

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
ATTENDANCE AND LEAVE MANUAL

GENERAL INFORMATION BULLETIN NO. 92-01

Section 20.1

March 17, 1992

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TO: State Departments and Agencies

FROM: Peter Elmendorf, Director *Peter Elmendorf*
Division of Work Force Planning Services

SUBJECT: Daylight Savings Time

This is a reminder of New York State's long-standing policy with respect to employees who work the shift when the clocks are set ahead for Daylight Savings Time or set back for Eastern Standard Time.

This year Daylight Savings Time begins at 2 a.m. on Sunday, April 5, 1992, and ends at 2 a.m. on Sunday, October 25, 1992.

Employees who work their normal schedule on the shift during which the clocks are set ahead on April 5, must be paid for a full shift (including the "lost" hour) and cannot be required to charge the "lost" hour to credits.

Those working the entire shift when clocks are set back in the fall are considered to have worked an additional hour which must also be paid as overtime if the employee is otherwise eligible.

For example, employees whose shift is eight hours work seven hours rather than their usual eight on the shift during which clocks are set ahead on April 5. They must be paid for eight hours and cannot be required to charge the "lost" hour to leave credits. Employees working the shift when clocks are set back in the fall work nine hours instead of their usual eight. The ninth hour is overtime if the employee is otherwise eligible.

Should you have any questions on this subject, please call the Employee Relations Section at (518) 457-2295.

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Purpose

The purpose of this Rule is to establish the basic workweek for full-time, overtime eligible employees.

Applicability of Basic Workweek

Except for employees working on a part-time basis or who are ineligible to earn overtime under the rules of the Director of the Budget, the basic workweek for annual salaried employees is 40 hours. The basic workweek may be reduced by the appointing authority with the approval of the Division of the Budget to not less than 37 1/2 hours and not less than five days or an approved equivalent work schedule. An employee may be required, when necessary, to work beyond the basic workweek regardless of eligibility or ineligibility to earn overtime.

Although no basic workweek is established either by Section 134 of the Civil Service Law or the Attendance Rules for employees ineligible to earn overtime, it is expected that the appointing authority will install appropriate controls to ensure compliance by such employees with the agency's standard workweek.

Normal Workday

The normal workday is 8 hours, plus meal time, for employees working 40 hours per week, and 7 1/2 hours, plus meal time, for employees working 37 1/2 hours per week. Usually the workday consists of one period of time per day (e.g., 8:30 a.m. - 5:00 p.m.) including meal time. (See page 2 of this Section for a discussion of alternative work schedules.)

Each appointing authority shall establish the starting and ending time of the workday and the time allowed for meals.

Meal Periods

The scheduling of meal periods should take into account the nature of the duties, the hours of the work shift and health and productivity concerns. Where a meal period is scheduled by the appointing authority, the meal period should be of at least one-half hour duration.

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The appointing authority may require employees to remain on duty during meal periods if the responsibilities of the position are such that this arrangement is necessary and the total number of hours on duty does not exceed eight for employees on a 40 hour workweek or seven and one half for employees on a 37 1/2 hour workweek.

The appointing authority may require that an employee remain on the employer's premises during an unpaid meal period. So long as the employee is relieved from all job duties, active or inactive, during this meal period, he/she is not deemed to be in duty status.

Rest Periods (Coffee Breaks)

Rest periods of reasonable duration may be granted, as appropriate, at the discretion of the appointing authority. More than two such periods per day, or periods of more than 15 minutes duration each, would be considered excessive under normal working conditions. Rest periods are especially recommended for employees whose duties are of a routine or tedious nature. Rest periods are paid time and do not extend the ending time of the work shift.

Rest periods not taken are forfeited. Rest periods may not be used or accumulated to cover late arrivals, early departures, or to extend the lunch period.

Individual Schedule Adjustments

In appropriate cases, the appointing authority may adjust the arrival and departure times and the length of the meal period of individual employees. Personal illness, illness in the family, transportation difficulties, or family or home obligations, for example, may warrant such schedule adjustments. Individual schedule adjustments may be made without reference to alternative work schedule procedures described below.

