

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
ATTENDANCE AND LEAVE MANUAL
ADVISORY MEMORANDUM 2023-01

Section 21.1

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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 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 29, 2023, Independence Day, July 4, 2023, and Veterans' Day, November 11, 2023. The MOUs expire December 31, 2023 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 29 (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 2023 and Veterans' Day 2023, 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, 2023, 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 2023 and/or as eligible former reservists for Independence Day 2023, 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 2023 and/or as eligible former reservists for Independence Day 2023, 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 2023. The benefits are available for Memorial Day, May 29, 2023, Veterans' Day, November 11, 2023, and/or Independence Day, July 4, 2023.

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, 2023 through May 15, 2023.

Appointment to State Service

Employees in these units who enter State service after May 15, 2023 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, 2023, 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, 2023 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 2024 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 2023, 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 2023, 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/restoration-honor-act>

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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, 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, Independence Day. 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.

**SPECIAL HOLIDAY WAIVER FOR SECURITY SUPERVISORS UNIT,
SECURITY SERVICES UNIT, OR AGENCY POLICE SERVICES UNIT
For Memorial Day, Veterans' Day, and Independence Day 2023**

*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, and/or Independence Day 2023 rather 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 2023.***

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, 2023 and May 15, 2023.

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 29, 2023 and Veterans' Day, November 11, 2023.

I currently receive holiday leave for all holidays worked. However, I elect to receive holiday pay for work on Memorial Day, May 29, 2023 and Veterans' Day, November 11, 2023.

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 4, 2023.

I currently receive holiday leave for all holidays worked. However, I elect to receive holiday pay for work on Independence Day, July 4, 2023.

Name (please print) _____

Signature _____

Date _____ Work Location _____

Social Security Number (last four digits)

BARGAINING UNIT: SSpU ☐ SSU ☐ APSU ☐

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TO: Manual Recipients
FROM: Jessica Rowe, Director of Staffing Services
SUBJECT: Christmas Day 2022 and New Year's Day 2023 Holiday Observance

Christmas Day, December 25, 2022 and New Year's Day, January 1, 2023, fall on Sunday this fiscal year and under the provisions of the General Construction Law are observed as legal holidays in New York State on Monday, December 26, 2022 and Monday, January 2, 2023, respectively. However, contract provisions for certain bargaining units provide that when Christmas Day and New Year's Day fall on Sunday, employees for whom that day is a regularly scheduled work day will observe the holiday on Sunday instead of Monday.

Holiday compensation provisions for certain bargaining units authorize holiday compensation (holiday pay or holiday leave) for work on the Christmas Day holiday at the time and one-half rate when the date of observance of that holiday is December 25. The Christmas time and one-half rate does not apply when the Christmas Day holiday is observed on December 26.

Because different provisions apply to different bargaining units, the following discussion is organized by bargaining unit.

Rent Regulation Services Unit, Managerial/Confidential Employees

Date of Holiday

For employees in the Rent Regulation Services Unit and those designated Management/Confidential (M/C), the Christmas Day holiday will be Monday, December 26, 2022 and the New Year's Day holiday will be Monday, January 2, 2023.

Employees in the Rent Regulation Services Unit and those designated M/C are not subject to contract or rule provisions authorizing either a Sunday or Monday observance date for the Christmas Day and New Year's Day holidays when these holidays fall on Sunday. Absent such special provisions, the General Construction Law governs and the holidays are observed on Monday.

Rate of Holiday Compensation

Holiday compensation (holiday pay or holiday leave) for work on December 26 and January 2 is at the straight time rate. Such employees will not receive any holiday pay or holiday leave for time worked on December 25 and January 1.

Although M/C employees are eligible for holiday compensation (holiday pay or holiday leave) at the time and one-half rate for work on Christmas Day, that provision only applies when Christmas Day is observed on the actual holiday, December 25. Therefore, it does not apply to the 2022 Christmas Day holiday which is observed on Monday, December 26.

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Administrative Services Unit, Institutional Services Unit, Operational Services Unit, Professional, Scientific and Technical Services Unit, Security Services Unit, Security Supervisors Unit, Agency Police Services Unit

Date of Holiday

For employees in these units, the day designated as the Christmas and New Year's holiday **depends upon the employee's regular work schedule on Sunday, December 25 and Sunday, January 1**. For purposes of this discussion, a "regularly scheduled workday" means that the employee is normally scheduled to work on that day as part of his/her basic 37.5 or 40 hour workweek. It does not mean a day that is scheduled as the employee's pass day on which the employee is scheduled or directed to work on an overtime basis.

