

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE  
ATTENDANCE AND LEAVE MANUAL

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PREAMBLE

The purpose of these rules is to insure equitable treatment of employees and to provide uniformity in matters of attendance and leave insofar as practicable and consistent with the efficient conduct of the State's business.

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ARTICLE 1

Attendance for Nonmanagerial/Confidential Employees in New York State  
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PART 20

GENERAL ATTENDANCE PROVISIONS

Section 20.1 Basic workweek. The basic workweek for annual salaried employees of State departments, agencies and institutions, other than those employed on a part-time basis only and other than employees excluded from the application of overtime compensation under the rules of the Director of the Budget adopted pursuant to section 134 of the Civil Service Law, shall be 40 hours; provided, however, that where a shorter workweek would not interfere with the proper performance of government functions an appointing authority may establish a basic workweek of not less than 37 1/2 hours and five days or an authorized equivalent work schedule for any employees under its appointive jurisdiction as may be designated by it with the approval of the Division of the Budget; provided, however, that this Part shall not be construed to increase the workweek of any employee for whom a workweek of less than 40 hours is prescribed by law, rule or administrative regulation as of the day preceding the effective date of this Chapter.

20.2 Record of attendance. Daily time records showing actual hours worked by each employee shall be maintained; provided, however, that the appointing authority may, with the approval of the Department of Civil Service, exempt from this requirement such executives, officers and employees who do not earn overtime as it may designate. Employees exempt from maintaining daily time records showing actual hours worked shall maintain a daily record of absences and time and leave credits earned and used in accordance with this Chapter.

20.3 Tardiness. The appointing authority shall establish and publish, subject to the approval of the Department of Civil Service, rules and schedules establishing penalties for tardiness. Such penalties shall not preclude disciplinary action in cases of excessive tardiness. In the event of public transportation difficulties, strikes, severe storms or floods, or similar uncontrollable conditions affecting a group of employees, tardiness may be excused by the appointing authority.

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PART 21

ABSENCE WITH PAY

Section 21.1 Sundays and holidays. (a) All Sundays and legal holidays enumerated herein shall be allowed as days off, or days shall be allowed in lieu thereof.

(b) The days prescribed by law for the observance of New Year's Day, Lincoln's Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Election Day, Veterans' Day, Thanksgiving Day and Christmas Day shall be observed as holidays, except when any such day falls on Saturday, in which case it shall not be observed as a holiday.

(c) A pass day is a day off in lieu of a Sunday on which the employee is required to work. When such pass day falls on a day observed as a holiday pursuant to this section, such day off shall not be charged as a pass day.

21.2 Vacation. (a) Employees in State service on the day preceding the effective date of this Chapter, or who were in State service before such date and who after such date, are reinstated, or reemployed within one year after separation from State service, shall earn and accumulate vacation at the rates provided in this Chapter as in force and effect on the day preceding the effective date of this Chapter.

(b) (1) Employees who enter State service on or after the effective date of this Chapter shall, upon completion of 13 biweekly pay periods of service, be credited with six and one-half days vacation. Thereafter, each such employee shall earn and accumulate vacation credits at the rate of one-half day per biweekly pay period until he has completed seven years of continuous service. An employee shall not earn vacation credit for any biweekly pay period unless he is in full pay status for at least seven work days during such biweekly pay period.

(2) A part-time employee who is required to work a fixed number of hours, five days per week, shall also receive vacation as provided herein, but his total pay for such period of vacation shall be the amount which would have been due him

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if he had been working regularly at his usual hours for such period.

(c) Employees who enter State service on or after the effective date of this Chapter shall also earn and, upon the completion of each full year of continuous service, be credited with additional vacation in accordance with the following schedule:

Completed Years of Continuous Service	Additional Vacation Credits
1	1 day
2	2 days
3	3 days
4	4 days
5	5 days
6	6 days
7	7 days

(d) (1) A leave of absence without pay, or a resignation followed by reinstatement or reemployment in State service within one year following such resignation, shall not constitute an interruption of continuous service for the purposes of this section; provided, however, that leave without pay for more than six months or the period between resignation and reinstatement or reappointment, during which the employee is not in State service, shall not be counted in determining eligibility for additional vacation credits under this section.

(2) During the second through seventh years of continuous service, credits not to exceed the number of additional vacation credits earned for the previously completed year of service, and in proportion to the number of pay periods served during the current year, may be advanced to an employee to cover necessary absences where no other credits are available. Compensation shall be granted for these credits in the event of layoff, military leave or death of an employee.

(3) After the anniversary date on which an employee has been credited with seven days of additional vacation credits he shall thereafter earn vacation for completed biweekly

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periods at a rate which will equal 20 days for 26 such pay periods.

(e) No accumulation of vacation credits in excess of 30 days shall be permitted, except that employees having accumulated vacation credits in excess of 30 days on the day preceding the effective date of this Chapter shall be allowed a period of one year to reduce such accumulated credits to an amount not in excess of 30 days. The appointing authority shall notify the employee, in writing, of the total amount of his unliquidated credits when such credits total the equivalent of 25 work days.

(f) The time at which vacation may be drawn by an employee shall be subject to the prior approval of the appointing authority.

(g) So far as practicable, vacation credits shall be used prior to appointment, promotion or transfer to another department, agency or institution. The department, agency or institution to which an employee is appointed, promoted or transferred shall credit him with all of his accumulated vacation credits not used prior to such appointment, promotion or transfer.

(h) An employee paid on an hourly or per diem basis who qualifies for coverage under this Chapter on the basis of nine months of continuous employment which began prior to January 3, 1957, the effective date of this Chapter, shall earn and accumulate vacation at the same rates as apply to annual salaried employees who were in service prior to such date. Other per diem and hourly paid employees shall earn and accumulate vacation at the same rates and subject to the same conditions as apply to annual salaried employees who enter State service on or after January 3, 1957, and, for the purpose of determining eligibility for additional vacation credits, each such employee shall be credited with all years of continuous service rendered from the beginning of the first nine months of his service by which he qualified for coverage under this Chapter. Every per diem and hourly paid employee shall, on the date on which he becomes subject to this Chapter, be credited with the number of days of vacation which he would have earned during the preceding nine months if he had been subject to this Chapter during such period, less the number of days of paid vacation which were granted to him during such nine-month period, except that no deduction shall be made for vacation drawn during such nine-month period which was earned prior thereto in accordance with an established departmental policy.

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21.3 Sick leave. (a) Sick leave is absence with pay necessitated by the illness or disability of the employee including illness or disability caused by pregnancy or childbirth.

(b) Employees shall earn sick leave credits at the rate of one-half day per biweekly pay period and may accumulate such credits up to a total of 150 days; provided, however, that an employee shall not earn sick leave credit for any biweekly pay period unless he is in full pay status for at least seven work days during such biweekly pay period. A part-time employee who is required to work a fixed number of hours, five days per week, shall also earn sick leave credit as provided herein, but his total pay when absent on such leave shall be the amount which would have been due him had he been working regularly at his usual hours for such period.

(c) An employee absent on sick leave shall notify his supervisor of such absence and the reason therefor on the first of such absence and within two hours after the beginning of work day; provided, however, that where the work is such that substitute may be required, the appointing authority may require earlier notification, but not more than two hours prior to the beginning of the employee's work day. Sick leave credits may be used in such units as the appointing authority may approve, but shall not be used in units of less than one-half hour.

(d) Before absence for personal illness may be charged against accumulated sick leave credits, the appointing authority may require such proof of illness as may be satisfactory to it, or may require the employee to be examined, at the expense of the department or agency, by a physician designated by the appointing authority. In the event of failure to submit proof of illness upon request, or in the event that, upon such proof as is submitted or upon the report of medical examination, the appointing authority finds that there is not satisfactory evidence of illness sufficient to justify the employee's absence from the performance of his duties, such absence may be considered as unauthorized leave and shall not be charged against accumulated sick leave credits. Abuse of sick leave privileges shall be cause for disciplinary action.

(e) The appointing authority may require an employee who has been absent because of personal illness, prior to and as a condition of his return to duty, to be examined, at the expense of the department or agency, by a physician designated by



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appointing authority, to establish that he is not disabled from the performance of his normal duties and that his return to duty will not jeopardize the health of other employees.

(f) In addition to personal illness of the employee, the following types of absence, when approved by the appointing authority, may be charged against accumulated sick leave credits: illness or death in the employee's family, provided, however, that charge for such absence shall not exceed a maximum of 15 days in any one year; absence of an employee certified as visually handicapped by the New York State Commission for the Blind and Visually Handicapped or, where such certification is not obtainable, who is certified by an examining physician or licensed optometrist as blind, as manifested by visual acuity of 20/200 or less in the better eye with best correction or a visual field of 20 degrees or less, or who has a hearing impairment manifested by a speech discrimination score of forty percent or less in the better ear with appropriate correction as certified by an examining physician or by a licensed audiologist or otolaryngologist, for the purpose of obtaining a guide dog and required training related thereto, provided, however, that charge for such absence shall not exceed a maximum of 26 days in any one calendar year; and personal visits to doctor or dentist. Proof of the need for such absence, satisfactory to the appointing authority, may be required.

(g) When an employee is transferred, his accumulated sick leave credits shall be transferred with him. When an employee is separated from service for other than disciplinary reasons and is subsequently reinstated or reemployed within one year after such separation, or is reinstated by action of the State Civil Service Commission, or is reinstated or reemployed while eligible for reinstatement from a preferred list, his sick leave credits accumulated and unused at the time of his separation shall be restored; provided, however, that such sick leave credits shall not be restored except where leave records satisfactory to the appointing authority and the Department of Civil Service are available.

(h) Every per diem and hourly paid employee shall, on the date on which he becomes subject to this Chapter, be credited with the number of days of sick leave which he would have earned during the preceding nine months if he had been subject to this Chapter during such period, less the number of days of sick leave with pay which were granted to him during such nine-month period, except

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that no deduction shall be made for sick leave drawn during such nine-month period which was earned prior thereto in accordance with an established departmental policy.

(i) This section shall not be construed to require extension of any employment beyond the time at which it would otherwise terminate by operation of law, rule or regulation.

21.4 Extended sick leave. (a) The appointing authority may, in its discretion, advance sick leave credits to an employee absent due to personal illness who has exhausted his accumulated sick leave, vacation and overtime credits. Such advanced sick leave credits shall be repaid, as soon as practicable after the employee's return to duty, from subsequent accumulations of time credits. The outstanding unrepaid sick leave credits advanced to any employee under the provisions of this subdivision shall not at any time exceed a total of five days.

(b) The appointing authority may, in its discretion, upon written request from an employee certified as visually handicapped by the New York State Commission for the Blind and Visually Handicapped or, where such certification is not obtainable, who is certified as blind by an examining physician or licensed optometrist as blind, as manifested by visual acuity of 20/200 or less in the better eye with best correction or a visual field of 20 degrees or less, or who has a hearing impairment manifested by a speech discrimination score of forty percent or less in the better ear with appropriate correction as certified by an examining physician or by a licensed audiologist or otolaryngologist, advance up to 26 days of sick leave to such employee who is absent for the purpose of obtaining a guide dog and required training related thereto, and who has exhausted accumulated leave credits, provided the cumulative total of sick leave credits charged and/or advanced for this purpose does not exceed 26 days in any one calendar year. Such advanced sick leave credits shall be repaid, as soon as practicable after the employee's return to duty, from subsequent accumulations of time credits. The outstanding unrepaid sick leave credits advanced to an employee under the provisions of this subdivision shall not at any time exceed a total of 26 days.

