

**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.

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**March 2003**

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TO: Manual Holders  
FROM: William Doyle   
Director of Staffing Services  
SUBJECT: Sick Leave Accrual Rate for PS&T Unit Employees

The State has entered into a Memorandum of Understanding (MOU) with the Public Employees Federation concerning the sick leave accrual rate for employees in the Professional, Scientific and Technical Services (PS&T) Unit. This MOU provides that with respect to all PS&T employees covered by the Attendance Rules, effective with the payroll period beginning March 27, 2003 for employees on the Administration payroll cycle and effective with the payroll period beginning April 3, 2003 for employees on the Institution payroll cycle, sick leave shall be credited in accordance with the Attendance Rules. Therefore, employees in the PS&T Unit with no creditable service prior to April 1, 1982 who had been earning sick leave at the 10-day rate will now be eligible to earn sick leave at the rate of 13 days per year.

Similarly, the MOU provides that employees covered by attendance rules other than the Attendance Rules for Employees in New York State Departments and Institutions will be credited with sick leave at the rate now applicable to employees hired before April 1, 1982. A memorandum will be issued by the Governor's Office of Employee Relations addressing this group.

**Accrual Rate**

As a result of the MOU, all PS&T Unit employees subject to the Attendance Rules should be credited with sick leave at the 13-day rate, effective with the biweekly payroll period beginning March 27, 2003 for those on the Administration payroll or April 3, 2003 for those on the Institution payroll.

All full time employees in this Unit will earn sick leave at the rate of 3.75 or 4 hours per biweekly payroll period, based on whether they occupy a 37.5 or 40 hour per week position.

Employees in the PS&T Unit participating in the Voluntary Reduction in Work Schedule (VRWS) program who were earning prorated sick leave at the 10-day rate will have their sick leave accrual rates adjusted to reflect the change to the 13-day rate, prorated based on their VRWS percentage.

Part time employees in the PS&T Unit who are eligible to earn sick leave will earn prorated sick leave based on the 13-day rate. For example, a 50% employee in a 40-hour workweek position will be eligible to earn 2 hours of sick leave each biweekly payroll period.

No 10-day accrual rate adjustments shall be credited on or after March 27, 2003 for the Administration payroll or April 3, 2003 for the Institution payroll. For example: A full time 40-

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hour per week employee on the Administration payroll cycle who was hired after April 1, 1982 currently earns 3 hours of sick leave each pay period with an adjustment of 2 additional hours on the employee's anniversary date to bring him/her up to ten days (80 hours) of sick leave per year. If the employee's next anniversary date was March 30, 2003, the 2-hour adjustment would not be credited because the employee is earning at the 13-day rate beginning with the pay period that commenced March 27, 2003.

Employees continue to be required to be in full pay status for 7 out of 10 days in a biweekly payroll period (or for a proportionate number of days for employees scheduled to work fewer than 10 days per biweekly payroll period) in order to actually earn accruals in that biweekly payroll period.

**Sick Leave at Half-Pay**

Employees in the PS&T Unit who earned sick leave at the 10-day rate will continue to be eligible for the benefit provided by Article 12.20 of the 1999-2003 State/PEF Agreement, until a successor agreement is ratified. However, the MOU limits the cumulative total of mandatory sick leave at half-pay an employee can receive under Article 12.20 to 1.5 days for each six months of service the employee completed after April 1, 1985 and prior to March 27, 2003 (Administration payroll cycle) or April 3, 2003 (Institution payroll cycle). Employees will, of course, continue to acquire eligibility for sick leave at half-pay under the Attendance Rules.

Please see Section 21.5, pages C-6 through C-11, of the *State Attendance and Leave Manual* for a discussion of the mandatory sick leave at half-pay benefit provided by Article 12.20 of the 1999-2003 PS&T Agreement.

Questions should be addressed to the Attendance and Leave Unit of this Department at (518) 457-2295.


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POLICY BULLETIN NO. 95-03

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Section 21.4

September 29, 1995

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TO: Personnel Officers  
FROM: Peter Elmendorf   
SUBJECT: Absence for Training of Service Animals

Legislation enacted on July 26, 1995 (Chapter 232, Laws of 1995) amends section 6(1) of the Civil Service Law to broaden the current Attendance Rule provisions permitting use of sick leave and advancing of sick leave by visually handicapped and hearing impaired employees for purposes of obtaining and training guide dogs.

The new legislation permits use of sick leave and advancing of sick leave for absences to obtain and train a service animal or guide dog and adds a new category of eligible employee -- individuals certified by an examining physician as benefiting from the use of a service animal in performing major life activities.

There is no change in the amount of sick leave which can be charged or advanced for this purpose. Eligible employees can charge up to 26 days of accrued sick leave credits per calendar year. Eligible employees who have exhausted all leave credits can be advanced sick leave provided that their outstanding balance of sick leave advanced for this purpose cannot exceed 26 days and the cumulative total of sick leave credits charged and/or advanced for this purpose cannot exceed 26 days in any one calendar year. (See sections 21.3 and 21.4 of the State Attendance and Leave Manual for a complete discussion of this benefit.)

Questions on these provisions should be referred to the Employee Relations Section of the Department of Civil Service at (518) 457-2295.

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Purpose

The primary purpose of sick leave is to provide a reasonable measure of protection against loss of income because of illness or other disability.

