

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE

ATTENDANCE AND LEAVE MANUAL

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Suspension of Rules

Part 25

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ADVISORY MEMORANDUM NO. 2006-03

Section 25.1

December 2006

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TO: Manual Holders
FROM: Terry Jordan, Director of Staffing Services
SUBJECT: Suspension of Attendance Rules for Flooding in the Southern Tier
in June 2006

At its December 2006 meeting, the State Civil Service Commission approved the request for suspension of the Attendance Rules for State employees with work locations in Broome County for June 28 and June 29, 2006, and for State employees with work locations in Chenango, Delaware and Otsego counties for June 28, 2006, who were absent due to the weather emergency.

This suspension applies only to full-day absences that were directly related to the extraordinary weather conditions. It does not apply to employees who were out on approved absences which were not storm-related such as sick leave or scheduled vacation.

Section 82-a of the Civil Service Law provides for leave with pay without charge to leave credits for absences of volunteer firefighters and volunteer ambulance squad members during a State of Emergency declared by the Governor. Eligible employees are entitled to this leave, subject to the approval of the appointing authority. Please refer to General Information Bulletin No. 94-02 in the Attendance and Leave Manual, Section 20.3, for additional information on Section 82-a.

Section 82-b of the Civil Service Law provides up to 20 workdays of paid leave without charge to leave credits per calendar year for employees who are certified by the American Red Cross as disaster volunteers to participate in specialized disaster relief operations. Requests for the services of such volunteers are made in writing by the Red Cross to the appointing authority and are subject to the approval of the appointing authority. Please refer to Policy Bulletin 2001-04 in Section 20.3 of the Attendance and Leave Manual for additional information on Section 82-b.

Although the suspension order itself only applies to employees subject to the Attendance Rules, the Governor's Office of Employee Relations has requested that we notify agencies that Executive branch employees who are not subject to the Commission's Attendance Rules are to be treated in the same manner as those covered by the Rules.

Any questions concerning suspension of the Attendance Rules should be referred to the Attendance and Leave Unit at (518) 457-2295.

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ADVISORY MEMORANDUM NO. 2006-04

Section 25.1

December 2006

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TO: Manual Holders
FROM: Terry Jordan, Director of Staffing Services
SUBJECT: Suspension of Attendance Rules for the October 2006 Snowstorm
in Western New York

At its December 2006 meeting, the State Civil Service Commission approved the request for suspension of the Attendance Rules for State employees with work locations in Erie, Genesee, Niagara and Orleans counties, who were absent due to the storm on October 13, 2006.

This suspension applies only to full-day absences that were directly related to the storm. It does not apply to employees who were out on approved absences which were not storm-related such as sick leave or scheduled vacation.

Section 82-a of the Civil Service Law provides for leave with pay without charge to leave credits for absences of volunteer firefighters and volunteer ambulance squad members during a State of Emergency declared by the Governor. Eligible employees are entitled to this leave, subject to the approval of the appointing authority. Please refer to General Information Bulletin No. 94-02 in the Attendance and Leave Manual, Section 20.3, for additional information on Section 82-a.

Section 82-b of the Civil Service Law provides up to 20 workdays of paid leave without charge to leave credits per calendar year for employees who are certified by the American Red Cross as disaster volunteers to participate in specialized disaster relief operations. Requests for the services of such volunteers are made in writing by the Red Cross to the appointing authority and are subject to the approval of the appointing authority. Please refer to Policy Bulletin 2001-04 in Section 20.3 of the Attendance and Leave Manual for additional information on Section 82-b.

Although the suspension order itself only applies to employees subject to the Attendance Rules, the Governor's Office of Employee Relations has requested that we notify agencies that Executive branch employees who are not subject to the Commission's Attendance Rules are to be treated in the same manner as those covered by the Rules.

Agency requests to suspend the Attendance Rules for days other than October 13, 2006 and for counties other than the four for which Governor Pataki declared a State Disaster Emergency, will be considered at an upcoming meeting of the Civil Service Commission.

Any questions concerning suspension of the Attendance Rules should be referred to the Attendance and Leave Unit at (518) 457-2295.

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Purpose

The purpose of this Section is to provide for the suspension of all or any part of the Attendance Rules by the Civil Service Commission in an emergency situation.

Eligibility

An appointing authority may request, in the case of emergency, that any or all of the Attendance Rules be suspended by the Civil Service Commission. When there is a provision in a negotiated agreement which supersedes the Attendance Rules, the Commission has no authority to waive such negotiated provision. (See Section 26.3, "Rules Applicable to Employees in Negotiating Units".)