(c) Upon termination of the employee's services any such advance of sick leave not offset by subsequent accumulations of sick leave, vacation and overtime credits shall be deducted from salary or wages due the employee.

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21.5 Sick leave at half-pay. The appointing authority may, in its discretion, grant sick leave at half-pay for personal illness to a permanent employee having not less than one year of service after all of his sick leave, vacation and overtime credits have been used; provided, however, that the cumulative total of all sick leave at half-pay hereafter granted to any employee during his State service shall not exceed one pay period for each complete six months of his State service.

21.6 Personal leave. (a) Personal leave is leave with pay for personal business including religious observance, without charge against accumulated vacation or overtime credits. Employees shall be entitled to personal leave not exceeding a total of five days in a year, to be credited as follows:

(1) An employee in State service on the effective date of this Chapter shall be credited with five days' personal leave on the effective date of this Chapter and thereafter, except as herein otherwise provided, shall be credited with five days' personal leave each year on the anniversary of the effective date of this Chapter;

(2) Any person who was separated or granted a leave of absence without pay from State service prior to the effective date of this Chapter and is hereafter reemployed or reinstated in State service, and any employee who enters State service after the effective date of this Chapter, shall be credited with five days' personal leave on the date of such reemployment, reinstatement or entry, as the case may be, and thereafter, except as herein otherwise provided, shall be credited with five days' personal leave each year on the anniversary of such date, and, for the purpose of crediting personal leave, a per diem or hourly paid employee shall be deemed to enter State service on the date on which he becomes subject to the application of this Chapter.

(3) If an employee is separated from State service, or granted a leave of absence without pay from State service, subsequent to the effective date of this Chapter, and thereafter is reinstated or reemployed within one year following the last date upon which personal leave was credited to him pursuant to this Chapter, the unused personal leave standing to his credit at the time of separation or leave of absence shall be restored to him and he shall retain the same

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anniversary date for the purposes of crediting personal leave thereafter under this section as that which was applicable to him prior to such separation or leave of absence.

(4) If an employee is separated from State service, or granted a leave of absence without pay from State service, subsequent to the effective date of this Chapter, and thereafter is reinstated or reemployed more than one year following the last date upon which personal leave was credited to him pursuant to this Part, such reinstatement or reemployment shall be deemed to be a new entry into State service for the purposes of crediting personal leave under this Part.

(5) If an employee is appointed, promoted or transferred to another department or agency, the unused personal leave standing to his credit at the time of such appointment, promotion or transfer shall be transferred with him, and he shall retain the same anniversary date for purposes of crediting personal leave as that which was applicable to him prior to such appointment, promotion or transfer.

(b) Personal leave shall not be cumulative, and any personal leave credit remaining unused by an employee on the date immediately preceding the anniversary date upon which he is entitled to receive new personal leave credits hereunder shall be cancelled. Unused personal leave shall not be liquidated in cash at the time of separation, retirement or death.

(c) Personal leave may be drawn only at a time convenient to and approved in advance by the appointing authority; provided, however, that personal leave allowed for religious observance shall be granted on the days and hours required, insofar as the same may be granted at such time without interference with the proper conduct of government functions.

21.7 Leave for extraordinary weather conditions. (a) The appointing authority may, in its discretion, grant employees time off with pay on account of excessive heat or other extraordinary weather conditions.

(b) Such time off shall be charged against accumulated vacation, overtime or sick leave credits, or may, with the approval of the appointing authority, be allowed as personal leave.

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21.8 Workers' Compensation leave. (Statutory authority: Civil Service Law, Sections 6, 71)

(a) Leave for absence necessitated by occupational injury or disease.

(1) Except as otherwise provided in subdivisions (b) and (c) of this section, an employee necessarily absent from duty because of occupational injury or disease as defined in the Workers' Compensation Law, upon giving notice to his appointing authority that he is absent on account of such injury or disease and that he claims benefits under such law, shall be allowed leave from his position for the period of absence necessitated by such injury or disease, up to cumulatively one year including any periods of such absence during which the employee draws vacation, sick leave or other leave credits. Such leave may be extended for further periods in the discretion of the appointing authority.

(2) Upon granting workers' compensation leave pursuant to subdivision (a) or subdivision (b) of this section, the appointing authority shall provide the employee in writing with the notice specified in subdivision (b) of section 5.9 of the Rules for the Classified Service, within the time prescribed by that rule.

(3) No less than 30 days nor more than 60 days prior to the anticipated expiration of an employee's workers' compensation leave, or the effective date of a termination of the leave by the employer pursuant to section 71 of the Civil Service Law upon a finding that the unfitness to perform the duties of the position is permanent where that determination does not arise from a hearing, the appointing authority shall provide the employee in writing with the notice specified in paragraph (2) of subdivision (c) of section 5.9 of the Rules for the Classified Service. If for any reason less than 30 days would remain prior to the date of termination of leave, if that termination is not the result of a hearing, service of the notice shall be deemed to be a grant by the appointing authority of an extension of the leave to a date 30 days from the date of service of this notice.

(b) Controverted cases. If the employee's claim for benefits under the Workers' Compensation Law is controverted by the State

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Insurance Fund (at the request of the appointing authority or on its own initiative) and the appointing officer is so notified, the employee shall not be entitled to leave under this section. This shall not, however, adversely affect the employee's eligibility for leave under other provisions of this Chapter. If final determination of the controverted claim is in favor of the employee, he shall be entitled to leave under this section, and all absences before such final determination, to the extent that the same were necessitated by his occupational injury or disease, shall be deemed to have been pursuant to leave under this section.

(c) Permanent incapacity. Leave under this section may be withheld or terminated if the appointing authority determines that the occupational injury or disease suffered by the employee is of such a nature as to permanently incapacitate him for the performance of the duties of his position.

(d) Pay during leave. An employee on leave under this section may receive pay, as follows:

(1) The appointing authority upon finding that the employee is in fact disabled from the performance of his duties, may grant the employee full pay during such leave not exceeding cumulatively six months. Such full pay may be granted irrespective of the employee's accrued credits under this Chapter.

(2) Except when on full pay status under paragraph (1) of this subdivision, the employee may draw accrued vacation, overtime and sick leave credits, subject to the provisions of this Chapter pertaining thereto.

(3) If not drawing full pay under paragraph (1) or paragraph (2) of this subdivision, an employee may, in the discretion of the appointing authority, be allowed to draw personal leave and sick leave at half-pay for which he may be eligible under this Chapter.

(e) Accrual of leave credits. An employee who receives full pay for any period of leave under this section shall earn vacation and sick leave credits during such period.

(f) Award credited to State. An award by the Workers' Compensation Board of compensation for any period for which the

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employee receives or received pay from the State shall be credited to the State as reimbursement of wages paid.

(g) Restoration of leave credits. Leave credits, including sick leave at half-pay, used by an employee during a period of absence for which an award of compensation has been made and credited to the State as reimbursement for wages paid shall be restored to him in full; provided, however, that no restoration shall be made for any absence of less than a full day. Credits so restored may not again be used for future absences attributable to the same injury. In the event that the employee dies, resigns, retires or continues absent beyond one year without further leave, cash payment for vacation and overtime credits, including any credits restored under this subdivision, shall be made in accordance with the appropriate provisions of this Chapter. In any other case, an employee restored to service after absence on leave under this section shall have one year from the date of such restoration to reduce his accrued leave credits to the limits prescribed in this Chapter.

(h) Return to duty. Upon request of the employee for restoration to duty at or prior to the expiration of the maximum period of allowed leave, the appointing authority, if in doubt as to whether the employee is physically and mentally fit to perform the duties of the position, may require the employee to undergo medical examination, by a physician designated by the appointing authority, before the employee may be restored to duty. If restoration to duty is denied, the employee may make application therefor in the manner prescribed by section 5.9 of the Rules for the Classified Service. If an employee's employment is terminated as a matter of law due to continued absence after the expiration of the maximum period of allowed leave, or due to a finding of permanent disability, eligibility for reinstatement shall be governed by section 71 of the Civil Service Law and section 5.9 of the Rules for the Classified Service.

(i) Medical examination. In order to enable the appointing authority to make such determinations as are authorized or required under this section, the appointing authority may require an employee at any time to be examined by a physician designated by the appointing authority.

(j) Where the appointing authority has refused to grant the employee pay during leave pursuant to subdivision (d) of this

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section, or, has withheld or terminated a leave of absence on the ground that the occupational injury or disease is of such a nature as to permanently incapacitate the employee for the performance of the duties of his position, the employee may request the Civil Service Commission to review the determination of the appointing authority. If the Commission finds that such determination of the appointing authority is arbitrary or unreasonable, it may reverse or modify such determination. Where the appointing authority has withheld or terminated a leave of absence on the ground that the occupational injury or disease is of such a nature as to permanently incapacitate the employee for performance of the duties of the position, and the employee disputes the issue of permanence of incapacitation, the employee may apply for continued leave up to a maximum of one year in aggregate, restoration to duty or reinstatement to employment, pursuant to the procedures of section 5.9 of the Rules for the Classified Service.

(k) Construction. This section shall not be construed require extension of any employment beyond the time at which would otherwise terminate.

21.9 Leave for subpoenaed appearance and jury attendance. On proof of the necessity of jury service or appearance as a witness pursuant to subpoena or other order of a court or body, an employee shall be granted a leave of absence with pay with no charge against leave credits; provided, however, that this section shall not apply to any absence by an employee occasioned by such an appearance if he is a party.

21.10 Leave for civil service examinations. Employees shall be allowed leave with pay to take New York State Civil Service examination at the appropriate center, provided that due notice is given by the employee to the appointing authority.

21.11 Leave for quarantine. If an employee who is not ill himself is required to remain absent because of quarantine and presents a written statement of the attending physician or local health officer proving the necessity of such absence, he shall be granted leave with pay for the period of his required absence, without charge against accumulated sick leave, vacation or overtime credits. Prior to return to duty, such employee may be required to submit a written statement from the local health officer having jurisdiction that his return to duty will not jeopardize the health of other employees.



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21.12 Leaves required by law. The appointing authority shall grant any leave of absence, with pay, required by law.

21.13 Leave for civil defense duties. Upon certification by the State Director of Civil Defense of the necessity for the participation in State or local civil defense drills of an employee enrolled as a civil defense volunteer and required to perform civil defense duties pursuant to the New York State Defense Emergency Act, the appointing authority may allow such employee to absent himself from his position, without loss of pay or charge against leave credits, for such time as is necessary for participation in such drills, but not exceeding cumulatively five workdays per calendar year.

21.14 Retroactive time credits. Except for the provisions of subdivision (i) of section 21.2 and subdivision (i) of section 21.3 granting vacation and sick leave credits for the nine months' service preceding the date on which an employee becomes subject to this Chapter, nothing herein contained shall be construed to provide for the granting of retroactive vacation, sick leave or other time credits to any per diem or hourly paid employee for service rendered prior to August 14, 1958.

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PART 22

LEAVES WITHOUT PAY

Section 22.1 Leave of absence; duration. (a) A permanent employee, or an employee holding a position by permanent or temporary appointment who requests leave because of pregnancy or childbirth, may, in the discretion of the appointing authority, be granted a leave of absence, without pay, for a period not exceeding two years. Such leave may be extended beyond two years, for periods aggregating not in excess of an additional two years, only with the approval of the Civil Service Commission. In an exceptional case, a further extension may be permitted by the commission for good cause shown and where the interests of the government would be served. For the purposes of this Part, time spent in active service in the military forces of the United States or of the State of New York shall not be considered in computing the period of leave.

