

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
ATTENDANCE AND LEAVE MANUAL
ADVISORY MEMORANDUM 2009-03

Section 23.1

May 2009

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TO: Manual Recipients
FROM: Blaine Ryan-Lynch, Director of Staffing Services
SUBJECT: Impact of Layoff on Leave Accruals

This memorandum replaces Advisory Memorandum 95-01, Impact of Layoff on Leave Accruals, dated March 6, 1995 which should be removed from your Manual and destroyed.

In anticipation of agency inquiries concerning the impact of layoff on leave accruals, we have compiled the following information as a reference document. More detailed information on the impact of layoff and other separations is contained in corresponding sections of the Attendance Rules, the Attendance and Leave Manual and related articles of the negotiated agreements.

As a matter of policy, agencies are encouraged, wherever possible, to afford employees being laid off the opportunity to liquidate leave credits for which they cannot be compensated at time of layoff, i.e., personal leave, holiday leave, and vacation accruals in excess of 30 days.

Vacation

Employees are entitled to a lump sum payment for accrued and unused vacation up to a maximum of 30 days. Subject to this 30-day maximum, for **eligible employees who have completed more than one year but less than seven years of continuous service**, payment in cash should be made on a prorated basis for bonus days in the event of termination of employment due to layoff. (Note that this option is **not** available to employees separated by resignation or termination of temporary employment.) Bonus vacation credits are prorated on the basis of number of pay periods of continuous service completed by the employee since the last date bonus days were credited. The amount of bonus credits due the employee is determined by use of the following formula:

$$\frac{\text{(Number of Complete Pay Periods of Service Since Last Anniversary Date)}}{26} \times \text{(Number of Bonus Days Earned on Last Anniversary Date)} = \text{Number of Days to be Paid}$$

For example, an eligible employee who was laid off 13 payroll periods after his fourth vacation anniversary date would be entitled to compensation for 2 days.

$$\frac{13}{26} \times 4 = 2 \text{ days}$$

Please note that there is no provision for payment for proration of additional vacation days for length of service for employees who have completed more than 15 or 20 years of service as provided by the negotiated agreements and Managerial/Confidential Rules.

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There is no provision for cash payment for vacation in excess of 30 days. However, credits in excess of the amount for which cash payment can be made are restored if employees are reappointed from a preferred list or while eligible for appointment from such list. (This is also true for employees not on preferred lists who reenter State service within one year following separation or who are reinstated by the Civil Service Commission.) **Employees who are being laid off may request that the agency temporarily defer lump sum payment for vacation accruals.** In those cases it is recommended that requests be in writing and that agencies provide employees with written statements verifying the amount of accruals for which payment is deferred.

NOTE: CSEA and PEF employees separating from State service who are eligible for the Leave Adjustment Program for Part-Time Annual Salaried Employees should be credited with any vacation adjustment credits they are entitled to. These credits are to be included in the vacation lump sum payment, subject to applicable maximums.

Personal Leave

There is no provision for cash payment for accrued and unused personal leave. Employees who return to State service prior to their next personal leave anniversary date have unused personal leave credits restored. For employees who reenter State service after the personal leave anniversary date has passed, the date of reinstatement/reemployment becomes the new personal leave anniversary date and such employees would be credited with their full entitlement on that date.

Sick Leave

There is no provision for cash payment for accrued and unused sick leave. However, employees reappointed from a preferred list or while eligible for appointment from such list are entitled to have sick leave credits restored upon reappointment. (This is also true for employees not on preferred lists who return to State service within one year following separation or who are reinstated by the Civil Service Commission.) While agencies are encouraged to afford employees, wherever possible, the opportunity to liquidate other leave credits for which they cannot be compensated at time of layoff, charges to sick leave continue to be limited to the uses outlined in the Attendance Rules and negotiated agreements.

NOTE: CSEA and PEF employees separating from State service who are eligible for the Leave Adjustment Program for Part-Time Annual Salaried Employees should be credited with any sick leave adjustment credits they are entitled to. These credits are to be added to the sick leave balances of separating employees' subject to applicable maximums.