**Note:** The Federal Family and Medical Leave Act (FMLA) of 1993 gives eligible employees the right to up to 12 workweeks in a calendar year of unpaid leave, or paid leave charged to leave credits under certain circumstances, for reasons which in some cases qualify for use of sick leave under the Attendance Rules and negotiated agreements.

If the use of sick leave is for a qualifying purpose under the FMLA and such leave is designated as FMLA by the appointing authority, the FMLA guidelines in Appendix I of the Manual should be read in conjunction with this Section. Eligibility, use of leave, medical documentation, and the definition of family are some examples of conditions of leave pursuant to FMLA which differ from those provisions under the Attendance Rules. The federal guidelines are controlling when the leave is designated as FMLA and caution should be used in applying the language in this Section without reference to Appendix I.

Eligibility

Full-time annual salaried employees and those part-time annual salaried employees working a fixed number of hours five days per week are eligible to earn sick leave.

Employees compensated on a per diem or hourly basis must have a regular work schedule of at least 3 3/4 hours per day five days per week and complete a "qualifying" service of 19 pay periods without a

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Sec.26.1,  
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Sec.26.1,  
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break of more than one complete pay period before being eligible to earn sick leave. After attaining coverage under the Attendance Rules, such employees are eligible to earn sick leave in the same manner as annual salaried employees.

No employee is entitled to leave under this Section beyond the time at which his/her services would otherwise terminate by operation of law, rule or regulation.

A seasonal employee cannot be continued on sick leave beyond the end of the "season"; i.e., after his/her employment has ended.

Earning and Crediting Sick Leave

An employee compensated on an annual salary basis earns and is credited with sick leave at the rate of 1/2 day for each pay period in which he/she is in full pay status for seven of ten working days. This is not a cumulative total of seven days but seven separate full days. (See Appendix C on Alternative Work Schedules for staff who are scheduled to work less than ten days per pay period and Appendix F for Managerial/ Confidential employees enrolled in the Income Protection Plan.)

Employees compensated on a per diem or hourly basis are not credited with sick leave until completion of the nineteen pay periods of "qualifying" service. At that time they are credited with sick leave in the following manner:

1. Add one-half day of sick leave for each of the nineteen pay periods of "qualifying" service in which such employee was in full pay status for seven of the ten working days plus any sick leave credits earned under the Attendance Rules prior to the per diem service but within this same period of continuous service.

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Sec. 26.1,  
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2. Subtract from the total obtained in (1) any paid sick leave granted during the period of "qualifying" service under Section 18c of the Labor Law which provides for paid sick leave for certain State employees who are not covered by the Attendance Rules. (See Section 21.12, p.8.)

Thereafter, sick leave is earned and credited in the same manner as it is for annual salaried employees.

Annual salaried and per diem or hourly paid employees who work part-time and meet the eligibility requirements earn and are credited with sick leave on a prorated basis in the same ratio that the number of hours worked has to the normal workweek. For example, a half-time, half-pay employee working 20 hours a week, where the normal workweek is 40 hours, earns one-half full-time credits, or 2 hours a biweekly pay period.

Employees may not accumulate sick leave credits in excess of 150 days. After reaching this maximum, employees can earn credits only after the balance has been reduced to fewer than 150 days. Sick leave credits which employees would have earned beyond this maximum cannot be credited to them. (See Section 21.8, Workers' Compensation, for an exception.)

Use of Sick Leave Credits

Approved absences necessitated by personal illness or other disability, personal visits to a doctor or dentist, and illness or death in the employee's family may be charged to sick leave. In addition to visits to or treatment by doctors and dentists, visits to the following medical and physical practitioners may be charged against sick leave credits: Psychiatrists, Osteopaths, Physio and Physical Therapists, Podiatrists, Optometrists,

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Psychologists, Chiropractors, Physician's Assistants, Nurse Practitioners, Christian Science Practitioners, and Social Workers doing psychological counseling.

The use of sick leave credits for absences necessitated by illness in the employee's family normally should be restricted to absences occasioned by the need for the services of the employee. It is not intended that sick leave credits be used to provide time off with pay when an employee absents himself/herself from work to assume housekeeping or homemaking duties normally performed by another member of the family. However, sick leave credits may be properly used if an employee absents himself/herself to provide direct care for members of the family who are ill. Sick leave credits may also be appropriately charged to accompany a family member to a medical appointment where the family member is unable to go alone (but not simply to provide transportation), or where the employee must serve as the responsible person to receive medical information from the family member's physician, or where, because of the nature of the medical procedures to be performed, the family member's physician requests the employee's presence. Depending on the circumstances involved, the appointing authority may approve or disapprove the use of sick leave for all or part of the absence. For example, if pregnancy of the spouse is involved, the appointing authority would normally approve the use of sick leave credits for the day of delivery and for the convalescent period immediately following hospitalization (generally about one week under normal circumstances). In the absence of unusual circumstances, other absences would generally be charged to credits other than sick leave for family illness.

For the purposes of this Section, the definition of family is any relative or relative-in-law regardless of residence or any persons with

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whom an employee has been making his/her home. Charges against sick leave for absences caused by illness or death in one's family may not exceed fifteen days in any one calendar year. An absence to attend a funeral of someone other than a family member as defined herein may not be charged to sick leave credits.

For the purposes of use of sick leave for personal illness, pregnancy must be treated in the same manner as any other ordinary disability. Employees may not be required to report the existence of pregnancy prior to requesting leave under this Section. They may be encouraged to do so, however, where the employer, the employee, or the employee's physician believe that the nature of the duties performed is such that continued performance of those duties during pregnancy may be hazardous. (See Section 22.1, pp. 5-8.)