(b) This section shall not be construed to require the extension of any employment beyond the time at which it would otherwise terminate by operation of law, rule or regulation.

22.2 Successive leaves of absence. Where a leave of absence without pay has been granted for a period which aggregates two years, or more if extended pursuant to Section 22.1 of this Part, a further leave of absence without pay shall not be granted unless the employee returns to his position and serves continuously therein for six months immediately preceding the subsequent leave of absence.

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PART 23

DRAWING OF EARNED CREDITS UPON SEPARATION FROM  
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Section 23.1 Payment for accruals upon separation. At the time of separation from State service, an employee, his estate or beneficiary, as the case may be, shall be compensated in cash for overtime credits not in excess of 30 days accrued and unused as of the effective date of separation; and further, except where provision is made for the transfer of leave credits, he shall be compensated in cash for vacation credits not in excess of 30 days accrued and unused as of the effective date of separation except that in the case of resignation, the appointing authority may require, as a condition for such payment, that written notice of such resignation be given to the appointing authority at least two weeks prior to the last day of work. No employee who is removed from State service as a result of disciplinary action or who resigns after charges of incompetency or misconduct have been served upon him shall be entitled to compensation for vacation credits under the provisions of this Part.

Section 23.2 Payment for accruals upon entry into Armed Forces. An employee on leave from his position on account of his entry into the Armed Forces of the United States for active duty (other than for training) as defined by Title 10 of the United States Code, may elect to receive compensation in cash for vacation and overtime credits not in excess of 30 days in each category accrued and unused as of the last date on which his name appeared on the State payroll.

Section 23.3 Payment for overtime accruals upon appointment, promotion or transfer. An employee who is appointed, promoted or transferred from one department or agency to another shall be compensated in cash by the department or agency from which he is so appointed, promoted or transferred for such of his overtime credits up to 30 days as cannot be liquidated by compensatory time off prior to such appointment, promotion or transfer. An employee who is appointed, promoted or transferred from one unit or institution to another within the same department or agency in the Office of Mental Health, the Office of Mental Retardation and Developmental Disabilities, the Department of Health, the Department of Correctional Services, or the Division for Youth, or within the State University, shall not be compensated in cash for overtime but such credits shall be transferred to the new unit or institution with the employee.

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PART 24

CREDITING OTHER PUBLIC EMPLOYMENT AS STATE SERVICE

Section 24.1 Written agreement required for transfer of leave credits. For the purpose of applying the provisions of this Chapter, employment in the executive, legislative or judicial branches of State service in positions not subject to this Chapter shall be credited as State service; provided, however, that, except as otherwise provided by law, leave credits may not be transferred upon movement from such positions to positions subject to this Chapter except where such credits were earned and accumulated in accordance with attendance and leave regulations which are substantially equivalent to this Chapter, and there is a written agreement between the President of the Civil Service Commission and the agency wherein such credits were earned and accumulated governing the transfer of leave credits upon such movements. Other public employment not subject to this Chapter may be credited as State service for purposes of this Chapter, provided such employment was subject to attendance and leave regulations substantially equivalent to this Chapter, and provided there is a written agreement between the President of the Civil Service Commission and the public agency wherein such employment occurred governing the crediting of such employment as State service and the transfer of leave credits upon movement of employees to and from such agency and positions subject to this Chapter.

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PART 25

SUSPENSION OF RULES

Section 25.1 Emergency required for suspension of rules. This Article may be suspended in whole or in part, in an emergency, for the duration of same and to an extent made necessary by the nature of the emergency, on approval by the State Civil Service Commission of a written request by the appointing authority in the agency in which the emergency exists.

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PART 26

APPLICABILITY

Section 26.1 To whom Article applies. (a) Except as otherwise expressly provided in any rule or rules, this Article shall apply to the following employees in the classified service in departments, agencies and institutions in the Executive Branch of the State service who are not designated as managerial or confidential under Section 201, Article 14, of the Civil Service Law:

- (1) all such employees who are compensated on annual salary basis;
- (2) all such employees compensated on a per diem or hourly basis who are employed on a regularly scheduled workweek of at least three and three-fourths hours per day and five days per week, and who have been so employed continuously for nine months without a break in service exceeding one full payroll period. Any such person who has completed such nine months of service on or before the effective date of this section shall become subject to this Chapter commencing on the effective date of this section; or, if such person is not in employment status on the effective date of this section, he/she shall be subject to this Chapter commencing on the first day of the payroll period following reinstatement pursuant to law or rules, or on the first day of the payroll period following such reemployment, provided such reemployment occurs within one year after such person's last separation from State service. Any such employee who completes such nine months of service subsequent to the effective date of this section shall become subject to this Chapter commencing on the first day of the payroll period following completion of such service. Such employees shall thereafter continue to be subject to this Chapter so long as such employment continues without a break in service of more than one year.

(b) This Chapter shall not apply to employees of the Department of Taxation and Finance who are employed in surrogates' offices pursuant to section 249-dd of the Tax Law.

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(c) This Chapter shall not apply to employees who are employed in positions the principal duty of which is the teaching or instruction of patients or inmates, or the direct supervision of such teaching or instruction, and who are compensated in accordance with section 136 of the Civil Service Law.

26.2 Exceptions. The provisions of these rules authorizing the earning and accumulation of vacation credits and entitlement to personal leave shall not apply to employees whose employment is temporary and limited to all or parts of the months of June, July, August and September and who are designated as summer employees or summer replacements.

26.3 Rules applicable to employees in negotiating units. The provisions of these attendance rules, insofar as they apply to employees in the negotiating units established pursuant to article 14 of the Civil Service Law, shall be continued; provided, however, that during periods of time when there is in effect an agreement between the State and an employee organization reached pursuant to the provisions of said article 14, the provisions of such agreement and the provisions of such rules shall both be applicable. In the event the provisions of the agreement are different from the provisions of these attendance rules, the provisions of the agreement shall be controlling.

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ARTICLE 2

Attendance for Managerial/Confidential Employees in New York State

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PART 27

GENERAL ATTENDANCE PROVISIONS

Section 27.1 Basic workweek. The basic workweek for annual salaried employees of State departments, agencies and institutions, other than those employed on a part-time basis only and other than employees excluded from the application of overtime compensation under the rules of the Director of the Budget adopted pursuant to section 134 of the Civil Service Law, shall be 40 hours; provided, however, that where a shorter workweek would not interfere with the proper performance of government functions an appointing authority may establish a basic workweek of not less than 37 1/2 hours and five days, or an authorized equivalent work schedule, for any employees under its appointive jurisdiction as may be designated by it with the approval of the Division of the Budget; provided, however, that this Part shall not be construed to increase the workweek of any employee for whom a workweek of less than 40 hours is prescribed by law, rule or administrative regulation as of the day preceding the effective date of this Chapter.

Section 27.2 Record of attendance. Daily time records showing actual hours worked by each employee shall be maintained; provided, however, that the appointing authority may, with the approval of the Department of Civil Service, exempt from this requirement such executives, officers and employees who do not earn overtime as it may designate. Employees exempt from maintaining daily time records showing actual hours worked shall maintain a daily record of absences and time and leave credits earned and used in accordance with this Chapter.

Section 27.3 Tardiness. (a) The appointing authority shall establish and publish, subject to the approval of the Department of Civil Service, rules and schedules establishing penalties for tardiness. Such penalties shall not preclude disciplinary action in cases of excessive tardiness. In the event of public transportation difficulties, strikes, severe storms or floods, or similar uncontrollable conditions affecting a group of employees, tardiness may be excused by the appointing authority.

(b) The appointing authority may excuse a reasonable amount of tardiness caused by direct emergency duties of duly authorized volunteer ambulance squad members, volunteer firemen, enrolled civil defense volunteers, and enrolled civil air patrol volunteers, subject to whatever evidence of participation in such activities may be deemed necessary by the appointing authority.

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PART 28

ABSENCE WITH PAY

SUBPART 28-1

Section 28-1.1 Saturdays, Sundays and holidays. (a) Saturdays and Sundays are normally allowed as days off, or days may be allowed in lieu thereof. A pass day is a day off in lieu of a Saturday or Sunday on which an employee is normally and regularly required to work.

(b) Holidays shall be allowed as days off, or days shall be allowed in lieu thereof.

(c) The days prescribed by law for the observance of New Year's Day, Dr. Martin Luther King, Jr. Day, Lincoln's Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Election Day, Veterans' Day, Thanksgiving Day and Christmas Day shall be observed as holidays. When a day observed as a holiday as provided herein falls on a Saturday or on an employee's pass day, the employee shall be allowed compensatory time off or another day shall be designated as a holiday in lieu thereof. In lieu of observance of the holidays enumerated herein on the days prescribed by law, the State may designate one or more of these holidays for observance on date or dates to be selected by the employee in accordance with guidelines issued by the Department of Civil Service.

(d) Compensatory time off in lieu of a holiday shall be credited as holiday leave. Employees shall be allowed reasonable opportunity to liquidate such leave time prior to separation, subject to program requirements and, in the case of resignation, subject to reasonable advance notice of such resignation.

(e) A part-time employee shall also observe holidays as provided herein, but such employee's total pay for a holiday shall be the amount which would have been due if such employee had been working regularly at his/her usual hours for such holiday. Such part-time employees shall observe only those holidays which fall on days they normally and regularly work or actually work; provided, however, that in the event a holiday falls on a Saturday and another day is not designated to be observed as the holiday, part-time employees eligible to observe holidays who are employed on a fixed schedule of at least half-time and for whom Saturday is not a regular workday, but who are scheduled to work on the Friday

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immediately preceding such holiday, shall be granted holiday leave equivalent to the number of hours such employees are regularly scheduled to work on that preceding Friday, but not to exceed one-fifth the number of hours in the normal workweek of full-time State employees.

28-1.2 Vacation. (a) Employees in State service on January 2, 1957, or who were in State service before such date and who, after such date, are reinstated, or reemployed within one year after separation from State service, shall earn and accumulate vacation at the rates provided in this Chapter as in force and effect on the day preceding the effective date of this Article.

(b) (1) Employees who enter State service on or after January 3, 1957 shall, upon completion of 13 biweekly pay periods of service, be credited with 6 1/2 days' vacation. Thereafter, each such employee shall earn and accumulate vacation credits at the rate of one-half day per biweekly pay period until such employee has completed seven years of continuous service. An employee shall not earn vacation credit for any biweekly pay period unless in full pay status for at least seven workdays during such biweekly pay period.

(2) A part-time employee who is required to work a fixed number of hours on a fixed schedule five days per week, or who is required to work at least half-time each biweekly pay period for a fixed number of hours on a fixed schedule, shall also receive vacation as provided herein, but the total pay for such period of vacation shall be the amount which would have been due if such employee had been working regularly at his/her usual hours for such period.

(c) Employees who enter State service on or after January 3, 1957 shall also earn, and upon the completion of each full year of continuous service be credited with, additional vacation in accordance with the following schedule:

Completed years of continuous service	Additional vacation credits
1	1 day
2	2 days
3	3 days
4	4 days
5	5 days
6	6 days
7	7 days

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(1) During the second through the seventh years of continuous service, credits not to exceed the number of additional vacation credits earned for the previously completed year of service, and in proportion to the number of pay periods served during the current year, may be advanced to an employee to cover necessary absences where no other credits are available. Compensation shall be granted for these credits in the event of layoff, military leave or death of an employee.