For employees in these units for whom Sunday is a regularly scheduled pass day, the Christmas Day holiday will be Monday, December 26, 2022, and the New Year's Day holiday will be Monday, January 2, 2023.

For employees in these units for whom Sunday is a regularly scheduled workday, the Christmas Day holiday will be Sunday, December 25, 2022 and the New Year's Day holiday will be Sunday, January 1, 2023.

Rate of Holiday Compensation

ASU, ISU, OSU, PS&T

Employees in these units for whom the holiday is December 25 and who are required to work on that day are eligible to receive holiday compensation (holiday pay or holiday leave) at the time and one-half rate.

Employees in these units for whom December 26 is the Christmas holiday and who are required to work on that day are eligible to receive holiday compensation (holiday pay or holiday leave) at the straight time rate.

Since there is no provision for payment of holiday compensation (holiday pay or holiday leave) at the time and one-half rate for work on New Year's Day, employees who receive holiday pay for work on either a January 1 or a January 2 New Year's Day holiday will receive such pay at the straight time holiday rate.

SSU, SSpU, APSU

Employees in these units are not covered by Christmas time and one-half rate holiday compensation provisions. Therefore, holiday compensation (holiday pay or holiday leave added to vacation) for work on the Christmas Day and the New Year's Day holidays is at the straight time rate, regardless of the date of the holiday.

Notification to Employees

It is recommended that employees in the ASU, ISU, OSU, PS&T, SSU, SSpU, and APSU units be notified as far in advance as possible about which holiday observance date applies to each of them (December 25 or December 26 and January 1 or January 2 respectively). Once that determination is made, an employee's entitlements to holiday benefits are determined in the same manner as they would be for any other holiday. The key is to remember that each employee is entitled to only **one** day as a Christmas holiday and **one** day as a New Year's holiday.

In the case of shift operations, holiday shifts must be designated for all four possible observance dates.

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After the date of the employee's holiday has been established based on the regular work schedule, the attached chart may be useful in determining the actual holiday benefit entitlement for employees in these units. Please note the assumptions listed at the top of the chart; the chart is designed to cover the "typical" situations which may arise and does not cover every possible circumstance which may occur.

Additional Clarification

Full-Time Employees (ASU, ISU, OSU, PS&T, SSU, SSpU, and APSU units)

A full-time employee in these units will observe these holidays on Sunday if those Sundays are part of his/her basic 37.5 or 40 hour workweek schedule for the weeks in which these holidays fall. Full-time employees scheduled or directed to work on those Sundays on an overtime basis outside the basic 37.5 or 40 hours workweek observe these holidays on Monday, not Sunday.

An employee in these units who does not normally have Sunday as a scheduled workday within his or her basic 37.5 or 40 hour workweek, but whose basic work schedule has been officially changed for the weeks in which the Christmas and New Year's holidays fall so that those Sundays are part of the employee's basic 37.5 or 40 hour workweek will observe those holidays on Sundays. This is true even if the employee is not normally scheduled to work on Sundays.

Part-Time Employees (ASU, ISU, OSU, PS&T, SSU, SSpU, and APSU units)

Part-time employees eligible to observe holidays are entitled to observe those holidays that fall on days they are regularly scheduled to work *or actually do work*, up to a maximum of 7.5 or 8 hours.

When part-time employees are directed to work hours in addition to their normal schedule within the 37.5 or 40 hour basic workweek of their position, such time becomes part of their scheduled hours for the week, even if it had not been scheduled in advance. If they are directed to work on a pass day, it ceases to be a pass day for them and instead becomes a regular workday so long as they are within the 37.5 or 40 hour workweek of the position. For example, if a part-time employee who does not normally work on Sunday is directed to work on a Sunday, that day becomes a regular workday for the employee so long as the employee is within the 37.5 or 40 hour basic workweek.

When a part-time employee in these units is directed to work on Sunday, December 25, within the 37.5 or 40 hour basic workweek of the position, that day becomes the employee's Christmas holiday, even if the employee is not normally scheduled to work on Sundays. The employee's holiday benefit is based on the number of hours he/she is scheduled or directed to work on that day up to a maximum of 7.5 or 8 hours of work.