Up to 26 days of sick leave per calendar year may be used for the purpose of obtaining and training guide dogs by employees certified as visually handicapped by the New York State Commission for the Blind and Visually Handicapped or certified as blind (evidenced by visual acuity of 20/200 or less in the better eye with best correction or a visual field of 20 degrees or less) by an examining physician or licensed optometrist, and by employees certified as having a hearing impairment (manifested by a speech discrimination score of 40 percent or less in the better ear with appropriate correction) by a licensed audiologist or otolaryngologist.

If the employee does not produce the required certifications or if it is reasonably determined by the agency that the use of sick leave credits is unjustified for a particular absence, the use of such credits should be denied. The absence may then be charged to other appropriate credits or may be considered as authorized or unauthorized leave without pay.

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Notification

An employee who is absent because he/she is sick should notify his/her supervisor on the first day, within two hours after the beginning of the workday. The appointing authority may require earlier notification, but not more than two hours before the beginning of the workday, where the work is such that a substitute may be required. This Rule does not provide any specific penalty for failure to report within the prescribed time limits. The appointing authority is free to enforce such requirements as he/she sees fit. However, the circumstances should be thoroughly considered before an employee is placed on leave without pay because he/she failed to give proper notice of his/her absence.

Minimum Units of Liquidation and Record Keeping

The appointing authority may regulate the units in which sick leave is used, except that sick leave may not be used in units of less than one-half hour. Except in circumstances where substitutes are required, the use of sick leave credits in units of one-half hour is the most practical method to provide equitable use of sick leave credits for short-term absences.

Each agency should maintain adequate records for proper control and to identify the reasons for which sick leave is used. This will assist in the identification of patterns which suggest abuse of the use of sick leave credits; e.g., consistent use of such credits on Friday afternoons, Monday mornings and before and after holidays and vacations. When such a pattern exists, the appointing authority may require more than the usual proof of illness. The maintenance of accurate records will also assist in administering the use of sick leave credits for illness or death in the employee's family.

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Documentation

The appointing authority may require such proof as may be considered satisfactory to justify the use of sick leave credits. Such evidence may include certifications from practitioners as described under Use of Sick Leave Credits, examination by a physician designated and paid by the agency, proof of hospitalization, etc.

Medical Examinations

The appointing authority may require an employee to be examined by a physician, at the agency's expense, as a condition of his/her returning to work from an illness. In lieu of, or in addition to, this medical examination, the appointing authority may require an employee to furnish a certificate from his/her attending physician.

When an agency exercises the option to require an employee to be examined by a physician selected by management, the State is obligated to pay both for the doctor and for the employee's actual and necessary travel expenses in accordance with the Comptroller's travel regulations. The employee remains in the same payroll status he/she is otherwise entitled to at the time of the examination (e.g., in duty status, charging credits, on leave without pay, etc.).

When in the judgment of the appointing authority an employee is unable to perform the duties of his/her position because of a disability (other than a disability resulting from an occupational injury or disease as defined in the Workers' Compensation Law) and leave under Section 72 of the Civil Service Law is contemplated, the employee may be required to be examined by a physician selected by the Department of Civil Service in accordance with Section 72. Based on the results of this examination, if the employee is

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placed on such leave of absence and not reinstated within one year, he/she may be separated in accordance with Section 73 of the Civil Service Law. Agencies should refer to Section 2200, Separations and Leaves, of the State Personnel Management Manual for a discussion of Section 72 of the Civil Service Law.

If, as a result of any medical examination or certificate or judgment of the appointing authority, an employee who has voluntarily absented himself/herself from duty seeks to return and is denied based on the inability to perform his/her duties, the appointing authority should consult with the Department of Civil Service Counsel's office for guidance on appropriate procedure.

Transfer of Credits

All earned and unused sick leave credits are transferred with an employee when:

1. he/she moves from a position covered by the Attendance Rules to another position also covered by the Attendance Rules,
2. he/she moves to or from a position covered by the Attendance Rules to or from a position in the unclassified service of the State University (pursuant to Section 35 of the Civil Service Law) or to or from a position covered by the Attendance Rules for Institution Teachers, or
3. he/she moves to or from a position covered by the Attendance Rules to or from a position in an agency with which a prior reciprocal agreement has been made between such agency and the Department of Civil Service. (See Section 24.1, "Written Agreement Required for Transfer of Leave Credits," of this Manual.)

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Sick leave credits transferred upon movement from a position with a basic workweek of 37 1/2 hours to a position with a basic workweek of 40 hours, or vice versa, should be converted to reflect the new workweek. 1125 hours (150 days) of sick leave earned in a position with a 37 1/2 hour workweek converts to 1200 hours for a 40 hour workweek. If the sick leave credits transferred are expressed in terms of days, the receiving agency can readily convert them to the appropriate number of hours.

Sick leave credits transferred upon movement between full-time and part-time items (with the same basic workweek of 37 1/2 or 40 hours) should not be converted but should be transferred in hours without increase or decrease. If such transfer causes the employee to exceed the maximum accruals allowed in the part-time item, he/she should not be deprived of credits earned but should not be credited with additional sick leave until his/her accruals are reduced below the allowable maximum in that item. If the movement involves items with different basic workweeks (e.g., a full-time item with a 37 1/2 hour workweek to a 1/2 time 1/2 pay item with a 20 hour workweek), sick leave should be converted as described above and then transferred in hours. (See Appendix D, Part-Time Employment for further information.)