Nature of Request

A request for suspension of the Attendance Rules as provided by this Section must be made in writing to the Civil Service Commission by the appropriate appointing authority.

Each written request should include:

- a. the nature of the emergency situation,
- b. the period of time involved,
- c. the location of the office or offices involved,
- d. the number and titles of employees affected by shift,
- e. a description of the actions taken by the appointing authority to deal with the emergency, and
- f. an explanation of what makes the subject "emergency" sufficiently unique as to warrant suspension of the Rules.

A more complete discussion of Commission criteria for suspension of the Rules is found on pages 7 and 8 of this Section.

Other Provisions of the Attendance Rules

Apart from suspension of the Rules, other sections of the Attendance Rules provide for leave in certain "emergency" situations where suspension of the Rules would not ordinarily be required. Reference should be made to Section 20.3, "Tardiness," Section 21.7, "Leave for Extraordinary Weather Conditions," and sections of this Manual relating to vacation,

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sick leave and personal leave which describe a number of "emergency" situations. For a complete discussion of actions which may be taken to deal with absences resulting from extraordinary circumstances, see pp. 4-9 of this Section which contain the State policy on extraordinary circumstances.

Authority of Agency Head to Deal Immediately with Emergency Situations not Restricted by Attendance Rules

Although suspension of the Attendance Rules, in whole or in part, cannot be ordered or directed by individual department or agency heads irrespective of the nature of the emergency, this in no way modifies or limits the authority and responsibility of such persons to take whatever actions they deem advisable and in the best interest of the State. Whenever the work environment is adversely affected by abnormal conditions which mandate that a work area be closed to employees, or that employees be removed from the area, the appointing authority is clearly free to deal with such emergency conditions without reference to the Attendance Rules. The closing of a State office is normally subject to approval of the Governor, and such action is not subject to review or approval by the Civil Service Commission.

Except for the maintenance of essential services, an appointing authority may deem it advisable to close a State facility because of a breakdown in the heating plant which has created an unbearable and unhealthy working environment and which conceivably could cause some employees to become ill. Assuming that it requires two workdays to repair the heating system, he/she may find it necessary to direct most, if not all, of the employees to stay away from work during that period. Although forced to absent themselves from work for reasons beyond their control, the employees shall be required to charge such absences against their leave credits or to suffer loss of pay if no credits are available. Unless and until the appointing authority requests an appropriate suspension of the Attendance Rules and the request is approved by the Civil Service Commission, failure to so charge such absences would be a direct violation of the Rules. Employees who are ordered to remain away from work or are forced to do so because of circumstances beyond their control and beyond the control of the appointing authority are not entitled to leave with pay without charge against credits.

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Employees who are directed by the appointing authority to absent themselves from work after having reported for duty should not be required to charge such absences (for the remainder of the normal workday) to leave credits. No suspension of the Attendance Rules is required in the case of such early departures but the authority to excuse such absences without suspension of the Attendance Rules does not extend to

- a. absences for a full workday or more,
- b. absences necessitated by extraordinary circumstances or emergency conditions related to weather conditions,
- c. absences necessitated by excessive heat caused by failure of air conditioning facilities or
- d. employees absent on leave or otherwise not on duty.

NOTE: When an employee is directed to leave his/her place of work for a prescribed period of time and advised to return to duty at a specific time later that same day (e.g., in the case of a "bomb threat" where the building is cleared and then declared safe), he/she shall be required to charge such early departure to his/her leave accruals if he/she fails to report for work at such specified time.

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MEMORANDUM

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TO: State Department and Agency Heads

FROM: Walter D. Broadnax

SUBJECT: Requests to Suspend the Attendance Rules
Because of Extraordinary Circumstances

DATE: December 8, 1988

The past few years have included several extraordinary events that prompted requests to the Civil Service Commission for suspension of the Attendance Rules to allow employees to absent themselves from work without charge to their leave credits. Because of the number of these occurrences, and because it has been several years since the last communication on this subject, it is appropriate to update State policy concerning the continuation of essential services and employee absences in extraordinary circumstances.

An extraordinary circumstance is an emergency situation which interferes with or actually precludes employees from reporting to work, or remaining at work. Examples include blizzards, power failures, floods and fires.

The State's objectives during any extraordinary circumstance are:

- to carry out all programs, with special emphasis on those areas involving safety, health and welfare;
- to ensure that essential services to the general public and other major governmental operations are maintained continuously;
- to recognize and support the legitimate needs of employees who work or are scheduled to work during these extraordinary circumstances.

