

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE

**ATTENDANCE AND LEAVE MANUAL**

ADVISORY MEMORANDUM 2010-01

Section 21.1

January 2010

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TO: Manual Recipients  
FROM: Blaine Ryan-Lynch, Director of Staffing Services  
SUBJECT: Special Holiday Waiver Memoranda of Understanding for Security Supervisors Unit (SSpU) and Security Services Unit (SSU)

The Governor's Office of Employee Relations has signed Memoranda of Understanding (MOUs) with Council 82 and the New York State Correctional Officers and Police Benevolent Association extending the benefits provided for employees in both the Security Supervisors Unit (SSpU) and Security Services Unit (SSU) entitled Waiver of Holiday Work Option for Military Veterans. Questions concerning this benefit, which is described below, may be referred to the Attendance and Leave Unit of this Department at (518) 457-2295.

**Eligibility**

In order to be eligible for these benefits, an employee must be an eligible veteran as described in Section 63 of the Public Officers Law or an honorably discharged former reservist covered by Section 249 of the Military Law. See the attached SUMMARY OF BENEFITS UNDER PUBLIC OFFICERS LAW, SECTION 63 AND MILITARY LAW, SECTION 249 for a discussion of these law benefits.

**Duration of the MOUs**

The benefits provided by the MOUs apply to Memorial Day, May 31, 2010, Independence Day, July 5, 2010, and Veterans' Day, November 11, 2010. The MOUs expire December 31, 2010 unless extended by mutual agreement of the parties.

**Benefit Description**

The MOUs permit certain veterans, who are eligible under Section 63 of the Public Officers Law for holiday benefits (law benefits) in connection with May 31 (Memorial Day) and November 11 (Veterans' Day), to file a different holiday waiver (Special Holiday Waiver) for contractual holiday compensation benefits for those two holidays. Specifically, veterans in either the Security Supervisors Unit or Security Services Unit covered by Public Officers Law Section 63 may opt to receive holiday pay or holiday leave (contractual benefit) for work on Memorial Day 2010 and Veterans' Day 2010, regardless of their holiday compensation election for all other holidays. The same election must apply to both holidays. (Please note that July 4, 2010 is a Sunday and under the General Construction Law, New York State as an employer will observe Independence Day on Monday, July 5, 2010, while the benefit available under Section 249 of the Military Law will continue to be available on Sunday, July 4. See the attached SUMMARY OF BENEFITS UNDER MILITARY LAW, SECTION 249 for a more detailed discussion.)

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The MOUs also permit certain former reservists who are eligible under Section 249 of the New York State Military Law for holiday benefits (law benefits) in connection with the

Independence Day holiday to file a different holiday waiver (Special Holiday Waiver) for contractual holiday compensation benefits for that holiday. In other words, former eligible reservists in either the SSpU or SSU who are covered by Section 249 of the Military Law may opt to receive holiday pay or holiday leave (contractual benefit) for work on Independence Day, July 5, 2010, regardless of their election for all other holidays.

An employee who is both an eligible veteran under Section 63 of the Public Officers Law and an eligible former reservist covered under Section 249 of the Military Law may file a Special Holiday Waiver as an eligible veteran and/or as an eligible former reservist.

**Relationship of Regular and Special Holiday Waivers**

For purposes of this discussion, a holiday waiver under Article 16.2 of the negotiated agreements continues to be applicable to all holidays (except as modified by a Special Holiday Waiver under the MOUs), and is referred to as a Regular Holiday Waiver option.

- Employees in these units who have a Regular Holiday Waiver option of holiday pay for work on holidays (either by default because they never filed a waiver or because they filed a waiver electing holiday pay) receive holiday pay for all holidays unless they file Special Holiday Waivers as eligible veterans for Memorial Day and Veterans' Day 2010 and/or as eligible former reservists for Independence Day 2010, who elect to receive holiday leave for those special holidays.
- Employees in these units who have a Regular Holiday Waiver option of holiday leave for work on holidays continue to receive holiday leave for all holidays unless they file Special Holiday Waivers as eligible veterans for Memorial Day and Veterans' Day 2010 and/or as eligible former reservists for Independence Day 2010, who elect to receive holiday pay for those special holidays.