Under no circumstances will direct payment for unused sick leave credits be made. However, certain State employees, after they retire, may continue coverage under the State health insurance plan and have the dollar value of their sick leave balance at the time of retirement applied toward the charges for health insurance (Section 167, Civil Service Law). Certain retirees may also be granted additional retirement service credit for accumulated and unused sick leave credits (Section 41, Retirement and Social Security Law).

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Restoration of Unused Sick Leave Credits

All sick leave credits accrued and unused at the time of separation (for other than disciplinary reasons) are restored to employees who are:

1. reinstated or reemployed within one year of separation,
2. returned to the payroll from a leave of absence without pay of any duration,
3. reinstated or reemployed at any time while eligible for reinstatement from a preferred list (actual appointment from the preferred list is not necessary),
4. reinstated at any time in accordance with Sections 71 and 73 of the Civil Service Law, or
5. reinstated at any time by action of the Civil Service Commission in accordance with Section 5.4 of the Civil Service Rules, provided the appointing authority indicates in the request for reinstatement the amount of sick leave credits to be restored if the former employee is reinstated, and certifies that such restoration will be based on available time records maintained in accordance with the Attendance Rules.

Note: Although the determination of the adequacy of records supporting unused amounts of sick leave credits and the restoration of such credits is normally left to the appointing authority, the Department of Civil Service reserves the right to deny restoration where in its judgment the records are inadequate to support such action.

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An employee's sick leave credit balance at the time of retirement is not reduced by either the retirement service credit or the health insurance premium payment credit the employee may receive at retirement. Therefore, the sick leave credit balance at the time of retirement should be restored in full to an otherwise eligible employee who is reemployed following such retirement within one year or reinstated at any time by the Civil Service Commission or other process of law.

If an employee moves from a position subject to the Attendance Rules to a position not subject to the Rules and not covered by a reciprocal agreement adopted in accordance with Section 24.1 of the Rules, his/her sick leave credits cannot be transferred. (See p. 6 of this Section on transferring sick leave.) However, upon a subsequent return to a position subject to the Attendance Rules, and consistent with the limitations and restrictions described above, those leave credits should be restored. Because time records often are not retained for more than three years, employees who move to positions not subject to the Attendance Rules as described herein should be given a statement of their sick leave accruals upon such movement.

Related Legal Provisions

Section 18(c) of the NYS Labor Law, which authorizes appointing authorities to grant sick leave to certain State employees who are not otherwise eligible.

Section 167, Civil Service Law, which authorizes the credit against health insurance premiums of sick leave values at retirement.

Section 41, Retirement and Social Security Law, which authorizes retirement service credit based upon sick leave credits at retirement.

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Section 35, Civil Service Law, which identifies state university professional service positions as unclassified.

Section 136.3, Civil Service Law, which exempts teachers from these Attendance Rules and authorizes the heads of the several agencies employing persons in teaching positions to establish attendance and leave regulations governing those employees.

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Negotiating Units:

Administrative Services Unit Article 10.6  
Institutional Services Unit Article 10.7  
Operational Services Unit Article 10.8  
Professional, Scientific and Technical Services  
Unit Article 12.8(b)  
Rent Regulation Services Unit Article 12.7(b)  
Security Services Unit Article 14.4  
Security Supervisors Unit Article 14.4

Effect:

Employees subject to the Attendance Rules for State employees (or agency attendance rules for institution teachers) may accumulate sick leave credits to the maximums listed below and may not, except as credits are restored in accordance with Section 21.8 of the Attendance Rules, be credited with sick leave in excess of such maximums:

Administrative Services Unit--190 days  
Institutional Services Unit--200 days  
Operational Services Unit--200 days  
Professional, Scientific and Technical Services Unit--200 days  
Rent Regulation Services Unit--200 days  
Security Services Unit--225 days  
Security Supervisors Unit--225 days

In no event may sick leave accumulations in excess of 165 days be used for retirement service credit or to pay for health insurance premiums in retirement.

Transfer of Credits

Sick leave credits accumulated and unused in excess of 150 days as provided by the subject contract items are transferred in the same way and are subject to the same limitations and restrictions as apply to the transfer of sick leave credits accumulated and unused (up to 150 days) as provided by the Attendance Rules.

When an employee moves from one negotiating unit to another and has earned and accumulated sick leave credits in excess of the maximum accumulation allowed employees in the latter unit, such employee may transfer the total accumulation but cannot be credited with additional sick leave until the sick leave accruals so transferred fall below the allowable maximum in the unit to which he/she has transferred.

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Restoration of Unused Sick Leave Credits

Sick leave credits earned and unused in excess of 150 days as provided by the subject contract items at the time of separation are restored to employees in the same way and subject to the same limitations and restrictions as apply to the restoration of sick leave credits accrued up to 150 days as provided by the Attendance Rules.

An employee otherwise entitled to restoration of sick leave credits upon reinstatement or reemployment is entitled to restoration of all sick leave credits earned and unused at the time of separation irrespective of whether the employee has received additional retirement service credit for such leave credits.

