

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, 18A:31-2, 30:4-178, 34:11B-1 et seq., 38:23-1, 38:23-2, 38:23-4, 38A:4-4, 40A:14-177, 52:14-26.2, Executive Order No. 12(1990), 29 U.S.C. 201 et seq., 42 U.S.C. 12101 et seq.

Source and Effective Date

R.1993 d.47, effective December 22, 1992.
See: 24 N.J.R. 3590(a), 25 N.J.R. 293(a).

Executive Order No. 66(1978) Expiration Date

Chapter 6, Leaves, Hours of Work and Employee Development, expires on December 22, 1997.

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 See, also, Historical Notes at repealed N.J.A.C. 4:1, Civil Service Rules, specifically Subchapters 17, 18, 20 and 26; repealed N.J.A.C. 4:2, State Service, specifically Subchapters 17, 18, 20 and 26; and repealed N.J.A.C. 4:3, Local Service, specifically Subchapters 17 and 20.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 See, also, Historical Note and section annotations at repealed N.J.A.C. 4:4, New Jersey State Employees' Awards Committee Rules.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 was readopted as R.1993 d.47. See: Source and Effective Date. See, also, section annotations for specific rulemaking activity.

CHAPTER TABLE OF CONTENTS**SUBCHAPTER 1. LEAVES OF ABSENCE**

- 4A:6-1.1 General provisions
- 4A:6-1.2 Vacation leave
- 4A:6-1.3 Sick leave
- 4A:6-1.4 Sick leave procedures: State service
- 4A:6-1.5 Vacation and sick leave adjustments: State service
- 4A:6-1.6 Sick Leave Injury (SLI) requirements: State service
- 4A:6-1.7 Sick Leave Injury (SLI) reporting and appeal procedures: State service
- 4A:6-1.8 Pregnancy-disability and child care leave: State service
- 4A:6-1.9 Administrative leave: State service
- 4A:6-1.10 Leave without pay: State service
- 4A:6-1.11 Military leave
- 4A:6-1.12 Leave for appointment by Governor
- 4A:6-1.13 Convention leave
- 4A:6-1.14 Education leave: State service
- 4A:6-1.15 Leave for athletic competition: State service
- 4A:6-1.16 Leave for union office
- 4A:6-1.17 Leave for elective office: local service
- 4A:6-1.18 Leave for emergency civilian duty: State service
- 4A:6-1.19 Leave for jury duty: State service
- 4A:6-1.20 Leave to appear as a witness: State service
- 4A:6-1.21 Family leave
- 4A:6-1.21A State family leave
- 4A:6-1.21B Federal family and medical leave
- 4A:6-1.22 Donated leave program: State service
- 4A:6-1.23 Voluntary furlough program

APPENDIX**SUBCHAPTER 2. HOURS OF WORK**

- 4A:6-2.1 General provisions
- 4A:6-2.2 Fixed workweek (35, 40, 3E or 4E) job titles: State service
- 4A:6-2.3 Non-limited (NL, NE or N4) job titles: State service
- 4A:6-2.4 Holidays: State service
- 4A:6-2.5 Inclement weather or emergency conditions: State service
- 4A:6-2.6 Flexitime programs: State service
- 4A:6-2.7 Alternative workweek programs: State service
- 4A:6-2.8 Adjusted hours of operation: State service

**SUBCHAPTER 3. SUPPLEMENTAL COMPENSATION
ON RETIREMENT**

- 4A:6-3.1 Eligibility: State service
- 4A:6-3.2 Break in service: State service
- 4A:6-3.3 Computation of payment: State service
- 4A:6-3.4 SCOR procedures: State service

**SUBCHAPTER 4. HUMAN RESOURCE
DEVELOPMENT: TRAINING, EDUCATION,
CAREER DEVELOPMENT AND EMPLOYEE
ASSISTANCE PROGRAMS**

- 4A:6-4.1 General provisions
- 4A:6-4.2 Department of Personnel functions: State service
- 4A:6-4.3 Training and Education Programs: State service
- 4A:6-4.4 Certified Public Manager Program: State service
- 4A:6-4.5 Career Development Programs: State service
- 4A:6-4.6 Tuition aid program: State service
- 4A:6-4.7 (Reserved)
- 4A:6-4.8 Employee interchange program
- 4A:6-4.9 Internship programs: State service
- 4A:6-4.10 Employee Advisory Service: State service

SUBCHAPTER 5. PERFORMANCE EVALUATION

- 4A:6-5.1 General provisions
- 4A:6-5.2 PAR procedure: State service
- 4A:6-5.3 PAR use and review: State service

SUBCHAPTER 6. AWARDS PROGRAM

- 4A:6-6.1 General provisions
- 4A:6-6.2 New Jersey Employee Awards Committee: State service
- 4A:6-6.3 Records: State service
- 4A:6-6.4 Recognition awards: State service
- 4A:6-6.5 Suggestion Award Program standards: State service
- 4A:6-6.6 Suggestion Award Program procedures: State service
- 4A:6-6.7 Suggestion Award Program types and amounts of awards: State service
- 4A:6-6.8 Service Awards Program: State service
- 4A:6-6.9 Departmental awards programs: State service
- 4A:6-6.10 Appeals: State 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.

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.

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 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) 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.

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

(f) 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.

(g) An employee who leaves State government service or service with a local jurisdiction shall be paid for unused earned vacation leave.

(h) 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.

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

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).

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.

(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 sick leave program in State service.

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).

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).

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).

4A:6-1.5 Vacation 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 while he or she is employed by an appointing authority which tracks and grants sick leave in hours, the employee's sick leave entitlement shall be recalculated in the following manner:

1. The number of hours of 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, 1989, she had accumulated 245 sick leave hours from prior years and was credited with 105 sick leave hours for the 1989 (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 1989 (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).

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.

(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 the injury or illness is work related.

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 required 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).

Law Review and Journal Commentaries

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

Case Notes

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.

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

(a) An employee is required to report to his or her supervisor any work accident or condition claimed to have caused disability upon occurrence or discovery, and is responsible for completing a written report on the matter within five days or as soon as possible thereafter. The report shall include a statement of when, where and how the injury or illness occurred, statements of witnesses and copies of all medical reports concerning the injury or illness.

(b) The appointing authority shall review the request for SLI benefits based on the standards in N.J.A.C. 4A:6-1.6, and within 20 days of receipt of the request:

1. Grant the request, notify the employee in writing and forward its recommendation to the Department of Personnel which, upon review, shall notify the employee and appointing authority whether or not the benefits have been approved; or

2. Deny the request and advise the employee in writing of the reasons for the denial and of the right to appeal to the Merit System Board within 20 days of receipt of the determination.

(c) The appointing authority's recommendation for approval of SLI benefits must be accompanied by:

1. All personal injury reports;
2. A record of the employee's lost time;
3. A detailed explanation of the incident;
4. All pertinent physician reports; and
5. A completed "Request for Employment Disability Leave."

(d) The appointing authority may require the employee to be examined by a physician designated and compensated by the appointing authority.

(e) An employee may appeal an appointing authority denial of SLI benefits to the Merit System Board in accordance with N.J.A.C. 4A:2-1.1 et seq.

(f) An employee or appointing authority may appeal a Department of Personnel denial of SLI benefits to the Merit System Board in accordance with N.J.A.C. 4A:2-1.1 et seq.

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

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

(i) 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).

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. Emergencies;
- ii. Religious holidays;
- iii. Personal matters.

2. Employees hired during the calendar year shall be granted one-half day of administrative leave for each full calendar month of employment up to a maximum of three days' leave for the remainder of the calendar year. Thereafter, administrative leaves shall be credited at the beginning of each calendar year.

3. Administrative leave may be granted and shall be recorded and tracked in hours.

(b) Unclassified employees may be granted up to three days of administrative leave in each calendar year, at the discretion of the appointing authority.

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

(d) Use of administrative leave must be approved by the appointing authority and cannot be unreasonably denied.

(e) Administrative leave that is not used during the calendar year shall be forfeited. An employee who leaves State service shall not be required to reimburse the State for days already used.

(f) Administrative leave may be taken in conjunction with other types of paid leave.

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

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

In (c): 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).

Revised (a)3.

4A:6-1.10 Leave without pay: State service

(a) In State service, an appointing authority may, with Department of Personnel approval, grant leaves of absence without pay to permanent employees for a period not to exceed one year unless otherwise provided by statute. A leave may be extended beyond one year for exceptional situations upon request by the appointing authority and written approval by the Department of Personnel.

1. An appointing authority may, with Department of Personnel approval, grant leaves of absence without pay to nonpermanent career service State employees for exceptional situations. Such leaves shall not exceed six biweekly pay-periods, or the equivalent, and shall not continue beyond termination of the appointment. Such leaves may be extended up to an additional six months, upon request of the appointing authority and written approval by the Department of Personnel, in cases of personal illness or disability. Leave without pay for nonpermanent employees may be terminated at any time.

2. Leave for union office for permanent and nonpermanent employees, pursuant to N.J.A.C. 4A:6-1.16, may be for periods longer than those specified in (a) and (a)1 above, as provided in the negotiated agreement.

(b) Employees in the senior executive and unclassified service may be granted leaves of absence without pay up to one year, at the discretion of the appointing authority.

(c) An appointing authority may permit an employee to return from a leave of absence without pay prior to its conclusion.

(d) Appointing authorities shall set procedures subject to review by the Department of Personnel for leave without pay.

(e) 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.1989 d.29, effective January 3, 1989.

See: 20 N.J.R. 133(a), 21 N.J.R. 19(a).

(a): Deleted text "Leave for union . . . the negotiated agreement." and added "Such leaves may . . . "; added (a)1.

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

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

Added new subsection (e).

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

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

Cross References

Active duty leaves, see N.J.A.C. 5A:2-2.3.

Case Notes

Temporary leave of absence from classified position to fill unclassified position does not violate civil service rules and regulations (citing former N.J.A.C. 4:1-17.6). *Zamboni v. Stamler*, 199 N.J.Super. 378, 489 A.2d 1169 (App.Div.1985).

4A:6-1.11 Military leave

(a) An employee in the career, senior executive or unclassified service, other than a person holding a position for a fixed term or period, who enters the military service in time of war or emergency, or for any period of training, or pursuant to any selective service system, shall be entitled to a leave of absence without pay for the period of such service and three months after discharge. However, if an employee is incapacitated by wound or illness at the time of discharge, such leave shall be extended until three months from recovery but in no event more than two years from date of discharge.

1. During such leave of absence, the employee shall continue to accrue seniority and salary increments, if applicable, in his or her title.

2. No entitlements under this section shall be granted if the separation from military service is by a dishonorable discharge. See N.J.S.A. 38:23-4.