(2) After the anniversary date on which an employee has been credited with seven days of additional vacation credits, such employee shall thereafter earn vacation for completed biweekly pay periods at a rate which will equal 20 days for 26 such pay periods.

(3) Employees having 20 or more years of continuous State service shall receive additional vacation credit as follows:

Completed years of continuous service	Additional vacation credits
20 to 24	1 day
25 to 29	2 days
30 to 34	4 days
35 or more	5 days

An employee shall receive additional vacation credit on the day on which such employee would normally be credited with such additional vacation in accordance with the above schedule, and shall thereafter be eligible for additional vacation credit upon the completion of each additional 12 months of continuous State service.

(d) Continuous State service for the purpose of this section shall mean uninterrupted State service, in pay status, as an employee. A leave of absence without pay, or a resignation followed by reinstatement or reemployment in State service within one year following such resignation, shall not constitute an interruption of continuous State service for the purposes of this section; provided, however, that leave without pay for more than six months or a period of more than six months between resignation and reinstatement or reappointment, during which the employee is not in State service, shall not be counted in determining

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eligibility for additional vacation credits or in computing continuous State service under this section.

- (e) (1) Vacation credits earned as provided herein may be accumulated without limitation, provided they do not exceed 40 days as of the first day of any calendar year.

(2) The appointing authority shall notify employees, in writing, of the total amount of their unliquidated vacation credits when such credits total the equivalent of 35 workdays.

(f) Vacation credits may be used in such units of time as the appointing authority may approve, but the appointing authority shall not require that vacation credits be used in units of greater than one-quarter hour.

(g) The time at which vacation may be drawn by an employee shall be subject to the prior approval of the appointing authority.

(h) So far as practicable, vacation credits shall be used prior to appointment, promotion or transfer to another department, agency or institution. The department, agency or institution to which an employee is appointed, promoted or transferred shall credit such employee with all accumulated vacation credits not used prior to such appointment, promotion or transfer.

(i) An employee paid on an hourly or per diem basis who qualifies for coverage under this Chapter on the basis of nine months of continuous employment which began prior to January 3, 1957, the effective date of this Chapter, shall earn and accumulate vacation at the same rates as apply to annual salaried employees who were in service prior to such date. Other per diem and hourly paid employees shall earn and accumulate vacation at the same rates and subject to the same conditions as apply to annual salaried employees who enter State service on or after January 3, 1957; and, for the purpose of determining eligibility for additional vacation credits, each such employee shall be credited with all years of continuous service rendered from the beginning of the first nine months of service by which such employee qualified for coverage under this Chapter. Every per diem and hourly paid employee not otherwise allowed vacation under this Chapter because of anticipated eligibility shall, on the date on which such employee becomes subject to this Chapter, be credited with the number of

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days of vacation which the employee would have earned during the preceding nine months if such employee had been subject to this Chapter during such period, less the number of days of paid vacation which were granted to the employee during such nine-month period, except that no deduction shall be made for vacation drawn during such nine-month period which was earned prior thereto in accordance with an established departmental policy.

28-1.3 Sick leave.

(a) (1) Effective January 1, 1986, this section shall apply only to persons who were in State service on December 31, 1985, including persons on an authorized leave of absence on such date and to persons who were in State service prior to December 31, 1985, who prior to such date resigned, retired or who were otherwise separated from their positions who are reemployed or reinstated to State service on or after January 1, 1986, who have creditable State service prior to January 1, 1986, who are eligible for but decline to participate in the Income Protection Plan established pursuant to the provisions of Part 78 of this Title (President's Regulations) and any such persons who are not otherwise eligible to participate in said plan. For the purpose of this section, an employee has prior creditable service if such person is reemployed within one year of resignation, retirement or termination or is reinstated by the Civil Service Department or Commission or by court order or is reemployed from or while eligible to be reemployed from a preferred list.

(2) Sick leave is absence with pay necessitated by the illness or disability of an employee, including illness or disability caused by pregnancy or childbirth.

(b) Employees shall earn sick leave credits at the rate of one-half day per biweekly pay period and may accumulate such credits up to a total of 200 days; provided, however, that no more than 165 days of such credits may be accumulated to pay for health insurance in retirement in accordance with Section 167(4) of the Civil Service Law and provided, however, that an employee shall not earn sick leave credit for any biweekly pay period unless such employee is in full pay status for at least seven workdays during such biweekly pay period. A part-time employee who is required to work a fixed number of hours on a fixed schedule five days per

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week, or who is required to work at least half-time each biweekly pay period for a fixed number of hours on a fixed schedule, shall also earn sick leave credit as provided herein, but total pay when absent on such leave shall be the amount which would have been due had such employee worked regularly at his/her usual hours for such period.

(c) An employee absent on sick leave shall notify his/her supervisor of such absence and the reason therefor on the first day of such absence and within two hours after the beginning of the employee's workday; provided, however, that where the work is such that a substitute may be required, the appointing authority may require earlier notification, but not more than two hours prior to the beginning of the employee's workday. Sick leave credits may be used in such units as the appointing authority may approve, but the appointing authority shall not require that sick leave credits be used in units greater than one-quarter hour.

(d) Before absence for personal illness may be charged against accumulated sick leave credits, the appointing authority may require such proof of illness as may be satisfactory to it, or may require the employee to be examined, at the expense of the department or agency, by a physician designated by the appointing authority. In the event of failure to submit proof of illness upon request, or in the event that, upon such proof as is submitted or upon the report of medical examination, the appointing authority finds that there is not satisfactory evidence of illness sufficient to justify the employee's absence from the performance of his/her duties, such absence may be considered as unauthorized leave and shall not be charged against accumulated sick leave credits. Abuse of sick leave privileges shall be cause for disciplinary action.

(e) The appointing authority may require an employee who has been absent because of personal illness, prior to and as a condition of return to duty, to be examined, at the expense of the department or agency, by a physician designated by the appointing authority, to establish that such employee is not disabled from the performance of his/her normal duties and that the return to duty will not jeopardize the health of other employees.

(f) In addition to personal illness of the employee, the following types of absence, when approved by the appointing authority, may be charges against accumulated sick leave credits:

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(1) illness or death in the employee's family; provided, however, that charge for such absence shall not exceed a maximum of 15 days in any one year;

(2) absence of an employee, certified as visually handicapped by the New York State Commission for the Blind and Visually Handicapped or, where such certification is not obtainable, who is certified by an examining physician or licensed optometrist as blind, as manifested by visual acuity of 20/200 or less in the better eye with best correction or a visual field of 20 degrees or less, or who has a hearing impairment manifested by a speech discrimination score of forty percent or less in the better ear with appropriate correction as certified by an examining physician or by a licensed audiologist or otolaryngologist, for the purpose of obtaining a guide dog and required training related thereto; provided, however, that charge for such absences shall not exceed a maximum of 26 days in any one calendar year; and

(3) personal visits to doctor or dentist.

Proof of the need for such absences, satisfactory to the appointing authority, may be required.

(g) When an employee is transferred, such employee's accumulated sick leave credits shall also be transferred. When an employee is separated from service for other than disciplinary reasons and is subsequently reinstated or reemployed within one year after such separation, or is reinstated by action of the State Civil Service Commission, or is reinstated or reemployed while eligible for reinstatement from a preferred list, sick leave credits accumulated and unused at the time of separation shall be restored; provided, however, that such sick leave credits shall not be restored except where leave records satisfactory to the appointing authority and the Department of Civil Service are available.

(h) Every per diem and hourly paid employee not otherwise allowed sick leave under this Chapter because of anticipated eligibility shall, on the date on which such employee becomes subject to this Chapter, be credited with the number of days of sick leave which would have been earned during the preceding nine months if such employee had been subject to this Chapter during such period, less the number of days of sick leave with pay which



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were granted during such nine-month period, except that no deduction shall be made for sick leave drawn during such nine-month period which was earned prior thereto in accordance with an established departmental policy.

(i) This section shall not be construed to require extension of any employment beyond the time at which it would otherwise terminate by operation of law, rule or regulation.

28-1.4 Extended sick leave.

(a) (1) Effective January 1, 1986, this section shall apply only to persons who were in State service on December 31, 1985, including persons on an authorized leave of absence on such date and to persons who were in State service prior to December 31, 1985, who prior to such date resigned, retired or who were otherwise separated from their positions who are reemployed or reinstated to State service on or after January 1, 1986, who have creditable State service prior to January 1, 1986, who are eligible for but decline to participate in the Income Protection Plan established pursuant to the provisions of Part 78 of this Title (President's Regulations) and any such persons who are not otherwise eligible to participate in said plan. For the purpose of this section, an employee has prior creditable service if such person is reemployed within one year of resignation, retirement or termination or is reinstated by the Civil Service Department or Commission or by court order or is reemployed from or while eligible to be reemployed from a preferred list.

(2) The appointing authority may, in its discretion, advance sick leave credits to an employee absent due to personal illness who has exhausted accumulated sick leave, vacation and overtime credits. Such advanced sick leave credits shall be repaid, as soon as practicable after the employee's return to duty, from subsequent accumulations of time credits. The outstanding unrepaid sick leave credits advanced to any employee under the provisions of this subdivision shall not at any time exceed a total of five days.

(b) The appointing authority may in its discretion, upon written request from an employee certified as visually handicapped by the New York State Commission for the Blind and Visually Handicapped or, where such certification is not obtainable, who is certified by an examining physician or licensed optometrist as

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blind, as manifested by visual acuity of 20/200 or less in the better eye with best correction or a visual field of 20 degrees or less, or who has a hearing impairment manifested by a speech discrimination score of forty percent or less in the better ear with appropriate correction as certified by an examining physician or by a licensed audiologist or otolaryngologist, advance up to 26 days of sick leave to such employee who is absent for the purpose of obtaining a guide dog and required training related thereto and who has exhausted accumulated leave credits, provided the cumulative total of sick leave credits charged and/or advanced for this purpose does not exceed 26 days in any one calendar year. Such advanced sick leave credits shall be repaid, as soon as practicable after the employee's return to duty, from subsequent accumulations of time credits. The outstanding unrepaid sick leave credits advanced to an employee under the provisions of this subdivision shall not, at any time, exceed a total of 26 days.

(c) Upon termination of the employee's services, any such advance of sick leave not offset by subsequent accumulations of sick leave, vacation, personal leave, overtime, or other leave credits shall be deducted from salary or wages due the employee.

28-1.5 Sick leave at half-pay. (a) Effective January 1, 1986, this section shall apply only to persons who were in State service on or before December 31, 1985, and persons who are reemployed or reinstated to State service on or after January 1, 1986, with creditable State service as described in section 28-1.3(a)(1) of this Part for service performed prior to January 1, 1986, who are eligible for but decline to participate or who are not eligible to elect to participate, in the Income Protection Plan established pursuant to the provisions of Part 78 of this Title (President's Regulations) and to persons appointed on or after January 1, 1986, who are excluded from participating in said plan.

(b) The appointing authority may, in its discretion, grant sick leave at half-pay for personal illness to a permanent employee having not less than one year of service after all sick leave, vacation and overtime credits have been used; provided, however, that the cumulative total of all sick leave at half-pay hereafter granted to any employee during such employee's State service shall not exceed one pay period for each complete six months of such State service.