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Professional, Scientific & Technical Services  
Unit Article 12.8(a)  
Rent Regulation Services Unit Article 12.7(a)

Effect:

Employees initially hired into State service on or after April 1, 1982 will be subject to the 10-day per year sick leave accrual rate established by (1) the 1982-85 State-PEF agreement and continued in the 1985-88 and 1988-91 agreements or (2) the 1984-85 State-DC37 agreement and continued in the 1985-88 and 1988-91 agreements. Employees on the payroll in State service prior to April 1, 1982 will be subject to the 13-day per year sick leave accrual rate established by the Attendance Rules.

The following rates of accumulation have been set for employees earning at the rate of 10 days per year:

1. For full-time employees whose basic workweek is 40 hours:  
3 hours each qualifying biweekly pay period plus two additional hours annually on the employee's anniversary date.
2. For full-time employees whose basic workweek is 37 1/2 hours:  
2 3/4 hours each qualifying biweekly pay period plus 3 1/2 hours annually on the employee's anniversary date.
3. Part-time employees who meet the eligibility requirements to accrue sick leave shall earn sick leave on a prorated basis determined by the percent of full-time scheduled and the appropriate full-time workweek rate (40 hours or 37 1/2 hours).

In addition to establishing accrual rates, employees must be categorized as subject to the 13-day accrual rate set by the Attendance Rules or subject to the 10-day rate set by the above agreements.

The contracts intend that any employee initially hired into State service on or after April 1, 1982 be governed by the 10-day contract accrual rate. This means that any employee initially hired on or after April 1, 1982, regardless of bargaining unit, will be subject to the contract accrual rate upon subsequent movement to the PS&T Unit or the Rent Regulation Unit. Alternatively, if an employee who is eligible to accrue 10 days' sick leave annually under the PS&T or Rent Regulation agreement moves to a position in another unit which is subject to the 13-day rate provided in the Attendance Rules, such employee will be eligible to accrue at the 13-day rate on the effective date of the move.

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For example:

1. A full-time annual salaried employee initially hired into State service and appointed to a PS&T position on May 6, 1982 earns sick leave at the rate of 10 days per year. This same employee moves to an M/C position on May 27, 1982. Effective May 27, he/she becomes eligible to earn sick leave at the rate of 13 days per year.
2. A full-time annual salaried employee was hired into an M/C position on August 27, 1981 and transferred to a PS&T position on April 15, 1982. This employee continues to earn sick leave at the rate of 13 days per year.
3. A full-time annual salaried employee is initially hired into State service in an ASU position on April 22, 1982 and earns sick leave at the rate of 13 days per year. On August 12, 1982, this individual moves to a PS&T position. Effective August 12 he/she becomes eligible to accrue sick leave at the rate of 10 days per year.
4. A full-time annual salaried employee moved from New York City service to State service on April 1, 1984 under Section 70 of the Civil Service Law into the Rent Regulation Services Unit. This employee was initially hired into City service on September 10, 1979 so he/she has "creditable service" prior to April 1, 1982 and will earn sick leave at the 13-day rate. (Employees in the Rent Regulation Unit who transferred to State service on April 1, 1984, pursuant to law, were entitled to have service prior to April 1, 1984 with New York City or the Conciliation and Appeals Board [CAB] counted as State service for attendance and leave purposes.)

The sick leave accrual rate for individuals hired on or after April 1, 1982, but who have previous creditable State service, will be determined in a manner consistent with the provisions of the Attendance Rules concerning the crediting of former service. For example, an employee who resigns and is reinstated within one year of the date of separation is entitled to service credit for employment prior to resignation and, therefore, would accrue sick leave at the rate of 13 days per year. For further information, see Section 21.2 of this Manual on crediting of previous service.

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Negotiating Units:

Administrative Services Unit Article 10.7(a)  
Operational Services Unit Article 10.9(d)  
Professional, Scientific and Technical Services  
Unit Article 12.9(b)  
Rent Regulation Services Unit Article 12.8(b)

Effect:

Employing agencies may not require employees in the negotiating units listed above to use sick leave in units greater than 1/4 hour but may permit liquidation in smaller units of time. This means that an employee may be allowed to charge a 35-minute absence against sick leave credits as a 45-minute charge (three 1/4-hour units). In accordance with a "local arrangement," he/she may be allowed to charge such an absence as a 40-minute charge (four 10-minute units) or as a 35-minute charge (seven 5-minute units) or on a minute-by-minute basis. Such local arrangements as may have been in effect when these items became effective (ASU-4/1/79, OSU-4/1/82, PS&T-12/7/79, RRSU - 4/1/84) are not superseded by the subject contract item and cannot be terminated unilaterally.



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Negotiating Units:

Administrative Services Unit Article 10.13  
Institutional Services Unit Article 10.17  
Operational Services Unit Article 10.9(a) and (c)  
Professional, Scientific & Technical Services  
Unit Article 12.18  
Rent Regulation Services Unit Article 12.14  
Security Services Unit Article 14.3  
Security Supervisors Unit Article 14.3

Effect:

Subdivision (f), Section 21.3 of the Attendance Rules provides that absences necessitated by illness or death in the employee's family may be charged to sick leave credits up to a maximum of 15 days each calendar year. (Note: For the Attendance Rules, family is defined as any relative or relative-in-law or any other persons with whom the employee makes his/her home. See this Section, p. 3.) These contract items are designed to prohibit unreasonable denials of employee requests for such use of sick leave credits and, for employees in the Administrative Services and Professional, Scientific and Technical Services Units who request leave for death in the family, to ensure that such requests will be approved subject only to reasonable evidence of need.