3. For Federal reemployment rights, see 43 U.S.C. Section 2021.

(b) An employee in the career, senior executive or unclassified service who is a member of the national guard or other component of the organized militia of the State of New Jersey shall be entitled to a leave of absence with pay not to exceed 90 days in the aggregate in any one year that he or she is required to engage in active duty or active duty for training. See N.J.A.C. 5A:2-2.3(b) for types of required duty. However, appointing authorities may reschedule an employee's work time to avoid conflict with such required duty.

1. A leave of absence with pay shall also be granted for other military duty when ordered by the Governor in case of insurrection, breach of the peace, national disaster or imminent danger to public safety.

2. Such leave of absence shall be in addition to the regular vacation allowed such employee. See N.J.S.A. 38A:4-4.

(c) A permanent employee who is a member of the organized reserves of the Army, Navy, Air Force or Marine Corps of the United States or other affiliated organizations shall be entitled to a leave of absence with pay on days on which he or she is required to engage in field training, but only that training which consists of participation in unit training field operations and is a part of the required annual tour of duty in order to be a member of that component. However, appointing authorities may reschedule an employee's work time to avoid conflict with military field training.

1. A nonpermanent employee serving for one year or longer shall be entitled to a leave of absence with pay not to exceed 30 days in the aggregate in any one year while engaged in field training. A leave of absence without pay shall be granted to a nonpermanent employee serving for less than a year while engaged in field training.

2. Such leave of absence shall be in addition to the regular vacation allowed such employee. See N.J.S.A. 38:23-1 and 38:23-1.1.

(d) An employee is entitled to a leave of absence without pay for such other national guard, state organized militia or United States reserve duty not covered by (b) or (c) above.

1. During such leave of absence, the employee shall continue to accrue seniority and salary increments, if applicable, in his or her title.

2. At the discretion of the employee, vacation leave, administrative leave and other accrued compensation may be used for such absences.

(e) For military leave regulations promulgated by the New Jersey Department of Defense, see N.J.A.C. 5A:2.

Amended by R.1994 d.73, effective February 7, 1994.
See: 25 N.J.R. 4824(a), 26 N.J.R. 795(b).

Cross References

Military leave, see N.J.A.C. 5A:2-2.3.

Case Notes

Employee not entitled to civilian pay while on voluntary military training (citing former N.J.A.C. 4:1-17.3). *Hill v. Camden*, 190 N.J.Super. 418, 475 A.2d 567 (App.Div.1983) certification denied 96 N.J. 263, 475 A.2d 567.

Entitlement to purchase credit for time spent on military leave upheld because it was involuntary and involved active duty for training (citing former N.J.A.C. 4:1-17.9). *Abbotts v. Bd. of Trustees*, 8 N.J.A.R. 102 (1984).

4A:6-1.12 Leave for appointment by Governor

When a permanent employee or an employee in the senior executive service is appointed by the Governor to an office, the appointing authority shall grant and record a leave of absence without pay for the period of appointment, provided that the employee requests such a leave of absence prior to the appointment. Upon the expiration of the leave, the employee shall have the right to return to the former title and receive all the rights, privileges and benefits of that title as if he or she had remained in that title. See N.J.S.A. 52:14-16.2.

Amended by R.1994 d.73, effective February 7, 1994.
See: 25 N.J.R. 4824(a), 26 N.J.R. 795(b).

4A:6-1.13 Convention leave

(a) Every employee in the career, senior executive or unclassified service who is a duly authorized representative shall, upon request, be granted a leave of absence with pay

for a period of up to five days in any calendar year to attend any State or national convention of any one or more of the established veterans organizations listed in N.J.S.A. 38:23-2 and the New Jersey Civil Service Association. The five days shall include necessary travel time. Written notice from the appropriate organization indicating that the employee is a duly authorized delegate shall be submitted to the appointing authority prior to the convention. A certificate of attendance shall be submitted to the appointing authority after the convention indicating the delegate's attendance.

(b) Every employee who is a duly authorized representative of the following organizations shall be granted a leave of absence with pay to attend the following conventions. The leave shall be for a period inclusive of the duration of the convention with a reasonable time allowed for travel to and from the convention. A certificate of attendance at the convention shall, upon request, be submitted by the representative so attending. See N.J.S.A. 11A:6-10; N.J.S.A. 40A:14-177 and 38:23-2.

1. American Federation of Police Officers, Inc.;
2. Bronze Shield, Inc.;
3. Batons;
4. Fire Fighters Association of New Jersey;
5. Firemen's Mutual Benevolent Association Inc.;
6. Fraternal Order of Police;
7. New Jersey Association of Chiefs of Police;
8. New Jersey State Exempt Firemen's Association;
9. New Jersey State Patrolmen's Benevolent Association, Inc.;
10. Uniformed Firemen's Association;
11. Vulcan Pioneers;
12. A member organization of the New Jersey Council of Charter Members of the National Black Police Association, Inc.

(c) Any corrections officer who is a member of the Italian American Police Society of New Jersey shall be granted a leave of absence with pay to attend any State or national convention of the organization. The leave shall be for a period inclusive of the duration of the convention with a reasonable time allowed for travel to and from the convention. A certificate of attendance at the convention shall, upon request, be submitted by the member so attending. See N.J.S.A. 11A:6-10.

(d) Persons designated by the Governor shall be granted leaves of absence to attend the convention of the American Correctional Association (American Prison Association). See N.J.S.A. 30:4-178.

(e) Any full-time teaching staff member, secretary or office clerk of any local school district who applies to his or her board of education shall be granted a leave of absence with pay to attend the convention of the New Jersey Education Association. Such leave shall not exceed two days within any one calendar year. The employee must file a certificate of attendance with the board of education. The certificate must be signed by the executive secretary of the association for the employee to receive paid leave. See N.J.S.A. 18A:31-2.

(f) The Chancellor of Higher Education, with approval of the Board of Higher Education, may prepare rules concerning leaves of absence and payment during such leaves for teachers employed in the State colleges. See N.J.S.A. 18A:64-16.

Amended by R.1994 d.73, effective February 7, 1994.
See: 25 N.J.R. 4824(a), 26 N.J.R. 795(b).

Case Notes

Sick leave injury benefits paid to public employees under the Civil Service Act constitute, like worker's compensation itself, wage-loss replacement benefits rather than remuneration for services rendered, therefore the benefits are not "wages" or "remuneration" within the meaning of the unemployment and temporary disability benefit laws. Atty.Gen.F.O.1980, No. 20.

4A:6-1.14 Education leave: State service

In State service, an appointing authority may, with Department of Personnel approval, grant an employee in the career, senior executive or unclassified service education leave with or without pay for the purpose of obtaining training that is of direct value to the State but is not available through State inservice training programs. See N.J.A.C. 4A:6-4.6 for tuition aid programs.

4A:6-1.15 Leave for athletic competition: State service

(a) Any State employee in the career, senior executive or unclassified service who qualifies as a member of the United States team for athletic competition at the world, Pan American or Olympic level, in a sport contested in either Pan American or Olympic competitions, shall be granted a leave of absence with pay for the purpose of preparing for and engaging in the competition.

(b) Such paid leave shall be no more than 90 calendar days in one year or the combined days of the official training camp and competition, whichever is less.

4A:6-1.16 Leave for union office

An appointing authority may grant a leave of absence without pay to any employee elected or appointed as an official of the employee's union. The maximum period for such leaves shall be a subject of negotiation between the employer and union.

4A:6-1.17 Leave for elective office: local service

(a) A permanent employee in local service shall be granted a leave of absence without pay to fill elective public office for the term of the office.

1. The employee shall be entitled to return to his or her permanent title within six years from the date the leave begins, provided that a written request to return is submitted to the appointing authority before the leave expires. If the term of the elective office exceeds six years, the employee's name shall be placed on a special reemployment list at the expiration of the six years.

2. The employee shall continue to accrue seniority in his or her permanent title for a maximum of six years.

3. An employee who had taken a promotional examination before being granted the leave may be appointed to the promotional title from the resulting list and shall begin the working test period upon return from the leave.

4. Any appointments to fill the position of the employee during the leave shall be made from appropriate eligible lists, but any such appointments shall be interim and shall terminate upon the return of the employee on such leave to the permanent title.

4A:6-1.18 Leave for emergency civilian duty: State service

(a) State employees in the career or senior executive service shall be given time off with pay to perform emergency civilian duty in relation to national defense or other emergency when so ordered by the Governor or by the President of the United States.

(b) Unclassified State employees may be granted such leave with or without pay at the discretion of the appointing authority.

4A:6-1.19 Leave for jury duty: State service

(a) State employees in the career or senior executive service shall be granted leave with pay for the time required to attend jury duty that is scheduled during work hours. Time required for jury duty includes actual time spent in commuting.

(b) Employees who are required to attend jury duty during the work shift immediately preceding or following his or her scheduled work shift wholly within the same day shall be excused from the scheduled work shift. If the employee's scheduled work shift extends from one day to the next and does not immediately precede or follow the period during which an employee must attend jury duty, the employee shall choose and be granted leave from his or her work shift that is scheduled either before or after jury duty.

(c) Employees shall be granted up to their normal number of work hours in any one day to attend jury duty. Employees who do not work on a fixed workweek schedule

may be granted up to eight hours' leave in any one work day.

(d) Employees shall submit to their appointing authority written verification of attendance signed by a representative of the court.

(e) Unclassified State employees may be granted such leave with or without pay at the discretion of the appointing authority.

4A:6-1.20 Leave to appear as a witness: State service

(a) State employees in the career or senior executive service shall be granted time off with pay to appear as a witness or a party before a judicial or administrative body or legislature committee when such appearance is part of the job function. If an employee appears as a witness or a party during his or her normal day off, the employee shall be compensated on a time-for-time basis.

(b) When appearance before a judicial or administrative body is not part of the job function, a State employee in the career or senior executive service shall be granted time off with pay when summoned as a witness in a proceeding to which he or she is not a named party, and shall be granted time off without pay to appear at a proceeding to which he or she is a party. However, an employee is entitled to time off with pay to attend his or her workers' compensation proceeding.

(c) State unclassified employees may be granted such leave with or without pay at the discretion of the appointing authority.

4A:6-1.21 Family leave

(a) The following two sections include informational provisions on two leave programs: family leave (FLA) under State law (N.J.A.C. 4A:6-1.21A), and family and medical leave (FMLA) under Federal law (N.J.A.C. 4A:6-1.21B). It is the responsibility of every appointing authority to determine the extent to which one or both leave programs are applicable to the situation of an employee requesting leave, or whether neither program is applicable. If one or both programs are applicable, it is also the responsibility of the appointing authority to record the leaves appropriately and implement the applicable law(s).

