

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
ATTENDANCE AND LEAVE MANUAL

POLICY BULLETIN 2008-03

Section 26.3

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TO: Manual Recipients
FROM: Blaine Ryan-Lynch, Director of Staffing Services
SUBJECT: Attendance and Leave Items in the 2007–2011 Negotiated Agreement Between the State of New York and the Public Employees Federation (PEF) for Employees in the Professional, Scientific and Technical Services Unit (PS&T)

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Introduction

The following material has been prepared to assist you in implementing the new or revised attendance and leave provisions contained in the 2007–2011 Agreement between the State of New York and the Public Employees Federation (PEF) for employees in the Professional, Scientific and Technical Services Unit (PS&T). References to applicable sections of the State Attendance and Leave Manual (Manual) are included.

Questions concerning this material should be directed to the Attendance and Leave Unit of the Department of Civil Service at (518) 457-2295. Questions concerning benefits for institution teachers should be directed to GOER's Assistant Director for the PS&T Unit at (518) 473-8375.

Effective Dates

The new or revised provisions are effective beginning April 11, 2008, the date of ratification of the Agreement, except as follows:

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Workers' Compensation	July 1, 2008
Over40 Comp Time II	July 1, 2008
Productivity Enhancement Program	July 1, 2008
Pilot Program on Annual Leave Restoration	
Under Article 33, Discipline	July 1, 2008

Subject: Vacation Use

Item: Article 12.7

Manual Reference: 21.2

Article 12.7(b) has been modified to provide that an employee's properly submitted written request for use of accrued vacation credits shall be answered within five working days of receipt. Previously, agencies were required to respond to a written request for use of vacation "within a reasonable period of time."

Under Article 12.7(b) if an employee's properly submitted request for use of accrued vacation credits is denied or canceled, the employee is entitled to a written statement of the reasons for that denial or cancellation if the employee submits a written request for such reasons. The new contract language clarifies that an agency must provide that written statement of the reasons for denial or cancellation within three working days of receipt of the employee's written request for the reasons.

When management exercises its right to establish a date or dates by which a request for a block of time must be submitted, as provided in Article 12.6(c), the time period for response is calculated from the end of the request period and not from the actual date during that period that individual requests were submitted. For example, if agency management designates the period of October 15 through October 31 as the period during which an employee who wishes to take a block of time off during the December holiday period must submit a vacation request, the time period for response commences as of October 31, close of business, the end of the designated request period.

For example, a PS&T Unit employee who works a Monday through Friday schedule submits a vacation request for Christmas week during the agency designated block request period of October 15 through October 31, 2008. The agency must notify the employee that the request was approved or denied by Friday, November 7, close of business. In this example, the employee is notified on November 7 that his request was denied. On Monday, November 10, the employee submits a written request for reasons for denial. The agency must provide the written statement of reasons for the denial to the employee by Friday, November 14, close of business. Tuesday, November 11 is a regular holiday, Veterans' Day, and does not count as a

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workday. For this purpose, floating holidays, such as Election Day, count as workdays but regular holidays, such as Veterans' Day, do not count as workdays.

Where reasons for denial or cancellation of vacation requests must be given, these written statements need not be any more explicit than is necessary to indicate the basis therefore - it is not intended that they be so lengthy or explicit as to serve as "proof" that the denial or cancellation was absolutely necessary or essential to the proper conduct of agency business. Failure to provide the requested written statement of the reasons for denying or canceling an employee's request for vacation may be grieved as a contract grievance. However, the denial itself may be grieved only as a non-contract grievance.

Subject: Workers' Compensation

Item: Article 13

Manual Reference: 21.8

The language of Article 13 has been modified to provide that employees receiving Workers' Compensation payments for a period of disability found to be compensable by the Workers' Compensation Board that is caused by an assault that occurred in the course of their employment shall be treated as though on the payroll for the length of the disability, but not to exceed twenty-four months per injury, for the sole purpose of health insurance. This provision is also applicable to employees in leave without pay status pending determination of a controverted or contested claim arising from an assault once the claim is decided in the employee's favor.