**Dates for Filing Waivers**

The benefits granted by the MOUs are available in calendar year 2010. The benefits are available for Memorial Day, May 31, 2010, Veterans' Day, November 11, 2010, and/or Independence Day, July 5, 2010.

Eligible employees may file a Special Holiday Waiver under the MOUs for the Memorial Day, Veterans' Day, and/or Independence Day holidays during the Special Holiday Waiver Election Period from April 1, 2010 through May 15, 2010.

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Appointment to State Service

Employees in these units who enter State service after May 15, 2010 may file both a Regular Holiday Waiver and/or a Special Holiday Waiver at time of appointment to State service.

Transfer From Other Units

For employees who transfer into these units after May 15, 2010, all holidays are governed by the Regular Holiday Waiver (and, in the case of transfer from either the SSpU or the SSU, the Special Holiday Waiver, if any) filed in their previous position and they may not file new Waivers at time of transfer to this unit. If the program is continued in subsequent years, those employees' first opportunity to file a Special Holiday Waiver would occur between April 1 and May 15 of the year following their transfer into either the SSpU or SSU position.

Of course, employees retain the ability to change their Regular Holiday Pay option each year during the open period between April 1 and May 15 as provided in Article 16.2 of the negotiated agreements.

**Impact of Expiration of MOU**

The MOUs expire December 31, 2010 unless extended by mutual agreement of the parties.

In the event these provisions are not extended by mutual agreement of the parties, Special Holiday Waivers will no longer be in effect beginning with calendar year 2011 and the Regular Holiday Waiver option will apply to all holidays, including Memorial Day, Veterans' Day, and Independence Day.

If the parties agree to extend these provisions beyond calendar year 2010, an employee's Regular Holiday Waiver option will again apply to all holidays including Memorial Day, Veterans' Day, and Independence Day, unless the employee files a new Special Holiday Waiver during the next applicable open period.

Of course, employees retain the ability to change their Regular Holiday Pay option each year during the open period between April 1 and May 15 as provided in Article 16.2 of the negotiated agreements.

**Special Holiday Waiver Form**

A Special Holiday Waiver form for this purpose is attached. Agencies may adapt the form to meet their needs provided it continues to include all the information on the attached form.

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**Benefits Under Negotiated Agreements**

Apart from providing the opportunity to file a Special Holiday Waiver for Memorial Day, Veterans' Day, and/or Independence Day 2010, the MOUs do not modify holiday benefits available under the negotiated agreements.

Employees in the SSpU and SSU continue to add holiday leave to vacation credits subject to applicable vacation maximums, regardless of whether that holiday leave is earned in connection with a Regular Holiday Waiver option or a Special Holiday Waiver.

**Benefits Under Law**

The MOUs do not in any way modify benefits available under Section 63 of the Public Officers Law or Section 249 of the Military Law.

**Attachments**

Summary of Benefits Under Public Officers Law, Section 63 and  
Military Law, Section 249  
Special Holiday Waiver form

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**Summary of Benefits Under Public Officers Law, Section 63 and  
Military Law, Section 249**

The following information is provided solely as a reference summary for agency convenience and does not contain any new information.

Benefits Under Section 63 of the Public Officers Law

Section 63 of the Public Officers Law entitles certain veterans to a day off with pay on or in lieu of Memorial Day and November 11, Veterans' Day.

To qualify, an employee must be a veteran who was honorably discharged or who was discharged under honorable conditions and who:

- Served in the Army, Navy, Marine Corps, Air Force, or Coast Guard of the United States (including reservists who served on active duty in these branches) at any time; or
- Served in the Armed Forces of the United States or its allies in time of war, including National Guard members serving on active duty during time of war or national emergency.

There is no New York State residency requirement for the benefit provided by Section 63 nor are employees required to have Attendance Rules coverage in order to be eligible for the benefit provided by Section 63.