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Holiday Leave

There is no provision for lump sum payment for holiday leave accruals. Employees reappointed from a preferred list or while eligible for appointment from such list have their accrued and unused holiday leave restored to them. (This is also true for employees not on preferred lists who are reemployed within one year of separation or who are reinstated by the Civil Service Commission.) In the Administrative Services and Operational Services Units, holiday leave credits are not restored for any holiday where one calendar year or more has elapsed from the date on which the holiday leave was earned.

Floating Holidays

There is no lump sum payment for floating holiday leave accruals. For all units, floating holiday credit is not restored where one calendar year or more has elapsed from the date on which the floating holiday was credited.

Voluntary Reduction in Work Schedule Program (VRWS)

Eligible employees who are participating in a VRWS program and are laid off are entitled to a lump sum payment for all accrued and unused VR credits. There is no maximum number of days for which payment can be processed.

Overtime Compensatory Time

In accordance with Section 135.11 of the Rules of the Director of the Budget and Sections 23 and 30 of the Attendance Rules, employees who are separated from State service are entitled to lump sum payment for up to 30 days of accrued and unused overtime compensatory time, i.e., time earned for hours worked between 37 1/2 and 40 in a workweek. In addition, certain employees are eligible to earn overtime compensatory time at time and one-half rates for hours worked in excess of 40 in a workweek. See Budget Bulletin, G-1024, July 27, 1986 and Payroll Bulletins P-491, September 11, 1986, and P-505, January 7, 1987, for details on the method of payment for overtime compensatory time earned at "time and one-half" rates after April 15, 1986 for hours worked in excess of 40 in a workweek.

Over40 Comp Time I Credits

An employee receives a lump sum payment for all accrued Over40 Comp Time I credits.

Over40 I credits are valued at the employee's straight-time rate of pay at the time of liquidation, but in no event shall it be less than the Fair Labor Standards Act (FLSA)

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requirements. See Payroll Bulletin P-545, March 21, 2005, for details on the method of payment for Over40 Compensatory Time I credits upon separation from State service.

Over40 Comp Time II Credits

An employee receives a lump sum payment for all accrued Over40 Comp Time II credits.

Over40 II credits are valued at the employee's straight-time rate of pay at the time of liquidation, but in no event shall it be less than the Fair Labor Standards Act (FLSA) requirements. See Payroll Bulletin P-860, November 14, 2008, for details on the method of payment for Over40 Compensatory Time II credits upon separation from State service.

Retention of Time Records for Employees on Preferred Lists

As long as an individual is eligible for appointment from a preferred list, he/she retains entitlement to have leave credits restored as described above. Since preferred lists are established for four years and, in some instances, have been extended by legislation for several more years, agencies should take steps to insure that time records for laid off employees are retained until such individuals are reemployed or the preferred lists expire, whichever occurs first.

Questions concerning this issue may be referred to the Attendance & Leave Unit of this Department at (518) 457-2295.

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GENERAL INFORMATION BULLETIN NO. 87-01

Section 23

September 21, 1987

Page 1 of 2

File this material in the section of the manual referenced above.

TO: All Manual Recipients

FROM: Walter D. Broadnax



SUBJECT: Lump Sum Payments for Overtime Credits

We have received a number of inquiries on the accrual of, use of and payment for overtime credits earned by eligible employees for hours worked between 37 1/2 and 40 in a workweek. This Bulletin confirms the statement on page 3 of Payroll Bulletin No. P-491, September 11, 1986, that there has been no change in the rules for payment for these overtime credits.

Parts 23 and 30 of the Attendance Rules authorize payment of "overtime credits not in excess of 30 days" at the time of separation, upon entry into the Armed Forces or upon movement between State departments. These overtime credits are earned pursuant to Section 135.11 of the Budget Director's Rules and Regulations or Budget Bulletin G-1024, dated July 27, 1986, Section X, items A, B, C and D1, which supersedes Part 135, for hours worked between 37 1/2 and 40 in a workweek. Such overtime credits are earned on a straight-time basis and are not subject to Fair Labor Standards Act (FLSA) requirements on overtime compensatory time which only apply to hours worked in excess of 40 in a workweek. (FLSA categorizes time for hours worked between 37 1/2 and 40 as "other" compensatory time.)