(b) Following are examples of the interaction of the FMLA and FLA:

EXAMPLE ONE: A State employee needs to take leave for the birth of a child in 1994 and the birth of another child in 1995. If the employee is eligible for leave under both State and Federal laws, the employee may utilize the 12-week entitlement in 1994, which counts against leave under both laws. The State must comply with applicable provisions of both laws. More generous provisions of the

FMLA, such as those on intermittent and reduced leave, apply.

In 1995, the employee is not entitled to family leave under State law because State law only permits 12 weeks of family leave in a two-year period. However, the employee is entitled to family leave under Federal law because the FMLA permits a family leave of 12 weeks in a 12-month period.

Leave during 1994 is recorded as both FLA and FMLA. Leave during 1995 is recorded as FMLA only.

EXAMPLE TWO: A municipal employee suffers from a serious health condition which makes the employee unable to perform his job duties. If the employee meets the criteria for eligibility under the FMLA, the employee is therefore entitled to 12 weeks of medical leave. This leave does not count against the employee's entitlement under State law because State law does not provide for leave for an employee's own serious health condition. Therefore, during the same 12-month period, if the employee needs to take leave because of the serious health condition of a child, the employee is entitled to 12 weeks of such leave under State law as long as the employee meets the criteria for eligibility.

EXAMPLE THREE: A State employee is disabled due to her pregnancy and is unable to work. The employee needs to take 12 weeks of leave for this reason. If the employee is eligible for medical leave under the FMLA, then the 12 weeks of pregnancy-disability leave will count toward her FMLA entitlement for that 12-month period. If she thereafter wishes to take 12 weeks of leave to care for her new child and is eligible for family leave under State law, she may then take 12 weeks of family leave. However, if the employee needs additional leave for child care, she may apply for leave without pay for this additional leave. The appointing authority may, but is not required to, grant such additional leave, since the employee has exhausted her leave entitlements under both State and Federal law. See N.J.A.C. 4A:6-1.10.

EXAMPLE FOUR: Joe is employed by the State Department of Insurance. His wife Jill is employed by the Department of State. Joe takes three weeks of leave to care for his seriously ill mother. Jill takes three weeks of leave to care for her newborn child. These three weeks are recorded on both of their records as State family leave (FLA) and Federal family leave (FMLA). They have remaining a combined total of six weeks of FMLA leave if used to care for their newborn child. However, if either is unable to work due to a serious health condition, each has nine weeks of FMLA leave remaining for that purpose. Each has nine weeks of FLA remaining.

EXAMPLE FIVE: An employee gives birth to a child on January 1. On November 1, she commences leave to care for her child, and completes this leave 12 weeks later. Her leave through December 31 is recorded as both FLA and FMLA. After December 31, the leave is recorded only as FLA.

EXAMPLE SIX: An employee takes in a foster child on December 1. He wishes to take a leave to care for the child commencing the following November 1. This leave is recorded as FMLA only, and only lasts through the end of November.

EXAMPLE SEVEN: An employee's wife gives birth on January 1. He commences leave on January 10. This leave is recorded as both FLA and FMLA, for a 12 week total.

EXAMPLE EIGHT: John is covered under a negotiations agreement. He has taken 12 weeks of leave, to end on December 31, 1993 because of his own serious health condition. Then he has a relapse and, on February 10, 1994, requires further leave. The leave does not fall under the FLA at all. Prior to February 5, 1994, the leave is also not recorded as FMLA. The leave commencing on February 10, 1994 is medical leave and is recorded as FMLA.

EXAMPLE NINE: Susan is a nonrepresented managerial employee who commences leave on July 1, 1993 for care of a newborn and needs leave for the next 15 weeks. From July 1 through August 4, the leave is recorded as FLA only. From August 5 through September 22 (12 weeks after July 1) the leave is recorded as FLA and FMLA. From September 23 through October 13, this leave is recorded as FMLA only.

EXAMPLE TEN: Robert is taking six weeks of paid sick leave for major surgery and recuperation from the surgery. Robert has informed his employer about the reason for his leave. His employer has designated this paid sick leave as FMLA leave. Immediately upon doing so, the employer also notifies Robert of this designation.

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

Law Review and Journal Commentaries

Federal Leave Act Broadens N.J. Coverage. David H. Ben-Asher, Elliot M. Baumgart, 133 N.J.L.J. No. 16, 10 (1993).

4A:6-1.21A State family leave

(a) This section describes leaves for which employees in State and local service may be eligible, pursuant to the Family Leave Act, L.1989, c.261. The Division on Civil Rights, Department of Law and Public Safety, has promulgated rules to implement and enforce the Family Leave Act. See N.J.A.C. 13:14.

(b) The following definitions are used in this section:

1. "Child" means a biological, adopted, or foster child, stepchild, legal ward, or child of a parent who is under 18 years of age or 18 years of age or older but incapable of self-care because of a mental or physical impairment.

2. "Employ" means to suffer or permit to work for compensation and includes ongoing, contractual relationships in which the employer retains substantial direct or indirect control over the employee's employment opportunities or terms and conditions of employment.

3. "Employee" means a person who is employed for at least 12 months by an employer, with respect to whom benefits are sought under the Family Leave Act, P.L.1989 c.261, for not less than 1,000 base hours during the immediately preceding 12-month period, and includes employees in the career, senior executive and unclassified services.

4. "Employer" means a legal entity which engages the services of an employee and which from May 4, 1990 to May 3, 1991, employed 100 or more persons; from May 4, 1991 to May 3, 1993, employed 75 or more persons; and from May 4, 1993 and thereafter employed 50 or more persons.

i. In State service, "employer" refers to the State of New Jersey. In local service, "employer" refers to the political subdivision or autonomous public officer, board or body.

5. "Employment benefits" means all benefits and policies provided or made available to employees by an employer, and includes group life insurance, health insurance, disability insurance, sick leave, annual leave, pensions, or other similar benefits.

6. "Family leave" means leave from employment so that the employee may provide care made necessary by reason of:

- i. The birth of a child of the employee;
- ii. The placement for adoption of a child with the employee; or
- iii. The serious health condition of a family member of the employee.

7. "Family member" means a child, parent, or spouse.

8. "Intermittent leave" means a non-consecutive leave comprised of intervals, each of which is at least one but less than 12 workweeks within a consecutive 12-month period.

9. "Parent" means a person who is the biological parent, adoptive parent, foster parent, step-parent, parent-in-law or legal guardian, having a "parent-child relationship" with a child as defined by law, or having sole or joint legal or physical custody, guardianship, or visitation with a child.

10. "Reduced leave" means a non-consecutive leave of up to the equivalent of 12 workweeks which is taken in increments of not less than one workday, but not more than one workweek at a time.

11. "Reduced leave schedule" means a reduced leave that is scheduled for not more than 24 consecutive weeks.

12. "Serious health condition" means an illness, injury, impairment, or physical or mental condition which requires:

- i. Inpatient care in a hospital, hospice, or residential medical care facility; or
- ii. Continuing medical treatment or continuing supervision by a health care provider.

(c) An employee shall be entitled to a family leave of 12 weeks in any 24-month period, unless denied under (d) below.

1. Leave taken because of the birth or placement for adoption of a child may commence at any time within a year after the date of the birth or placement for adoption.

2. An employee shall be entitled, at the option of the employee, to take family leave on a reduced leave schedule, in the case of a family member with a serious health condition.

i. The employee shall not be entitled to a reduced leave schedule for a period exceeding 24 consecutive weeks.

ii. The employee shall not be entitled to take the leave on a reduced leave schedule without an agreement between the employee and the appointing authority, if the leave is taken upon the birth or adoption of a healthy child.

iii. The employee shall make a reasonable effort to schedule reduced leave so as not to disrupt unduly the operations of the appointing authority and the employee shall provide the appointing authority with prior notice of the care, medical treatment, or continuing supervision by a health care provider necessary due to a serious health condition of a family member in a manner which is reasonable and practicable.

iv. Leave taken on a reduced leave schedule shall not result in a reduction of the total amount of family leave to which an employee is entitled.

EXAMPLE: An employee on a five day workweek schedule is entitled to a total of 12 weeks of family leave, or 60 working days. The employee takes reduced leave of two days per week for a total of 20 days. The employee remains entitled to 40 working days of family leave.

3. In the case of a family member who has a serious health condition, the leave may be taken intermittently when medically necessary, if:

i. The total time within which the leave is taken does not exceed a 12-month period for each serious health condition episode;

ii. The employee provides the appointing authority with prior notice of the leave in a manner which is reasonable and practicable; and

iii. The employee makes a reasonable effort to schedule the leave so as not to disrupt unduly the operations of the appointing authority.

iv. In the case of the birth or adoption of a healthy child, the leave may be taken intermittently if agreed to by the employee and the appointing authority.

4. See N.J.A.C. 13:14-1.10 concerning proof of need for family leave.

(d) Family leave may be denied to an employee if:

1. The employee is among the highest paid five percent of the employer's employees or the seven highest paid employees of the employer, whichever is greater;

2. The denial is necessary to prevent substantial and grievous economic injury to the employer's operations; and

3. The appointing authority notifies the employee of its intent to deny the leave at the time the appointing authority determines that the denial is necessary.

i. When leave has already commenced at the time of the notification pursuant to (d)3 above, the employee shall return to work within 10 working days of the date of notification.

(e) No employee shall, during any period of family leave, perform services on a full-time basis for any employer for whom the employee did not provide those services immediately prior to commencement of the leave.

(f) During a family leave, the employer shall maintain coverage under any group health insurance policy, group subscriber contract or health care plan at the level and under the conditions coverage would have been provided if the employee had continued in employment continuously from the date the employee commenced the leave to the date the employee returns to work or the date on which the employee's coverage would have expired had the employee not been on leave, whichever is sooner.

(g) Except for health insurance as provided in (f) above, other employment benefits shall be available to employees on family leave without pay as are available to employees on all other leaves without pay.

(h) If a layoff occurs during a family leave, the employee shall retain all rights available under N.J.A.C. 4A:8 as if the employee had not taken the leave.

(i) Family leave without pay shall not be deducted from seniority for layoff purposes. See (c) above. For all other purposes, family leave without pay shall be treated the same as other leaves without pay.

(j) An employee may, at his or her option, use paid leave for family leave purposes. An employee who chooses to use paid leave (vacation, sick or administrative) must meet the requirements set forth in this subchapter for the type of leave requested.

New Rule, R.1990 d.387, effective August 6, 1990.

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

Administrative Correction to (d)3i.

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

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

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

Revised (a) and (b)6ii; added new (c)4 and (j).

Recodified from 4A:6-1.21 by R.1994 d.620, effective December 19, 1994.

