

CIVIL SERVICE

CIVIL SERVICE COMMISSION

Leaves, Hours of Work, and Employee Development

Vacation Leave

Paid Leave Bank

Proposed Amendment: N.J.A.C. 4A:6-1.2

Authorized By: Civil Service Commission, Robert M. Czech, Chair/CEO.

Authority: N.J.S.A. 11A:2-6(d) and 11A:6-1 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2012-087.

A **public hearing** concerning the proposed amendment will be held on:

Monday, July 9, 2012 at 3:00 P.M.

Civil Service Commission Room

44 South Clinton Avenue

Trenton, New Jersey

Please call Elizabeth Rosenthal at (609) 984-7140 if you wish to be included on the list of speakers.

Submit written comments by August 17, 2012 to:

Henry Maurer, Director

Merit System Practices and Labor Relations

Civil Service Commission

P.O. Box 312

Trenton, NJ 08625-0312

The agency proposal follows:

Summary

The Civil Service Commission proposes to delete N.J.A.C. 4A:6-1.2(l), (m), and (n) and related section Appendices A through E, regarding the paid leave bank (PLB) program for certain State employees. By way of background, in order to resolve the concerns arising from the adoption of a rule regarding temporary layoffs, the State and several employee unions entered into memoranda of agreement (MOAs) designed to avert the layoffs of thousands of State employees, maintain the delivery of needed public services, and achieve substantial budgetary savings. The MOAs regarding covered employees of the State, other than those employed by the nine State colleges and universities, required that covered employees take a total of 10 unpaid furlough days prior to July 1, 2010. In exchange for these unpaid furlough days, the employees were to be credited with up to seven PLB days, available for use after July 1, 2010, in addition to the employees' annual vacation, sick, and administrative leave allotment. Employees of the nine State colleges and universities, who were not managers or members of the American Federation of Teachers (AFT), were covered by an amendment to the MOAs known as a committee statement, which provided for a different mandatory furlough and PLB program. In that program, employees were required to take seven mandatory

furlough days and entitled to receive three PLB days. The MOAs also committed the parties to requesting that the Civil Service Commission repeal N.J.A.C. 4A:8-1.1A, the temporary layoff rule. The Civil Service Commission repealed this section, which repeal took effect on December 21, 2009. See 41 N.J.R. 3139(a), 4701(a).

To make the provisions of the MOAs regarding unpaid furlough days and PLB days applicable to unrepresented State employees, the Commission issued an order establishing a pilot program for fiscal year 2009-2010. See *In the Matter of Unpaid Furlough Days for Unrepresented Employees Pilot Program*, CSC Dkt. No. 2010-163 (August 5, 2009). This decision also stated that rules would be promulgated to codify the PLB program.

Accordingly, the Commission commenced the rule proposal process to codify the aforementioned MOA provisions. However, since the Commission believed that it did not have the statutory authority to promulgate a separate rule establishing the PLB program, the Commission concluded that such provisions should instead be added to N.J.A.C. 4A:6-1.2, Vacation leave. The MOA provisions stating that PLB days could be retained and used for the duration of the employee's service with the State were not proposed for incorporation into the amendments as the Commission concluded that the PLB days would be subject to the statutory limitation regarding the carry-over of vacation leave. Therefore, any additional, unused days were to be carried over for one year only, so that no days could be carried beyond June 30, 2012. See 42 N.J.R. 1116(a).

The Commission adopted N.J.A.C. 4A:6-1.2(l), regarding covered State employees other than ones employed by the nine State colleges and universities. See 42 N.J.R. 2400(b). The Commission then adopted N.J.A.C. 4A:6-1.2(m), with respect to State college and university employees who were not managers or members of the AFT. A new subsection (n) applied to those State college and university employees who, like State employees covered by subsection (l), had used up to 10, rather than up to seven, mandatory furlough days, so that they were to receive up to seven PLB days. See 43 N.J.R. 615(a).

In *Communications Workers of America, AFL-CIO, et al. v. New Jersey Civil Service Commission*, Dkt. No. A-1110-10T3 (January 18, 2012) (*CWA*), the Appellate Division, reversed and remanded the Commission's adoption of subsection (l) of the vacation leave rule. The court questioned the Commission's decision to place the PLB program in the vacation leave rule, so that the carry-over restriction applied to PLB days. The court further questioned why the Commission would adopt PLB rule provisions at all if it was concerned about the lack of statutory authority for the PLB program.