Employees who request sick leave for reasons of family illness may be required to present evidence of the illness, family relationship or need of the ill person for the services of the employee. Employees who request sick leave for reasons of death in the family may be required to present evidence of the death, the family relationship and the need for the total amount of leave requested. Appointing authority denials of employee requests are grievable as contract grievances.

Although prior approval is normally required for the use of sick leave for family illness or to attend a funeral in the case of death in the family, such requirement may be waived at the discretion of the appointing authority and should be waived if the employee presents a satisfactory explanation of the reasons for failing to secure such prior approval.

For employees in the Security Services and Security Supervisors Units the definition of family, for the purpose of using sick leave for illness or death, is limited to the employee's spouse, child, parent, grandparent, brother, sister, parent-in-law, brother-in-law, sister-in-law, grandchild or other relative living in the employee's household.

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For the purpose of applying these contract provisions in all other units, the definition of family contained on page 3 of this Section continues to apply. This definition covers all relatives and relatives-in-law regardless of the location of their residences, but non-relatives must be residing with the employee. The Institutional Services Unit agreement contains this same definition of family so it does not provide any benefit not already available to these employees. The ISU contract article does make denials of leave based on the definition of family grievable as a contract grievance.

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Negotiating Units:

Administrative Services Unit Article 10.7(b)  
Institutional Services Unit Article 10.20(b)  
Operational Services Unit Article 10.9(e)

Effect:

For employees in the subject bargaining units who are disabled veterans, these contract articles exempt sick leave absences to obtain treatment for service-connected disabilities at Veterans' Administration facilities from review under agency absenteeism control programs.

When an employee requests such exemption, agencies may require the employee to provide documentation to substantiate both that the disability is service-connected and the absence was for treatment for that disability. This provision is not intended to apply to time spent at Veterans' Administration facilities for treatment or services not related to the service-connected disability.

Absences for the purpose of obtaining treatment for service-connected disabilities at Veterans' Administration facilities should be charged to sick leave first; if the employee has no sick leave available, absence may be charged to vacation, personal leave, holiday leave or overtime compensatory time. Regardless of the leave category the absence is charged against, substantiated by documentation, it is to be excluded from an agency absenteeism/sick leave control program and any related attendance records review.

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Negotiating Unit:

Institutional Services Unit Article 10.8

Effect:

This contract provision confirms that an ISU employee must notify his/her supervisor within two hours of the start of his/her workday on the first day of sick leave absence of the reason(s) for and duration of the absence. If the duration is not known, the employee must call in on each day of absence until a return date is established. This is consistent with the Attendance Rules and their application. In addition, an ISU employee who is absent because of illness and whose work is such that a substitute may be required cannot be required to give notification of such absence more than one hour before the beginning of the employee's workday. Such employee may be requested to give more than one hour's advance notice but may not be required to do so.

This article also provides that, although employees are responsible for providing appropriate notice of absence consistent with agency call-in procedures, no employee shall be denied use of sick leave solely on the basis of not having spoken directly to his/her supervisor.

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Negotiating Unit:

Institutional Services Unit Article 10.12

Effect:

An employee in the Institutional Services Unit must be given a written response, within six workdays, if the employee submits a written request to use sick leave credits. If the request is denied, the written response must include a statement of the reasons for the denial.

In addition, an employee who has not received a response at the end of four days after making the request to use sick leave credits has the right to appeal to a designated management representative who then is responsible for ensuring that the employee receives a response within two days of the appeal. See p. C-11, Section 21.2, Vacation, for a further discussion of this contract provision which applies to the use of all leave credits for this Unit.

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Negotiating Unit:

Institutional Services Unit Article 10.20

Effect:

This provision confirms the Attendance Rules provision that an employee who has exhausted sick leave accruals must be permitted to charge absence due to illness to other leave credits if the absence would have been approved as a charge to sick leave credits were such credits available.

The subject contract article also provides that employee requests to charge absences due to illness to other credits following exhaustion of sick leave credits shall not be routinely or arbitrarily denied. However, such requests may be denied in cases where employees have been given prior notice that they have attendance problems.

When applying this contract article, appointing authorities should be judicious in determining both the type of absence for which use of other leave credits will be denied and the period of time that denial will be effective. For example, it would be appropriate to include unscheduled, undocumented single day absences for personal illness but not include documented absence for death in the family. Also, in the case of long-term personal illness or disability, it is not the intent of this article to deny an employee his/her entitlement to sick leave at half-pay by denying the use of leave credits (thus making the employee ineligible for sick leave at half-pay). Appointing authorities should state in the notice to the employee the specific time period he/she will be denied use of other credits as sick leave and at the end of the period, should review the individual's record before extending or discontinuing the denial.

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Negotiating Units:

Administrative Services Unit Article 10.16  
Institutional Services Unit Article 10.9  
Operational Services Unit Article 10.12  
Professional, Scientific & Technical Services  
Unit Article 30  
Rent Regulation Services Unit Article 14

Effect:

These contract articles provide for confidentiality of medical certificates and notice of written documentation requirements.

Confidentiality of Medical Certificates

Whatever local arrangements are made for the filing of confidential medical certificates with designated persons, it is not intended that such designees shall be required to withhold information reasonably required by immediate supervisors or other appropriate agency staff to exercise their normal and regular responsibilities. However, in all cases, great care should be exercised to protect employees against the indiscriminate dissemination or use of medical information provided confidentially.