This new provision is applicable to disabling incidents due to assault occurring on or after July 1, 2008. For disabling incidents due to assault occurring prior to July 1, 2008, the period for which an employee is treated as though on the payroll for the purpose of health insurance is capped at 12 months.

For the purpose of accruing seniority, continuous service and accrual of vacation, sick leave and personal leave, employees subject to the new provision continue to be treated as though on the payroll for up to 12 months per injury. Similarly, such employees continue to be treated as though on the payroll for up to 12 months per injury for the purposes of retirement credit and contributions made by the State and/or the employee.

The provisions of Article 13 applicable to disabilities other than those resulting from assault incurred in the course of employment remain unchanged.

Additionally, the language in Article 13.6(a) has been modified to provide that one of the purposes of the State/PEF committee established pursuant to this article is to review and make

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recommendations about the parties' mutual concerns regarding employee awareness of eligibility for the Mandatory Alternate Duty Program. Previously this agenda item concerned review and making recommendations regarding implementation of the Mandatory Alternate Duty program. The other purposes of the committee stated in this Article remain unchanged.

Subject: Productivity Enhancement Program (PEP)

Item: Memoranda of Understanding on PEP

Manual Reference: 26.3

The Productivity Enhancement Program (PEP) is a pilot program that allows eligible employees to exchange previously accrued annual leave (vacation) and/or personal leave in return for a credit to be applied toward their employee share NYSHIP premiums on a biweekly basis. The program will be available to eligible PS&T Unit employees for six months in calendar year 2008 and for the entire calendar year in 2009, 2010, and 2011.

In order to enroll an employee must:

- Be a classified or unclassified service employee in the Executive branch in a title below Salary Grade 18 or equated to a position below Salary Grade 18;
- Be an employee covered by the 2007–2011 New York State/PEF collective bargaining agreement;
- Have a minimum combined balance of annual and personal leave of at least 8 days after making the forfeiture; and
- Be a NYSHIP enrollee (contract holder) in either the Empire Plan or an HMO at the time of enrollment.

Eligible part-time employees may participate on a prorated basis. A separate PEP program for institution teachers is described below.

Full time employees who enroll in the program for calendar year 2008 will forfeit 1 1/2 days in exchange for a credit of up to \$225. During 2008, the credit will be divided evenly among the State pay days that fall between July 1 and December 31, 2008. In order to coordinate the six month participation of PS&T Unit employees with the 2008 PEP program year, the actual payroll period dates vary slightly.

Full time employees who enroll in 2009, 2010, and/or 2011 will forfeit 3 days per program year in exchange for a credit of up to \$450 in 2009, and/or \$500 in 2010, and/or 2011. During 2009, 2010, and 2011, the credit will be divided evenly between State paydays that fall between January 1 and December 31 of each respective year.

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The enrollment period for the 2008 Program ran from May 5, 2008 through June 4, 2008. The enrollment period for subsequent program years will be conducted during the month of October immediately preceding that program year.

This pilot program will end on December 31, 2011 unless renewed by mutual agreement of the parties.

All other program provisions remain unchanged. Detailed Program Guidelines and enrollment materials were issued by the Attendance and Leave Unit of this Department as Policy Bulletin 2008-02, Implementation of PEP for 2008 for PEF-Represented Employees.

PEP for Institution Teachers

The enrollment criteria for institution teachers are:

- Be 1) a classified or unclassified service employee in a title below Salary Grade 18 or equated to a position below Salary Grade 18; or (2) in the unclassified service at the New York State School for the Deaf or the New York State School for the Blind in a title with a full-time annual salary (or in the case of Instructor Assistants, total annual compensation) that does not exceed the job rate in effect at the time of enrollment for an employee in salary Grade 17 as specified in *Appendix I Salary Schedules* in the 2007–2011 State/PEF Collective Bargaining Agreement.
- Be covered by the 2007–2011 New York State/PEF Collective Bargaining Agreement; and
- Be a NYSHIP enrollee and contract holder in either the Empire Plan or an HMO at the time of enrollment.

As is the case with the PEP program for employees in twelve month positions, PEP for Institution Teachers is available to eligible part-time employees on a prorated basis.