Alternative Work Schedules

The Attendance Rules provide that the basic workweek for full-time, annual salaried employees shall be five days or an approved equivalent work schedule.

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Executive Order No. 68, which became effective on February 15, 1978, encourages the establishment of alternative work schedules throughout State service. Budget Policy and Reporting Manual Item G-068, as revised 11/8/85, issued by the Division of the Budget, contains procedural guidelines for all agencies submitting alternative work schedule proposals pursuant to the Executive Order. Under Executive Order No. 68, the responsibilities of the Department of Civil Service include reviewing proposals, advising on implementation and reviewing agency performance in complying with the Order. It is essential that proposals submitted for review adequately address all the concerns outlined in Item G-068, in order not to delay the review process by the need to obtain additional information from the agencies.

Information from the Department of Civil Service Policy Bulletin 82-02 on issues to be considered in submission of proposals under Executive Order 68 is reproduced below.

Items to be Considered When Preparing Proposals Under Executive Order No. 68 for Alternative Work Schedules

All proposals for alternative work schedules should follow the procedure specified in Budget Policy and Reporting Manual Item G-068. The written statement in support of the proposed schedule must address all the issues listed in §5 a-h of that item. Proposals from facilities, institutions, or campuses should be submitted through their agency's central office. Particular attention should be given to the following:

Program Impact - It is important that agencies consider at the outset how the proposed schedule change will meet the goals outlined in Executive Order No. 68. The guiding principle should be improvement in the quality or quantity of State operations. Program goals should be clearly stated, along with the method by which impact is to be objectively measured after the alternative work schedule is put into effect.

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Related Contract Provisions

Timekeeping - With increased flexibility in scheduling, the maintenance of accurate time records becomes crucial to the success of alternative work schedules. All proposals should specify the manner in which these time records are to be maintained. It is not sufficient to say that time records will be kept using "standard procedures," or "as they have been in the past." The method or procedures used must be described in detail. Standard procedures may not be adequate for the new schedules. "Flextime" schedules, in particular, present unique timekeeping problems. Proposals should indicate how supervisors will be assured that the appropriate number of hours scheduled to work are being worked.

Supervision - Some proposals increase the number of hours to be worked, e.g., a schedule of staggered hours or a compressed workweek under which an office would be open 45 hours instead of 37 1/2 hours per week. With no increase in staff, such a change sometimes results in difficulties in maintaining adequate supervision at all times. Each proposal must describe how necessary supervision will be provided.

Adequate Coverage - A frequently reported difficulty with alternative work schedules has been that of ensuring adequate coverage (especially during the late afternoon), since most employees, when given the opportunity to choose starting and ending times, opt to start as early as possible. When preparing new schedules, agencies must describe what will be done to avoid a reduction in services.

Related Legal Provisions

Executive Order No. 68 addresses the establishment of alternative work schedules throughout State service.

Section 134, Civil Service Law, establishes the basic workweek.

Division of the Budget Bulletin G-1024 dated July 27, 1986 contains guidelines on the requirements of the Federal Fair Labor Standards Act.

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Negotiating Units:

Administrative Services Unit Article 32
Institutional Services Unit Article 32
Operational Services Unit Article 32
Professional, Scientific and Technical Services
Unit Article 32
Rent Regulation Services Unit Article 28
(Seasonal employees in the PS&T Unit Article 32.5
on extension of lunch period)

Effect:

Effective April 1, 1985, the following provisions apply to the normal workweek and workday for employees in ASU, ISU, OSU and PS&T identified above except as alternative work schedules may be established pursuant to Executive Order 68:

1. Except in the case of shift operations, the normal workweek for full-time employees, other than those employed on a seasonal basis or in a field assignment, is defined as five consecutive working days, Monday through Friday, with two consecutive days off.

The normal workday for such employees commences between 6:00 a.m. and 10:00 a.m. and consists of 7 1/2 or 8 hours, depending on whether the employee's basic workweek is 37 1/2 or 40 hours.

2. In the case of shift operations, the normal workweek for full-time, nonseasonal employees, where practicable and consistent with program needs, is to be five consecutive working days with two consecutive days off.