Many certificates will not require the special treatment contemplated by the subject items. Employees will continue to submit medical certificates for colds or the flu or dental problems without requesting use of special procedures for confidentiality. Every supervisor who receives medical certificates from employees is expected to handle all of them in such a way as to prevent their perusal by co-workers or other unauthorized personnel.

With respect to requirements for confidential treatment of medical certificates:

1. Employees in the Administrative Services Unit who submit medical certificates which they wish to be treated as confidential shall be allowed, in accordance with procedures developed in a labor/management forum, to file such certificates with one person designated to receive such certifications and to transmit the authorization for the use of sick leave credits back to the employee's supervisor.



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2. Employees in the Professional, Scientific and Technical Services and the Rent Regulation Services Units may be allowed the same option as is available to ASU employees in accordance with local labor/management arrangements which may be developed for that purpose.
3. The Institutional Services Unit agreement provides that an employee, upon notice to his/her supervisor, may submit medical certificates on a confidential basis directly to the agency or facility personnel office. The employee is expected to advise the supervisor of his/her intent to do this prior to return to work. The personnel office is responsible for ensuring that the supervisor has sufficient information to decide the appropriateness of a charge to sick leave.
4. For employees in the Operational Services Unit, an alternate method for handling medical certificates has been provided in cases where employees, because of extreme confidentiality concerns, prefer to deliver their medical certificates to someone other than the immediate supervisor who normally receives such certificates for employees in this unit. According to this procedure, the State shall designate one person in a particular department, agency or facility to receive the medical certificate and to transmit authorization for the use of sick leave credits and/or anticipated date of return to duty back to the employee's immediate supervisor. For employees in this unit, this procedure is restricted to cases where extreme confidentiality concerns exist. This privilege may be discontinued for an individual employee if the agency/facility head determines that the employee is abusing this privilege.

#### Medical Diagnosis

Employees should not be required to provide medical certificates which contain more than a brief statement of the employee's medical condition when such brief statement is sufficient to serve as proof of an employee's inability to perform the duties of the position. While an explicit diagnosis will be unnecessary in many cases, employing agencies are not prohibited from requiring medical certificates which are sufficiently informative to allow them to make a determination concerning the employee's entitlement to leave or to evaluate the assignment and availability of the individual. Generally, satisfactory medical documentation will include, in addition to a brief statement of the nature of the illness, a statement confirming that the employee is unable to perform the duties of the position due to this illness, the dates of the disability and the prognosis, including anticipated date of return to work.

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The contract articles for the Professional, Scientific and Technical Services and the Rent Regulation Services Units specifically provide that employees may not be required to submit medical certificates which provide a medical diagnosis in greater detail than is necessary.

Notice of Medical Certificate Requirement

Many State agencies have adopted policies which provide that medical documentation of personal illness shall not normally be required of employees for sick leave absences of four or five days or less. In part, such policies recognize that most employees who are ill for a day or two because of a bad cold, upset stomach, migraine headache, etc., will not require medical treatment and need not incur the expense of such treatment. The three CSEA Unit Agreements serve to establish such a policy for all employees in these Units and prohibit agencies from imposing unreasonable requirements for the filing of certificates.

Neither the aforementioned agency policies nor the CSEA Unit agreements preclude any agency from requiring medical certificates of employees who are absent for four days or less whenever such requirement is reasonable under the circumstances; e.g., when there is reason to believe the employee is not incapacitated from the performance of the duties of the position, when the employee has consistently abused leave privileges or when the employee fails or refuses to explain the absence in question. There is no requirement that such agency requests be made in writing to the employee. So long as medical certificates are not required for every sick leave absence of four days or less for every employee in an agency as a matter of "routine," the employing agency is not otherwise restricted in its right to require evidence of medical disability.

With respect to requirements for notice:

1. Employees in any one of the three CSEA Units may not be required regularly to submit medical certificates for sick leave absences of four days or less. For employees in the Institutional Services Unit specific clarification has been added that the four-day requirement is four consecutive workdays. This clarification does not provide a benefit different than that in the other CSEA Units.

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For example, an employee who has Saturday/Sunday pass days who was absent on a Thursday and Friday would also need to be absent Monday, Tuesday and Wednesday before management could request a medical note on a routine basis. These provisions do not limit the appointing authority's right to require medical documentation to substantiate past absences in specific cases and when unrelated to an overall attendance record review.

2. For employees in the Operational Services Unit and Administrative Services Unit, in cases where an agency determines solely on the basis of review of the employee's attendance record that an employee shall be required to provide medical documentation, the requirement must follow counseling and must be in writing with an effective date subsequent to such notice. The requirement to provide medical documentation must be of a reasonable duration and that duration must be specified in the written notice to the employee.
3. When an appointing authority requires medical documentation from an employee in the Institutional Services Unit, the employee must be notified of this requirement in writing. When an appointing authority requires an individual to submit doctors' certificates to substantiate absences charged to sick leave based solely on a review of the employee's past attendance record, such requirement may be imposed only for absences occurring after the employee has been given written notice. This does not limit the appointing authority's right to require medical documentation to substantiate past absences in specific cases and when unrelated to an overall attendance record review.