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

4A:6-1.21B Federal family and medical leave

(a) The Federal Family and Medical Leave Act (FMLA), 29 U.S.C. 2601 et seq., was effective on August 5, 1993, except for employees covered under a collective negotiations agreement, for whom the Act is effective on February 5, 1994, or the date the agreement expires, whichever is sooner. This section is for informational purposes only, and addresses areas in which FMLA provisions differ from those under the State Family Leave Act (FLA). See N.J.A.C. 4A:6-1.21A. The U.S. Department of Labor has promulgated rules to implement and enforce the FMLA. See 29 CFR 825.

(b) Definitions, unique to this section, are as follows:

1. "Eligible employee" means an employee of the State or a political subdivision who has worked for the employer for at least 12 months for a minimum of 1,250 hours. In determining whether an employee meets this hours of service requirement, work not requested by an employer but suffered or permitted is work time for purposes of meeting this requirement. See 29 U.S.C. 207; 29 CFR 785.11.

2. "Family leave" means a type of FMLA leave to which an eligible employee is entitled if the employee meets the conditions set forth in (d)1 or (d)2 below.

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 Administration, 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 supercedes 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 immediately notify the employee that the paid leave has been designated as FMLA leave.

(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).

4A:6-1.22 Donated leave program: State service

(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. Is suffering from a catastrophic health condition or injury which is expected to require a prolonged absence from work by the employee; and
3. Has exhausted all accrued sick, vacation and administrative leave and all compensatory time off.

(b) 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 serious health condition or injury.

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.

(c) 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. A leave donor shall be in the same department or autonomous agency as the leave recipient.

(d) While using donated leave time, 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 donor or 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.

(e) An 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.

New Rule, R.1993 d.47, effective January 19, 1993.
See: 24 N.J.R. 3590(a), 25 N.J.R. 293(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).

New Rule, by R.1995 d.12, effective January 3, 1995.
See: 26 N.J.R. 4126(a), 27 N.J.R. 145(a).

APPENDIX

Major Provisions of Federal and State Family and Medical Leave Laws

	Federal	New Jersey	
Issues	Enforced by U.S. Dept. of Labor	Enforced by Division on Civil Rights, Dept. of Law and Public Safety	Most Favorable to Employees
Employers Covered	Employers of 50 or more employees in at least 20 weeks of the current or preceding year	Similar	Comparable
Employees Eligible	Have worked for employer at least 1,250 hours in preceding 12 months and employed for at least 12 months; and employed at worksite by employer with 50 or more employees within 75 miles of that worksite	Have worked for employer at least 1,000 hours in preceding 12 months and employed for at least 12 months	New Jersey
Amount of Leave	12 weeks during a 12-month period Leave for birth, adoption, or to care for sick parent must be shared by spouses working for same employer	12 weeks during a 24-month period No reduction in leave requirement for spouses working for same employer	Federal, except for leave sharing requirement for spouses
Type of Leave	Birth, adoption or foster care; to care for parent, child or spouse with serious health condition, or employee's own serious health condition	Birth or adoption, serious health condition of parent, parent of spouse, child or spouse	Federal for coverage of employee's own serious health condition
Serious Health Condition	Means illness, injury, impairment, or physical or mental condition involving incapacity or treatment connected with inpatient care in hospital, hospice, or residential medical-care facility; or, continuing treatment by a health care provider involving: (1) incapacity or absence of more than 3 days from work, school or other activities; (2) chronic or long-term condition incurable or so serious if not treated would result in incapacity of more than 3 days; or (3) prenatal care.	Means illness, injury, impairment, or physical or mental condition which requires inpatient care in a hospital, hospice or residential medical treatment or continuing supervision by a health care provider	New Jersey for coverage of in-laws Comparable
Health Care Provider	Means doctors of medicine or osteopathy authorized to practice medicine or surgery in the State; podiatrists, dentists, clinical psychologists, optometrists, chiropractors (for manual manipulation of spine to correct subluxation demonstrated by X-ray), nurse practitioners, and nurse-midwives, if authorized to practice under State law; or, Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts	Means any person licensed under Federal, State or local law, or the laws of a foreign nation, to provide health services, or any other person who has been authorized to provide health care by a licensed health care provider	Federal
Intermittent Leave	Permitted for serious health condition when medically necessary. Not permitted for birth or adoption unless employer agrees	Not permitted unless employer and employee agree	Federal in cases of serious health condition

	Federal	New Jersey	
Substitution of Paid Leave	Employee may elect or employer may require accrued paid leave to be substituted in some cases. No limits on substituting paid vacation or personal leave. Employee may not substitute paid sick, medical, or family leave for any situation not covered by employer's leave plan.	Similar, but an employer may only require an employee to exhaust paid leave while on family leave if this policy is already in place for other, unpaid leaves of absence.	New Jersey
Reinstatement Rights	Must be restored to same or equivalent position in all terms and conditions	Similar	Comparable
Key Employee Exception	Exempts salaried employees if among highest paid 10 percent and if restoration would cause grievous economic harm to employer	Exempts highest paid five percent of employees or one of the seven highest paid employees, whichever is greater, if restoration would lead to substantial economic injury to employer.	New Jersey in most cases
Maintenance or Health Benefits During Leave	Health insurance must be continued under same conditions as prior to leave	Similar provision in New Jersey has been held to be preempted by ERISA in an April 1, 1991 Superior Court of New Jersey ruling.	Federal
Leave Requests	Made by employee 30 days in advance or as soon as practicable	Made by employee 30 days in advance or as soon as practicable for birth or adoption, 15 days in advance or as soon as practicable for serious health condition.	Comparable for birth or adoption New Jersey for serious health condition
Medical Certification May Be Required By Employer To Support:	Request for leave because of serious health condition Employee's fitness to return to work from medical leave	Similar for serious health condition of family member. Certification may also be required for the birth or placement of a child. Not applicable, law does not provide leave for employee's own serious health condition.	Federal Not Applicable
Executive, Administrative and Professional Employees	Salaried executive, administrative, and professional employees of covered employers who meet the Fair Labor Standards Act (FLSA) criteria for exemption from minimum wage and overtime under Regulations, 29 CFR Part 541, do not lose their FLSA-exempt status by using any unpaid FMLA leave. This special exception to the "salary basis" requirements for FLSA's exemption extends only to "eligible" employees' use of leave required by FLMA.	Unpaid leave would not result in loss of exempt status under State minimum wage and overtime law	Comparable

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

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

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.

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:6-2.3 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:

1. Holiday pay shall be paid at the end of a bi-weekly pay period and shall be calculated by dividing the number of hours the employee was in regular pay status in that pay period by the number of hours which a full-time employee would work during that pay period, and then multiplying that amount by the number of holiday hours for that pay period.

2. An intermittent employee who has resigned, been removed or been laid off prior to the last day of the pay period shall not receive holiday pay for that pay period.

(c) When an authorized State holiday falls on a Saturday, the preceding Friday shall be observed as the holiday. When an authorized holiday falls on a Sunday, the following Monday shall be observed as the holiday.

(d) Employees who are in pay status on the day immediately before an authorized holiday shall receive pay for the holiday. An employee on a voluntary furlough or a furlough extension leave on the day before a holiday shall receive pay for the holiday as long as the employee is in pay status during the pay period in which the holiday falls.

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

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

In (a): raised text and created new (b), with paragraphs 1. and 2. Recodified old (b)-(c) as new (c)-(d), with no change in text.

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

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

4A:6-2.5 Inclement weather or emergency conditions: State service

(a) The Governor, the Commissioner of Personnel or their designees shall determine when inclement weather warrants the implementation of emergency procedures such as early release of employees, the closing of offices and the late opening of offices. The Commissioner or his designee shall notify all State departments when emergency procedures are to be implemented.

(b) Each State department shall maintain essential services and shall designate a coordinator who shall be responsible for:

1. Ensuring that department employees are advised of the emergency procedures;
2. Advising the Governor's office and the Commissioner of regional openings and closings;
3. Ensuring that employees are advised of a telephone number to call regarding implementation of departmental emergency procedures and a listing of the radio stations which will broadcast information concerning the implementation of State-wide emergency procedures.

(c) Employees who are required to work to maintain essential services while others are excused shall be given priority for release for the next emergency, where practicable.

4A:6-2.6 Flexitime programs: State service

(a) Appointing authorities may establish flexitime programs to accommodate operational and/or employee needs, and shall provide for:

1. Core time, which is the period of time during which all employees must be present;
2. Flexible time, which is the period of time before and after the core time in which the employees may choose, subject to appointing authority approval, time of arrival and departure;
3. A meal period which may be flexible in duration and scheduling.

(b) An appointing authority may limit participation in a flexitime program to selected groups of job titles, work units and/or work locations to accommodate operational needs.

(c) Department of Personnel assigned workweeks for affected titles, for example, 35 or 40 hours, shall be retained.

(d) Establishment, modification or termination of a flexitime program shall not become effective without the approval of the Commissioner. Requests for these actions shall be submitted at least 30 days in advance of the proposed effective date to the Department of Personnel and shall include:

1. Justification which relates the requested action to operational and employee needs;
2. Statement of impact on services to the public or agency clientele;
3. Details of the core time, flexible time and meal periods;
4. Groups of job titles, work units and/or work locations to be covered by the program;

5. Procedures governing employee participation in the program;

6. Approval procedures for individual flexitime schedules and changes;

7. Provisions for giving employees at least two weeks notice of termination of the program;

8. Monitoring and evaluation procedures; and

9. Name, address and telephone number of the program administrator.

(e) An appointing authority may authorize a complete or partial temporary suspension of the flexitime program if required by operational needs. Within 10 days of the suspension of the program, the appointing authority shall submit to the Commissioner a fully detailed justification and specify the duration of the suspension.

(f) Appointing authorities should consult with affected negotiations representatives concerning flexitime programs before implementation.

(g) A description of an appointing authority's flexitime program shall be made available to employees upon request.

(h) Overtime compensation for employees in flexitime programs shall be regulated in the same manner as for all other employees.

4A:6-2.7 Alternative workweek programs: State service

(a) Appointing authorities may establish alternative workweek programs, such as a four day workweek, to accommodate operational and/or employee needs.

(b) A program may be developed for year-round use or for a specific portion of a year.

(c) An appointing authority may limit participation in an alternative workweek program to selected groups of job titles, work units and/or work locations to accommodate operational needs.

(d) Department of Personnel assigned workweeks for affected titles, for example, 35 or 40 hours, shall be retained.

(e) Appointing authorities shall develop appropriate pro-rated sick, vacation and administrative leave schedules for employees participating in an alternative workweek program.

1. A normal workday for four day workweek employees in 35 hour, NL or NE workweek titles shall be eight and three-quarter hours a day, exclusive of a meal period. A normal workday for four day workweek employees in 40 hour or N4 workweek titles shall be 10 hours a day, exclusive of a meal period.

