

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE  
**ATTENDANCE AND LEAVE MANUAL**  
ADVISORY MEMORANDUM 2021-01

Section 21.1

February 2021

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TO: Manual Recipients  
FROM: Jessica Rowe, Director of Staffing Services  
SUBJECT: Special Holiday Waiver Memoranda of Understanding for Security Supervisors Unit (SSpU), Security Services Unit (SSU), and Agency Police Services Unit (APSU)

The Governor's Office of Employee Relations has signed Memoranda of Understanding (MOUs) with Council 82, the New York State Correctional Officers and Police Benevolent Association, and the Police Benevolent Association of New York State, Inc. extending the benefits provided for employees in the Security Supervisors Unit (SSpU), the Security Services Unit (SSU), and the Agency Police Services Unit (APSU), formerly known as Agency Law Enforcement Services (ALES) Unit, 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, including those eligible under the recent amendments to those laws, per the Restoration of Honor Act (ROHA). Additional information regarding ROHA can be found below. 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, 2021, Independence Day, July 4, 2021, and Veterans' Day, November 11, 2021. The MOUs expire December 31, 2021 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 the Security Supervisors Unit, Security Services Unit, or Agency Police 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 2021 and Veterans' Day 2021, regardless of their holiday compensation election for all other holidays. The same election must apply to both holidays.

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 the SSpU, SSU, or APSU who are covered by Section 249 of the Military Law may opt to receive holiday pay or holiday

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leave (contractual benefit) for work on Independence Day, July 4, 2021, 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 2021 and/or as eligible former reservists for Independence Day 2021, 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 2021 and/or as eligible former reservists for Independence Day 2021, 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 2021. The benefits are available for Memorial Day, May 31, 2021, Veterans' Day, November 11, 2021, and/or Independence Day, July 4, 2021.

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, 2021 through May 15, 2021.

Appointment to State Service

Employees in these units who enter State service after May 15, 2021 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, 2021, all holidays are governed by the Regular Holiday Waiver (and, in the case of transfer from the SSpU, SSU, or APSU, the Special Holiday Waiver, if any) filed in their previous position and they may not file new Waivers at time of

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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 the SSpU, SSU, or APSU position.

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, 2021 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 2022 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 2021, 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.

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.

**Benefits Under Negotiated Agreements**

Apart from providing the opportunity to file a Special Holiday Waiver for Memorial Day, Veterans' Day, and/or Independence Day 2021, the MOUs do not modify holiday benefits available under the negotiated agreements.

Employees in the SSpU, SSU, and APSU 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.

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**Restoration of Honor Act**

Veterans or former eligible reservists granted status in accordance with the Restoration of Honor Act (ROHA), may be eligible for leave under Section 63 of the Public Officers Law and Section 249 of the Military Law, so long as they meet all other eligibility criteria under those laws.

The New York State Division of Veterans' Services adjudicates all Restoration of Honor Act applications. When an application meets the law's criteria for restoration of eligibility for the enumerated State benefits, the Division of Veterans' Services will issue a letter on its letterhead, signed by the agency's Director or designee, stating that the veteran now meets the character of discharge criteria for all of the benefits and services listed in the Restoration of Honor Act.

More information on the Restoration of Honor Act is available on the Division of Veterans Services website at the following link:

<https://veterans.ny.gov/content/restoration-honor-act>

**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.

### 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, who was discharged under honorable conditions, who meets the character of discharge criteria under ROHA 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 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. Employees who qualify under ROHA shall also be eligible for benefits under Section 249 of the Military Law.

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.

When an eligible former reservist who has elected holiday pay for holidays worked is required to work on July 4, Independence Day, such employee is entitled to holiday pay pursuant to the negotiated agreement and to holiday leave pursuant to 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.

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.