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Negotiating Units:

Administrative Services Unit Article 10.17

Institutional Services Unit Article 10.19

Professional, Scientific & Technical Services  
Unit Article 30

Rent Regulation Services Unit Article 14

Effect:

These items refer to medical examinations required of employees in accordance with Subdivision (e), Section 21.3 of the Attendance Rules for State employees. (These provisions do not apply to workers' compensation injuries). This Section confirms the appointing authority's right to require an employee who has been absent due to personal illness, as a condition of returning to work, to undergo a medical examination at the appointing authority's expense by a physician selected by the appointing authority. In general, reasonable effort should be extended to schedule medical examinations in such a way as to avoid unnecessary delay in the employee's return to duty beyond the date the employee requests to return.

Rent Regulation Services Unit

For employees in the Rent Regulation Unit, the appointing authority is expected to make a reasonable effort to schedule a medical examination within five working days of the date of receipt of notice from the employee that such employee has his/her physician's approval to return to work. This limitation is intended to prevent the employing agency from unduly delaying the employee's return to duty beyond the date requested for return by not acting promptly to initiate the scheduling of medical examinations.

Administrative, Institutional and Professional, Scientific and Technical Services Units

The agreements for these three Units are designed to provide more specific protection from loss of income when employees are denied return to duty because of employer-caused delays in the scheduling of medical examinations as a condition of return to work.

When an employee in one of these Units has been absent because of illness or injury, he/she may be required to provide medical documentation confirming his/her fitness for duty and to submit to a medical examination by a physician selected by the appointing authority as a condition of return. If an employee is required to submit to such a medical examination, the 20 workdays within which the appointing authority is expected to complete the exam should be calculated as follows:

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1. If an employee submits medical documentation stating fitness for duty and giving a return to work date which is ten workdays or fewer from the date the documentation is submitted, the appointing authority has a total of 20 workdays from receipt of the notice to complete the medical examination. This includes the ten workdays or fewer of advance notice and a sufficient number of workdays beyond the proposed return to work date to total 20 workdays. In other words, if the employee gives less than ten days' notice the appointing authority has 20 days from the date of notice to complete the exam or the employee is put in pay status on the 21st day.
2. If an employee submits medical documentation stating fitness for duty and giving a return to work date which is more than ten workdays from the date the documentation is submitted, the appointing authority has from receipt of the notice to a maximum of ten workdays beyond the expected date of return to complete the examination. In other words, if the employee gives more than ten days' notice, the appointing authority has ten days beyond the specified return date to complete the exam or the employee is put in pay status on the 11th day following the return date.

Some examples follow:

1. Employee A notifies her agency on September 11, 1985, with appropriate medical documentation, that she can return to work on September 19, 1985. (She has a Monday through Friday schedule.) This employee would be entitled to be put in pay status on October 10, 1985 if the agency has not completed the medical examination process and notified the employee of the results prior to that date. (The employee provided fewer than ten workdays' advance notice so the agency has a total of 20 workdays to complete the process.)
2. Employee B notifies his agency on September 26, 1985, with appropriate medical documentation, that he can return to work on October 16, 1985. (He has a Monday through Friday schedule.) This employee would be entitled to be put in pay status on October 31, 1985 if the agency has not completed the medical examination process and notified the employee of the results by that date. (The employee provided more than ten workdays' advance notice so the agency has ten workdays beyond the proposed return to work date to complete the process.)



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If no decision is reached concerning the employee's request to return to duty within the time limits, the employee may be placed on leave with pay without charge to credits and not allowed to return to duty. However, leave with pay is not granted where the delay in determining the employee's fitness is caused by the employee's failure to appear for the medical examination or otherwise to cooperate in its scheduling and holding.

If the physician selected by the appointing authority finds that the employee is not fit for return to duty, the employee is placed on appropriate leave charged to credits or, if necessary, on leave without pay as of the date of receipt of the physician's report. Reexaminations by the appointing authority's physician (where the employee is found unfit for duty) are not required more often than once a month and if the physician has set a date for reexamination or return to duty, not before such specified date.

The provisions of these contract articles shall not be construed to require the extension of any employment beyond the time it would otherwise terminate or would be terminated; e.g., under Section 73 of the Civil Service Law.

Employees required to submit to a medical examination conducted by a physician selected by the appointing authority are entitled to be reimbursed for actual and necessary travel, meal and lodging costs incurred as a result of travel in connection with such examination. Such reimbursement is to be made in accordance with the Comptroller's Rules and Regulations.

To this point, the provisions of ASU Article 10.17, ISU Article 10.19, and PS&T Article 30 are the same and should be administered in the same manner.

The PS&T article differs from the two CSEA unit contracts in Section 30.1(f) which states that employees shall be considered to be in pay status during the time of the medical examination and necessary travel time to and from its site. In application, this means that a PS&T employee shall be placed on leave with pay without charge to credits for actual time spent at the medical examination and reasonable and necessary travel time to and from the examination. Employees absent on leave accruals shall not have accruals charged during this period. Employees absent on half-pay or leave without pay shall be entitled to be put in full pay status during this period. This full pay for the medical examination does not restore the employee to duty status and does not impact on the time limits on leave for disability in Section 73 of the Civil Service Law. (Note: Employees in ASU and ISU remain in the same payroll status to which they are otherwise entitled at the time of the examination; i.e., in duty status,

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charging leave accruals, on sick leave at half-pay, or on leave without pay.

Salary adjustments for PS&T employees for the number of hours of the examination and reasonable and necessary travel time to and from the examination site should be processed as quickly as possible.