

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
ATTENDANCE AND LEAVE MANUAL
ADVISORY MEMORANDUM 2009-03

Section 23.1

May 2009

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TO: Manual Recipients
FROM: Blaine Ryan-Lynch, Director of Staffing Services
SUBJECT: Impact of Layoff on Leave Accruals

This memorandum replaces Advisory Memorandum 95-01, Impact of Layoff on Leave Accruals, dated March 6, 1995 which should be removed from your Manual and destroyed.

In anticipation of agency inquiries concerning the impact of layoff on leave accruals, we have compiled the following information as a reference document. More detailed information on the impact of layoff and other separations is contained in corresponding sections of the Attendance Rules, the Attendance and Leave Manual and related articles of the negotiated agreements.

As a matter of policy, agencies are encouraged, wherever possible, to afford employees being laid off the opportunity to liquidate leave credits for which they cannot be compensated at time of layoff, i.e., personal leave, holiday leave, and vacation accruals in excess of 30 days.

Vacation

Employees are entitled to a lump sum payment for accrued and unused vacation up to a maximum of 30 days. Subject to this 30-day maximum, for **eligible employees who have completed more than one year but less than seven years of continuous service**, payment in cash should be made on a prorated basis for bonus days in the event of termination of employment due to layoff. (Note that this option is **not** available to employees separated by resignation or termination of temporary employment.) Bonus vacation credits are prorated on the basis of number of pay periods of continuous service completed by the employee since the last date bonus days were credited. The amount of bonus credits due the employee is determined by use of the following formula:

$$\frac{\text{(Number of Complete Pay Periods of Service Since Last Anniversary Date)}}{26} \times \text{(Number of Bonus Days Earned on Last Anniversary Date)} = \text{Number of Days to be Paid}$$

For example, an eligible employee who was laid off 13 payroll periods after his fourth vacation anniversary date would be entitled to compensation for 2 days.

$$\frac{13}{26} \times 4 = 2 \text{ days}$$

Please note that there is no provision for payment for proration of additional vacation days for length of service for employees who have completed more than 15 or 20 years of service as provided by the negotiated agreements and Managerial/Confidential Rules.

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There is no provision for cash payment for vacation in excess of 30 days. However, credits in excess of the amount for which cash payment can be made are restored if employees are reappointed from a preferred list or while eligible for appointment from such list. (This is also true for employees not on preferred lists who reenter State service within one year following separation or who are reinstated by the Civil Service Commission.) **Employees who are being laid off may request that the agency temporarily defer lump sum payment for vacation accruals.** In those cases it is recommended that requests be in writing and that agencies provide employees with written statements verifying the amount of accruals for which payment is deferred.

NOTE: CSEA and PEF employees separating from State service who are eligible for the Leave Adjustment Program for Part-Time Annual Salaried Employees should be credited with any vacation adjustment credits they are entitled to. These credits are to be included in the vacation lump sum payment, subject to applicable maximums.

Personal Leave

There is no provision for cash payment for accrued and unused personal leave. Employees who return to State service prior to their next personal leave anniversary date have unused personal leave credits restored. For employees who reenter State service after the personal leave anniversary date has passed, the date of reinstatement/reemployment becomes the new personal leave anniversary date and such employees would be credited with their full entitlement on that date.

Sick Leave

There is no provision for cash payment for accrued and unused sick leave. However, employees reappointed from a preferred list or while eligible for appointment from such list are entitled to have sick leave credits restored upon reappointment. (This is also true for employees not on preferred lists who return to State service within one year following separation or who are reinstated by the Civil Service Commission.) While agencies are encouraged to afford employees, wherever possible, the opportunity to liquidate other leave credits for which they cannot be compensated at time of layoff, charges to sick leave continue to be limited to the uses outlined in the Attendance Rules and negotiated agreements.

NOTE: CSEA and PEF employees separating from State service who are eligible for the Leave Adjustment Program for Part-Time Annual Salaried Employees should be credited with any sick leave adjustment credits they are entitled to. These credits are to be added to the sick leave balances of separating employees' subject to applicable maximums.

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Holiday Leave

There is no provision for lump sum payment for holiday leave accruals. Employees reappointed from a preferred list or while eligible for appointment from such list have their accrued and unused holiday leave restored to them. (This is also true for employees not on preferred lists who are reemployed within one year of separation or who are reinstated by the Civil Service Commission.) In the Administrative Services and Operational Services Units, holiday leave credits are not restored for any holiday where one calendar year or more has elapsed from the date on which the holiday leave was earned.

Floating Holidays

There is no lump sum payment for floating holiday leave accruals. For all units, floating holiday credit is not restored where one calendar year or more has elapsed from the date on which the floating holiday was credited.

Voluntary Reduction in Work Schedule Program (VRWS)

Eligible employees who are participating in a VRWS program and are laid off are entitled to a lump sum payment for all accrued and unused VR credits. There is no maximum number of days for which payment can be processed.

Overtime Compensatory Time

In accordance with Section 135.11 of the Rules of the Director of the Budget and Sections 23 and 30 of the Attendance Rules, employees who are separated from State service are entitled to lump sum payment for up to 30 days of accrued and unused overtime compensatory time, i.e., time earned for hours worked between 37 1/2 and 40 in a workweek. In addition, certain employees are eligible to earn overtime compensatory time at time and one-half rates for hours worked in excess of 40 in a workweek. See Budget Bulletin, G-1024, July 27, 1986 and Payroll Bulletins P-491, September 11, 1986, and P-505, January 7, 1987, for details on the method of payment for overtime compensatory time earned at "time and one-half" rates after April 15, 1986 for hours worked in excess of 40 in a workweek.

Over40 Comp Time I Credits

An employee receives a lump sum payment for all accrued Over40 Comp Time I credits.

Over40 I credits are valued at the employee's straight-time rate of pay at the time of liquidation, but in no event shall it be less than the Fair Labor Standards Act (FLSA)

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requirements. See Payroll Bulletin P-545, March 21, 2005, for details on the method of payment for Over40 Compensatory Time I credits upon separation from State service.

Over40 Comp Time II Credits

An employee receives a lump sum payment for all accrued Over40 Comp Time II credits.

Over40 II credits are valued at the employee's straight-time rate of pay at the time of liquidation, but in no event shall it be less than the Fair Labor Standards Act (FLSA) requirements. See Payroll Bulletin P-860, November 14, 2008, for details on the method of payment for Over40 Compensatory Time II credits upon separation from State service.

Retention of Time Records for Employees on Preferred Lists

As long as an individual is eligible for appointment from a preferred list, he/she retains entitlement to have leave credits restored as described above. Since preferred lists are established for four years and, in some instances, have been extended by legislation for several more years, agencies should take steps to insure that time records for laid off employees are retained until such individuals are reemployed or the preferred lists expire, whichever occurs first.

Questions concerning this issue may be referred to the Attendance & Leave Unit of this Department at (518) 457-2295.