2. All sick, vacation and administrative leave taken by employees participating in a four day workweek program

shall be charged at the rate of one and one-quarter days for each day absent. Employees taking less than a full day's leave shall have their leave time prorated accordingly.

(f) Since employees in an alternative workweek program have a longer or shorter workday than employees on a five day workweek schedule, a time differential exists on holidays. This differential shall be equalized in a manner determined by the appointing authority. If a holiday occurs on an employee's regular day off, he or she shall be granted an additional day off consistent with operational needs.

(g) Establishment, modification or termination of an alternative workweek program shall not become effective without the approval of the Commissioner. Requests for these actions must be submitted at least 30 days in advance of the proposed effective date to the Department of Personnel and shall include the same items listed in N.J.A.C. 4A:6-2.6(d).

(h) An appointing authority may authorize a complete or partial temporary suspension of the alternative workweek program if required by operational needs. Within 10 days of the suspension of the program, the appointing authority shall submit to the Commissioner a fully detailed justification and specify the duration of the suspension.

(i) Appointing authorities should consult with affected negotiations representatives concerning alternative workweek programs before implementation.

(j) A description of an appointing authority's alternative workweek program shall be made available to employees upon request.

(k) Overtime compensation for employees in alternative workweek programs shall be regulated in the same manner as for all other employees.

4A:6-2.8 Adjusted hours of operation: State service

(a) Appointing authorities may adjust established hours of daily or shift operations to accommodate operational and/or employee needs.

(b) Department of Personnel assigned workweeks, for affected titles, for example, 35 or 40 hours, shall be retained.

(c) Except for emergency situations of limited duration, adjustments in hours of daily or shift operation shall not become effective without the approval of the Commissioner. Requests for these actions should be submitted at least 30 days in advance of the proposed effective date to the Department of Personnel and shall include:

1. Justification which relates the change to operational and employee needs;

2. Statement of impact on services to the public or agency clientele, employees and the community, that is, traffic flow;

3. Details of adjustments;

4. Work locations and approximate number of employees affected;

5. Provisions for giving employees at least two weeks written notice of adjustments; and

6. Name, address and telephone number of the program administrator.

(d) Appointing authorities should consult with affected negotiations representatives regarding adjustments in hours of daily or shift operations before implementation.

SUBCHAPTER 3. SUPPLEMENTAL COMPENSATION ON RETIREMENT

4A:6-3.1 Eligibility: State service

(a) The following employees shall be eligible for supplemental compensation on retirement ("SCOR"):

1. State employees in the career service and employees in the senior executive service with underlying permanent career service status;

2. State employees in job titles in the senior executive service without permanent career service status and in the unclassified service who have been granted sick leave under the following standards:

- i. All employees in that job title are granted sick leave days in the same number and manner as set forth for State career service employees in N.J.A.C. 4A:6-1.3;

- ii. Sick leave for all employees in that job title is used, reported, and subject to verification in the same manner required for State career service employees in N.J.A.C. 4A:6-1.4 and 1.5.

3. Employees of Rutgers, the State University; the 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, or who have been granted sick leave under the standards set forth in (a)2 above.

(b) Employees in the categories in (a) above shall be eligible for SCOR upon separation from employment based on retirement from a pension system administered by the State of New Jersey.

1. Employees removed for cause after an opportunity for a hearing, who retire in lieu of removal, or who retire under circumstances which would warrant removal, shall not be eligible for SCOR. However, the Commissioner may allow SCOR in such cases where removal was based on a medical disability or where the Commission finds sufficient mitigating circumstances to warrant supplemental compensation.

2. Employees who retire as a result of accidental or ordinary disability, and who meet all other applicable rules, shall be eligible for SCOR.

3. Employees of the University of Medicine and Dentistry of New Jersey who are members of the Newark Employees' Retirement System, and who meet all other applicable rules, shall be eligible for SCOR.

4. Employees who elect deferred retirement, or whose separation from employment is not based on retirement, shall not be eligible for SCOR.

5. Faculty members of the State Colleges; Rutgers, the State University; the New Jersey Institute of Technology; and the University of Medicine and Dentistry of New Jersey who have served in an administrative capacity may be eligible for SCOR based on the time served in that administrative capacity only. Such employees, if deemed eligible, shall be entitled to payment based on sick leave and salary earned while serving in an administrative title.

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).

4A:6-3.2 Break in service: State service

(a) Employees who incur a break in service due to resignation, retirement or removal shall have sick leave computed for SCOR purposes only from the date of return to employment.

1. Employees who have retired and received the maximum SCOR payment shall not be eligible for further supplemental compensation.

2. Employees who have retired and received less than the maximum SCOR payment shall be eligible for an amount no greater than the difference between the payment received and the maximum payment upon reentering State employment and again retiring from State service.

(b) Employees who incur a break in service due to layoff shall be credited for SCOR purposes with sick leave accrued both before separation and after return to employment.

4A:6-3.3 Computation of payment: State service

(a) SCOR shall be computed at the rate of one-half the employee's daily rate of pay for each day of earned and unused accumulated sick leave at the effective date of retirement. The daily rate of pay shall be based upon the average annual compensation received during the last full year of active employment prior to the effective date of retirement.

1. Overtime pay or other supplemental pay shall be excluded from the computation.

2. Periods of leaves of absence without pay shall be excluded from the computation.

(b) If an employee changes from 12 month to 10 month employment during the last year of employment, the average annual compensation must be weighted accordingly.

(c) Ten month employees who have received sick leave without proration shall have their unused accumulated sick leave reduced by one-sixth for purposes of calculating SCOR.

(d) The maximum amount of SCOR for any employee shall be \$15,000.

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).

4A:6-3.4 SCOR procedures: State service

(a) An employee may file an application form DPF-279, within one year of the effective date of retirement, requesting supplemental compensation after receiving a copy of the official notice of retirement approval issued by the appropriate pension board or authority.

(b) The appointing authority shall not process the SCOR application form until it has received the employer's copy of the notice of the retirement approval. If the appointing authority has not received the employer's copy of the notice of retirement approval, it shall, within 45 days after receipt of the employee's application form DPF-279, notify the employee accordingly.

(c) After receipt of the notice of retirement approval and SCOR application, the appointing authority shall forward to the Department of Personnel within 45 days:

1. A personnel action request certifying the number of days of earned and unused accumulated sick leave and the amount of SCOR to be paid;

2. A copy of the notice of retirement approval; and

3. Completed application form DPF-279.

(d) The Department of Personnel shall review the request to ensure that eligibility criteria as set forth in N.J.A.C. 4A:6-3.1 have been met.

1. If eligibility criteria have been met, the request shall be approved.

2. If eligibility criteria have not been met, the request shall be disapproved and the employee shall be provided written notice of the reasons for disapproval and the right to appeal to the Commissioner.

(e) Following approval of the SCOR application, payment shall be made by the appointing authority in accordance with established payroll procedures. The appointing authority shall be responsible for withholding payment should the employee cancel the retirement.

(f) In the event of an employee's death after the effective date of retirement but before payment of SCOR is made, payment shall be made to the employee's estate.

(g) Payment of SCOR shall in no way affect any pension or retirement benefits for which a retired employee is eligible under any other program.

SUBCHAPTER 4. HUMAN RESOURCE DEVELOPMENT: TRAINING, EDUCATION, CAREER DEVELOPMENT AND EMPLOYEE ASSISTANCE PROGRAMS

4A:6-4.1 General provisions

(a) In local service, appointing authorities may implement Human Resource Development (HRD) programs and may, subject to the terms and approval of the Commissioner, participate in programs set forth in this subchapter.

(b) In State Service, the Commissioner shall establish training and education, performance evaluation and assistance programs for employees. The Commissioner shall also review and approve career development programs for employees. These responsibilities may be delegated to agencies other than the Department of Personnel only by written order of the Commissioner.

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

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

Revised (b). Subchapter 4 title also revised to reflect textual changes.

4A:6-4.2 Department of Personnel functions: State service

(a) The Commissioner shall administer a Human Resource Development Institute (HRDI) which is responsible for the following functions:

1. Planning, development, and delivery of all training and education programs for State employees, except for programs exempted by Executive Order 12 (1990) or delegated by the Commissioner in writing.

2. Planning, development, and delivery of all evaluation and assistance programs for State employees.

3. Review and approval of all career development programs for State employees.

4. Management of all ancillary operations, quality control efforts, facilities, and administrative support that are allocated to State Government training programs.

5. Coordination of State service programs for employees seeking agency, career, or location changes and for employees affected by job displacement.

(b) In cooperation with State agencies, the Human Resource Development Institute (Institute) shall assess State government Human Resource Development (HRD) needs and develop training and education plans and programs for each agency and for the State government as a whole. The Institute shall deliver or arrange the delivery of these programs as appropriate.

1. Neither agency employees nor outside consultants may develop or deliver training and education programs that the Institute is capable of developing or delivering without the prior written approval of the Institute director. If the Institute is not capable of developing or delivering a program of instruction that an agency needs, the Institute director may authorize the agency to assign employees temporarily to develop or deliver the program, or to hire a consultant for the same purpose. The Institute staff shall supervise and direct the delivery of any such program.

2. No State agency except the Institute may employ or retain any person whose primary duty is staff training or human resource development, except as specifically permitted by Executive Order No. 12(1990) or by the Commissioner of Personnel in writing.

(c) The Institute shall establish guidelines and procedures for career development programs, help State agencies develop these programs, and review and approve career development plans and programs.

(d) The Institute shall evaluate the results and effects of all State government HRD programs based on the following criteria:

1. Contribution to State government-wide goals and objectives.

2. Response to legitimate State government HRD needs.

3. Allocation of resources to areas of greatest need.

4. Achievement of desired changes in employee knowledge, skills, attitudes, and performance.

(e) The Institute shall maintain a comprehensive system to record the training and education experiences of its clients, including all State government employees.

(f) Each State agency may designate a customer liaison to the Institute, whose responsibilities, which shall be in addition to his or her other job assignments in the agency, shall be the following:

1. Review and approve the designation of members of the agency to participate in HRD programs, subject to eligibility criteria established by the Institute.
2. Assist the Institute in setting HRD priorities related to the agency's mission and goals.

Amended by R.1993 d.47, effective January 19, 1993.
See: 24 N.J.R. 3590(a), 25 N.J.R. 293(a).

Deleted existing text and inserted new.

4A:6-4.3 Training and Education Programs: State Service

(a) State Government training and education programs include, but are not limited to, the following:

1. Employee orientation programs;
2. Agency specific technical and topical programs;
3. Programs mandated by State and Federal statutes;
4. Health and safety programs;
5. General training programs;
6. Computer and information systems training;
7. Basic literacy and remedial programs;
8. Clerical and support programs;
9. Apprenticeship programs;
10. Supervisory and management training; and
11. Executive training and development.