The PEP for institution teachers is consistent with the program for 12-month employees with the following exceptions:

- The only leave category which can be exchanged for a PEP credit is previously accrued personal leave.
- In calendar year 2008 full time employees who enroll forfeit 1 or 1 1/2 days in exchange for a credit of up to \$75 for each half-day forfeited.
- In 2009, 2010, and 2011, full time employees who enroll forfeit 1, 2, or 3 days in exchange for a PEP credit of up to \$150 per day beginning January 2009 and up to \$166.66 per day during the 2010 and/or 2011 program years.

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Subject: Leave Donation/Exchange Program

Item: Memorandum of Understanding on Leave Donation/Exchange Program

Manual Reference: Appendix H, Leave Donation Program

Provisions pertaining to leave donation across agency lines by other than family members, which were pilot provisions under the 2003–2007 PS&T Leave Donation Program, are now permanent. All other program provisions remain unchanged.

At the present time the ability to donate across agency lines to other than family members has been made a permanent part of the program for employees in the ASU, ISU, OSU, DMNA, RRSU, and PSNU units and for those designated M/C. Therefore, employees in the PS&T Unit may continue to exchange leave donations across agency lines with other PS&T Unit employees and with employees in those units, regardless of whether the donor and recipient are family members.

For employees in SSU, SSpU, and ALES, the entire Leave Donation Program has been temporarily extended until March 31, 2009. While these extensions of the Leave Donation program for the security units are in place, employees in the PS&T Unit may continue to exchange leave donations with employees in these units, including donations across agency lines, regardless of family relationship.

Detailed Leave Donation Program Guidelines will be issued following the conclusion of the negotiation process. Until those updated guidelines are issued, agencies should refer to Policy Bulletin 2004-02 dated August 2004 and to Policy Bulletin 2001-02 dated March 23, 2001.

Subject: Leave Adjustment Program

Item: Side Letter on Leave Adjustment Program

Manual Reference: Appendix D, Part-Time Employment

Effective upon ratification of the Agreement, the Leave Adjustment Pilot Program, available to eligible part-time annual salaried employees scheduled to work additional hours beyond their payroll percentage, will no longer be a pilot.

The language has been modified to clarify that the personal leave adjustment date will be May 30 following the end of each April 1–March 31 fiscal year. Previous language had referred to the May 30 date in specific calendar years.

In addition, the parties agreed to develop guidelines for application of the Leave Adjustment Program to PS&T Unit members employed to work on a part-time annual salaried basis in ten-month items as soon as practicable upon ratification of the 2007–2011 State/PEF Agreement.

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Such guidelines shall be applicable to all agencies employing ten-month employees on a part-time basis. These guidelines will be forthcoming under separate cover.

All other program provisions remain unchanged.

Subject: Leave for Professional Meetings

Item: Side Letter on Leave for Professional Meetings

Manual Reference: Section 21.12

This side letter confirms the understanding reached during the negotiations of the 2007–2011 State/PEF Agreement regarding the availability of Leave for Professional Meetings pursuant to Article 12.15 of the Agreement for non-day shift employees who wish to use professional meeting leave to attend professional meetings or programs necessary for licensure that are held during what would otherwise be non-work hours for these employees.

Specifically, under the terms of this side letter, agencies shall make every effort to accommodate requests from these employees to adjust their regular work schedule to allow them to use professional meeting leave.

All other requirements for the use of professional meeting leave will continue to apply. For example agencies continue to have the discretion to restrict absence under Article 12.15 for any conference or at any one time to five percent of the profession in the operating unit (e.g., institution, hospital, college, main office, or other appropriate facility) and to base approval to attend on a determination that the activity to be undertaken will benefit the agency and that the absence will not interfere with the proper conduct of governmental functions. The contract provision does not guarantee that every eligible employee will receive three days leave with pay each year. Because of the timing of employee requests for the leave, the need to conduct governmental functions and imposition of the five percent staff limit, some employees may receive less than the maximum number of days allowed. However, agencies are expected to take appropriate steps to ensure that the leave is equitably distributed among eligible employees in the operating unit, including those whose normal work shift is other than a regular day shift.

Subject: Verification of Time Records

Item: Side Letter on Verification of Time Records

Manual Reference: Section 20.2

This side letter confirms that the parties agree to meet during the term of the 2007–2011 State/PEF Agreement to discuss their concerns about the issue of supervisors' rights as they relate to the verification of employee attendance.