The Commission has duly considered the issues raised by the court and has concluded that, as it has no statutory authority to promulgate rules on the PLB program, the proper course of action is to delete the provisions of N.J.A.C. 4A:6-1.2 concerning the program. Accordingly, the Commission proposes to delete N.J.A.C. 4A:6-1.2(l), (m), and (n), as well as related section Appendices A through E. While the court in *CWA, supra*, specifically reversed only the adoption of subsection (l), the

Commission believes that subsections (m) and (n) should be deleted for the same reasons that subsection (l) should be deleted; that is, that the Commission does not have the statutory authority to promulgate PLB program rule provisions for employees of the nine State colleges and universities, just as it does not have the statutory authority to do so for the State employees covered by subsection (l).

It is noted that the Commission considers the deletion of the subject rule provisions as having taken place on January 18, 2012, the date on which the Appellate Division reversed the codification of the PLB program. See *CWA, supra*. Additionally, the Commission has separately issued a decision waiving any salary overpayment actions that might otherwise occur as a result of this proposed amendment. See *In the Matter of Paid Leave Bank Days* (CSC, May 16, 2012).

As the Commission has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The Commission does not anticipate a social impact as a result of the proposed amendment to delete the PLB provisions of N.J.A.C. 4A:6-1.2. The proposed amendment would not affect employees' usage or retention of PLB days, particularly since the Commission will not institute any actions to recoup payment for PLB days used through fiscal year 2012, as already noted in the Summary above.

Economic Impact

For the same reasons as provided in the Social Impact statement, the Commission does not anticipate an economic impact as a result of the proposed amendment to delete the PLB provisions of N.J.A.C. 4A:6-1.2.

Federal Standards Statement

A Federal standards analysis is not required because the proposed amendment governs State employee leave time and is not subject to any Federal standards or requirements.

Jobs Impact

It is not anticipated that any jobs would be generated or lost if the proposed amendment is adopted. The proposed amendment governs State employee leave time.

Agriculture Industry Impact

It is not anticipated that the proposed amendment would have any agriculture industry impact. The proposed amendment involves State employee leave time.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since the proposed amendment would have no effect on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment involves State employee leave time.

Housing Affordability Impact Analysis

Since the proposed amendment concerns State employee leave time, it would

have no impact on the number of housing units or the average cost of housing in New Jersey.

Smart Growth Development Impact Analysis

Since the proposed amendment concerns State employee leave time, it would have no impact on new construction within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

4A:6-1.2 Vacation leave

(a) – (k) (No change.)

[(l) In State service, full-time 12-month and 10-month employees in the career, senior executive and unclassified services who have utilized up to 10 mandatory furlough days in 2009 and 2010 shall be credited with up to seven additional working days of paid vacation leave, regardless of years of service, as follows:

1. On July 1, 2009, all employees shall be credited with one paid leave day.
2. An employee shall earn one additional paid leave day for every two mandatory furlough days utilized, up to a maximum of five paid leave days earned for 10 mandatory furlough days utilized.

3. On June 30, 2010, all employees shall be credited with one additional paid leave day.

4. By July 1, 2010, all employees who utilized a total of 10 mandatory furlough days shall be credited with a total of seven paid leave days.

i. Employees who began State service after July 1, 2009 or who were in unpaid status for one or more pay periods between July 1, 2009 and June 30, 2010 and therefore utilized a prorated number of mandatory furlough days shall be credited with a prorated number of paid leave days in accordance with the schedules in N.J.A.C. 4A:6-1.2 Appendix A, incorporated herein by reference, for 10-month employees and N.J.A.C. 4A:6-1.2 Appendix B, incorporated herein by reference, for 12-month employees.

ii. Part-time employees who utilized a prorated number of mandatory furlough days shall be credited with a prorated number of paid leave days in accordance with the schedule in N.J.A.C. 4A:6-1.2 Appendix C, incorporated herein by reference, except that if a part-time employee meets the criteria in (a) above, the schedule in N.J.A.C. 4A:6-1.2 Appendix C shall be used in conjunction with the schedules in N.J.A.C. 4A:6-1.2 Appendices A or B, as applicable.

5. These additional paid leave days may be used beginning July 1, 2010 through June 30, 2011, subject to operational needs. Approval for the use and scheduling of these days shall not be unreasonably denied. If not taken in a given year because of business demands, these days shall accumulate and be granted during the next succeeding year only. In no case shall any such additional paid

leave be carried beyond June 30, 2012.

6. An employee who leaves State government service shall be paid for unused earned paid leave.

7. Upon the death of an employee, unused paid leave shall be paid to the employee's estate.

8. The paid leave days granted under this subsection do not correlate with years of service and shall, therefore, be tracked separately from the vacation leave accumulated under (a)2 above.

(m) Notwithstanding subsection (l) above, in State service, full-time 12-month and 10-month employees of the nine State colleges and universities, with the exception of managers and those employees represented by the American Federation of Teachers who have utilized up to seven mandatory furlough days in 2009 and 2010, shall be credited with up to three additional working days of paid vacation leave, regardless of years of service, as follows:

1. An employee shall earn one paid leave day for every two mandatory furlough days utilized, up to a maximum of three paid leave days earned for seven mandatory furlough days utilized.