Amended by R.1993 d.47, effective January 19, 1993.
See: 24 N.J.R. 3590(a), 25 N.J.R. 293(a).

Revised section.

4A:6-4.4 Certified Public Manager Program: State service

(a) The Human Resource Development Institute shall develop and administer the Certified Public Manager Program (CPM) for supervisors and managers. The program shall meet criteria established by the National Certified Public Managers Consortium. The Commissioner of Personnel shall be Chief Administrative Officer of the program. The Director of the HRDI shall be the Program Director.

(b) The Program shall consist of progressive levels of instruction delivered jointly by the Institute and Rutgers, the State University. The Institute shall set eligibility criteria and design the courses.

(c) For that part of the program for managerial training, the employee shall be responsible for 25 percent of the cost and the department or agency for 75 percent of the cost, provided however that the HRDI Director may set a different cost allocation depending upon the fiscal condition of the department or agency. If a different cost allocation is set, HRDI shall notify affected departments or agencies prior to soliciting nominations for employee participants.

(d) In order to provide expert guidance to the program, the Commissioner shall appoint a CPM Policy Board consisting of representatives from State government, private sector organizations, and institutions of higher education.

Repealed, recodified and amended by R.1993 d.47, effective January 19, 1993.

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

Section was "Human Resource Development Committee; State Service"; new section recodified from 4.7 with revisions to text.

4A:6-4.5 Career Development Programs: State service

(a) Departments or agencies may, with the approval of the HRDI Director and consistent with their goals, workforce planning and technological changes, implement programs that prepare employees to move to new assignments or career opportunities.

(b) Programs in support of career development include, but are not limited to, the following: tuition assistance (N.J.A.C. 4A:6-4.6), employee interchanges (N.J.A.C. 4A:6-4.8), and internships (N.J.A.C. 4A:6-4.9).

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

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

Deleted (a); redesignated (b)-(c) as (a)-(b) with revisions.

4A:6-4.6 Tuition aid program: State service

(a) Each State department or agency, subject to available appropriations, shall establish a tuition aid program, available to eligible employees to complete undergraduate, graduate, technical or supplemental coursework at an accredited educational institution which relate to current or planned job responsibilities.

(b) The tuition aid program may be submitted for approval as part of the HRD plan (see N.J.A.C. 4A:6-4.3) or as a separate plan for approval by the Department of Personnel and shall include:

1. Employee eligibility criteria and acceptable grades and course completion for reimbursement;
2. Amount of funds allocated for tuition aid;
3. Name of the individual charged with administering the program;
4. Amount and form of reimbursement; and
5. Procedures for notifying employees of approval or disapproval.

(c) Any amendment to the plan must be submitted for approval at least one month prior to implementation.

(d) No employee shall receive tuition aid per semester in an amount that exceeds the cost of six credits at a New Jersey State College or Rutgers, the State University, whichever is higher.

(e) Reimbursement shall be made upon evidence of satisfactory completion of the courses as determined by the department or agency.

(f) Notice, eligibility and application procedures for tuition aid shall be posted throughout the department or agency.

(g) Each State department or agency shall also submit semi-annual reports to the Department of Personnel in such form and detail and according to such time schedule as the Department shall prescribe and include:

1. Names and titles of all employees receiving tuition aid;
2. Amount of aid received by each employee;
3. Equal employment and affirmative action data;
4. Information relating to the course and educational institution; and
5. Other information as may be requested by the Commissioner.

4A:6-4.7 (Reserved)

Repealed and Recodified to 4A:6-4.4 by R.1993 d.47, effective January 19, 1993.

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

Section was "Certified Public Manager Program: State service."

4A:6-4.8 Employee interchange program

(a) The Commissioner may approve an Employee Interchange Program that is intended to improve the management of government through shared experience, communication and learning among public, private and academic organizations. See N.J.S.A. 52:14-6.10 et seq. and N.J.S.A. 11A:2-11j.

(b) An appointing authority is authorized to participate, either as a sending or receiving agency, in an interchange program with any federal, State or local governmental or private sector entity.

(c) An interchange program shall provide that:

1. The length of any interchange shall not be more than 12 months or less than two months. The Commissioner may approve an assignment of less than two months in emergency situations. The Commissioner may extend an interchange for up to an additional six months to complete work in progress.

2. The participating employee shall remain an employee of the sending agency from which he or she shall receive salary and all benefits.

i. A receiving agency may reimburse the employee for travel expenses.

ii. The sending agency may receive reimbursement from the receiving agency for the salary and benefits of the employee. Such reimbursement shall be determined by agreement between the sending and receiving agencies. The agencies may also agree to provide housing or relocation assistance for the employee.

3. No interchange may be initiated without written consent of the participating employee.

4. A participating employee shall remain in the employ of the sending agency for a period of at least one year after the end of the interchange.

(d) An employee may not be assigned to an interchange program for more than 12 months in any 36-month period, unless the length of the interchange is extended by the Commissioner pursuant to (c)1 above.

(e) An employee interchange may be terminated by either the receiving or sending agency by giving 30 days written notice to the other agency, the employee and the Department of Personnel.

(f) The New Jersey Conflict of Interest Law (N.J.S.A. 52:13D-12 et seq.) shall be applicable to all participating State employees and to Federal, local or private sector employees serving with a State agency.

4A:6-4.9 Internship programs: State service

(a) Internship programs include:

1. Programs limited to full time students of participating accredited institutions of higher education who are performing services for a State department or agency directly related to their course of study;

2. Fellowships in managerial assignments to selected individuals based on established educational and career achievements; and

3. Educational or apprenticeship programs for State employees intended for career change or advancement or due to job displacement.

(b) A proposed internship program must be submitted in writing to the Commissioner by the agency head and include a detailed description of the program, its benefits, program participants, program costs and relevant data. The Commissioner may request additional information and may approve, disapprove or modify the request.

4A:6-4.10 Employee Advisory Service: State service

(a) The Department of Personnel shall establish an Employee Advisory Service (EAS) to assist State employees in achieving and maintaining the highest level of job performance of which they are capable. EAS shall provide access to counseling, rehabilitative and/or community services for a State employee who:

1. Has received an annual performance rating at the lowest level. See N.J.A.C. 4A:6-5.1 et seq.
2. Has received a performance rating which is below the mid-point on the multi-level scale and an improvement plan has not been effective;
3. Is experiencing personal problems which affect job performance; or
4. Has a family member who is experiencing personal problems which affect the employee's job performance.

(b) Employees may voluntarily contact EAS or may be referred to EAS by the appointing authority. If the employee consents, he or she may be referred by a union or association representative. An employee should be referred to EAS as soon as problems are manifested which may affect job performance.

(c) Except as conditioned below or where there is an overriding health or safety need, all EAS information regarding an employee is confidential.

1. An employee may authorize in writing the release of all or part of such information.
2. In appointing authority referrals, the appointing authority may be informed:
 - i. Whether an individual has been accepted for a program;
 - ii. Whether or not an employee has kept his or her appointments;
 - iii. The dates and times of future appointments with either EAS or an outside agency; and
 - iv. The estimated amount of time needed to complete the program if reasonably ascertainable.

(d) Appointments for appointing authority referred employees shall be scheduled through the personnel office.

1. An employee shall be given time off with pay for the intake and evaluation visits. For other situations and visits, arrangements shall be set by the employee and appointing authority, which may include use of available sick or other leave.
2. When an appointing authority referred employee fails to keep a scheduled appointment or does not accept a referral from EAS, the appointing authority shall be notified of the matter by EAS.

(e) EAS shall monitor the progress of all employees. To maintain active client status, an employee must follow the prescribed EAS program.

(f) An appointing authority that is informed that an employee is receiving services through EAS, shall consult with the supervisor of the EAS program prior to seeking removal of the employee.

(g) State health or other benefit programs may be utilized where applicable.

SUBCHAPTER 5. PERFORMANCE EVALUATION**4A:6-5.1 General provisions**

(a) In local service, an appointing authority may establish an employee performance evaluation program. A performance evaluation system must be reviewed and approved by the Department of Personnel in order to be used in promotions or layoff.

(b) In State service, a Performance Assessment Review (PAR) program shall apply to all employees in the career service, and those in unclassified titles as designated by particular departments or agencies.

1. While not mandated, departments and agencies are encouraged to include all unclassified titles in the PAR program.
2. The PAR program shall use a standardized form to be designated by the Department of Personnel and a five-level rating scale to include the following ratings:
 - i. One, for Significantly Above Standards;
 - ii. Two, for Exceeds Standards;
 - iii. Three, for Meets Standards;
 - iv. Four, for Marginally Below Standards; and
 - v. Five, for Significantly Below Standards.

(c) Each appointing authority shall maintain an employee's PAR evaluations in his or her personnel records and shall submit reports to the Department of Personnel on all final PAR ratings of its employees in a form prescribed by the Department.

(d) The Commissioner may modify the PAR program based on specific employee or agency needs.

Amended by R.1993 d.47, effective January 19, 1993.
See: 24 N.J.R. 3590(a), 25 N.J.R. 293(a).
Revised (b).

Case Notes

Criteria for employee evaluations; managerial prerogative. State v. State Supervisory Employees Association, 78 N.J. 54, 393 A.2d 233 (1978).

4A:6-5.2 PAR procedure: State service

(a) An employee and his or her supervisor shall jointly develop a job performance plan consisting of work assignments together with measurable performance standards. The employee shall be provided with a copy of the performance plan once established. If an employee disagrees with the established performance plan, he or she may note such disagreement.

(b) At the end of six months and at the end of one year, the employee and the supervisor shall review the employee's performance. The supervisor shall designate an interim performance rating at the end of six months and a final rating at the end of one year.

1. When there is a change either in job assignment or supervisor during the evaluation period, the old performance plan shall be closed out. The employee's performance during the portion of the rating period under the old performance plan shall be rated and a new performance plan shall be prepared. The final rating shall be a proration of all ratings received during the review period.

2. When there is a change in job title during the evaluation period, the former supervisor shall assign a final rating for the former performance plan and title. A performance plan for the new title shall be developed.

3. For employees who are newly hired or whose anniversary dates have changed, the rating period shall end in accordance with the employee's new anniversary date.

4. The final PAR rating for an employee who is at the eighth step of the salary range will be based on an evaluation of performance over 18 months. Interim ratings will be assigned at the end of six months and again at the end of 12 months, and the final rating will be assigned and recorded at the end of 18 months. Once the employee reaches the ninth step of the salary range, the evaluation of the employee's performance again will be based on a 12 month period as described in (b) above.

5. When appropriate, performance improvement plans shall be set at each review.

6. The employee shall be entitled to a copy of the rating.

(c) Where a rating of four or five is received, a performance conference shall be conducted after three months or such shorter period of time as determined by the supervisor.