For employees in ASU, ISU and OSU, the normal workday, wherever practicable and consistent with program needs, commences as follows: day shift 6 a.m. to 8 a.m.; evening shift 2 p.m. to 4 p.m.; night shift 10 p.m. to 12 midnight.

These articles provide that an employee's lunch period should not be lengthened to cause the employee to be in duty status or force him/her to remain at the work site and be immediately available for duty assignment for an increased period of time between the start of the work shift and the end of the shift.

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In addition, these articles provide that employees at salary grade 22 or below cannot be scheduled for a break in work hours in excess of one hour unless they consent.

Finally, these articles provide that workdays and workweeks, once established pursuant to the agreements, shall not be changed except either with the consent of the employees affected, or in an emergency, or after reasonable advance notice and consultation with CSEA or PEF, as appropriate. When there is advance notice and consultation, the consultation shall occur at the appropriate level and shall include the local CSEA or PEF president and/or CSEA designee for the department or agency involved.

It is important to note that appointing authorities may deviate from the basic 5/2 workweek without union agreement as long as the requirements of Article 32.2(b) are met. This means the appointing authority need not prove the rationale for deviation from the norm if all of the employees involved agree to the deviation, or if there is an emergency situation requiring permanent schedule change, or where CSEA (the local president and/or recognized CSEA representative for the department) is provided with advance written notice and consultation. The appointing authority should notify the CSEA representative of the desire to deviate and then consult with him/her, discussing rationale, actual schedule impact, etc., and eliciting input from the representative. Following that, notice is given to the employees. Employees affected by such changes in the CSEA- and PEF-represented units, except for emergencies, shall be provided with a minimum of 30 days' written notice prior to the effective date of the change.

In the three CSEA units, when a non-shift employee is notified of a change in his/her normal workday or workweek, such employee shall have the opportunity to claim hardship, in writing, to the appropriate, designated agency official who must provide a written response prior to the implementation date.

For ASU, ISU and OSU employees, there shall be no rescheduling of days off or tours of duty to avoid the payment of overtime compensation except in a specific case, upon one week's notice, and when necessary to provide for the continuation of State services.

For PS&T Unit employees and Rent Regulation Services Unit employees, there shall be no rescheduling of days off or tours of duty to avoid the payment of overtime compensation except upon two weeks' notice.

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The standard workweek for full-time employees in the Rent Regulation Services Unit is 37 1/2 hours, consisting of five consecutive working days of 7 1/2 hours each exclusive of meal periods. Standard workdays shall begin between 6 a.m. and 10 a.m. Work schedules different from these standards may not be established by the State except in an emergency or with the consent of the affected employee(s) or after advance notice and consultation with the union.

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Negotiating Units:

Institutional Services Unit Article 46
Operational Services Unit Article 46
(Seasonal employees in both units)

Effect:

All employees in the Units noted above may not be required to work more than 16 consecutive hours in a 24-hour period. If an employee does work 16 consecutive hours, he/she must be relieved from duty status for at least 8 consecutive hours unless he/she volunteers and is allowed to work in excess of 16 consecutive hours.

The 16-hour limitation on consecutive hours of work does not apply to employees whose "normal daily schedule" is other than 7 1/2 or 8 hours.

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Negotiating Unit:

Institutional Services Unit Article 15.9
(Seasonal employees in the Unit)

Effect:

Depending on availability of adequate lunchroom space in some facilities for employees who bring their own meals, work schedules and meal periods should be adjusted to allow employees a sufficient and reasonable period of time in which to eat, including a reasonable amount of time to travel to and from areas available for eating. Adjustments in work schedules and/or meal periods should be considered in the light of circumstances prevailing at each location.

In no event shall an employee's normal workday (total hours in duty status) be reduced or increased because of work schedule or meal period adjustments.

