

# NEW YORK STATE DEPARTMENT OF CIVIL SERVICE

## ATTENDANCE AND LEAVE MANUAL

### Leaves Without Pay Leave of Absence; Duration

Section 22.1

Page 1 of 8

#### Purpose

The purpose of this Section is to authorize the granting of leaves without pay to employees who are necessarily absent from duty and who do not have appropriate leave accruals against which to charge such absences.

#### Eligibility

Any permanent employee who is subject to the Attendance Rules is eligible for leave under this Section. (Although the Attendance Rules do not otherwise provide for leaves of absence without pay for other than permanent employees, such leaves may be granted to temporary or provisional employees in certain situations with the approval of the Bureau of Staffing Services, Department of Civil Service.)

Employees who are not subject to the Attendance Rules, but who are otherwise subject to the Civil Service Rules for the Classified Service may be granted leave without pay pursuant to Section 5.2 of the Classified Service Rules.

In addition, any employee who requests leave under this Section or Section 5.2 because of pregnancy or childbirth or in connection with adoption is eligible for such leave regardless of whether the employee's appointment is permanent, temporary or provisional. For purposes of determining eligibility for employees who request leave because of pregnancy or childbirth, a probationary employee is deemed a permanent employee.

#### Extent of Leave

An eligible employee may be granted, at the discretion of the appointing authority, a leave of absence without pay, or successive leaves of absence without pay, for a period not to exceed two years.

A leave of absence may be extended beyond two years only with the approval of the Civil Service Commission.

For the purpose of determining the duration of a leave of absence without pay, active service in the military forces of the United States or the State of New York for up to four years of voluntary service and a fifth year at the convenience of the government and any periods of involuntary service are not counted.

Related  
Contract  
Provisions

# NEW YORK STATE DEPARTMENT OF CIVIL SERVICE

## ATTENDANCE AND LEAVE MANUAL

### Leaves Without Pay Leave of Absence; Duration

Section 22.1

Page 2 of 8

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.

An employee who is disabled because of pregnancy or childbirth and has exhausted her leave credits is entitled to leave without pay under this Section so long as she continues to be disabled. An employee, regardless of gender, is also entitled to such leave for up to seven months following childbirth or in connection with adoption. Any leave beyond the seven month period following childbirth shall be at the discretion of the appointing authority. The State's policies on leave for pregnancy, childbirth, child care and for adoption are found on pp. 4-8. Agencies may develop agency-wide policies concerning the granting of discretionary child care leave beyond the seven months mandated by State policy.

#### Use of Credits

Although not mandated by this Rule, the appointing authority may require that all appropriate leave credits be exhausted before approving a leave without pay except if the leave is granted for the purposes of child care in which case the employee may not be required to exhaust credits prior to being granted leave without pay. See pages 4-8 for a more detailed explanation.

#### Procedures for Granting Leave Without Pay

Each agency should establish procedures to ensure equitable treatment of all its employees in providing leave under this Section. In the granting of leave without pay for reasons other than illness, disability, pregnancy and child care, such factors as the employee's work performance record, the urgency and value of such leave to the employee and the agency and the effect the employee's absence will have on program requirements may be considered.

When an employee, who is denied a leave of absence without pay, absents himself/herself anyway, he/she is on an unauthorized leave of absence and cannot be considered as terminated or to have resigned because he/she failed to report for duty after having been denied the leave he/she requested. However, unauthorized absence may result in disciplinary action.

Related  
Contract  
Provisions

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE

ATTENDANCE AND LEAVE MANUAL

Leaves Without Pay  
Leave of Absence; Duration

Section 22.1

Page 3 of 8

When an employee is granted a leave of absence without pay, he/she should be notified by a competent authority in writing and in precise language of the terms of his/her leave; e.g., the effective date of the approved leave, date the leave terminates, what is expected of him/her during and at the end of the period of leave and the possible consequences of failure to report for duty upon its expiration.

Related  
Contract  
Provisions

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE

ATTENDANCE AND LEAVE MANUAL

Leaves Without Pay  
Leave of Absence; Duration

Section 22.1

Page 4 of 8

MEMORANDUM

Related  
Contract  
Provisions

TO: State Departments and Agencies

FROM: Joseph A. F. Valenti

SUBJECT: Leave for Pregnancy, Childbirth and  
Child Care

DATE: January 28, 1982

We have reviewed the State's policy on leave for pregnancy, childbirth and child care in the light of recent court determinations concerning such leaves. I find it necessary to revise this policy statement to reflect the views of the court concerning these subjects. This memorandum revokes and replaces the August 3, 1973, memorandum from the Civil Service Commission regarding maternity leave effective immediately.