(d) A performance plan for each rating period shall be established within a reasonable time after completion of the previous rating period. New employees shall receive a performance plan within a reasonable time after appointment.

1. The supervisor shall prepare job performance standards prior to the commencement of the working test period which identify essential tasks and emphasize training and development. Upon the employee's successful completion of the working test period the supervisor and the employee shall jointly develop complete job performance standards.

(e) A supervisor's own PAR shall provide that the supervisor shall complete the PAR of his or her subordinates.

(f) The Department of Personnel may require additional reports, information or audits of an agency's PAR program.

(g) A complaint that an entire agency or unit is in violation of this subchapter shall be presented to the PAR coordinator within the personnel office for the subject department. The PAR coordinator shall, within 30 days, investigate the complaint, respond in writing to the individual(s) presenting the complaint and implement remedial action as appropriate. If the individual(s) is (are) dissatisfied with the response of the PAR coordinator, or if no action has been taken within 30 days of the complaint, the individual(s) may appeal the matter to the PAR Program Coordinator, Department of Personnel.

1. Complaints concerning an individual's PAR rating or performance standards shall be addressed through noncontractual grievance procedures. See N.J.A.C. 4A:6-5.3(b) through (d).

Amended by R.1993 d.47, effective January 19, 1993.
See: 24 N.J.R. 3590(a), 25 N.J.R. 293(a).

Revised (b)-(e); redesignated (e) as (f); added new (g).

4A:6-5.3 PAR use and review: State service

(a) An employee receiving an annual PAR rating of a four or a five shall be denied an anniversary date increment.

1. An appointing authority may request an anniversary date increment for an employee who was denied an increment because of receiving a four rating but whose performance has subsequently improved. If approved by the Department of Personnel, such increment shall not be effective until a pay period beginning at least 90 days after the employee's anniversary date.

2. An employee who receives an annual rating of a four or five shall be referred by the appointing authority to the Employee Advisory Service. See N.J.A.C. 4A:6-4.10.

(b) An employee who has received an annual PAR rating of a four or a five may appeal such rating through departmental non-contractual grievance procedures. See N.J.A.C. 4A:2-3.1. In addition to the grievance procedure requirements, all appeals shall be accompanied by a copy of the PAR evaluation.

(c) An employee may appeal the final departmental decision to the Merit System Board within 20 days of receipt of the decision.

1. The appeal shall be in writing and include a copy of the written departmental decision and the basis for the appeal.

2. The employee shall have the burden of proof to establish that the actions of the supervisor in assigning the rating were arbitrary, unreasonable or induced by improper motives.

3. The Board shall render a final administrative decision upon the written record or such other proceeding as it deems appropriate. See N.J.A.C. 4A:2-1.1.

(d) An employee who disagrees with his or her PAR job performance standards may utilize the noncontractual grievance procedures. The Department of Personnel may designate a person to aid in the resolution of such matters.

(e) A rating of a five shall constitute evidence of incompetency, inefficiency or failure to perform duties. In a disciplinary action, an employee may challenge the basis of any rating that is an issue in the proceeding.

(f) Performance ratings may be used as a factor in promotion (see N.J.A.C. 4A:4-2.15) and layoff (N.J.A.C. 4A:8-2.2(c)4).

Administrative change to (g).
See: 23 N.J.R. 1410(a).
Amended by R.1993 d.47, effective January 19, 1993.
See: 24 N.J.R. 3590(a), 25 N.J.R. 293(a).
Revised text.

Case Notes

Statute providing for salary of judges of compensation controlled over regulation of salary adjustment committee. Matter of Boyan, 246 N.J.Super. 300, 587 A.2d 640 (A.D.1991), certification granted 126 N.J. 342, 598 A.2d 898, reversed 127 N.J. 266, 604 A.2d 98.

SUBCHAPTER 6. AWARDS PROGRAM

4A:6-6.1 General provisions

(a) In local service, appointing authorities may establish and administer awards programs.

(b) In State service, the following types of award programs are established:

1. Awards for Recognition;
2. Awards for Suggestions;
3. Awards for Service;

4. Other awards programs as the New Jersey Employee Awards Committee may establish; and

5. Department or agency awards programs approved by the New Jersey Employee Awards Committee.

(c) The awards program applies to all employees in the executive branch of State government, whether in the career, senior executive or unclassified service, including autonomous agencies within executive departments; applicable employees in the Judiciary; and all employees in the Office of Legislative Services.

4A:6-6.2 New Jersey Employee Awards Committee: State service

(a) The New Jersey Employee Awards Committee (Committee) shall be established in the Department of Personnel under the supervision of the Commissioner. The Committee shall consist of seven persons, each of whom shall be employed in a different department in the Executive Branch.

1. Committee members shall be appointed by the Governor upon nomination by the Commissioner, for staggered terms of three years or until a successor is appointed. If a vacancy on the Committee occurs by reason other than expiration of term, the vacancy shall be filled for the unexpired term. No member shall serve more than two consecutive full terms.

2. Members of the Committee shall serve without compensation but shall be reimbursed for their actual and necessary expenses.

3. The Committee shall meet and organize as soon as practicable after the annual appointment of new members and select a Chairperson from among its members. The Committee shall hold a regular meeting at least once each month and special meetings at the call of the Chairperson.

4. The Committee shall submit monthly reports to the Commissioner concerning operations of the Awards Program, which shall include data on activity level, processing time, and program benefits to the State. This data will also be furnished to each agency's chief executive officer. The Committee shall submit an annual report to the Governor through the Commissioner.

5. The administrative work of the Committee shall be performed by an Executive Secretary (Secretary) and other necessary staff designated by the Commissioner.

(b) Departmental committees shall be established in each agency operating under the Awards Program, under the supervision and direction of the Committee. Divisional and institutional award subcommittees may be established within agencies, but the responsibility for the agencies' activities will remain with the departmental committees.

1. The departmental committees shall include at least three members appointed by the agency's chief executive officer for a term of one year, effective each May 18. Departmental committee members shall be employees who are responsible for evaluation and analysis of the agency's programs. The chairperson of the departmental committee shall be an individual who has direct access to the chief executive officer.

2. Departmental committees shall meet at least monthly and shall establish procedures for the processing of awards within their agencies, in accordance with the rules in this subchapter and with the approval of the Committee.

3. Departmental committees shall be responsible for objectively and impartially investigating and evaluating each proposed award furnished to them by the Committee and returning a timely and documented recommendation to the staff of the Committee.

4. Departmental committees shall be responsible for suitable ceremonies for the presentation of awards to their employees and shall use available means, as the Committee may propose, to promote employee participation in the awards program.

5. Departmental committees shall report their activities to the Committee through their chairpersons.

4A:6-6.3 Records: State service

(a) The Committee shall maintain the following records:

1. Official copies of the minutes of all meetings and all other official actions which are public information.

2. Copies of all suggestions, as defined in N.J.A.C. 4A:6-6.5, received by the Committee, along with supporting documents and recommendations from departmental committees.

(b) The departmental committees shall maintain the following records:

1. Official copies of the minutes of all meetings and all other official actions which are public information.

2. Copies of each suggestion, as defined in N.J.A.C. 4A:6-6.5, which is referred by the Committee, with supporting documentation and the recommendation of the departmental committee.

3. Records of all transactions and supportive documentation for Option No. 2 suggestions as defined in N.J.A.C. 4A:6-6.6.

(c) Records shall be retained after the final action by the Committee in accordance with each department's record retention schedule. See N.J.A.C. 15:3-2.1 *et seq.*

4A:6-6.4 Recognition awards: State service

(a) Recognition Awards shall be established in, but not limited to, the following four categories:

1. Heroism Awards may be made to employees who perform acts of bravery or personal sacrifice above and beyond the duties and responsibilities of the employee's position and which reflect credit upon the State of New Jersey, whether or not the act was performed during working hours.

2. Exceptional Service Awards may be made to employees for outstanding acts of public service above and beyond the duties and responsibilities of the employee's position and which reflect credit upon the State of New Jersey, whether or not the act was performed during working hours.

3. Professional Achievement Awards may be made to employees in recognition of meritorious or distinguished accomplishments which need not fall entirely within the scope of normal duties. An award may be made to an employee who has:

i. Initiated and successfully established new and outstanding methods, practices, plans or designs in such fields as, but not limited to, administration, engineering, law, medicine or environmental sciences;

ii. Achieved honors from professional societies, educational institutions or recognized groups for outstanding performance in his or her field; or

iii. Provided key assistance to the recipient of an award.

4. Community Service Awards may be made to employees who have made outstanding contributions to the communities in which they live or to the State as a whole through organizational activities outside the workplace.

(b) Employee recognition awards may be made to an employee or a group of employees.

(c) A nomination for an employee recognition award may be submitted by an employee or by any resident of New Jersey to the Committee along with supporting information.

1. Nominations in the heroism category must be submitted within one year of the specified act.

2. Upon receipt, the nomination will be reviewed by the Secretary and a letter of acknowledgement sent to the nominator. Copies of the nomination shall then be forwarded to the appropriate departmental committee(s) for investigation and recommendation.

3. The departmental committee shall make a thorough investigation of the nomination and thereafter, by majority vote, recommend approval or disapproval. If the recommendation is for disapproval, the nomination shall be returned to the Secretary with an explanation of the reasons for disapproval, along with any supporting documents. If the departmental committee recommendation is for approval, the nomination with recommendations and supporting documentation shall be forwarded to the department's chief executive officer for endorsement. The nomination, with recommendations and supporting documents, shall then be returned to the Secretary.

4. The Committee shall consider the nomination and the departmental committee's recommendation and decide whether or not an award should be made and the type of award. The Secretary shall advise the nominator, in writing, of the action of the Committee. Presentation ceremonies shall be arranged by the Secretary.

Case Notes

Causal relationship between suggestion and implementation of practice required, based on statute and pre-Code rules (citing former N.J.A.C. 4:4-4.3). In Re: Application of Lodge, 155 N.J.Super. 488, 382 A.2d 1159 (App.Div.1978) certification denied 76 N.J. 234, 386 A.2d 859 (1978).

4A:6-6.5 Suggestion Award Program standards: State service

(a) A suggestion is a written proposal which will produce notable economy or improvement in an operation of State government or one which will improve service to the public, employee safety or employee welfare.

(b) To be considered for a suggestion award, the following requirements must be met:

1. The suggestion must be original, or propose a new application of an old idea;
2. The suggestion must be implemented or ordered implemented by a State agency; and
3. There must be a causal relationship between the suggestion and implementation of the improvement.