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Negotiating Units:

Administrative Services Unit Articles 33.4, 33.8, 44
Institutional Services Unit Articles 12, 33.4, 33.8, 44
Operational Services Unit Articles 33.4, 33.8, 50
Professional, Scientific and Technical
Services Unit Articles 25, 33.10
Rent Regulation Services Unit Article 33.9
Security Services Unit Articles 8.7, 24
Security Supervisors Unit Articles 8.7, 24
(Seasonal employees in the three CSEA Units - Article 33)
(Seasonal employees in the PS&T Unit - Article 33)
(Seasonal employees in Security Services Unit - Article 8)

Effect:

As confirmed by the management rights articles of these agreements, appointing authorities generally determine and establish the shifts, if any, and pass day configurations that will be available in the agency. In other words, management decides the schedules that are necessary to meet agency operating needs. Once they are established, the provisions of these contract articles that affect how employees select or are selected for the various schedules become operable.

All of the agreements identified above contain language in their respective disciplinary articles which states that shifts and pass days shall not be changed for the purpose of imposing discipline. The PS&T, RRSU and two Security agreements add the caveat that such changes can be made in accordance with the provisions of the disciplinary articles; i.e., as appropriate penalties in certain cases following disciplinary action. Under the settlement provisions of all of these agreements, shift and pass day changes are also possible. The intent of the language here is to prevent the changing of shifts or pass days in lieu of filing formal disciplinary charges.

The 1985-88 agreements in the Administrative, Institutional and Operational Services Units contain an additional provision on reinstatement following discipline (Section 33.4[e][4]). An employee in one of these three units found innocent of all allegations contained in a notice of discipline following a disciplinary proceeding must be reinstated to the exact shift, work location and pass days he/she had prior to institution of the charges and any temporary reassignment made as part of the disciplinary process. Whenever an appointing authority decides to change the shift, work location or pass days of an employee previously reinstated by an arbitrator, having been found innocent of

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all allegations in a notice of discipline, the appointing authority is required to give the employee a written statement of the reasons for the change. The change is grievable under Article 34, Grievance and Arbitration Procedure, directly to Step 3. These provisions on subsequent shift, pass day and work location changes and the grievance procedure are due to expire on March 1, 1988 unless there is specific agreement by the parties to extend them.

Except for the disciplinary article provision, the Rent Regulation Services Unit agreement is silent on the use of seniority for selection of shifts and pass days.

The seniority article in the Professional, Scientific and Technical Services Unit states that contract seniority will be a factor in the assignment of shifts and pass days when the qualifications, training and any other factors relevant to providing the needed services are equal, including such items as subspecialties within the professional field. For PS&T Unit employees there may be many occasions when only one person at a particular job location has the necessary professional background to accomplish the task at hand. Seniority becomes a factor only when there is more than one person available who has all of the prerequisites for the assignment.

The seniority article in the Administrative Services Unit states that assignment to shifts and pass days will be made on the basis of seniority where there is no distinction between employees with respect to factors relevant to the ability of the employees to perform the required duties and responsibilities satisfactorily or where management is meeting an operating need. If an appointing authority does not select the most senior employee who requests a particular shift assignment or set of pass days, the burden is on management to prove that there is an operating need for selecting someone else or there are distinctions between the employees which clearly show that the one selected is better able to perform the duties than the more senior employee who was not selected.

The ASU agreement further provides that an employee involuntarily transferred or reassigned to a shift or work location to meet agency program or operating needs has the right to select vacations, work schedules and shift (if the involuntary move was not to a specific shift) in accordance with agency procedures developed through labor/management meetings. This provision (ASU 44.4) is applicable when more than one employee is affected and there is more than one shift available to which these employees can transfer.

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Finally, when an ASU employee volunteers to be transferred or reassigned to a different shift or work location or when the employee is so transferred as a result of disciplinary action, he/she is precluded from selecting shift, vacation or work schedule until the next time such selection is available under the labor/management procedures. He/She is also not eligible to make shift selection if the move was to a specific shift or if he/she was moved as a result of disciplinary action and the labor/management procedures contain time periods during which employees so moved may not make any selection.

The seniority article in the Institutional Services Unit provides that assignment of employees to work locations and shifts shall be made on the basis of seniority, subject to agency operating needs or subject to identifiable differences between employees with respect to factors relevant to the employee's ability to perform the duties and responsibilities satisfactorily. If management does not select the most senior employee who requests the work location or shift, the burden is on management to prove there is an operating need or to demonstrate the identifiable differences on which selection of a less senior employee was made.