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Subject: Over40 Comp Time II

Item: Side Letter on Over40 Comp Time II

Manual Reference: Sections 23.1, 23.3

The Over40 Comp Time II program will be made available to eligible employees in the PS&T Unit effective July 1, 2008. The program years under the Over40 Comp Time II Pilot Program will run from July 1, 2008 through June 30, 2009, July 1, 2009 through June 30, 2010, and July 1, 2010 through June 30, 2011. Actual dates of program years may vary slightly to coincide with payroll periods. Employees who enroll to participate in the first year of the program will be eligible to receive Over40 Comp Time II credits for overtime worked for the period June 26, 2008 to June 24, 2009 for the Administration payroll and June 19, 2008 to June 17, 2009 for the Institution payroll.

Eligibility

To be eligible to enroll in Over40 Comp Time II, an employee must be employed 1) in an overtime eligible position allocated to salary grades 22 and below or in a position otherwise eligible to earn overtime and 2) in a bargaining unit represented by CSEA, DC 37, or PEF.

Enrollment

Employees may enroll in the program each year for a one year period during each of the three years of the pilot. The enrollment period for the 2008–2009 Program Year will run from Thursday, June 5, 2008 through Wednesday, June 18, 2008. The enrollment period in subsequent years will occur during the period April 1–May 15 of each year. Enrollment materials, including a program description, will be distributed by GOER prior to that time.

Over40 Comp Time II is a single program available to employees represented by DC 37 and by CSEA as well as to those represented by PEF.

Enrollment continues in effect for the remainder of the program year even if employees move to a different agency, so long as the movement is to an overtime eligible position represented by CSEA, PEF, or DC 37. Participation in the program ends upon appointment to an overtime ineligible position and/or to a position in a bargaining unit not represented by CSEA, PEF, or DC 37.

Accrual Maximum

Over40 Comp Time II can be accrued to a maximum of 240 hours. Over40 Comp Time II is earned at the rate of 1.5 hours for every hour of overtime worked by enrolled employees in excess of 40 hours in a workweek until the 240 hour maximum is reached. It must be recorded on time records in a separate Over40 Comp Time II category. It is separate and distinct from overtime compensatory time earned by overtime eligible employees in 37.5 hour workweek

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positions for hours worked between 37.5 and 40 hours. Over40 Comp Time II cannot be merged with regular overtime compensatory time.

Once the 240 hour maximum is reached, employees participating in Over40 Comp Time II receive cash compensation for overtime worked from that point forward until such time as their balance is reduced below 240 hours, at which point they resume being credited with Over40 Comp Time II for overtime worked. For example, in September, a participating employee reaches the 240 hour maximum and is no longer eligible to be credited with Over40 Comp Time II. Subsequently, during the annual cash out election period, the employee files an election form to liquidate 120 hours of Over40 Comp Time II which is payable in December. The 120 hours the employee elected to liquidate are deducted from his time record as of the date the election form is received in the Personnel Office. Effective as of the date the employee's Over40 Comp Time II balance is reduced below 240 hours, the employee is again credited with Over40 Comp Time II for overtime worked.

Unavailability for Use as a Leave Accrual

Over40 Comp Time II credits are not available for use as leave credits and, therefore, an employee who has exhausted his/her other credits has exhausted all available credits to be eligible for sick leave at half-pay or leave donations, even though he/she continues to have a balance of Over40 Comp Time II credits on his/her time record.

Annual Cash Out

There will be an annual cash out election period in October of each year of the pilot program for employees with Over40 Comp Time II credits on their time record who may elect to liquidate up to 120 hours of accrued Over40 Comp Time II credits for a cash payment payable in the closest payroll period to December 1st at the rate of pay earned at the time of liquidation. Appropriate election forms will be distributed prior to the start of the annual election period. In 2008, the election period will run from Monday, October 6, 2008 through Wednesday, October 29, 2008.

Employees who have accrued Over40 Comp Time II credits on their time records do not have to be currently enrolled in a program year in order to participate in the annual cash out. This is true regardless of whether the employee is eligible to enroll but elects not to do so or is currently employed in an overtime ineligible position and/or in a bargaining unit not represented by CSEA, PEF, or DC 37.