Extraordinary circumstances may range from the relatively minor to the catastrophic. Appropriate actions taken under these circumstances must necessarily reflect that range in severity. The nature of the emergency will dictate which of the following actions may be appropriate.

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Excused Tardiness

Pursuant to the Attendance Rules, an appointing authority may excuse a reasonable amount of tardiness without charge to leave credits when extraordinary circumstances delay the arrival time of a significant number of employees. It is urged that agencies in the same location communicate with each other regarding the amount of tardiness to be excused to avoid disparate treatment of employees.

Directed Early Departures

Provisions contained in the negotiated agreements and in the Attendance Rules authorize appointing authorities to direct early departures of employees in the event of extraordinary circumstances. Directed early departures must be without charge to leave accruals (except that weather-related directed early departures for Security Unit employees must be charged to leave credits) and apply only to employees who are present at the time the departure is directed. No special consideration is provided to staff who have been designated by the appointing authority to perform essential services and who are required to remain at the work site.

Before taking such action appointing authorities or designees must discuss proposed directed early departures with staff of the Employee Relations Section of the Department of Civil Service and the Governor's Office of Employee Relations. Immediately following the emergency such directed early departures must be reported in writing by the appointing authority to the Employee Relations Section and to the Governor's Office of Employee Relations.

While a directed early departure may not be deemed appropriate in all extraordinary situations, employees who wish to depart early may be advised by the appointing authority that they can leave and charge appropriate credits.

Reassignment

When extraordinary circumstances preclude employees from working at their regular work sites, agencies should make every effort to reassign employees to other work locations in the vicinity.

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Agencies should establish procedures to notify employees when reassignment to another work site can be arranged.

Schedule Adjustments

Extraordinary circumstances may qualify as emergencies under provisions of the negotiated agreements for purposes of making schedule adjustments to provide necessary coverage. Schedule adjustments may be beneficial to employees by enabling them to complete full shifts.

Overtime

Division of the Budget's guidelines for unscheduled overtime continue to apply in extraordinary circumstances.

Full-Day Absences

Full-day absences must, in the first instance, be charged to leave credits or as leave without pay, at the employee's option.

Appointing authorities may subsequently request that the Civil Service Commission suspend the Attendance Rules to excuse full-day absences without charge to leave credits.

Each written request to the Commission should include this information:

- the nature of the emergency situation;
- the period of time involved;
- the location affected;
- the number and titles of employees affected, by shift;
- a description of the actions taken by the appointing authority to deal with the emergency;
- an explanation of what makes the subject "emergency" sufficiently unique as to warrant suspension of the Rules.

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Civil Service Commission Criteria for Suspension of the Attendance Rules

Commission consideration of appointing authority requests to excuse full-day absences because of extraordinary circumstances has traditionally been based on criteria that included that one-day absences without charge to credits would not be approved, and when absences of more than one full day were excused, the first day would not be excused.

Criteria for future Commission determinations will differentiate between absences because of extraordinary circumstances and absences because State offices are closed. These differing criteria are as follows:

Extraordinary Weather Conditions

The Commission will continue to consider approval of requests to suspend the Attendance Rules when catastrophic weather emergencies of an extended duration affect a large number of employees over a wide geographic area. In the past such emergencies involved disasters relating to blizzards, floods, hurricanes, etc.

The Commission intends to continue its policy of not suspending the Rules for one-day absences because of extraordinary weather conditions. However, when suspension is approved for extended absences because of extraordinary weather conditions, the Commission will not automatically exclude approval for the first day of such absences.

Extraordinary Circumstances (Other Than Weather Emergencies) When Offices are Officially Closed

Occasionally the State, as an employer, may find it necessary to direct that offices be closed because buildings are uninhabitable due to fire, power failure, etc. Offices may be officially closed by the Governor, by official representatives of the Office of General Services (in the case of buildings operated by OGS), or by an appointing authority (in the case of State-owned buildings not operated by OGS).

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Procedures should be established by agency heads to deal with the official closing of leased office space. These procedures should take into account such factors as how many State agencies are located in the building and the resulting need for interagency coordination to ensure uniform treatment of employees, and the feasibility of reassignment of the employees.

All building closings should be reported to both the Employee Relations Section of the Department of Civil Service and the Governor's Office of Employee Relations before the public announcement of such closings.

The closing of an office or building does not automatically entitle employees to be absent without charge to leave credits. The Commission will, however, consider approval of requests for suspension of the Rules when offices are closed officially due to extraordinary circumstances and employees are absent for at least one full day and cannot be reassigned.