In such cases, if Monday, December 26, is also a scheduled workday for the part-time employee who worked on Sunday, Monday is no longer the employee's Christmas holiday. If the employee had intended to be off on Monday, December 26, he/she is no longer entitled to be absent on that day without charge to credits. The employee would either have to charge the absence to leave credits or work on that date. If the employee works on that day, the employee receives only straight time pay and is no longer eligible for holiday compensation. The same principle applies to Monday, January 2.

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Accordingly, administrative agencies that plan to be closed on Monday, December 26, or Monday, January 2, should take steps to ensure that part-time employees for whom Monday is a scheduled work day are not directed to work on Sunday, December 25, or Sunday, January 1, within their 37.5 or 40 hour basic workweek.

Sunday, December 25, and Sunday, January 1, are not holidays for any employees, full-time or part-time, who are directed to work on those days in overtime status (beyond their 37.5 or 40-hour basic workweek).

Further Information

It should be noted that the last time these holidays fell on Sunday was Christmas Day 2016 and New Year's Day 2017. The relevant contract provisions for those holidays were set forth in Manual Advisory Memo 2016-03 Christmas Day 2016 and New Year's Day 2017 Holiday Observance, dated June 2016. For further background information on these contract provisions, agencies may also refer to the following memos:

Memo	Date	Subject
OER Memo 88-06	July 22, 1988	1988-1991 Institutional Services Unit Agreement
OER Memo 88-07	July 22, 1988	1988-1991 Operational Services Unit Agreement
OER Memo	October 6, 1988	1988-1991 State/PEF Agreement Article 12, Attendance and Leave
Attendance & Leave Manual Policy Bulletin 88-01	November 14, 1988	Christmas Day 1988 and New Year's Day Holiday Observance
Attendance & Leave Manual Policy Bulletin 89-01	March 1, 1989	1988-1991 Negotiated Agreements: Administrative Services, Institutional Services, Operational Services, Professional, Scientific and Technical Services, Rent Regulation Services, Security Services and Security Supervisors Units
OER Memo	February 9, 2001	Implementation of Negotiated Agreement 1999-2003 with NYSCOPBA
Attendance & Leave Manual Policy Bulletin 2002-01	January 22, 2002	Attendance and Leave Items in 1999-2003 Negotiated Agreements with NYSCOPBA and Council 82

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Memo	Date	Subject
Attendance & Leave Manual Policy Bulletin 2004-02	August 2004	Attendance and Leave Items 2003-2007 Negotiated Agreements Administrative Services Unit (ASU), Institutional Services Unit (ISU), Operational Services Unit (OSU)
Attendance & Leave Manual Policy Bulletin 2004-04	November 2004	Attendance and Leave Items in the 2003-2007 Negotiated Agreement with PEF
Attendance & Leave Manual Advisory Memo 2004-05	November 2004	Summary of recent changes in Holiday Leave Benefits
Attendance & Leave Manual Advisory Memo 2005-04	August 2005	Christmas Day 2005 and New Year's Day 2006 Holiday Observance
Attendance & Leave Manual Advisory Memo 2005-05	November 2005	Christmas Day 2005 and New Year's Day 2006—Additional Clarification
Attendance & Leave Manual Advisory Memo 2011-04	November 2011	Christmas Day 2011 and New Year's Day 2012 Holiday Observance
Attendance & Leave Manual Advisory Memo 2016-03	June 2016	Christmas Day 2016 and New Year's Day 2017 Holiday Observance

Questions and requests for background memos should be referred to the Attendance and Leave Unit of the Department of Civil Service at (518) 457-2295.

Attachment

HOLIDAY BENEFIT
FOR EMPLOYEES IN ADMINISTRATIVE, INSTITUTIONAL, OPERATIONAL, PROFESSIONAL, SCIENTIFIC & TECHNICAL
SERVICES UNITS, SECURITY SERVICES, SECURITY SUPERVISORS, AND AGENCY POLICE SERVICES UNITS
FOR
CHRISTMAS DAY 2022 AND NEW YEAR'S DAY 2023

Directions: Locate employee's regular work schedule in left hand column.
 Read across to determine employee's Christmas Day and New Year's Day holiday and the holiday entitlement based on employee's status on those days.