When an eligible veteran who has elected holiday pay for holidays worked is required to work on one of these holidays, such employee is entitled to holiday pay pursuant to the negotiated agreement and to holiday leave pursuant to Section 63 of the Public Officers Law. If, on the other hand, such employee waived holiday pay one day of holiday leave satisfies both the contractual entitlement and the legal entitlement under Section 63.

While contractual holiday compensation is limited to 7.5 or 8 hours and is tied to the designated holiday shift, holiday compensation for Memorial Day and November 11 under the Public Officers Law is tied to the 24-hour calendar day period on the date of the holiday and is not capped at 7.5 or 8 hours.

Benefits Under Section 249 of the Military Law

Section 249 of the Military Law entitles honorably discharged former reservists or former National Guard members who served during peace time to a day off with pay on or in lieu of July 4. In order to be eligible, at least one day of this reserve service must have occurred outside time of war as defined in Section 85.1(c) of the Civil Service Law.

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To qualify, the reserve duty must have been active reserve duty during which the employee was required to attend drills, not inactive reserve duty where the employee was subject to being recalled but was not required to attend drills. Reservists who were honorably discharged from a period of active reserve duty and who have reenlisted for a subsequent period of reserve duty are eligible for this benefit.

There is no New York State residency requirement; an employee need not have served in a reserve or National Guard unit in New York State. There is no requirement that an employee have Attendance Rules coverage in order to be eligible for this benefit.

July 4, 2010 is a Sunday and, under the General Construction Law, New York State as an employer will observe Independence Day on Monday, July 5, 2010. If required to work on Monday, July 5, an eligible reservist would be entitled, pursuant to the negotiated agreement, to holiday pay or holiday leave depending on his/her holiday waiver. However, the benefit under Section 249 of the Military Law is tied to the calendar date of July 4 and an eligible former reservist required to work on Sunday, July 4, 2010 would be entitled to a day of holiday leave under Section 249 for work on Sunday, regardless of his/her contractual benefit for Monday, July 5.

While contractual holiday compensation is limited to 7.5 or 8 hours and is tied to the designated holiday shift, holiday compensation for July 4 under Section 249 of the Military Law is tied to the 24-hour calendar day period on July 4 and is not capped at 7.5 or 8 hours.

**SPECIAL HOLIDAY WAIVER FOR  
SECURITY SUPERVISORS UNIT OR SECURITY SERVICES UNIT  
For Memorial Day, Veterans' Day, and Independence Day 2010**

*Complete this form only if you wish to have a **different** holiday compensation option (Special Holiday Waiver) for holiday compensation benefits under the collective bargaining agreements for work on Memorial Day, Veterans' Day 2010 and/or Independence Day 2010 than your Regular Holiday Waiver option under Article 16.2 of your contract. **If you do not complete this form, your Regular Holiday Waiver option under Article 16.2 will continue to apply to all holidays, including Memorial Day, Veterans' Day, and Independence Day 2010.***

*If you are both an eligible veteran and an eligible former reservist, you may complete A and/or B below.*

*This form must be completed and submitted to your personnel/payroll office between April 1, 2010 and May 15, 2010.*

**A. Eligible Veteran Covered by Public Officers Law Section 63**

\_\_\_\_\_ I currently receive holiday pay for all holidays worked. However, I elect to receive holiday leave for work on Memorial Day, May 31, 2010 and Veterans' Day, November 11, 2010.

\_\_\_\_\_ I currently receive holiday leave for all holidays worked. However, I elect to receive holiday pay for work on Memorial Day, May 31, 2010 and Veterans' Day, November 11, 2010.

**B. Eligible Former Reservist Covered By NYS Military Law Section 249**

\_\_\_\_\_ I currently receive holiday pay for all holidays worked. However, I elect to receive holiday leave for work on Independence Day, July 5, 2010.

\_\_\_\_\_ I currently receive holiday leave for all holidays worked. However, I elect to receive holiday pay for work on Independence Day, July 5, 2010.

Name (please print) \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_ Work Location \_\_\_\_\_

Social Security Number (last four digits) \_ \_ \_ \_

**BARGAINING UNIT:** SSpU  SSU