

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 a life-threatening condition or combination of conditions or a period of disability required by his or her mental or physical health or the health of the employee's fetus and requiring 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 a life-threatening condition or combination of conditions or a period of disability required by his or her mental or physical health and requiring 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.

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 program 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.

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).

New Rule, by R.1995 d.12, effective January 3, 1995.

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

Petition for Rulemaking.

See: 34 N.J.R. 1742(a).

Petition for Rulemaking.

See: 35 N.J.R. 276(a).

4A:6-1.24 School volunteer leave

(a) State employees in the career, senior executive or unclassified service shall be granted leave with pay, up to a maximum of 20 hours per calendar year, to volunteer in an academically beneficial school activity.

1. In local service, an appointing authority may establish a school volunteer leave program.

(b) An academically beneficial school activity, for purposes of this section, includes, but is not limited to, helping a teacher in the classroom, as well as the following activities held at the schools: reading to children; tutoring; assisting students with homework; mentoring; serving as a guest speaker; advising students on careers; or assisting with extra curricular or coaching activities.

1. School volunteer leave is not intended to be used for such activities as parent teacher conferences back-to-school nights, field trips or attending class performances.

2. Activities may take place at any New Jersey public, private or parochial school, through grade 12.

3. The volunteer program shall be approved by the local board of education or, in the case of a private or parochial school, the appropriate administrative authority for that school.

4. The State employee need not be a parent of a child in the school in which the volunteer activity is being performed. However, employee participation in the volunteer program shall be subject to approval by the school principal or designee.

(c) State appointing authorities shall establish procedures for school volunteer leave, subject to the following:

SUBCHAPTER 2. HOURS OF WORK

4A:6-2.1 General provisions

(a) In local service, appointing authorities, subject to applicable negotiations requirements, may establish the hours of work.

(b) In State service, this subchapter applies to all employees in the career, senior executive or unclassified service.

1. The number of hours comprising the normal workweek for each job title shall be indicated in the State compensation plan.

2. For State overtime and holiday pay procedures, see N.J.A.C. 4A:3-5.1 et seq.

Case Notes

Scope of negotiations; work week provisions. In re IFPTE Local 195 v. State, 88 N.J. 393, 443 A.2d 187 (1982).

Extension of work day (local service). Pros., Det. Essex Cty. v. Hudson Bd. Freeholders, 130 N.J.Super. 30, 324 A.2d 897 (App.Div. 1974) certification denied 66 N.J. 330, 331 A.2d 30.

Jurisdiction; issue of increase in hours without increase in pay. Essex Coun. # 1, N.J. Civ. Serv. Assoc. v. Gibson, 114 N.J.Super. 576, 277 A.2d 562 (Law Div.1971) reversed and remanded 118 N.J.Super. 583, 289 A.2d 537 (App.Div.1972).

4A:6-2.2 Fixed workweek (35, 40, 3E or 4E) job titles: State service

(a) Job titles which meet all of the following criteria shall be assigned a fixed workweek of either 35 or 40 hours:

1. The work schedule is consistently regular, amenable to administrative control and determined by the direction of a supervisor rather than by the nature of the service and employees have minimal discretion over their work schedule;

2. The hours of work conform to a standard pattern of work time for the typical work location;

3. Employees normally work under direct supervision within a formal work program in a State office, location or place of business. Field work without direct supervision is minimal; and

4. An appointing authority can certify with assurance when an employee performs work beyond the normal workweek.

(b) Job titles which meet the criteria in (a) above are designated as 35 hours (35) or 40 hours (40), except those exempt from the Fair Labor Standards Act, 29 U.S.C. 20 et seq., are designated exempt 35 hours (3E) or exempt 40 hours (4E).

Case Notes

Past practice not prohibitive of enforcement of 40 hour work week. In re Grievance of Trans. Empt., 120 N.J.Super. 540, 295 A.2d 369 (App.Div.1972) certification denied 62 N.J. 193, 299 A.2d 727.

4A:6-2.2A Law enforcement work schedule (4L): State service

(a) Job titles which meet all of the following criteria shall be assigned an alternate work schedule consisting of a 28-day cycle, pursuant to 29 U.S.C. § 207(k):

1. Employees are uniformed or plainclothes members of a body of officers and subordinates;

2. Employees are empowered by statute or local ordinance to enforce laws designed to maintain public peace and order, to protect life and property from accident or willful injury and to prevent and detect crimes;

3. Employees have the power to arrest; and

4. Employees have participated in a special course of instruction or study (or will undergo on-the-job training) which typically includes: self defense, physical training, firearm proficiency, criminal and civil law principles, investigative and law enforcement techniques, community relations, medical aid and ethics.

(b) Job titles which meet the criteria in (a) above shall be designated 4L. All employees who meet the criteria are considered engaged in law enforcement activities regardless of their rank or their status as trainee, probationary or permanent employees.

1. The tour of duty within the 28 day cycle shall total at least 160 hours. At the discretion of the appointing authority, employees who work more than 160 hours may be compensated through either a provision for flexible work patterns or a grant of comparable amounts of time off to a maximum of one hour for each hour of such additional work time.

2. Within the 28 day cycle, employees can work a maximum of 171 hours. Employees may work more than 40 hours in a week without incurring overtime, so long as they do not work more than 171 hours within the 28 day cycle. Overtime begins on the 172nd hour.

3. Except for the special eligibility requirements set forth above, overtime compensation shall be paid in the same manner as employees in 40 hour workweek titles. See N.J.A.C. 4A:3-5.5(b).

New Rule, R.1997 d.483, effective November 17, 1997.
See: 29 N.J.R. 3384(a), 29 N.J.R. 4865(a).

4A:6-2.3 Non-limited (NL, NE or N4) job titles: State service

(a) Titles in the following categories shall be assigned a non-limited workweek:

1. Titles in which employees have direct or delegated responsibility for the management of a State governmental unit or a professional level program, including deputies, assistants and staff administrative titles at management levels who are authorized to assume many of the functions performed by their supervisor. This category

could include supervisory professional titles above the level of crew leader and clerical supervisor;

2. Non-management titles which do not meet all of the criteria for a fixed workweek set forth in N.J.A.C. 4A:6-2.2(a);

3. Sworn unclassified employees of the State police;

4. Military titles in the Department of Defense in which employees are required to be on duty in support of National Guard units; and

5. Titles in which schedules of work vary considerably between a prime and a slack work season.

(b) Non-limited titles are those titles having irregular or variable work hours. Such titles shall be designated as follows:

1. Non-limited (NL) titles are those titles in which employees work at least a 35 hour workweek with occasional requirements for a longer workweek to complete projects or assignments.

2. Non-limited, 40 hour (N4) titles are those in which employees work at least a 40-hour workweek with occasional requirements for a longer workweek to complete projects or assignments.

3. Non-limited, non-exempt (NE) titles are those titles which are subject to the provisions of the Fair Labor Standards Act, 29 U.S.C. 201 et seq.

4A:6-2.4 Holidays: State service

(a) Holidays as authorized by law or Executive Order shall be allowed as days off with regular pay for full-time employees. Part-time employees who work a constant percentage of a full workweek shall receive holiday leave credit on a proportionate basis.

(b) Employees in intermittent titles shall receive holiday leave credit based on accumulated hours of work as follows: