

**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
ATTENDANCE AND LEAVE MANUAL
POLICY BULLETIN NO. 2011-01**

Section 21.3

February 2011

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TO: Manual Recipients
FROM: Blaine Ryan-Lynch, Director of Staffing Services
SUBJECT: Extension of Family Sick Leave for the Purposes of Funeral or Bereavement Leave to Same-Sex Committed Partners and their Family Members

The New York State Civil Rights Law has been amended to add a new Section 79-n requiring employers who extend to their employees funeral or bereavement leave for the death of an employee's spouse or the child, parent or other relative of the spouse, to extend the same benefits for the death of the employee's same-sex committed partner or the child, parent or other relative of the same-sex committed partner.

Specifically, Civil Rights Law Section 79-n provides as follows:

§ 79-n. Funeral or bereavement leave. No employer who extends to its employees funeral or bereavement leave for the death of an employee's spouse or the child, parent or other relative of the spouse shall deny the same leave to an employee for the death of the employee's same-sex committed partner or the child, parent or other relative of the committed partner. For the purposes of this section, same-sex committed partners are those who are financially and emotionally interdependent in a manner commonly presumed of spouses.

This legislation was signed August 30, 2010 and became effective on October 29, 2010, the sixtieth day after its enactment.

This memorandum is a result of discussions with the Governor's Office of Employee Relations and provides guidance on the application of this new provision to classified service employees in the Executive branch.

The legislation applies to employees who are same-sex committed partners, defined as "those who are financially and emotionally interdependent in a manner commonly presumed of spouses." The law does not require that the same-sex partners be domestic partners, as New York State commonly defines the term.

The intent of the legislation is to make leave for bereavement available to individuals in committed same-sex relationships on the same basis as is provided to employees who are married.

The Attendance Rules and collective bargaining agreements with CSEA, PEF, DC 37, NYSCOPBA and Council 82 permit employees to charge up to 15 days of accrued sick leave credits per calendar year as family sick leave for illness or death in the employee's family. The Attendance Rules definition of family is any relative or relative-in-law regardless of place of residence, or any person with whom the employee resides. The Attendance Rules definition of family applies to employees in the Administrative, Institutional and Operational Services Units, Rent Regulation Services Unit,

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Professional, Scientific and Technical Services Unit, and those designated MC. For employees in the Security Services and Security Supervisors Units and those in the Agency Law Enforcement Unit, the definition of family is contained in the applicable collective bargaining agreement.

Even before enactment of the legislation, under Rule and contract definitions, same-sex partners have been eligible for family sick leave for illness or death of the partner as a person with whom the employee resides. However, prior to the effective date of the legislation, a partner in a same-sex committed relationship was not eligible for family sick leave for the death of his/her partner's family member unless the partner's family member resided with the employee requesting the leave. Under the legislation, such individuals are now entitled to be treated as family members for use of family sick leave for bereavement.

The legislation does not have any impact on eligibility for use of family sick leave for illness in the family. All employees, including employees in same-sex committed relationships, continue to be required to meet Rule and contract eligibility requirements for use of family sick leave for illness in the family.

The legislation in no way changes the 15 day limit per calendar year on use of accrued sick leave as family sick leave for absences necessitated by illness or death in the employee's family.

The legislation does not apply to opposite sex partners who must continue to meet the eligibility criteria in the Attendance Rules and negotiated agreements for family sick leave for both illness and death in the family. Opposite sex partners who co-reside are eligible for family sick leave for illness or death of the partner. In order for an opposite sex partner to be eligible for family sick leave for illness or death of his/her partner's family member, the partner's family member must reside with the employee requesting the leave.

The legislation has no impact on employees in same-sex marriages that are legally performed in jurisdictions where they are legally recognized. Under State policy, such individuals are considered to be spouses and are treated accordingly under the definition of family in the Attendance Rules and negotiated agreements. Relatives of the same-sex spouse are relatives-in-law under Rule and contract definitions.

While absence for death of someone who does not meet the definition of a family member cannot be charged as family sick leave, such absences may be approved and charged to other available credits such as vacation or personal leave. It is important that agencies handle all requests for leave for bereavement in a sensitive and equitable manner. Agencies should refer to Section 21.3 of the Attendance and Leave Manual for a discussion of family sick leave.

Questions concerning this benefit should be directed to the Attendance and Leave Unit of this Department at 518-457-2295.