

**CHAPTER 6  
LEAVES, HOURS OF WORK AND  
EMPLOYEE DEVELOPMENT**

**Authority**

N.J.S.A. 11A:2-6(d), 11A:6-1 through 11A:6-29, 11A:6-31, 18A:31-2, 30:4-178, 34:11B-1 et seq., 38:23-1, 38:23-2, 38:23-3, 38A:4-4, 40A:14-177, 52:14-26.2; Executive Order No. 12 (1990); 42 U.S.C. §§ 12101 et seq., 29 U.S.C. §§ 2601 et seq. and 29 C.F.R. 825.

**Source and Effective Date**

R.1998 d.57 and d.58, effective December 19, 1997.  
See: 29 N.J.R. 4364(a), 30 N.J.R. 384(a);  
29 N.J.R. 4590(a), 30 N.J.R. 384(b).

**Executive Order No. 66(1978) Expiration Date**

Chapter 6, Leaves, Hours of Work and Employee Development, expires on December 19, 2002.

**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 See, also, Historical Notes at repealed N.J.A.C. 4:1, Civil Service Rules, specifically Subchapters 17, 18, 20 and 26; repealed N.J.A.C. 4:2, State Service, specifically Subchapters 17, 18, 20 and 26; and repealed N.J.A.C. 4:3, Local Service, specifically Subchapters 17 and 20.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 See, also, Historical Note and section annotations at repealed N.J.A.C. 4:4, New Jersey State Employees' Awards Committee Rules.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, effective December 22, 1992. See 24 N.J.R. 3590(a), 25 N.J.R. 293(a).

Pursuant to Executive Order No. 66(1978), Subchapters 1 through 5 were readopted as R.1998 d.57, effective December 19, 1997; and Subchapter 6, Awards Program, was readopted as R.1998 d.58, effective December 19, 1997. See: Source and Effective Date. See, also, section annotations.

**Cross References**

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

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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.

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

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

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

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

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

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

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

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

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

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

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

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

Administrative correction.

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

#### 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  New Jersey for coverage of in-laws
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	Comparable

	Federal	New Jersey	
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
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).

## SUBCHAPTER 2. HOURS OF WORK

## 4A:6-2.1 General provisions

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

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

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

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

## Case Notes

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

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

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

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

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

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

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

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

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

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

## Case Notes

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

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

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

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

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

3. Employees have the power to arrest; and

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

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

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

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

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

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

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

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

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

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

3. Sworn unclassified employees of the State police;

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

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

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

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

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

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

**4A:6-2.4 Holidays: State service**

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

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