Overtime credits for work between 37 1/2 and 40 hours in a workweek can be retained only until the end of the fiscal year following the one in which they are earned. An employee can receive a lump sum payment at straight-time rates for these overtime credits only under the conditions set forth in the rules.

Compensatory time for hours worked over 40 in a workweek is subject to FLSA regulations, is earned on a time-and-a-half basis and has a 240- or 480-hour maximum regardless of the basic workweek (37 1/2 or 40 hours). In addition, the regulations on earning this time differ from those for time under 40 hours and once an employee reaches the maximum accrual, he/she must be paid for additional overtime hours worked. Finally, the lump sum payment regulations and processing procedures vary. Currently overtime eligible employees designated managerial or confidential are the only people who can elect to receive compensatory time pursuant to Section 207(o) of FLSA in lieu of overtime pay for hours worked in excess of 40 in a workweek.

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Because of the different rules and procedures, it is recommended that employees eligible to earn both types of time record and maintain separately those overtime credits earned for time worked between 37 1/2 and 40 hours and the overtime compensatory time earned under FLSA for hours worked over 40. Consideration also might be given to labeling these two categories of time differently. For example, many agencies refer to the hours between 37 1/2 and 40 as "non"-compensatory overtime and the Office of the State Comptroller refers to hours over 40 as "time and one-half" compensatory overtime.

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Purpose

The purpose of this Section is to provide authorization for cash compensation for overtime compensatory time and accrued and unused vacation credits upon separation from State service.

Eligibility for Cash Payment for Overtime Compensatory Time Credits

Any employee who is subject to the Attendance Rules (or the estate or beneficiary in the case of death) is entitled to cash payment for accrued and unused overtime compensatory time credits, not in excess of 30 days, whenever such employee separates, for any reason, from State service or moves from the classified service to the unclassified service or to a position subject to Attendance Rules for Institution Teachers.

For information on payment for or transfer of accrued overtime compensatory time credits when an employee is appointed, promoted or transferred within the classified service see Section 23.3 of this Manual.

Eligibility for Cash Payment for Vacation Credits

Eligibility

An employee who is subject to the Attendance Rules (or the estate or beneficiary in the case of death) is entitled to cash payment for accrued and unused vacation credits, not in excess of 30 days, when such employee separates from State service for any reason, except that no such payment shall be made if the employee:

1. is removed from State service as a result of disciplinary action (not a probationary termination; see "Separation of Probationer" in this Section);
2. resigns after charges of incompetency or misconduct have been served (see "Separation After Charges Have Been Determined" below);
3. transfers and provision is made for the transfer of vacation credits, e.g. to the unclassified service of State University. See Section 21.2, "Transfer of Vacation Credits," and Section 24.1, "Written Agreement Required for Transfer of Leave Credits," in this Manual. Also, see "Transfers from Classified to Unclassified Service" in this Section.

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Resignation Without Two Weeks' Notice

The appointing authority may, on a discretionary basis, withhold such payment if an employee resigns without giving written notice of the resignation at least two weeks prior to the last day of work.

Separation After Charges Have Been Determined

In cases where charges have been determined and the penalty imposed is other than dismissal, the employee is eligible for cash compensation for accrued and unused vacation credits following a subsequent resignation.

In cases where settlement of disciplinary charges results in an agreed upon disciplinary probationary period, an employee terminated as a result of unsatisfactory performance during the disciplinary probationary period is entitled to his/her lump sum payment for vacation credits.

Except where a disciplinary settlement provides otherwise, if disciplinary charges are withdrawn or dropped as a result of or in exchange for a resignation, the employee is entitled to his/her lump sum payment for vacation credits.

Transfers to 10-Month Teaching Positions

For the purpose of this Section, the term teacher is defined in Section 136 of the Civil Service Law. If an employee moves from a position subject to these Rules to a 10-month teaching position not subject to these Rules, such employee is entitled to a lump sum payment for accrued and unused vacation, at the time of movement, in accordance with this Section.