Pregnant employees may be asked or encouraged to report the existence of pregnancy, but they may not be required to do so. Where, in the opinion of the appointing officer, the nature of the duties performed may be particularly hazardous or burdensome during pregnancy, this should be pointed out in the letter of appointment and such employees should be urged to advise their supervisors of any pregnancy. In any case where the appointing authority believes the employee is unable to perform the duties of the position because of pregnancy, the employee may be required to undergo a medical examination, at the expense of the department or agency, by a physician designated by the appointing authority. A pregnant employee who is determined to be medically disabled from the performance of job duties must be treated the same as any other employee similarly disabled insofar as disability leave benefits are concerned.

Sick leave and sick leave at half-pay may be used only during a period of medical disability. Under the State's policy, disabilities arising from pregnancy or childbirth are treated the same as other disabilities in terms of eligibility for or entitlement to sick leave with and/or without pay, extended sick leave and sick leave at half-pay. Generally, the period of such disability is deemed to commence approximately

# NEW YORK STATE DEPARTMENT OF CIVIL SERVICE

## ATTENDANCE AND LEAVE MANUAL

### Leaves Without Pay Leave of Absence; Duration

Section 22.1

Page 5 of 8

four weeks prior to delivery and to continue for six weeks following delivery. While doctor's certificates may be required for any period of disability, agencies should request detailed medical documentation whenever disability is claimed to commence prior to or to extend beyond the period of disability described above.

An appointing authority may approve an employee's request for leave without pay during pregnancy and prior to the onset of any medical disability as a matter of discretion. Absences during pregnancy and following childbirth may be charged to vacation, overtime or personal leave irrespective of whether the employee is disabled. While the use of annual leave, overtime and personal leave accruals prior to the onset of medical disability is discretionary with the appointing authority, employees must be permitted to use these accruals during a period of medical disability after sick leave with pay has been exhausted.

Employees, regardless of sex, are entitled to leave without pay for child care for up to seven months following the date of delivery. For purposes of computing the seven month period of mandatory leave, periods during which the employee was absent for "disability" or use of leave credits are included; the mandatory seven month period is not extended by the granting of disability leave or the use of accrued leave. During a period of leave for child care, employees shall be permitted, upon request, to use annual leave, personal leave and overtime credits before being granted leave without pay. As is the case with other mandatory leaves without pay (e.g., military leave), agencies shall not require that employees exhaust all appropriate leave credits prior to being granted leave without pay for child care. Sick leave or sick leave at half-pay may be used only during a period of medical disability (Attendance Rules Sections 21.3, 21.4, 21.5, 28.3 [28-1.3], 28.4 [28-1.4] and 28.5 [28-1.5, 28-2.1, 28-2.2]). Except in the case of continuing medical disability, any leave of absence beyond the seventh month following childbirth shall be at the discretion of the appointing authority as provided in Sections 22.1 and 29.1 of the Attendance Rules. An employee who requests a leave for child care of less than seven months is entitled to have such leave extended, upon request, up to the seven month maximum and may, at the discretion of the appointing authority, have such leave extended beyond the seventh month. In certain situations, an employee may not be

Related  
Contract  
Provisions

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE

ATTENDANCE AND LEAVE MANUAL

Leaves Without Pay  
Leave of Absence; Duration

Section 22.1

Page 6 of 8

permitted to return from such leave until the expiration of the period that such employee requested and was granted. Generally, such restrictions on early return are limited to situations where such return would be disruptive of a project or where the termination of a replacement would occur.

During the seven month period following childbirth, the granting of leave for child care is mandatory upon request from either parent. If both parents are State employees, leave for child care is mandatory for one parent at a time and the parents may elect to split the mandatory seven month leave into two separate blocks of leave with each parent entitled to one continuous period of leave but not to exceed a combined total of seven months of leave and not to extend beyond seven months from the date of delivery.

Agencies may, in their discretion, approve other arrangements for shared leave including concurrent leave and may, as a matter of discretion, extend leave for child care beyond the mandatory seven months. Furthermore, while one parent is absent on leave for child care, agencies continue to have the discretion to approve requests from the other parent for periods of vacation or personal leave, and for family sick leave in accordance with Sections 21.3(f) and 28.3(f) [28-1.3(f) and 28-2.1(g)] of the Attendance Rules.