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28-1.6 Personal leave. (a) Personal leave is leave with pay for personal business, including religious observance, without charge against accumulated vacation or overtime credits. Employees shall be entitled to personal leave, not exceeding a total of five days in a year, to be credited as follows:

(1) An employee credited with personal leave as provided under this section shall continue to be credited with five days' personal leave each year on the anniversary date of the date such employee was so credited.

(2) Any person who was separated or granted a leave of absence without pay from State service prior to the effective date of this Part and is hereafter reemployed or reinstated in State service, and any employee who enters State service after the effective date of this Part, shall be credited with five days' personal leave on the date of such reemployment, reinstatement or entry, as the case may be, and thereafter, except as herein otherwise provided, shall be credited with five days' personal leave each year on the anniversary of such date, and, for the purpose of crediting personal leave, a per diem or hourly paid employee shall be deemed to enter State service on the date on which such employee becomes subject to the application of this Chapter or the date employed if it is anticipated the employee will become subject to this Chapter.

(3) If an employee is separated from State service, or granted a leave of absence without pay from State service, subsequent to the effective date of this Part, and thereafter is reinstated or reemployed within one year following the last date upon which personal leave was credited, the unused personal leave standing to such employee's credit at the time of separation or leave of absence shall be restored and such employee shall retain the same anniversary date for the purposes of crediting personal leave thereafter under this section as that which was applicable to such employee prior to such separation or leave of absence.

(4) If an employee is separated from State service, or granted a leave of absence without pay from State service, subsequent to the effective date of this Part, and thereafter is reinstated or reemployed more than one year following the last date upon which personal leave was credited to the employee, such reinstatement or reemployment shall be deemed

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to be a new entry into State service for the purposes of crediting personal leave under this Part.

(5) If an employee is appointed, promoted or transferred to another department or agency, the unused personal leave standing to the credit of such an employee at the time of such appointment, promotion or transfer shall also be transferred, and the employee shall retain the same anniversary date for purposes of crediting personal leave as that which was applicable prior to such appointment, promotion or transfer.

(b) Personal leave shall not be cumulative, and any personal leave credit remaining unused by an employee on the date immediately preceding the anniversary date upon which such employee is entitled to receive new personal leave credits hereunder shall be cancelled. Unused personal leave shall not be liquidated in cash at the time of separation, retirement or death.

(c) Personal leave may be drawn only at a time convenient to and approved in advance by the appointing authority; provided, however, that personal leave allowed for religious observance shall be granted on the days and hours required, insofar as the same may be granted at such time without interference with the proper conduct of government functions.

(d) Personal leave may be used in such units of time as the appointing authority may approve, but the appointing authority shall not require that personal leave be used in units greater than one-quarter hour.

(e) Personal leave may be used as vacation, subject to the prior approval of the appointing authority. The appointing authority may not require an employee to give a reason for the use of personal leave, except where such reason may be required for the use of vacation for the same absence.

(f) A part-time employee who is required to work a fixed number of hours on a fixed schedule five days per week, or who is required to work at least half-time each biweekly pay period for a fixed number of hours on a fixed schedule, shall also receive personal leave as provided herein, but total pay when absent on such leave shall be the amount which would have been due had such employee worked regularly at his/her usual hours for such period.

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28-1.7 Leave for extraordinary weather conditions and extraordinary circumstances. (a) The appointing authority may, in its discretion, grant employees time off with pay charged to leave credits (other than sick leave) for absences necessitated by excessive heat or other extraordinary weather conditions.

(b) Employees who have reported for duty, and because of extraordinary circumstances or extraordinary weather conditions are directed to leave work, shall not be required to charge such directed early departure to the leave credits.

(c) During a state of emergency declared by the Governor, employees directed by the Governor not to report for duty to official work stations within the specific geographic area covered by the emergency declaration shall not be required to charge such directed absences to their leave credits.

28-1.8 Workers' compensation leave. This section governs leave for employees necessarily absent from duty because of an injury or disease arising out of and in the course of State employment. Subdivisions (a) through (o) inclusive, govern leave for those whose injury or disease occurred before September 1, 1986 and subdivisions (p) through (y) inclusive, govern leaves for those whose injury or disease occurred on or after September 1, 1986 and before September 1, 1994 and subdivisions (z) through (gg) inclusive, govern leaves for those whose injury or disease occurred on or after September 1, 1994.

- (a) (1) Except as otherwise provided in subdivisions (b) and (c) of this section, an employee necessarily absent from duty because of an injury or disease arising out of and in the course of State employment which occurred or was suffered before September 1, 1986 shall be allowed leave from his or her position in accordance with the provisions of subdivisions (a) through (o) of this section for the period during which the employee is unable to perform the duties of his or her position because of such injury or disease upon giving timely notice that such absence is the result of such injury or disease and that a claim has been or will be filed for benefits under the New York State Workers' Compensation Law. Such leave shall be permitted for all periods of absence resulting from such injury or disease, not to exceed a cumulative total of one year; provided, however,

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such leave may be continued for additional periods at the discretion of the appointing authority.

(2) Upon granting workers' compensation leave pursuant to subdivision (a) or subdivision (b) of this section, the appointing authority shall provide the employee in writing with the notice specified in subdivision (b) of section 5.9 of the Rules for the Classified Service, within the time specified by that rule.

(3) No less than 30 days nor more than 60 days prior to the anticipated expiration of an employee's workers' compensation leave, or the effective date of a termination of the leave by the employer pursuant to section 71 of the Civil Service Law upon a finding that the unfitness to perform the duties of the position is permanent where that determination does not arise from a hearing, the appointing authority shall provide the employee in writing with the notice specified in paragraph (2) of subdivision (c) of section 5.9 of the Rules for the Classified Service. If for any reason less than 30 days would remain prior to the date of termination of leave, if that termination is not the result of a hearing, service of the notice shall be deemed to be a grant by the appointing authority of an extension of the leave to a date 30 days from the date of service of this notice.

(b) Controverted cases. If the employee's claim for benefits under the Workers' Compensation Law is controverted by the State Insurance Fund, at the request of the appointing authority or on its own initiative, the employee shall not be allowed workers' compensation leave. If final determination of the controverted claim is in favor of the employee, eligibility for leave shall be determined as provided in subdivisions (a) and (c) of this section for all absences necessitated by the occupational injury or disease.

(c) Leave withheld or terminated. Leave under subdivision (a) of this section may be withheld or terminated if:

(1) the appointing authority determines that the employee is permanently incapacitated;

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(2) there is good and sufficient reason to believe that the employee's disability did not arise out of and in the course of employment with the State;

(3) there is good and sufficient reason to believe that the employee's disability is primarily due to some preexisting medical condition;

(4) there is good and sufficient reason to believe that the employee could report for work on a full-time or part-time basis;

(5) the employee has not upon request submitted satisfactory medical documentation of the claimed disability;

(6) the employee fails or refuses to submit to a medical examination conducted by a physician selected by the appointing authority and at the expense of the appointing authority; or

(7) the employee's services would have terminated or ceased under rule or law.

(d) Pay during leave. An employee allowed leave from his/her position pursuant to subdivision (a) of this section shall receive pay during such leave for each separate injury or disease and regardless of the date of occurrence of such injury or disease, subject to the following provisos:

(1) For the first 10 working days of such leave in any one calendar year, but not exceeding 10 working days in any one continuous period of leave spanning successive calendar years, the employee shall charge such leave to accrued leave credits, if any, subject to the exceptions listed in subdivision (e) of this section; provided, however, that the cumulative total of leave credits so charged shall not exceed the number of hours normally and regularly worked by the employee in a biweekly pay period.

(2) During a period of leave under paragraph (1) of this subdivision, the appointing authority shall advance up to 10 days of sick leave credits to an employee eligible to accrue leave credits but who has exhausted all such leave accruals, unless such employee requests otherwise in writing (except

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where such 10-day period is waived pursuant to subdivision [e] of this section), and such advanced sick leave credits shall be repaid as soon as practicable from subsequent accumulations of leave credits in a manner to be determined by the appointing authority; provided, however, that the cumulative total of leave credits so advanced shall not exceed the number of hours normally and regularly worked by the employee in a biweekly pay period.

(3) Beginning with the 11th workday of such leave in each calendar year, the employee shall be granted compensation leave with pay without charge to leave credits, but not exceeding a cumulative total of 131 workdays for each injury or disease; provided, however, that the cumulative total of such leave with pay shall not exceed the number of hours normally and regularly worked by the employee in 13 biweekly pay periods of employment.

(4) Upon exhausting leave with pay benefits under paragraph (3) of this subdivision, the employee shall be allowed to draw accrued leave credits.

(5) Upon exhausting leave with full pay benefits under paragraph (3) and (4) of this subdivision, the employee shall be allowed sick leave at half pay for which such employee may be eligible.

(e) Waiver of 10-day waiting period. Notwithstanding the provisos set forth in subdivision (d) of this section, the following conditions will also apply:

(1) If the employee is required by a physician to be admitted as an inpatient to a hospital during the first 10 consecutive working days after the occurrence of an occupational injury or disease in any one calendar year, and otherwise qualifies for such leave pursuant to subdivisions (a) through (o) of this section, the employee shall not be required to charge leave credits for the first 10 days of such leave.

(2) If the employee is required to be absent for a period of 20 consecutive working days or more following the occurrence of an occupational injury or disease in any one calendar year, and otherwise qualifies for such leave pursuant to subdivisions (a) through (o) of this section, the employee



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shall not be required to charge leave credits for the first 10 days of such leave.

(3) Where an employee is required by the employer, the State Insurance Fund or Workers' Compensation Board to attend a medical examination or a hearing during the first 10 working days of such leave in any one calendar year, and otherwise qualifies for such leave pursuant to subdivisions (a) through (c) of this section, the employee shall not be required to charge leave credits for the time required, including reasonable travel time, for such medical exam or hearing during such 10 working days.

(4) Upon written application by an employee within 45 days of the occurrence of an occupational injury or disease, the head of a department or agency or his/her designee may, in his/her discretion, waive the requirement of this section that an employee charge or repay, if advanced, the first 10 working days of such leave in any one calendar year to accrued leave credits. The decision of the head of a department or agency, or his/her designee, shall not be reviewable. For the purposes of this paragraph, occurrence shall also be deemed to mean the commencement of an absence due to the reoccurrence in subsequent calendar years of an occupational injury or disease.

(f) Employee election to draw leave credits. An employee allowed leave with pay under subdivisions (a) through (c) of this section may elect to draw accrued leave credits for part or all of such employee's absences from duty before being granted leave with pay under subdivision (d) of this section.

(g) Absences of less than a full day. An employee who is necessarily absent from duty as described hereinabove may be granted compensation leave with pay, without charge against leave credits, for absences of less than a full day.

(h) Leave for hearings and medical examination. An employee who is allowed leave with full pay as provided in subdivision (d) of this section shall be allowed such leave with pay when absent from duty for the purpose of attending a hearing scheduled by the Workers' Compensation Board or a board-ordered medical examination, or visiting a doctor for examination or treatment, subject to the proviso set forth in subdivision (d).

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(i) Accrual of leave credits. An employee who receives full pay for any period of leave under this section shall earn leave credits during such period.

(j) Holiday observance. An employee on leave with pay without charge to leave credits under paragraph (d)(3) of this section, on days observed as holidays by the State as an employer, shall not be eligible to observe such days as paid holidays nor eligible for compensatory time off in lieu thereof.

