

## 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Notes at repealed N.J.A.C. 4:1, Civil Service Rules, specifically Sub-  
chapters 17, 18, 20 and 26; repealed N.J.A.C. 4:2, State Service,  
specifically Subchapters 17, 18, 20 and 26; and repealed N.J.A.C. 4:3,  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Note and section annotations at repealed N.J.A.C. 4:4, New Jersey  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.

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## 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).

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

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

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

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

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

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

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

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

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

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

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

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

(h) Failure to follow sick leave notification and verification procedures may result in a denial of sick leave for that specific absence, be considered an abuse of sick leave and/or constitute cause for disciplinary action.

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

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

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

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

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

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

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

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

Added new (j).

#### 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.

(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 supersedes any provision of State law that provides greater rights than those provided under the FMLA, and further provided that rights under the FMLA shall not be diminished by State law.

(i) An employer may designate an employee's paid leave as FMLA leave if the employee provides information to the employer indicating an entitlement to such leave. The employer shall 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.