Temporary, provisional and probationary employees without any permanent status are entitled to leave with full pay and/or without pay as described above. However, these employees are not eligible for sick leave at half-pay nor are they entitled to leave beyond that date when their employment would otherwise terminate (e.g., temporary item abolished, permanent incumbent restored to item, certification of eligible lists, etc.). In general, the State's policy on leave for pregnancy, childbirth and child care shall not be construed to require extension of any employment (permanent, permanent contingent, temporary or provisional) beyond the time it would otherwise terminate.

Questions concerning the State's policy on leave for pregnancy, childbirth and child care should be referred to the Division of Program Evaluation and Development of this Department (Telephone 518 457-2295).

/s/ Joseph A. F. Valenti  
President, Civil Service Commission

Related  
Contract  
Provisions



NEW YORK STATE DEPARTMENT OF CIVIL SERVICE

ATTENDANCE AND LEAVE MANUAL

Leaves Without Pay  
Leave of Absence; Duration

Section 22.1

Page 7 of 8

MEMORANDUM

Related  
Contract  
Provisions

TO: State Departments and Agencies

FROM: Joseph A. F. Valenti

SUBJECT: Child Care Leave for Adoptive Parents

DATE: March 11, 1982

On January 28, 1982, I issued a memorandum to State agencies concerning leave for pregnancy, childbirth and child care. Consistent with that memorandum, I am extending entitlement to leave without pay for child care to adoptive parents in the same manner and to the same extent that such leave is available to natural parents. This memorandum applies to all eligible State employees, except that where an Agreement between the State and an employee organization entered into pursuant to Article 14 of the Civil Service Law (the Taylor Law) provides for a different leave benefit, the provisions of the Agreement shall control. However, nothing in the Agreements precludes appointing authorities from extending the benefits provided by this policy on a discretionary basis.

State employees, regardless of gender, are entitled to a maximum of seven months of leave without pay for child care in connection with the adoption of a child in accordance with the provisions of Article 7 of the Domestic Relations Law. Entitlement to such leave without pay shall be for a period of up to seven months. The employee may take leave for this purpose starting at any time from the date the adoptive child is placed with the family to the effective date of the adoption.

In general, the guidelines for leave of absence for child care for adoptive parents are the same as those governing leave for child care for natural parents.

During a period of leave for child care, employees shall be permitted, upon request, to use annual leave, personal leave and overtime credits before being granted leave without pay. However, agencies shall not require that employees exhaust all appropriate leave credits before being granted leave without pay for child care. The seven-month period of such leave is not extended by the use of accrued leave credits.

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE

ATTENDANCE AND LEAVE MANUAL

Leaves Without Pay  
Leave of Absence; Duration

Section 22.1

Page 8 of 8

An adoptive parent who requests a leave of absence for child care purposes of less than seven months is entitled to have such leave extended, upon request, up to the seven-month maximum.

If both adoptive parents are State employees, one parent may elect to take the entire leave, or the parents may choose to divide the leave time with each entitled to one continuous period of leave as long as it does not exceed a combined total of seven months of leave.

Agencies may, in their discretion, approve other arrangements for shared leave and may as a matter of discretion extend leave for child care for adoptive parents beyond the seven months to which this new policy entitles them. Furthermore, while one parent is absent on leave for child care, agencies continue to have the discretion to approve requests from the other parent for periods of vacation or personal leave or for family sick leave in accordance with Sections 21.3(f) and 28.3(f) [28-1.3(f) and 28-2.1(g)] of the Attendance Rules.

The State's policy on leave for child care for adoptive parents shall not be construed to require extension of any employment beyond the time it would otherwise terminate.

Questions concerning the State's policy on leave for child care for adoptive parents should be referred to the Division of Program Evaluation and Development of this Department (Telephone 518 457-2295).