(k) Reimbursement by employee. If it is subsequently determined that an employee was not entitled to compensation leave with pay, without charge to leave credits, for any period for which such employee was granted such leave as provided hereinabove, the employee shall be required to make reimbursement for such paid leave from current or subsequent accumulations of leave credits at a rate and in a manner determined by the appointing authority.

(l) Restoration of leave credits. An employee who draws leave credits or is allowed sick leave at half pay, as provided in subdivision (d) of this section, shall be entitled to restoration of such credits and such sick leave at half-pay eligibility, excluding leave credits charged pursuant to paragraph (d)(1) of this section or advanced pursuant to paragraph (d)(2), but including those used for absences of less than a full day, as are used during a period of absence for which an award of compensation has been made and credited to the State as reimbursement for wages paid. Credits so restored may not again be used for future absences attributable to the same injury or disease. In the event that the employee dies, resigns, retires or is terminated, cash payment for vacation and overtime credits, including any credits so restored, shall be made in accordance with applicable provisions. In any other case, an employee who returns to duty after absence on leave under this section shall have one year from the date of such return or restoration of credits to reduce his/her accrued leave credits, exclusive of personal leave, to the prescribed limits. Personal leave may not be restored as provided herein if the award of compensation is received more than 12 months following the personal leave anniversary date on which such personal leave was credited.

(m) Return to duty. Upon request of the employee to report for duty from compensation leave, the appointing authority, if in doubt as to whether the employee is physically and mentally fit to

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perform the duties of the position, may require the employee to undergo medical examination, by a physician designated by the appointing authority, before the employee may be restored to duty pursuant to the procedures of section 5.9 of the Rules for the Classified Service.

(n) Medical examination. In order to enable the appointing authority to make such determinations as are authorized or required under subdivisions (a) through (o) of this section, the appointing authority may require an employee at any time to be examined by a physician designated by the appointing authority.

(o) Construction. The provisions of subdivisions (a) through (o) of this section shall not be construed to require extension of any employment beyond the time at which it would otherwise terminate or to require the granting of any leave benefits provided herein solely because of determinations made by the Workers' Compensation Board.

(p) (1) Workers' Compensation Benefits for Injuries or Diseases Suffered on or after September 1, 1986.

(2) Upon granting workers' compensation leave pursuant to this subdivision, the appointing authority shall provide the employee in writing with the notice specified in subdivision (b) of Section 5.9 of the Rules for the Classified Service, within the time prescribed by that rule.

(3) No less than 30 days nor more than 60 days prior to the anticipated expiration of an employee's workers' compensation leave, or the effective date of a termination of the leave by the employer pursuant to section 71 of the Civil Service Law upon a finding that the unfitness to perform the duties of the position is permanent where that determination does not arise from a hearing, the appointing authority shall provide the employee in writing with the notice specified in paragraph (2) of subdivision (c) of section 5.9 of the Rules for the Classified Service. If for any reason less than 30 days would remain prior to the date of termination of leave, if that termination is not the result of a hearing, service of the notice shall be deemed to be a grant by the appointing authority of an

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extension of the leave to a date 30 days from the date of service of this notice.

Except as otherwise provided in subdivisions (p) through (y), an employee necessarily absent from duty because of an injury or disease arising out of and in the course of State employment which occurred or was suffered on or after September 1, 1986 shall be allowed leave from his or her position in accordance with the provisions herein for the period during which the employee is unable to perform the duties of his or her position because of such injury or disease upon giving timely notice that such absence is the result of such injury or disease and that a claim has been or will be filed for benefits under the New York State Workers' Compensation Law. Such leave shall be permitted for all periods of absence resulting from such injury or disease, not to exceed a cumulative total of one year; provided, however, such leave may be continued for additional periods at the discretion of the appointing authority. Such leave may be denied or terminated if the appointing authority determines that the employee is permanently incapacitated or the employee's services would have otherwise been terminated or ceased under rule or law.

No leave shall be allowed under subdivisions (p) through (y) if the State Insurance Fund contests a claim filed by an employee, whether at the request of the appointing authority or on its own initiative, because it is alleged that such injury or disease did not occur on the job or the employee has not suffered any such injury or disease. If such claim is resolved in favor of the employee, eligibility for leave shall be determined as provided in this subdivision for all absences necessitated by the occupational injury or disease. In the event a person who has returned to work claims that he or she has suffered a reoccurrence of a previous injury or disease, which claim is then contested, such claim shall be deemed a new claim for the purpose of this subdivision unless resolved in favor of the employee.

(q) Compensation and pay benefits. An employee on leave from his or her position pursuant to subdivision (p) shall receive compensation or pay benefits during such leave for each separate injury or disease occurring on or after September 1, 1986 as hereinafter provided:

(1) During the period of absence for which payment is being made pursuant to Part 89 of Chapter V of Title 4 of these

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Rules (President's Regulations), an employee shall be deemed to be in full paid leave status.

(2) An employee who has been absent for less than one year and who has exhausted the supplemental benefit shall, while receiving benefits pursuant to the Workers' Compensation Law, be continued on the payroll at full pay until the employee's leave accruals, if any, have been exhausted, unless such employee requests that he or she not be so continued on the payroll, or if in such status, that such leave with pay be discontinued.

(3) An employee who has been absent for less than one year shall, upon exhausting all accrued leave credits and while receiving benefits pursuant to the Workers' Compensation Law, be granted such sick leave at half-pay for which the employee is otherwise eligible.

(4) Nothing herein shall prevent the appointing authority from continuing an employee on leave with pay pursuant to paragraph (2) or (3) of this subdivision in excess of one year if the employee is otherwise eligible to be continued on such leave.

(r) Waiting periods.

(1) An employee who is absent for seven or fewer calendar days due to a single occupational injury or disease shall be permitted to charge such absence to accrued leave credits or shall be granted a leave without pay for such period of absence.

(2) An employee who is absent for more than seven but fewer than 15 calendar days for a single occupational injury or disease shall be permitted to charge such absence up to the eighth calendar day to leave credits or shall be granted a leave without pay for such period of absence. Leave credits used for days of absence commencing on the eighth calendar day shall be recredited upon return to work or upon receipt of payment pursuant to said Part 89, whichever occurs first.

(3) An employee who is absent for 15 or more calendar days for a single occupational injury or disease shall have any accrued leave credits used during any waiting period recredited upon

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return to work or upon receipt of payment pursuant to said Part 89, whichever occurs first.

(s) Advanced leave credits. An employee eligible for benefits pursuant to the Workers' Compensation Law who has used all leave accruals to which he or she is entitled and is not yet receiving payments pursuant to said Part 89 shall be granted "advanced leave" at full pay upon request filed with the appointing authority on a form to be provided by the State in accordance with and subject to the terms and conditions set forth in said Part 89.

(t) Election to draw leave credits. An employee allowed leave under subdivisions (p) through (y) may elect to draw accrued leave credits for part or all of such employee's absences from duty before being granted the supplemental benefit pursuant to said Part 89.

(u) Accrual of leave credits. An employee who receives a supplemental benefit pursuant to said Part 89 for any period of leave pursuant to subdivisions (p) through (y) shall earn leave credits during such period in accordance with this Article.

(v) Holiday observance. An employee on leave and receiving a supplemental payment pursuant to said Part 89 in accordance with subdivision (q) of this section on days observed as holidays by the State as an employer shall not be eligible to observe such days as paid holidays nor be eligible for compensatory time off in lieu thereof.

(w) Restoration of leave credits. Notwithstanding any limitations on the accumulation of leave accruals to the contrary, an employee who uses his or her accrued leave credits or is granted sick leave at half-pay as provided in paragraphs (2) and (3) of subdivision (q) of this section shall be entitled to the restoration of such credits and such sick leave at half-pay eligibility as he or she may have used during any period of such absence for which an award of compensation has been made and credited to the State as reimbursement for wages paid. Leave credits so restored may not be used in the future for absences attributable to the same injury or disease. In the event that the employee dies, resigns, retires or is terminated, payment for vacation and overtime credits, including appropriate payments for any credits so restored, shall be made in accordance with the applicable provisions of law, rule or regulation. An employee

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shall have one year from the date of return to duty or restoration of credits, whichever is later, to reduce his or her accrued leave credits, exclusive of personal leave, to the maximum limits otherwise prescribed in these Rules. Personal leave shall not be restored to any employee if the award of compensation is received more than 12 months following the personal leave anniversary date on which such personal leave would have been otherwise credited.

(x) Return to duty. Upon request of the employee to report for duty following absence due to occupational injury or disease, and prior to the expiration of the maximum period of allowed leave, if the appointing authority is uncertain as to whether the employee is physically and mentally fit to perform the duties of his or her position, the employee shall be required to be examined by a physician designated by the appointing authority before being permitted to return to duty pursuant to the procedures of section 5.9 of the Rules for the Classified Service.

(y) Construction. Nothing in subdivisions (p) through (x) of this section shall be construed to require extension of any employment beyond the time at which it would otherwise terminate or be terminated.

(z) (1) Workers' compensation benefits for injuries or diseases suffered on or after September 1, 1994. Except as otherwise provided in subdivisions (z) through (gg) of this section, an employee necessarily absent from duty because of an injury or disease arising out of and in the course of State employment which occurred or was suffered on or after September 1, 1994, shall be allowed leave from his or her position in accordance with the provisions herein for the period during which the employee is unable to perform the duties of his or her position because of such injury or disease upon giving timely notice that such absence is the result of such injury or disease and that a claim has been or will be filed for benefits under the New York State Workers' Compensation Law. Such leave shall be permitted for all periods of absence resulting from such injury or disease, not to exceed a cumulative total of one year; provided, however, such leave may be continued for additional periods at the discretion of the appointing authority. Such leave may be denied or terminated if the appointing authority determines that the employee is permanently incapacitated or the employee's services would have otherwise been terminated or ceased under rule or law. No leave shall be allowed under subdivisions (z) through (gg) of this

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section if the State Insurance Fund controverts or contests a claim filed by an employee, whether at the request of the appointing authority or on its own initiative, because it is alleged that such injury or disease did not occur on the job or the employee has not suffered any such injury or disease. If such claim is resolved in favor of the employee, eligibility for leave shall be determined as provided in this subdivision for all absences necessitated by the occupational injury or disease. In the event a person who has returned to work claims that he or she has suffered a reoccurrence of a previous injury or disease, which claim is then contested, such claim shall be deemed a new claim for the purpose of this subdivision unless resolved in favor of the employee.

(2) Upon granting workers' compensation leave pursuant to this subdivision, the appointing authority shall provide the employee in writing with the notice specified in section 5.9(b) of this Title, within the time prescribed by that rule.

(3) No less than 30 days nor more than 60 days prior to the anticipated expiration of an employee's workers' compensation leave, or the effective date of a termination of the leave by the employer pursuant to section 71 of the Civil Service Law upon a finding that the unfitness to perform the duties of the position is permanent where that determination does not arise from a hearing, the appointing authority shall provide the employee in writing with the notice specified in section 5.9(c)(2) of this Title. If for any reason less than 30 days would remain prior to the date of termination of leave, if that termination is not the result of a hearing, service of the notice shall be deemed to be a grant by the appointing authority of an extension of the leave to a date 30 days from the date of service of this notice.

(aa) Benefits. An employee on leave from his or her position pursuant to subdivision (z) shall, for each separate injury or disease occurring on or after September 1, 1994, be placed on workers' compensation disability leave without pay for all absences and shall receive benefits pursuant to the Workers' Compensation Law.