If the pilot program is not extended beyond its scheduled expiration in June 2011, there will be a final opportunity in October 2011 to elect to cash out up to 120 hours of Over40 Comp Time II credits payable in December 2011.

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Retention of Credits and Lump Sum Payment

Accrued Over40 Comp Time II has no expiration date. Employees are entitled to retain these credits until they are liquidated during the annual cash out election period or until the employee becomes eligible for a lump sum payment.

As is the case with overtime compensatory time earned for hours between 37.5 and 40, employees are entitled to a lump sum payment for accrued and unused Over40 Comp Time II credits upon movement to the unclassified service, movement under a reciprocal agreement, movement to or from positions subject to attendance rules for institution teachers, movement to a classified service position in another agency or upon separation from State service for any reason. The lump sum value of Over40 Comp Time II credits is the rate of pay earned at the time of liquidation but in no event shall it be less than FLSA requirements.

Over40 Comp Time II credits, like regular overtime compensatory time credits, are carried forward when employees move between classified service positions subject to the Attendance Rules in the same agency, including movement between facilities and institutions within such agencies as State University of New York, the Departments of Correctional Services and Health, and the Offices of Mental Health, Mental Retardation and Developmental Disabilities, and Children and Family Services. This occurs even if the new classified service position subject to the Attendance Rules in the same agency is overtime ineligible and/or in a non-participating bargaining unit. However, employees who move between positions subject to attendance rules for institution teachers and positions subject to the Attendance Rules receive a lump sum payment for accrued Over40 Comp Time II credits as described above, even if the positions are in the same agency.

See the Over40 Comp Time II Program Description, pages 4 and 5 for a discussion of provisions applicable to employees who previously participated in the Over40 Comp Time I Program under the 2003–2007 CSEA negotiated agreements and who are currently employed in PEF-represented positions.

**Subject: Pilot Program on Accrual Restoration Under Article 33, Discipline
Item: Side Letter on Accrual Restoration Pursuant to Article 33
Manual Reference: 22.1**

The parties agreed to establish a pilot program governing restoration of annual leave charged pursuant to Article 33.4(a)(4) when a decision is rendered that the suspension was improper or the employee is innocent of all charges. The pilot will begin on July 1, 2008 and expire on April 2, 2011, unless the parties mutually agree to extend the pilot.

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Eligibility under the pilot is based on the date of the decision and not on the dates of the suspension. Accordingly, the pilot provisions will apply to decisions that are dated on or after July 1, 2008 and prior to April 2, 2011.

Under the pilot, when vacation credits are restored pursuant to Article 33.4(a)(4) and such restoration causes the total vacation credits to exceed 40 days, an employee is allowed a period of one year from the date of restoration or the employee's return to work, whichever is later, to reduce the total accumulation to 40 days.

The following example illustrates the manner in which this provision should be applied. An employee is suspended for the entire month of June 2008. An arbitrator issues a decision dated March 1, 2009 which finds the employee innocent of all charges. The employee's leave record is reconstructed from June 2008 forward, restoring credits charged, if any, and crediting accruals that would have been earned. The actual restoration occurs on March 5, 2009, the date the agency completes reconstruction of the employee's time record. This reconstruction causes the employee to exceed 40 days of vacation and, therefore, the employee is subject to the provisions of the pilot program.

Under the provisions of this pilot, the employee's vacation balance is not reduced to 40 days of vacation on April 1, 2009 as would have been the case if the employee were not subject to the provisions of the pilot program.

Instead, the pilot program provisions entitle the employee to retain the restored vacation credits for a period of one year following restoration. During this one year grace period, employees continue to earn vacation above the maximum.

The one year grace period under the pilot applies only to restoration of vacation credits. When credits are restored pursuant to Article 33.4(a)(4) and the employee's leave record is reconstructed, there is no relief from the applicable sick leave maximum and/or dates on which personal leave, floating holiday leave or overtime compensatory time credits would otherwise expire.

Agencies are requested to contact the Attendance and Leave Unit of this Department for assistance in applying the provisions of the pilot program in specific cases.