/s/ Joseph A. F. Valenti  
President, Civil Service Commission

Related  
Contract  
Provisions



NEW YORK STATE DEPARTMENT OF CIVIL SERVICE

ATTENDANCE AND LEAVE MANUAL

Leaves Without Pay  
Disciplinary Suspension  
Use of Leave Credits

Section 22.1

Page C-1 of 4

Negotiating Units:

Administrative Services Unit Article 33.3  
Institutional Services Unit Article 33.3  
Operational Services Unit Article 33.3

Effect:

Section 33.3(g)(4) of these three agreements states that effective April 1, 1985, an employee suspended without pay shall have the option of using his/her vacation, holiday leave, personal leave and overtime compensatory time during a period of suspension. Leave accruals so used must be restored to the employee:

1. Upon a finding of innocence on all allegations contained in the notice of discipline or
2. Upon a determination that the suspension was improper.

There is no maximum limit on the restoration of vacation credits under this provision. The employee is deemed to have exercised his/her rights under the applicable contract article which provides an exception to the 40-day maximum (but not beyond March 31). The employee's personal leave anniversary date is not changed and personal leave is not restored if the date has passed. For employees in ASU and OSU, holiday leave may not be restored if more than one year has passed from the date it was earned. For employees in all subject units, floating holidays may not be restored if more than one year has passed since the date designated as the floating holiday. Overtime compensatory time may not be restored beyond the last day of the fiscal year following the one in which it was earned.

If an employee has been offered a temporary reassignment which he/she declines, the suspension shall be without pay and such employee shall not be eligible to use leave credits during the period of suspension.

Employees in these units who exercise their contractual option to charge credits during a period of disciplinary suspension do not earn leave credits although this charging of credits places them in full pay status for the requested number of days per pay period that would normally entitle them to earn accruals. Moreover, these employees are not eligible to observe holidays which fall during a period of disciplinary suspension charged to credits. Thus, in a pay period in which a holiday fell, the employee would be required to charge ten days of leave credits rather than nine.

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE

**ATTENDANCE AND LEAVE MANUAL**

Leaves Without Pay  
Disciplinary Suspension  
Use of Leave Credits

Section 22.1

Page C-2 of 4

This provision specifically excludes use of sick leave during a period of disciplinary suspension. The suspension takes precedence over an illness or disability an employee might develop during such time. Once an employee exhausts all available credits other than sick leave, he/she is placed on suspension without pay regardless of any existing ordinary disability or available sick leave credits.

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE

ATTENDANCE AND LEAVE MANUAL

Leaves Without Pay  
Disciplinary Suspension  
Accrual of Leave Credits Upon  
Back Pay Awards

Section 22.1

Page C-3 of 4

Negotiating Units:

Administrative Services Unit Article 33.4  
Institutional Services Unit Article 33.4  
Operational Services Unit Article 33.4  
Professional, Scientific and Technical Services  
Unit Article 33.5

Effect:

Section 33.4(g) of the CSEA agreements states that effective April 1, 1985, when an arbitrator awards back pay to an employee who was suspended without pay pursuant to this article, the award is deemed to include the accrual of leave credits and holiday leave for the period of time specified in the award.

In the PS&T Unit, an arbitrator's award of back pay to an employee previously suspended without pay pursuant to this article requires that the employee be treated as though he/she was never suspended during the time period covered by the award. This includes restoration of back pay and accruals the employee would have been eligible to earn.

There is no maximum limit on the crediting of vacation as the employee is deemed to have exercised his/her rights under the applicable contract article which provides an exception to the 40-day maximum. However, because this is a retroactive adjustment of time records, if April 1st occurred during the suspension period, vacation in excess of 40 days on March 31 may not be carried forward to April 1.

Sick leave may be credited only up to the applicable maximum. In addition, the employee is entitled to be credited with holiday leave for any holidays coinciding with pass days during the period of the back pay award. An employee in ASU or OSU remains subject to the one year limit on holiday leave based on the date of the holiday, not the date the credits are restored pursuant to these articles. Also, an employee in any of these four units is deemed to be eligible to be credited with floating holiday(s) during any period for which back pay is awarded. Such employee has one year from the date designated as a floating holiday to use the floating holiday earned. Finally, if this employee's personal leave anniversary date fell during the period of back pay award, he/she retains that date and is credited with personal leave accordingly. (Personal leave cannot be carried beyond the personal leave anniversary date.)

**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE**

**ATTENDANCE AND LEAVE MANUAL**

Leaves Without Pay  
Disciplinary Suspension  
Accrual of Leave Credits Upon  
Back Pay Awards

Section 22.1

Page C-4 of 4

Correction of the employee's leave records to reflect these accruals is to be accomplished upon receipt of the notice of decision making the back pay award, either as a requested interim decision or after the hearing is closed.