When suspension is granted because offices are closed, the Commission will not automatically exclude approval for one-day absences, or for the first full day of a longer absence.

Suspension of the Rules will not be approved when the closing of offices could have been anticipated (e.g., planned electrical shutdown, scheduled closing for holiday observance of non-State-owned building, etc.) where alternative arrangements could have been made, nor will the Commission approve suspension in cases where offices are safe and inhabitable, although not fully operational (e.g., electricity is temporarily off but the building has been deemed safe for occupancy, the heating system is temporarily not functioning but building temperatures do not constitute a health risk, etc.).

Dissemination of Policy on Extraordinary Circumstances

Agencies are responsible for communicating State policy on extraordinary circumstances to employees.

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Agencies should establish and communicate specific procedures which supervisors and employees are expected to follow in the event of extraordinary circumstances. These guidelines should include, but not be limited to, identifying who is authorized to direct an early departure and what constitutes an official closing. It should be clarified that actions taken by local officials and media announcements not authorized by the appointing authority do not necessarily constitute an official closing or entitlement to time off without charge to leave credits.

Agency policies should address what is expected of employees in terms of reporting to work, providing the agency with a telephone number where they can be reached, and communicating with supervisors throughout an emergency situation for information on when and where to report. Agencies should also develop special procedures for designated employees who perform essential services to ensure that these services continue to be provided throughout the period of the emergency.

Any questions on this material may be referred to the Employee Relations Section of the Department of Civil Service (518) 457-2295.

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Negotiating Units:

Administrative Services Unit Article 10.11
Institutional Services Unit Article 10.13
Operational Services Unit Article 10.15
Professional, Scientific & Technical Services
Unit Article 12.13
Rent Regulations Services Unit Article 12.12
Security Services Unit Article 14.7
Security Supervisors Unit Article 14.7
(Seasonal employees in the three CSEA units)
(Seasonal employees in the PS&T unit)

Effect:

These contract articles provide that early departures due to extraordinary circumstances beyond the employee's control, directed by the appointing authority, should not be charged to leave credits.

For ASU, ISU, OSU, RRSU and PS&T Unit employees, these articles include directed early departures related to weather conditions. (See Section 21.7, Leave for Extraordinary Weather Conditions, page 1.) For the Security Services and Security Supervisors Units, early departures due to weather conditions are specifically excluded. Other than provisions related to weather conditions, the contracts in all seven units provide the same leave privilege for directed early departures already provided by the Attendance Rules and interpretations.

The impact of these articles, for employees in all units listed above, is to extend this leave provision to all employees in these units regardless of Attendance Rules coverage. In addition, for employees in these units, appointing authority determinations concerning whether time off shall be charged to leave accruals or excused where the employee is directed to leave work may be subject to contract grievance procedures. In that connection, it is important to note that the subject contract items do not, in any case, require or mandate that appointing authorities direct employees to leave work--such determinations are made at the discretion of the appointing authority.

The PS&T Services Unit and Rent Regulation Services Unit agreements also provide that employees shall be allowed leave with pay without charge to leave credits if the Governor declares a state of emergency and directs employees in the area affected by his/her declaration not to report for duty. It is not operative in any case where an "emergency"

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is declared by local officials only or where local officials take action to close local roads or highways.

Because of the different provisions contained in the negotiated agreements, because many State employees are required to work in non-air conditioned facilities, and because of the obvious impact of injudicious implementation of the subject items, employing agencies should exercise great care and discretion when faced with requests to send employees home because of extraordinary weather conditions or breakdowns in heating and cooling facilities. In cases where individual employees experience discomfort due to rising temperatures or humidity, supervisors are encouraged to accept requests from employees who elect to depart early and charge such absences to appropriate accumulated leave credits. This action may eliminate the need to direct employees to depart early in certain circumstances.

In any event, before any proposed directed early departure related to weather conditions or breakdowns in air conditioning facilities is announced by an agency, it should be discussed with staff of the Employee Relations Section, Program Evaluation and Development Division, Department of Civil Service, by the agency's Employee Relations Officer. The directed early departure of any group of employees does not create any right to equivalent time off for employees not directed to depart because they were not deemed adversely affected by the extraordinary circumstances or were already on leave with or without pay at the time of the directed early departure.

Employees who do not return to duty as directed following an office evacuation necessitated by such circumstances as a bomb threat should be required to charge such absence from duty, beginning with the time of the ordered evacuation, to leave credits.