Assumptions: 1. Employees are full time, annual salaried.
 2. Employees work only those hours which correspond to their normal work shift on a pass day or a regularly scheduled workday.

EMPLOYEE'S REGULAR WORK SCHEDULE	EMPLOYEE'S CHRISTMAS/NEW YEAR'S HOLIDAY	STATUS: EMPLOYEE IS OFF SUNDAY AND MONDAY	STATUS: EMPLOYEE WORKS SUNDAY, OFF MONDAY	STATUS: EMPLOYEE IS OFF SUNDAY, WORKS MONDAY	STATUS: EMPLOYEE WORKS SUNDAY AND MONDAY
SUNDAY-WORKDAY MONDAY-PASS DAY	Sunday 12/25 Sunday 1/1	Sunday-holiday observance Monday-regular pass day	Sunday-holiday pay * or leave* Monday-regular pass day	Sunday-holiday observance Monday-overtime	Sunday-holiday pay* or leave* Monday-overtime
SUNDAY-WORKDAY MONDAY- WORKDAY	Sunday 12/25 Sunday 1/1	Sunday-holiday observance Monday-charged to credits	Sunday-holiday pay* or leave* Monday-charged to credits	Sunday-holiday observance Monday-regular workday	Sunday-holiday pay* or leave* Monday-regular workday
SUNDAY-PASS DAY MONDAY- WORKDAY	Monday 12/26 Monday 1/2	Sunday-regular pass day Monday-holiday observance	Sunday-overtime Monday-holiday observance	Sunday-regular pass day Monday-holiday pay or leave	Sunday-overtime Monday-holiday pay or leave
SUNDAY-PASS DAY MONDAY-PASS DAY	Monday 12/26 Monday 1/2	Sunday-regular pass day Monday-earns holiday leave	Sunday-overtime Monday-earns holiday leave	Sunday-regular pass day Monday-holiday pay or leave plus overtime	Sunday-overtime Monday-holiday pay or leave plus overtime

*Holiday Pay or Holiday Leave for December 25 at the Christmas time and one-half rate is only for employees in Administrative, Institutional, Operational, and Professional, Scientific and Technical Services Units.

Holiday Pay or Holiday Leave at the Christmas time and one-half rate is not available to Security Services, Security Supervisors and Agency Police Services Units.

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Retain until June 30, 2025

TO: Manual Recipients
FROM: Jessica Rowe, Director of Staffing Services
SUBJECT: Designation of Floating Holidays in Lieu of Election Day and Lincoln's Birthday for Contract Year 2022–2023

Floating holidays have been designated in lieu of fixed holidays for Election Day, 2022, and Lincoln's Birthday, 2023.

The guidelines and eligibility criteria applicable to these floating holidays are the same as those that governed Election Day, November 2, 2021, and Lincoln's Birthday, February 12, 2022, which were designated as floating holidays during contract year 2021–2022. **Because the floating holiday for Lincoln's Birthday 2023 falls on a Sunday and will be observed on a Monday, these guidelines provide additional details not normally contained in attendance and leave guidelines for floating holidays. We have bolded material which supplements information contained in previous floating holiday guidelines.**

State offices will be open on Election Day, November 8, 2022. **Lincoln's Birthday falls on a Sunday in 2023. Under the General Construction Law, Sunday holidays are observed on a Monday.** Managerial/Confidential employees and employees in the Administrative Services, Institutional Services, Operational Services, Professional, Scientific and Technical Services, and Rent Regulation Services Units, who are eligible as described below, will on each of those dates receive credit for a holiday to be used on a date of their choice. The credit(s) for these two floating holidays will be carried as separate entries on time records and will not be merged with holiday leave or holiday compensatory time. Floating holiday credit may be charged in quarter-hour units (or smaller units pursuant to local agreements). Each floating holiday must be used by November 6, 2023, and February 11, 2024, respectively.

For employees in the above units, therefore, November 8, 2022, and February 13, 2023, will not be observed as holidays and are to be treated as regular workdays. An employee's status on November 8, 2022, and February 13, 2023, determines eligibility to be credited with a floating holiday for that day.

To be credited with a floating holiday, an employee must meet the following criteria:

- a. The employee must be otherwise eligible to observe holidays under the Attendance Rules and negotiated agreements:

and

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- b. The employee must be in service on November 8 and/or February 13; that is, the employee must be in full pay status for any portion of his/her work shift on the date in order to earn a floating holiday for that day (for employees for whom these days are pass days, see below).