(bb) Election to draw leave credits. (1) An employee allowed leave under subdivisions (z) through (gg) of this



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section may elect to draw accrued leave credits for part or all of such employee's absences from duty.

(2) An employee allowed leave under subdivisions (z) through (gg) of this section and subject to section 28-1.5, Sick leave at half-pay, of these rules may elect to use any sick leave at half-pay to which that employee is entitled.

(3) An employee allowed leave under subdivisions (z) through (gg) of this section and subject to subpart 28-2, Absence with Pay for Illness/Disability for Certain Managerial/Confidential Employees, of these rules shall be allowed to apply for benefits under Part 78, Income Protection Plan, of these rules to which he/she may be entitled.

(cc) Accrual of leave credits. Notwithstanding any Attendance Rule to the contrary, and regardless of pay status, an employee absent in accordance with subdivision (aa) of this section shall earn leave credits for the first twelve cumulative months of such absence.

(dd) Holiday observance. An employee on leave in accordance with subdivision (aa) of this section on days observed as holidays by the State as an employer, and who is not drawing against accrued leave credits pursuant to paragraph (1) of subdivision (bb), shall not be eligible to observe such days as paid holidays nor be eligible for compensatory time off in lieu thereof.

(ee) Restoration of leave credits. Notwithstanding any limitations on the accumulation of leave accruals to the contrary, an employee who uses his or her accrued leave credits or is granted sick leave at half-pay as provided in subdivision (bb) of this section or in connection with a contested or controverted claim which is subsequently resolved in the employee's favor by the Workers' Compensation Board shall be entitled to the restoration of such credits and such sick leave at half-pay eligibility proportional to the net monetary award credited to New York State by the Workers' Compensation Board or proportional to 60 percent of the employee's gross salary, whichever is greater, as he or she may have used during any period of such absence for which an

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award of compensation has been made and credited to the State as reimbursement for wages paid. Gross salary is defined as the employee's base annual salary rate plus inconvenience and location pay and geographic and shift differential pay to which the employee was entitled at the time of the accident. Leave credits so restored may not be used in the future for absences attributable to the same injury or disease. In the event that the employee dies, resigns, retires or is terminated, payment for vacation and overtime credits, including appropriate payments for any credits so restored, shall be made in accordance with the applicable provisions of law, rule or regulation. An employee shall have one year from the date of return to duty or restoration of credits, whichever is later, to reduce his or her accrued leave credits, exclusive of personal leave, to the maximum limits otherwise prescribed in these Rules. Personal leave shall not be restored to any employee if the award of compensation is received more than 12 months following the personal leave anniversary date on which such personal leave would otherwise have been credited.

(ff) Return to duty. Upon request of the employee to report for duty following absence due to occupational injury or disease, and prior to the expiration of the maximum period of allowed leave, if the appointing authority is uncertain as to whether the employee is physically and mentally fit to perform the duties of his or her position, the employee shall be required to be examined by a physician designated by the appointing authority before being permitted to return to duty pursuant to the procedures of section 5.9 of the Rules for the Classified Service.

(gg) Construction. Nothing in subdivisions (z) through (gg) of this section shall be construed to require extension of any employment beyond the time at which it would otherwise terminate or be terminated.

28-1.9 Leave for subpoenaed appearance and jury attendance. On proof of the necessity of jury service or appearance as a witness pursuant to subpoena or other order of a court or body, an employee shall be granted a leave of absence with pay with no charge against leave credits; provided, however, that this section shall not apply to any absence by an employee occasioned by such an appearance as a party.

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28-1.10 Leave for civil service examination. (a) Employees shall be allowed leave with pay to take New York State civil service examinations for State positions at the appropriate center, provided that due notice is given by the employee to the appointing authority. Leave shall be allowed for written, oral, physical and performance tests and for interviews from eligible lists, or for transfers providing the employee has not initiated the interview.

(b) Employees whose work shifts end less than eight hours prior to the starting time of an examination may, at the discretion of the appointing authority, be allowed leave with pay for part or all of such shifts.

28-1.11 Leave for quarantine. If an employee who is not personally ill is required to remain absent because of quarantine, and presents a written statement of the attending physician or local health officer proving the necessity of such absence, such employee shall be granted leave with pay for the period of the required absence, without charge against leave credits. Prior to return to duty, such employee may be required to submit a written statement, from the local health officer having jurisdiction, that return to duty will not jeopardize the health of other employees.

28-1.12 Leaves required by law. The appointing authority shall grant any leave of absence, with pay, required by law.

28-1.13 Leave for civil defense duties. Upon certification by the State Director of Civil Defense of the necessity for the participation in State or local civil defense drills of an employee enrolled as a civil defense volunteer and required to perform civil defense duties pursuant to the New York State Defense Emergency Act, the appointing authority may allow such employee to be absent, without loss of pay or charge against leave credits, for such time as is necessary for participation in such drills, but not exceeding cumulatively five workdays per calendar year.

28-1.14 Leave for professional meetings. Subject to prior approval by the appointing authority, each employee may be allowed time off without charge to leave credits to attend conferences or seminars of recognized professional organizations, such conferences or seminars to be directly related to the employee's profession or professional duties. Requests for such leave may be approved to the extent that such absence would not interfere with the proper conduct of governmental functions.

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28-1.15 Leave for professional examination. (a) Upon proper advance notice, an employee may be allowed leave with pay without charge to leave credits for the purpose of participating in one professional examination each year in such employee's discipline. In the event such examination is administered in several parts, the several parts shall be considered a single examination. Absence required for travel shall be charged to appropriate leave credits.

(b) If an employee is scheduled to work on a shift which ends within eight hours of commencement of such professional examination, the appointing authority may adjust the employee's work schedule or allow leave with pay charged to appropriate leave credits for part or all of such work shift.

28-1.16 Retroactive time credits. Except for the provisions of subdivision (i) of section 28-1.2 and subdivision (h) of section 21.3 of this Chapter, granting vacation and sick leave credits for the nine months' service preceding the date on which an employee becomes subject to this Chapter, nothing herein contained shall be construed to provide for the granting of retroactive vacation, sick leave or other time credits to any per diem or hourly paid employee for service rendered prior to August 14, 1958.

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SUBPART 28-2

ABSENCE WITH PAY  
FOR ILLNESS/DISABILITY FOR CERTAIN  
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Section 28-2.1 Sick leave. (a) Effective January 1, 1986, this section shall apply to all appointees not subject to the provisions of section 28-1.3 of this Part.

(b) Sick leave is absence with pay necessitated by the illness or disability of the employee, including illness or disability caused by pregnancy or childbirth.

(c) Employees who are on the payroll on the date on which sick leave credits are otherwise to be granted shall be entitled to eight days of sick leave credits for each 12 months of service up to a total of 200 days; provided, however, that no more than 165 days of such credits may be accumulated to pay for health insurance in retirement in accordance with Section 167(4) of the Civil Service Law. Such sick leave shall be credited as follows:

(1) Four days of sick leave credits upon completion of six months of State service and four days of such credits following completion of each six additional months of State service; provided, however, that any eligible employee electing to participate in the Income Protection Plan pursuant to Part 78 of this Title (President's Regulations) shall immediately receive four days of such sick leave credit on the effective date of such election.

(2) Part-time employees shall be granted sick leave credits not to exceed four days following completion of each six months of State service which credit shall be prorated based on the percentage of full-time service such employee is scheduled to work on each sick leave grant date.

(3) Employees who are not in pay status on a date on which such sick leave would otherwise be credited, shall be entitled to receive such sick leave credit on the date they return to pay status and the date on which such sick leave credits are to be thereafter credited shall be revised accordingly.

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(d) An employee absent on sick leave shall notify the appropriate supervisor of such absence and the reason therefor on the first day of such absence and within two hours after the beginning of the employee's workday; provided, however, that where the work is such that a substitute may be required, the appointing authority may require earlier notification, but not more than two hours prior to the beginning of the employee's workday. Sick leave credits may be used in such units as the appointing authority may approve, but the appointing authority shall not require that sick leave credits be used in units greater than one-quarter hour.

(e) Before absence for personal illness may be charged against accumulated sick leave credits, the appointing authority may require such proof of illness as may be satisfactory to it, or may require the employee to be examined, at the expense of the department or agency, by a physician designated by the appointing authority. In the event of failure to submit proof of illness upon request, or in the event that, upon such proof as is submitted or upon the report of medical examination, the appointing authority finds that there is not satisfactory evidence of illness sufficient to justify the employee's absence from the performance of his/her duties, such absence may be considered as unauthorized leave and shall not be charged against accumulated sick leave credits. Abuse of sick leave privileges shall be cause for disciplinary action.

(f) The appointing authority may require an employee who has been absent because of personal illness, prior to and as a condition of return to duty, to be examined, at the expense of the department or agency, by a physician designated by the appointing authority, to establish that such employee is not disabled from the performance of his/her normal duties and that the return to duty will not jeopardize the health of other employees.

(g) In addition to personal illness of the employee, the following types of absence when approved by the appointing authority, may be charged against accumulated sick leave credits: illness or death in the employee's family; provided, however, that charge for such absence shall not exceed a maximum of 15 days in any one year; absences of an employee certified as visually handicapped by the New York State Commission for the Blind and Visually Handicapped for the purpose of obtaining a guide dog and required training related thereto; provided, however, that charge for such absences shall not exceed a maximum of 26 days in any one calendar year; and personal visits to doctor or dentists. Proof of

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the need for such absences, satisfactory to the appointing authority, may be required.

(h) When an employee is transferred, such employee's accumulated sick leave credits shall also be transferred. When an employee is separated from service for other than disciplinary reasons and is subsequently reinstated or reemployed within one year after such separation, or is reinstated by action of the State Civil Service Commission, or is reinstated or reemployed while eligible for reinstatement from a preferred list, sick leave credits accumulated and unused at the time of separation shall be restored; provided, however, that such sick leave credits shall not be restored except where leave records satisfactory to the appointing authority and the Department of Civil Service are available.

(i) Every per diem and hourly paid employee employed on a full-time basis appointed on or after January 1, 1986, with no creditable State service prior to such date as defined in section 28-1.3(a)(1) of this Part shall, on the date such employee becomes subject to these rules, be granted four days of sick leave credits and that date shall become one of the employee's sick leave grant dates; provided, however, a per diem or hourly paid employee initially appointed on or after January 1, 1986, who is given anticipated eligibility shall be granted sick leave in accordance with subdivision (c) of this section.

(j) Every per diem and hourly paid employee employed on a part-time basis appointed on or after January 1, 1986, with no creditable State service prior to such date as defined in Section 28-1.3(a)(i) of this Part shall, on the date such employee becomes subject to these rules, be granted sick leave credits not to exceed four days, which credits shall be prorated based on the percentage of full-time service such employee is scheduled to work on the grant date, and that date shall become one of the employee's sick leave grant dates; provided, however, a per diem or hourly paid employee initially appointed on or after January 1, 1986, who is given anticipated eligibility shall be granted sick leave in accordance with subdivision (c) of this section.

28-2.2 Extended sick leave. (a) This section shall apply only to persons appointed on or after January 1, 1986, not eligible to participate in the Income Protection Plan pursuant to the provisions of Part 78 of this Title (President's Regulations).