2. By July 1, 2010, all employees who utilized a total of seven mandatory furlough days shall be credited with a total of three paid leave days.

i. Employees who began State service after July 1, 2009 or who were in unpaid status for one or more pay periods between July 1, 2009 and June 30, 2010, and therefore utilized a prorated number of mandatory furlough days shall be credited with a prorated number of paid leave days in accordance with the

schedules in N.J.A.C. 4A:6-1.2 Appendix D, incorporated herein by reference, for 10-month employees, and N.J.A.C. 4A:6-1.2 Appendix E, incorporated herein by reference, for 12-month employees.

ii. Part-time employees who utilized a prorated number of mandatory furlough days shall have their paid leave days adjusted in proportion to the number of mandatory furlough days utilized.

3. These additional paid leave days may be used beginning July 1, 2010 through June 30, 2011, subject to operational needs. Approval for the use and scheduling of these days shall not be unreasonably denied. If not taken in a given year because of business demands, these days shall accumulate and be granted during the next succeeding year only. In no case shall any such additional paid leave be carried beyond June 30, 2012.

4. An employee who leaves State government service shall be paid for unused earned paid leave.

5. Upon the death of an employee, unused paid leave shall be paid to the employee's estate.

6. The paid leave days granted under this subsection do not correlate with years of service and shall, therefore, be tracked separately from the vacation leave accumulated under a(2) above.

(n) Subsection (m) above shall not apply to employees of the nine State colleges and universities who utilized up to 10, rather than up to seven, mandatory furlough days. Such employees shall be subject to the provisions of subsection (l)

above.

APPENDIX A

10-Month Employee Proration Chart

EMPLOYED (ACTIVE STATUS) ALL OF FY2010; NOT IN PAY STATUS ALL OF FY2010							NEW HIRES AND SEPARATIONS DURING FY2010				
10 Month Employees											
				Active on both 7/1 & 6/30	Active on both 7/1 & 6/30	Active on both 7/1 & 6/30	Active on neither 7/1 nor 6/30	Active on either 7/1 only or 6/30 only	Active on either 7/1 only or 6/30 only	Active on either 7/1 only or 6/30 only	
# of pay periods in pay status	SDF day obligation	Rounded SDF day obligation	Rounded PLB days	Bookend days accrued	Bookend hours accrued*	Bookend hours accrued*	Bookend days accrued	Bookend days accrued	Bookend hours accrued*	Bookend hours accrued*	
					35 hr wk	40 hr wk			35 hr wk	40 hr wk	
22	10.00	10	5.0	2.00	14.00	16.00	0.0	1.00	7.00	8.00	
21	9.55	10	5.0	1.91	13.50	15.50	0.0	0.96	6.50	7.50	
20	9.09	9	4.5	1.82	13.00	15.00	0.0	0.91	6.50	7.50	
19	8.64	9	4.5	1.73	12.00	14.00	0.0	0.87	6.00	7.00	
18	8.18	8	4.0	1.64	11.50	13.00	0.0	0.82	6.00	6.50	
17	7.73	8	4.0	1.55	11.00	12.50	0.0	0.78	5.50	6.00	
16	7.27	7	3.5	1.45	10.00	11.50	0.0	0.75	5.00	6.00	
15	6.82	7	3.5	1.36	9.50	10.50	0.0	0.68	5.00	5.50	
14	6.36	6	3.0	1.27	9.00	10.00	0.0	0.64	4.50	5.00	
13	5.91	6	3.0	1.18	8.50	9.50	0.0	0.59	4.00	4.50	
12	5.45	5	2.5	1.09	7.50	8.50	0.0	0.55	4.00	4.50	
11	5.00	5	2.5	1.00	7.00	8.00	0.0	0.50	3.50	4.00	
10	4.55	5	2.5	0.91	6.50	7.50	0.0	0.46	3.00	3.50	
9	4.09	4	2.0	0.82	5.50	6.50	0.0	0.41	3.00	3.50	
8	3.64	4	2.0	0.73	5.00	6.00	0.0	0.37	2.50	3.00	
7	3.18	3	1.5	0.64	4.50	5.00	0.0	0.32	2.00	2.50	
6	2.73	3	1.5	0.55	4.00	4.50	0.0	0.28	2.00	2.00	
5	2.27	2	1.0	0.45	3.00	3.50	0.0	0.23	1.50	2.00	
4	1.82	2	1.0	0.36	2.50	3.00	0.0	0.18	1.50	1.50	
3	1.36	1	0.5	0.27	2.00	2.00	0.0	0.14	1.00	1.00	
2	0.91	1	0.5	0.18	1.50	1.50	0.0	0.09	0.50	0.50	
1	0.45	0	0.0	0.09	0.50	0.50	0.0	0.05	0.50	0.50	