Employees are deemed to be in full pay status on November 8 and February 13 if, for any portion of their work shift on those days, they work, charge absence to leave credits, are on leave with full pay without charge to leave credits, or are treated as though they are on leave with full pay (e.g., paid military leave, jury leave, workers' compensation leave with full pay without charge to credits, Workers' Compensation Supplemental Pay Program or Workers' Compensation Statutory Benefit Program, the Professional, Scientific and Technical Services Medical Evaluation Program, or the M/C Workers' Compensation Program). Employees on sick leave at half-pay and employees on leave without pay for the entire day on November 8, 2022, and/or February 13, 2023, are not eligible to be credited with a floating holiday for that day.

Full-time employees for whom November 8 and/or February 13 are pass days are eligible to be credited with a floating holiday(s). Such employees must be in pay status on either their last work shift before their November 8 or February 13 pass day or their first work shift following that pass day to be credited with a floating holiday (i.e., employees do not have to be in pay status on both sides of the holiday/pass day to be credited with a floating holiday). Eligible employees are credited with a 7.5 or 8-hour floating holiday, as appropriate.

Eligible part-time employees are credited with a floating holiday if they are regularly scheduled to work or are directed to work on November 8, 2022, and/or February 13, 2023; they are credited with a floating holiday equivalent to the number of hours they are scheduled to work or actually do work on November 8, 2022, and/or February 13, 2023, (up to a maximum of 7.5 or 8 hours for each day).

Subject to agency procedures for requesting time off, eligible employees may use their floating holiday beginning November 8, 2022, and ending with November 6, 2023, and beginning February 13, 2023, and ending with February 11, 2024, respectively.

This memorandum is not applicable to Institution Teachers and other employees subject to Section 136 of the Civil Service Law since such employees are not subject to the Attendance Rules. For those employees, the observance of holidays should be determined by the school calendar in effect in their facilities.

For employees in the Security Services, Security Supervisors, Agency Police Services, State Police Troopers, State Police Commissioned and Noncommissioned Officers, and State Police Investigators negotiating units, Election Day (November 8, 2022), and Lincoln's Birthday

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(February 13, 2023) are not designated floating holidays. For employees in these units who are eligible to observe holidays, Election Day and Lincoln's Birthday will be observed as fixed holidays. When such employees are required to work on these holidays, their benefits will be determined in the same manner as is currently followed for other holidays on which they are required to work.

Questions concerning application of these eligibility criteria may be directed to the Attendance and Leave Unit of this Department at (518) 457-2295.

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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 30, 2022, Independence Day, July 4, 2022, and Veterans' Day, November 11, 2022. The MOUs expire December 31, 2022 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 30 (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 2022 and Veterans' Day 2022, 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, 2022, 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 2022 and/or as eligible former reservists for Independence Day 2022, 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 2022 and/or as eligible former reservists for Independence Day 2022, 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 2022. The benefits are available for Memorial Day, May 30, 2022, Veterans' Day, November 11, 2022, and/or Independence Day, July 4, 2022.

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, 2022 through May 15, 2022.

Appointment to State Service

Employees in these units who enter State service after May 15, 2022 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, 2022, 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, 2022 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 2023 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 2022, 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 2022, 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 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, 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, Independence Day. 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.

**SPECIAL HOLIDAY WAIVER FOR SECURITY SUPERVISORS UNIT,
SECURITY SERVICES UNIT, OR AGENCY POLICE SERVICES UNIT
For Memorial Day, Veterans' Day, and Independence Day 2022**

*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, and/or Independence Day 2022 rather 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 2022.***

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, 2022 and May 15, 2022.

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 30, 2022 and Veterans' Day, November 11, 2022.

_____ I currently receive holiday leave for all holidays worked. However, I elect to receive holiday pay for work on Memorial Day, May 30, 2022 and Veterans' Day, November 11, 2022.

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 4, 2022.

_____ I currently receive holiday leave for all holidays worked. However, I elect to receive holiday pay for work on Independence Day, July 4, 2022.

Name (please print) _____

Signature _____

Date _____ Work Location _____

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

BARGAINING UNIT: SSpU ☐ SSU ☐ APSU ☐