The article goes on to provide that seniority will be used to determine the order of selection among employees for available pass days within each shift and title. The agreement also provides, however, that pass day selection may be done in accordance with locally developed labor/management procedures. In the absence of such procedures, seniority is the controlling factor.

ISU employees involuntarily assigned to a shift or work location to meet operating needs shall have the right to select pass days in accordance with specific procedures developed through labor/management meetings. These procedures shall not be applicable to employees transferred or reassigned voluntarily. Such procedures may include time periods during which employees transferred or reassigned because of disciplinary action may not select pass days. In the absence of agency procedures developed at labor/management meetings, appointing authorities will make such involuntary assignments subject to the other agreement provisions on shift, pass day and work location selection.

Article 12 of the ISU agreement on probationary employees provides that a permanent employee on leave for a period of probation pursuant to this article shall provide four weeks' notice of his/her return from such leave and shall be returned to his/her former shift. This employee also shall be offered first preference on the next available vacancy at his/her former work location, regardless of shift. If an employee

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receives less than four weeks' notice that his/her probationary appointment is being terminated, the employee is deemed to have provided sufficient notice if he/she advises the former agency of his/her return as soon as the notice is received.

Article 50 of the Operational Services Unit agreement on work location, shift and pass day assignments provides that assignment of employees to work locations and shifts shall be made on the basis of seniority, as defined in Article 44 of the agreement, subject to agency operating needs or subject to identifiable differences between employees with respect to factors relevant to the employee's ability to perform the duties and responsibilities satisfactorily. If management does not select the most senior employee who requests the work location or shift, the burden is on management to prove there is an operating need or to demonstrate the identifiable differences on which selection of a less senior employee was made. (Management determines and establishes work locations and shifts. Once they are established, the provisions of OSU Article 50 are operable.)

The OSU Article goes on to provide that seniority will determine the order of selection among employees for scheduling pass days within each shift.

An additional provision in the OSU agreement requires management to hold an employee's shift, pass day and work location arrangement, as applicable, for at least three months when an employee is on authorized absence due to an on-the-job injury, pregnancy and child care leave, or extended personal illness (including sick leave at half-pay), unless the employee's shift, pass day or work location would have otherwise terminated, for example, because of a building closing. Three months is the minimum period and appointing authorities have the discretion to hold the assignment for a longer period.

Finally, Article 50 in the OSU agreement contains an allowance for mutually agreeable local arrangements for the selection of shift, pass days and/or work locations, which differ from the provisions of this Article. In the absence of such local agreements, these contract provisions on selection of shift, pass days and work locations must be used.

The seniority articles in the Security Services and Security Supervisors Units (Article 24) contain identical provisions except for the job or shift assignment item.

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The definition of seniority is the same for employees in these two units. Both agreements provide that pass days shall be selected on the basis of seniority, but mutually agreeable local arrangements on the selection of pass days by some other method are allowable. No employee in either unit has the right to bump for any reason. Also, the shift and pass day provisions of these articles shall not apply in departments or agencies whose employees function on a rotating shift basis.

The Security Services Unit agreement confirms management's rights to make any job or shift assignment necessary to maintain the services of the agency. However, it further provides that such job and shift assignment shall be made in seniority order provided the employee has the ability to perform the work involved properly. Agencies are required to post permanent vacancies in shift or job assignments for 30 days during which employees bid. The bids are to be awarded at the end of the 30 days and new assignments are to begin within two weeks of the award. By mutual consent the assignment can begin later but in no case beyond 30 days after the bid award. Grievances alleging failure to abide by these provisions are not arbitrable.

The Security Supervisors Unit agreement confirms management's rights to make any job or shift assignment necessary to maintain the services of the agency. Such job or shift assignments shall be made in accordance with the employee's ability to perform the work involved properly; provided, however, that seniority will be used if there is more than one employee of equal ability to perform the work. The Superintendent is required to post vacancies in writing for 15 days prior to making a permanent assignment to allow employees to submit bids. Grievances alleging failure to abide by these provisions are not arbitrable.