Transfers from Classified to Unclassified Service

Subject to the approval of the appointing authority of the releasing agency, an employee who transfers from a position in the classified service to a position in the unclassified service where no provision is made for the transfer of vacation credits and where such employee would normally receive cash compensation for unused vacation credits, may elect not to be paid for such credits if it is anticipated that the employee will return to the classified service within a reasonable period of time.

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If it becomes apparent that the employee is not going to return to the classified service within a reasonable period of time, the appointing authority of the releasing agency may direct that the individual be paid for accrued vacation credits, or, the employee, if he/she requests, must be paid such payment. If the employee separates from State service without returning to the classified service the employee is entitled to payment for any outstanding vacation credits. Whenever payment is made it is computed on the basis of the employee's salary as of the date of separation from the classified service and establishment of eligibility for payment.

Liquidation Versus Lump Sum Payment

Although the Rule does not specifically prohibit liquidation of credits prior to separation, it is recommended policy that separating employees not be continued on the payroll after the last day of work to liquidate those vacation credits (e.g., up to 30 days) for which they could receive a lump sum payment. It is essential that agencies are consistent in the manner in which such employee requests are handled to ensure equitable treatment of all employees.

Payment for Overtime Compensatory Time and Vacation Credits

The following provisions apply to both payments for overtime compensatory time and accrued and unused vacation credits:

Separation of Probationer

An employee who resigns or is terminated during or at the end of a probationary period is entitled to a lump sum payment for any vacation credits and overtime compensatory time credits accrued and unused at the time of separation, provided the employee is otherwise eligible for such payment. For example, an employee who is terminated at the end of a 26 week probationary period, or after having worked 7 days in the final pay period of a 26 week probationary period, may have satisfactorily completed the 13 biweekly pay periods necessary to be credited with 6 1/2 days vacation.

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Sec. 21.2,
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Payment to Estate or Beneficiary

Salary and cash payments for overtime compensatory time and accrued and unused vacation credits made on behalf of deceased employees must be made in accordance with instructions issued by the Office of the State Comptroller.

Payment for Accruals Upon Entry Into Armed Forces

See Section 23.2 of this Manual.

Waiting Period

Payments for overtime compensatory time and accrued and unused vacation credits due to be made to, or on behalf of, eligible employees who have retired or died or have been laid off should be made immediately following separation.

Payments for overtime compensatory time and accrued and unused vacation credits may not be submitted on behalf of employees who have resigned or transferred prior to the expiration of two complete pay periods following separation.

Layoffs

In the case of a layoff, and, where the employee does not liquidate credits prior to layoff, any such laid off employee should be paid for overtime compensatory time and accrued and unused vacation credits at the time of layoff. An appointing authority may withhold lump sum payment for vacation credits only, if an employee so requests, in anticipation of reemployment within a reasonable period of time. If it becomes apparent that the employee will not be returning to State service in a reasonable period of time, the appointing authority may direct that the individual be paid for vacation credits, or, the employee, if he/she requests, must be paid such payment. Whenever payment is made it is computed on the basis of the employee's salary as of the date of layoff. (If an employee is reinstated or reemployed or rehired from or while on a preferred list in a position covered by the Attendance Rules, and has not received cash payment for credits accrued and unused at the time of separation, these credits should be restored provided the employee is eligible for such restoration.)

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Credits Not Earned and Accumulated Pursuant to the
Attendance Rules for Employees in New York State
Departments and Institutions

The statutory authorization for the lump sum payment for vacation and overtime compensatory time credits contained in the Attendance Rules applies only to employees in the classified service of the Executive Branch of State service and only to credits provided to employees in accordance with the Attendance Rules.

Sick Leave, Personal Leave and Holiday Leave

There is no provision for cash payment for unused balances of sick leave, personal leave or holiday leave credits when an employee separates from the classified service. However, certain employees, after they retire, may continue coverage under the State Health Insurance Plan and have the dollar value of their accrued and unused sick leave credits 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(j), Retirement and Social Security Law).

See Section 21.1 page 3 on Holiday Leave concerning the use of this leave by certain employees prior to separation.

**Related
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Sec.21.1,
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Sec.21.2,
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Sec.21.3,
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Sec.21.1,
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