R. 253(b).

Rewrote the section.

Amended by R.2005 d.66, effective February 22, 2005.

See: 36 N.J.R. 4567(a), 37 N.J.R. 587(a).

In (b)1 and 2, added i and ii.

Petition for Rulemaking: Donated Leave Program.

See: 39 N.J.R. 2153(a).

Petition for Rulemaking: Donated Leave Program.

See: 42 N.J.R. 87(a).

#### 4A:6-1.23 Voluntary furlough program

(a) The purpose of a voluntary furlough program is to lessen the need for reductions in force by allowing employees in the career, senior executive or unclassified services to take up to 30 days off from work without pay in a calendar year, with accrual of leave time, anniversary dates and seniority treated as if the employee is in pay status.

(b) In local service, an appointing authority may establish a voluntary furlough program which may differ in detail but which shall be consistent with the purpose of these rules, with approval of the Commissioner.

1. The appointing authority shall submit to the Commissioner, through the appropriate regional office, a voluntary furlough program proposal no later than 30 days before the planned implementation of the program. The proposal shall specify departments to be affected, employees or titles to be affected, include a summary of consultations with affected negotiations representatives concerning the program and name the voluntary furlough program administrator for the appointing authority.

2. The appointing authority shall not implement a voluntary furlough program unless the program has been approved by the Commissioner.

3. The appointing authority shall retain all records concerning implementation of an approved voluntary furlough program subject to Department of Personnel audit.

4. The appointing authority may suspend or terminate the voluntary furlough program at any time upon 30 days written notice of such suspension or termination to the Commissioner, all affected employees and labor negotiations representatives.

(c) An employee who wishes to participate in the program shall request, in writing, approval for such participation from the appointing authority.

1. The employee shall not be permitted to take the voluntary furlough until the employee has received approval by the appointing authority.

2. The manner in which the employee proposes to use the voluntary furlough shall be contained in the request, may be the equivalent of no more than 30 work days in a calendar year, and may consist of one or more of the following:

- i. Shorter work days;
- ii. Intermittent days off; or
- iii. Consecutive days off.

3. An appointing authority may deny an employee the opportunity to participate in the program if it determines that such participation would be detrimental to the public health, safety or welfare or would result in increased costs to the appointing authority due to increased overtime, the need to appoint additional employees or the loss to that appointing authority of anticipated revenue.

4. An employee shall not be permitted to use a voluntary furlough for any of the following purposes:

- i. As sick leave;
- ii. As a leave without pay due to disability; or
- iii. To seek or engage in alternate employment.

5. When an employee uses voluntary furlough or furlough extension leave for a purpose covered by the New Jersey Family Leave Act (FLA) or the Federal Family and Medical Leave Act (FMLA) and the employee is eligible for coverage under the FLA or FMLA, the voluntary furlough or furlough extension leave shall be recorded as FLA leave, FMLA leave, or both, as appropriate.

(d) An employee who wishes to extend a voluntary furlough beyond 30 days may request up to 60 days' furlough extension leave without pay. This furlough extension leave shall be taken in blocks of 10 work days, which need not be consecutive.

1. During furlough extension leave, accrual of leave time, anniversary dates and seniority shall be treated as if

the employee is in pay status. The employee may continue health benefits by paying the full premium amount (employer's and employee's share) for the furlough extension's days in accordance with the regulations of the State Health Benefits Commission.

2. Furlough extension leave may be used for education or family care needs only.

3. Requests for furlough extension leave are subject to the approval of the appointing authority and the Department of Personnel.

(e) An employee on a voluntary furlough or furlough extension leave shall continue to accrue leave time as if the employee is in pay status. See N.J.A.C. 4A:6-1.2 (vacation leave), 4A:6-1.3 (sick leave) and 4A:6-1.5 (vacation and sick leave adjustments).

(f) In State service, the anniversary date of an employee on a voluntary furlough or furlough extension leave shall be unaffected by the employee's participation in the program. See N.J.A.C. 4A:3-4.6.

(g) The seniority of an employee on a voluntary furlough or furlough extension leave shall be unaffected by the employee's participation in the program. See N.J.A.C. 4A:4-2.15 (seniority in rating of examinations) and N.J.A.C. 4A:8-2.4 (seniority in layoffs).

(h) An employee serving in a working test period who is participating in the program shall have the working test period extended for the period of time equal to the voluntary furlough or furlough extension leave. See N.J.A.C. 4A:4-5.

(i) In State service, an employee on a voluntary furlough or furlough extension leave on the day before a holiday shall receive pay for the holiday as long as he or she is in pay status during the pay period in which the holiday falls. See N.J.A.C. 4A:6-2.4.

(j) See N.J.A.C. 17:9-4.2, 8.3 and 9.1 for State health benefits coverage during a voluntary furlough.

(k) Once an employee has used the equivalent of 30 days for a voluntary furlough and the equivalent of 60 days for a furlough extension leave in a calendar year, the employee shall not be permitted to take a leave without pay unless it is approved by the appointing authority in accordance with N.J.A.C. 4A:6-1.10.

1. For any leave without pay approved by the appointing authority in accordance with N.J.A.C. 4A:6-1.10 after the employee has taken a voluntary furlough and furlough extension leave, the rules on leave time, anniversary dates and seniority with respect to leaves without pay shall apply. See N.J.A.C. 4A:6-1.2 (vacation leave), 1.3 (sick leave), 1.5 (vacation and sick leave adjustments); 4A:3-4.6 (anniversary dates); and 4A:4-2.15 (seniority in rating of examinations) and 4A:8-2.4 (seniority in layoffs).