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(b) The appointing authority may, in its discretion, advance sick leave credits to an employee absent due to personal illness who has exhausted accumulated sick leave, vacation and overtime credits. Such advanced sick leave credits shall be repaid, as soon as practicable after the employee's return to duty, from subsequent accumulations of time credits. The outstanding unrepaid sick leave credits advanced to any employee under the provisions of this Part shall not at any time exceed a total of four days.

(c) Upon termination of the employee's services, any such advance of sick leave not offset by subsequent accumulations of sick leave, vacation, personal leave, overtime, or other leave credits shall be deducted from salary or wages due to the employee.

SUBPART 28-3

ABSENCE WITH PAY FOR ILLNESS OF CERTAIN MANAGERIAL/CONFIDENTIAL  
EMPLOYEES CHARGED TO DONATED LEAVE CREDITS

28-3.1 This subpart governs the transfer of vacation credits to eligible employees, as defined herein, for use for absences in connection with an illness or disability which did not arise in connection with such individual's employment.

28-3.2 Eligibility to receive donated credits. In order to be eligible to receive donated credits an employee must be subject to this Article and eligible to earn leave accruals, must have completed at least one cumulative year of State service, must be absent due to a non-occupational personal illness or disability for which medical documentation satisfactory to management is submitted as required, must have exhausted all leave credits and must be expected to be absent for at least two biweekly payroll periods following exhaustion of leave credits or sick leave at half-pay. The employee must not have had any disciplinary actions or unsatisfactory performance evaluations within his/her last three years of State employment.

28-3.3 Use of donated leave credits. (a) For employees subject to the sick leave provisions of Subpart 28-1 of this Article, donated credits may be used at employee option either in full day units following exhaustion of all available leave credits and prior to any sick leave at half-pay available to the employee pursuant to Section 28-1.5 of this Article or in either full-day or



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half-day units following exhaustion of all available leave credits and any sick leave at half-pay available to the employee pursuant to Section 28-1.5 of this Article.

(b) For employees subject to Subpart 28-2 of this Article, donated credits may be used in full-day units after all available leave credits are exhausted and prior to receipt of any disability benefits available to the employee pursuant to that subpart.

28-3.4 Eligibility to earn accruals. Employees absent while charging donated leave credits pursuant to this subpart shall not earn vacation and sick leave, shall not be granted personal leave and shall not be eligible to observe holidays. Absences charged to donated leave credits shall be treated as leave without pay for purposes of calculating vacation and personal leave anniversary dates.

28-3.5 Medical documentation. Before absence for personal illness may be charged against donated leave credits, the appointing authority may require such proof of illness as may be satisfactory to it, or may require the employee to be examined, at the expense of the department or agency, by a physician designated by the appointing authority. In the event of failure to submit proof of illness upon request, or in the event that, upon such proof as is submitted or upon the report of medical examination, the appointing authority finds that there is not satisfactory evidence of illness sufficient to justify the employee's absence from the performance of his/her duties, such absence may be considered as unauthorized leave and shall not be charged against donated leave credits. Abuse of leave privileges shall be cause for disciplinary action.

28-3.6 Return to work. The appointing authority may require an employee who has been absent because of personal illness charged to donated leave credits, prior to and as a condition of return to duty, to be examined, at the expense of the department or agency, by a physician designated by the appointing authority, to establish that such employee is not disabled from the performance of his/her normal duties and that the return to duty will not jeopardize the health of other employees.

28-3.7 Donation of credits. (a) Vacation credits may be donated by employees who are subject to this Article and are employed in the same agency as the intended recipient employee.

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Where an agreement exists between the State and an employee organization, recognized or certified pursuant to article 14 of the Civil Service Law to represent a bargaining unit of State employees, which permits leave donations between employees of different agencies, the employees subject to this section may donate leave credits to employees eligible to receive donated leave credits who are employed by an agency other than the agency of the donor employee.

(b) Limits on donation of credits. Such donations shall not cause the donor employee to have fewer than ten days of vacation standing to his/her credit upon making such donation. Employees may not donate vacation credits which would otherwise be forfeited.

(c) Return of donated credits. Donated leave credits unused and standing to the recipient employee's credit at time of return to work or separation from State service shall be returned to the employees who donated those unused credits.

28-3.8 Donation exchange agreements. During the effective period of an applicable donation exchange agreement between the Governor's Office of Employee Relations and an employee organization, recognized or certified pursuant to Article 14 of the Civil Service Law to represent a bargaining unit of State employees, providing for donation of vacation credits, pursuant to an authorized leave donation program, to and from employees subject to this subpart and employees subject to the leave donation program for that bargaining unit, such vacation credits may be donated by an employee who is subject to this subpart to the benefit of an employee within the bargaining unit so represented, or received by an employee subject to this subpart from an employee within such bargaining unit. Such vacation credits shall be donated, transferred and utilized in accord with the applicable donation exchange agreement and this subpart or any such bargained program as applicable. Any donation exchange agreement shall be effective upon filing with the President of the Civil Service Commission and shall terminate ten days after notice in writing by either party is served upon the President and the other party to the agreement.

28-3.9 Construction. This subpart shall not be construed to require extension of any employment beyond the time it would otherwise terminate by operation of law, rule or regulation.

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PART 29

LEAVES WITHOUT PAY

Section 29.1 Leave of absence; duration. (a) A permanent employee, or an employee holding a position by permanent or temporary appointment who requests leave because of pregnancy or childbirth, may, in the discretion of the appointing authority, be granted a leave of absence, without pay, for a period not exceeding two years. Such leave may be extended beyond two years, for periods aggregating not in excess of an additional two years, only with the approval of the Civil Service Commission. In an exceptional case, a further extension may be permitted by the commission for good cause shown and where the interests of the government would be served. For the purposes of this Part, time spent in active service in the military forces of the United States or of the State of New York shall not be considered in computing the period of leave.

(b) This section shall not be construed to require the extension of any employment beyond the time at which it would otherwise terminate by operation of law, rule or regulation.

29.2 Successive leaves of absence. Where a leave of absence without pay has been granted for a period which aggregates two years, or more if extended pursuant to section 29.1 of this Part, a further leave of absence without pay shall not be granted unless the employee returns to his/her position and serves continuously therein for six months immediately preceding the subsequent leave of absence.

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PART 30

DRAWING OF EARNED CREDITS UPON SEPARATION  
OR ENTRY INTO ARMED FORCES

Section 30.1 Payment for accruals upon separation. At the time of separation from State service, an employee, such employee's estate or beneficiary, as the case may be, shall be compensated in cash for overtime credits not in excess of 30 days accrued and unused as of the effective date of separation; and further, except where provision is made for the transfer of leave credits, the employee shall be compensated in cash for vacation credits not in excess of 30 days accrued and unused as of the effective date of separation, except that in the case of resignation, the appointing authority may require, as a condition for such payment, that written notice of such resignation be given to the appointing authority at least two weeks prior to the last day of work. No employee who is removed from State service as a result of disciplinary action, or who resigns after charges of incompetency or misconduct have been served, shall be entitled to compensation for vacation credits under the provisions of this Part.

30.2 Payment for accruals upon entry into Armed Forces. An employee on leave on account of entry into the Armed Forces of the United States for active duty (other than for training), as defined by title 10 of the United States Code, may elect to receive compensation in cash for vacation and overtime credits not in excess of 30 days in each category accrued and unused as of the last date on which such employee's name appeared on the State payroll.

30.3 Payment for overtime accruals upon appointment, promotion or transfer. An employee who is appointed, promoted or transferred from one department or agency to another shall be compensated in cash by the department or agency from which such employee is so appointed, promoted or transferred for such overtime credits up to 30 days as cannot be liquidated by compensatory time off prior to such appointment, promotion or transfer. An employee who is appointed, promoted or transferred from one unit or institution to another within the same department or agency in the Office of Mental Health, the Office of Mental Retardation and Developmental Disabilities, the Department of Health, the Department of Correctional Services, or the Division for Youth, or within the State University, shall not be compensated in cash for overtime but such credits shall be transferred to the new unit or institution with the employee.

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PART 31

CREDITING OTHER PUBLIC EMPLOYMENT AS STATE SERVICE

Section 31.1 Written agreement required for transfer of leave credits. For the purpose of applying the provisions of this Chapter, employment in the Executive, Legislative or Judicial Branch of State service in positions not subject to this Chapter shall be credited as State service; provided, however, that except as otherwise provided by law, leave credits may not be transferred upon movement from such positions to positions subject to this Chapter except where such credits were earned and accumulated in accordance with attendance and leave regulations which are substantially equivalent to this Chapter, and there is a written agreement between the President of the Civil Service Commission and the agency wherein such credits were earned and accumulated governing the transfer of leave credits upon such movements. Other public employment not subject to this Chapter may be credited as State service for purposes of this Chapter, provided such employment was subject to attendance and leave regulations substantially equivalent to this Chapter, and provided there is a written agreement between the President of the Civil Service Commission and the public agency wherein such employment occurred governing the crediting of such employment as State service and the transfer of leave credits upon movement of employees to and from such agency and positions subject to this Chapter.

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PART 32

SUSPENSION OF RULES

Section 32.1 Suspension of rules. This Article may be suspended in whole or in part, in an emergency, for the duration of same and to an extent made necessary by the nature of the emergency, on approval by the State Civil Service Commission.

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PART 33

APPLICABILITY

Section 33.1 To whom rules apply. Except as otherwise expressly provided in any rule or rules, this Article shall apply to the following employees, designated as managerial/confidential under section 201, article 14 of the Civil Service Law, who are in the classified service in departments, agencies and institutions in the Executive Branch of the State service:

(a) All such employees who are compensated on an annual salary basis.

(b) All such employees compensated on a per diem or hourly basis who are employed on a regularly scheduled workweek of at least 3 3/4 hours per day and five days per week, or who are employed on a regularly scheduled workweek and required to work at least half-time each biweekly pay period, and who have been so employed continuously for nine months without a break in service exceeding one full pay period. Any such person who has completed such nine months of service on or before the effective date of this section shall become subject to this Chapter commencing on the effective date of this section; or, if such person is not in employment status on the effective date of this section, he/she shall be subject to this Chapter commencing on the first day of the payroll period following reinstatement pursuant to law or rules, or on the first day of the payroll period following such reemployment, provided such reemployment occurs within one year after such person's last separation from State service. Any such employee who completes such nine months of service subsequent to the effective date of this section shall become subject to this Chapter commencing on the first day of the payroll period following completion of such service. Such employees shall thereafter continue to be subject to this Chapter as long as such employment continues without a break in service of more than one year.

(c) All such employees compensated on a per diem or hourly basis who are expected by the appointing authority to be employed continuously for nine months as described in this section shall, effective at the beginning of such employment, observe holidays, earn and accumulate vacation and sick leave, and receive personal leave in the same manner and subject to the same limitations and

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restrictions as would apply if they were compensated on an annual salary basis.

33.2 Exceptions. (a) The provisions of this Chapter authorizing the earning and accumulation of vacation credits and entitlement to personal leave shall not apply to employees whose employment is temporary and limited to all or parts of the months of June, July, August and September and who are designated as summer employees or summer replacements.

(b) This Chapter shall not apply to employees of the Department of Taxation and Finance who are employed in surrogates' offices pursuant to section 249-dd of the Tax Law.

(c) This Chapter shall not apply to employees who are employed in positions the principal duty of which is the teaching or instruction of patients or inmates, or the directed supervision of such teaching or instruction, and who are compensated in accordance with section 136 of the Civil Service Law.