(c) The following suggestions are not eligible for an award:

1. A suggestion which represents a part of an employee's duties and which the employee has the authority to change or the responsibility to bring to the attention of his or her supervisor;
2. A suggestion by an employee whose primary duty is research and planning unless the suggestion concerns a matter which is clearly unrelated to the employee's assignment or primary duty;
3. A suggestion which was initially disapproved, unless the idea is implemented as a result of the suggestion within two years from notice of disapproval and is subsequently approved by the Committee;
4. A suggestion which is received by the Committee more than six months (excluding necessary trial period) after it has been placed in use;
5. A suggestion concerning routine maintenance of buildings, equipment or grounds, which should be normally reported. Where sustained complaints have not resulted in correction, the Committee may consider such a suggestion for an award;

6. A suggestion involving new structures, equipment, materials and procedures during the initial period of trial,

experiment or development, the length of which is considered reasonable by the Committee;

7. A suggestion which simply involves instituting or raising fees or taxes levied by the State;

8. A suggestion to transfer programs or activities from one level of government to another, unless the transfer of the program or activity effectuates a savings or improvement of services;

9. A suggestion to recoup owed funds from another agency or political subdivision of the State; or

10. Any idea or improvement which no State agency is authorized to perform, or which requires legislative or regulatory changes or the enforcement of a law or regulation.

(d) All persons employed in State government at the time of submission are eligible, except members of the Committee or a departmental committee, the Secretary, or the staff of the Awards program.

4A:6-6.6 Suggestion Award Program procedures: State service

(a) Suggestions shall be submitted on a form prescribed by the Committee, which shall include:

1. A brief statement describing the present condition, method or practice, and where it exists.
2. A specific statement of what is suggested and how it can be accomplished. Sketches, charts, samples and additional data may be included.
3. A concise statement of the benefits which will accrue and the name of the organization or organizations which will benefit.
4. The name, home mailing address, social security number, title of present position, salary range, and department and division of the suggester.

(b) Suggestions may be submitted through one of two options at the discretion of the suggester:

1. Option 1 suggestions are suggestions sent to the Committee, which then refers them to the appropriate departmental committee(s).
2. Option 2 suggestions are suggestions sent to the Committee to ensure that the suggestion is recorded as the suggester's property. Thereafter, the suggester directly works with the suggester's supervisor and the departmental committee to develop and refine the suggestion.

(c) The Committee and the departmental committees shall utilize the following procedures in processing suggestions:

1. For Option 1, the departmental committee shall make, within 45 days of receipt of the suggestion from the

Committee, an evaluation and a recommendation to the Committee.

2. For Option 2, the departmental committee shall make arrangements with the suggester and appropriate supervisory personnel to develop and refine the suggestion. This departmental committee shall, within a reasonable time, make an evaluation and recommendation to the Committee.

3. The Secretary shall make the initial review of all proposed award recommendations from the departmental committees. When the recommendation from the departmental committee is for disapproval, the Secretary shall, from the evidence presented, determine if the disapproval should be upheld. When the recommendation is for approval and the recommended amount of the award is \$100.00 or less, the Secretary may authorize the award.

4. The Committee shall review evaluations from departmental committees when the recommendation is for approval and the recommended amount of the award is more than \$100.00. Following review, the Committee shall either accept, reject or modify the recommendation.

5. If the Committee determines that it is necessary to use outside consultants in the development or evaluation of a suggestion, the costs may be offset against any award.

6. Suggestions which are disapproved by the departmental committee, may be reviewed by the Committee on its own motion, or be referred back to the departmental committee for reconsideration.

7. The Secretary shall notify the suggester of the disposition of the suggestion within 60 days of receipt of the departmental committee's recommendation, and whether there will be a trial period and the length of such period.

(d) After approval of a suggestion award, the Secretary shall make arrangements for the issuance of a check, less appropriate payroll deductions, to be drawn upon the funds appropriated to the Department of Personnel for the payment of awards.

1. The check will then be forwarded to the departmental committee for presentation, except when the Committee elects to arrange a special ceremony.

2. Awards involving vacation options under N.J.A.C. 4A:6-6.7(a)2 will be arranged between the employee's Personnel Officer and the Secretary on a case by case basis.

4A:6-6.7 Suggestion Award Program types and amounts of awards: State service

(a) Awards for suggestions shall be in cash or additional paid vacation time-off in lieu of cash under certain circumstances.

1. Cash awards shall be no less than \$25.00 nor more than \$10,000 for each approved suggestion.

2. A time-off option in lieu of a cash award will be calculated as follows:

i. One day of additional time-off in lieu of an award from \$50.00 to \$75.00;

ii. Two days of additional time-off in lieu of an award from \$75.00 to \$150.00.

(b) When a suggestion is adopted primarily because it will result or has resulted in saving money, the amount of the award shall be 10 percent of the estimated net annual savings in the first year of operation, up to the \$10,000 maximum. Under exceptional conditions, the Committee may select a typical year or may average several years to determine an award.

(c) When a suggestion is adopted primarily upon the basis of improvements in such areas as safety, health, welfare and morale, or it is otherwise not possible to determine monetary savings, the departmental committee shall recommend and the Committee shall determine the amount of the award base on the following factors:

1. Effectiveness of solution offered by suggesters;
2. Seriousness of present problem in terms of money or other factors;
3. Extent of problem;
4. Probability of problem actually happening; and
5. Ingenuity of the solution.

(d) A suggester shall receive the full amount of the award when the suggestion is implemented. Where implementation is not complete but specific steps have been taken, a partial award may be paid at the Committee's discretion. It shall be the responsibility of the departmental committee to inform the Secretary when a suggestion has been placed into operation. Disputes regarding the date of implementation shall be resolved by the Committee.

(e) A cash or other award shall be in addition to the regular compensation of the recipient. The acceptance of such award shall constitute an agreement that the use of the suggestion by the State or its subdivisions or independent authorities shall not form the basis of a further claim of any additional award, compensation or payment by the employee, his or her heirs, or assignees.

(f) Persons who leave State service after having submitted a suggestion are still eligible for an award. In the case of death, the award shall be paid to the suggester's estate.

(g) Departmental awards consisting of plaques may be presented to the department or autonomous agency with the best record of employee participation during the fiscal year for the:

1. Highest number of suggestions approved per one hundred employees.
2. Highest dollar savings to the State realized through implementation of suggestions from their employees.

(h) Special awards consisting of plaques may be presented to suggesters whose accumulated awards total \$10,000 or result in savings to the State of \$100,000. In addition, the suggesters become members of an Advisory Board to the Committee. The Advisory Board may be called upon to comment and make recommendations on policy and program promotion.

(i) State "Suggester of the Year" may be selected by the Committee from among the successful submissions of the previous calendar year and will be suitably recognized as determined by the Committee. The selection from nominations submitted by the Secretary will be based on:

1. Importance of the suggestion on a State and national level;
2. Savings and/or other benefits;
3. Public relations aspects and compatibility of the selection with the character and goals of the program.

(j) Departmental "Suggester of the Year" may be nominated by each department or autonomous agency. The nomination shall be made by the departmental committee with approval of the chief executive officer. The nomination must be approved by the Committee which will designate a uniform award and arrange for its procurement and presentation. Standards in selecting the nomination will be:

1. The suggestion(s) must have been approved during the previous calendar year;
2. The suggestion(s) must be of importance or value to the agency;
3. The suggester must be an employee of the agency as of the date nominated.

4A:6-6.8 Service Awards Program: State service

(a) Awards for length of service shall be given to all employees upon completion of each five years of employment.

1. Service shall include employment in the career, senior executive or unclassified service in either a regular, provisional or temporary capacity.
2. Years of employment shall be determined in the same manner used to compute annual vacation leave. See N.J.A.C. 4A:6-1.2.
3. Any dispute or question regarding eligible service shall be referred to the Committee for resolution.

4. It shall be the responsibility of each agency to determine the employees eligible for length of service awards.

(b) Retirement awards shall be given at the time of retirement to all those who have retired from any pension system administered by the State, regardless of the amount of service time. Only one retirement award will be presented to any employee.

1. Any dispute or question regarding eligible service shall be referred to the Committee for resolution.
2. It shall be the responsibility of each agency to determine the employees eligible for retirement awards.

(c) Each department shall review personnel records prior to the close of the fiscal year to determine employees who will be eligible for length of service and/or retirement awards. Presentation ceremonies shall be the responsibility of each department and shall be conducted at least on a yearly basis.

(d) Length of service and retirement awards may consist of letters of commendation, certificates, citations, plaques, medals, gift items, or such other awards as the Committee shall determine.

4A:6-6.9 Departmental awards programs: State service

(a) All State departments and agencies are encouraged to establish and maintain programs for recognition of their own employees for, but not limited to:

1. Attendance;
2. Safety;
3. Productivity;
4. Customer service; and
5. Employee of the year, employee of the month, or similar programs.

(b) Proposals for departmental programs shall be submitted to the Committee, which may approve, disapprove or modify the proposals. Proposals shall describe in detail the categories of awards, eligibility standards, procedures and types and amounts of awards to be given selected employees. Approval shall generally be for a specific duration, after which time the department or agency may seek approval for continuing the programs.

4A:6-6.10 Appeals: State service

(a) Any appeals to the Committee which involve matters under this subchapter, including denial of a suggestion award by a departmental committee, shall be filed with the Secretary.

1. All appeals shall be in writing, signed by the person appealing (appellant) or his or her representative and

must include the reason for the appeal and the specific relief requested.

2. Unless a different time period is stated, an appeal must be filed within 20 days after either the appellant has notice or should reasonably have known of the decision, situation or action being appealed.

3. The appellant must provide any additional information that is requested, and failure to provide such information may result in dismissal of the appeal.

4. Except where a hearing is required by law or these rules, or where the Committee finds that a material and controlling dispute of fact exists that can only be resolved by a hearing (see N.J.A.C. 1:1-1.1 et seq. for OAL hearing procedures), an appeal will be reviewed on a written record.

5. A party in an appeal may be represented by an attorney, authorized union representative or authorized appointing authority representative. See N.J.A.C. 1:1-5.4 for contested case representation at the Office of Administrative Law.

(b) The Committee may reopen a final decision if new evidence and/or a new argument is presented which, if accepted, would change the outcome. Before reopening is considered, the appellant must satisfy the Committee that it was impossible to present these matters during the original appeal.

(c) If a suggestion is disapproved, and within a two-year period from notice of disapproval appears to have been subsequently implemented, the suggester may appeal the original determination. See N.J.A.C. 4A:6-6.5(c)3.

(d) The Committee shall render the final administrative decision, which shall not be subject to further appeal to the Commissioner or the Merit System Board.

(e) When an agency recommends disapproval of a suggestion award on the basis of absence of causal relationship between the suggestion and implementation, the burden of proof in an appeal shall be on the agency. In all other appeals, the burden of proof shall be on the appellant.