* rounded to nearest half hour: .75 or above rounded up to full hour
 .26 to .74 rounded to half hour
 .01 to .25 rounded down to full hour

APPENDIX B

12-Month Employee Proration Chart

EMPLOYED (ACTIVE STATUS) ALL OF FY2010; NOT IN PAY STATUS ALL OF FY2010 12 month employees							NEW HIRES AND SEPARATIONS DURING FY2010				
				Active on both 7/1 & 6/30	Active on both 7/1 & 6/30	Active on both 7/1 & 6/30	Active on neither 7/1 nor 6/30	Active on either 7/1 only or 6/30 only	Active on either 7/1 only or 6/30 only	Active on either 7/1 only or 6/30 only	
# of pay periods in pay status	SDF day obligation	Rounded SDF day obligation	Rounded PLB days	Bookend days accrued	Bookend hours accrued*	Bookend hours accrued*	Bookend days accrued	Bookend days accrued	Bookend hours accrued*	Bookend hours accrued*	
					35 hr wk	40 hr wk			35 hr wk	40 hr wk	
26	10.00	10	5.0	2.00	14.00	16.00	0.0	1.00	7.00	8.00	
25	9.62	10	5.0	1.92	13.50	15.50	0.0	0.96	6.50	7.50	
24	9.23	9	4.5	1.85	13.00	15.00	0.0	0.92	6.50	7.50	
23	8.85	9	4.5	1.77	12.50	14.00	0.0	0.88	6.00	7.00	
22	8.46	8	4.0	1.69	12.00	13.00	0.0	0.85	6.00	7.00	
21	8.08	8	4.0	1.62	11.50	13.00	0.0	0.81	5.50	6.50	
20	7.69	8	4.0	1.54	11.00	12.50	0.0	0.77	5.50	6.00	
19	7.31	7	3.5	1.46	10.00	11.50	0.0	0.73	5.00	6.00	
18	6.92	7	3.5	1.38	9.50	11.00	0.0	0.69	5.00	5.50	
17	6.54	7	3.5	1.31	9.00	10.50	0.0	0.65	4.50	5.00	
16	6.15	6	3.0	1.23	8.50	10.00	0.0	0.62	4.50	5.00	
15	5.77	6	3.0	1.15	8.00	9.00	0.0	0.58	4.00	4.50	
14	5.38	5	2.5	1.08	7.50	8.50	0.0	0.54	4.00	4.50	
13	5.00	5	2.5	1.00	7.00	8.00	0.0	0.50	3.50	4.00	
12	4.62	5	2.5	0.92	6.50	7.50	0.0	0.46	3.00	3.50	
11	4.23	4	2.0	0.85	6.00	7.00	0.0	0.42	3.00	3.50	
10	3.85	4	2.0	0.77	5.50	6.00	0.0	0.38	2.50	3.00	
9	3.46	3	1.5	0.69	5.00	5.50	0.0	0.35	2.50	3.00	
8	3.08	3	1.5	0.62	4.50	5.00	0.0	0.31	2.00	2.50	
7	2.69	3	1.5	0.54	4.00	4.50	0.0	0.27	2.00	2.00	
6	2.31	2	1.0	0.46	3.00	3.50	0.0	0.23	1.50	2.00	
5	1.92	2	1.0	0.38	2.50	3.00	0.0	0.19	1.50	1.50	
4	1.54	2	1.0	0.31	2.00	2.50	0.0	0.15	1.00	1.00	
3	1.15	1	0.5	0.23	1.50	2.00	0.0	0.12	1.00	1.00	
2	0.77	1	0.5	0.15	1.00	1.00	0.0	0.08	0.50	0.50	
1	0.38	0	0.0	0.08	0.50	0.50	0.0	0.04	0.50	0.50	

* rounded to nearest half hour: .75 or above rounded up to full hour
 .26 to .74 rounded to half hour
 .01 to .25 rounded down to full hour

Appendix C
Proration Chart for Part-Time Employees

	UNPAID FURLOUGH HOURS REQUIRED IN FY2010	PAID LEAVE BANK DAYS ACCRUED			UNPAID FURLOUGH HOURS REQUIRED IN FY2010	PAID LEAVE BANK DAYS ACCRUED
P/T PERCENTAGE	HOURS IN WORKWEEK OF TITLE	HOURS IN WORKWEEK OF TITLE			HOURS IN WORKWEEK OF TITLE	HOURS IN WORKWEEK OF TITLE
	35	35			40	40
10	7	0.50			8	0.50
15	11	0.75			12	0.75
20	14	1.00			16	1.00
25	18	1.25			20	1.25
30	21	1.50			24	1.50
35	25	1.75			28	1.75
40	28	2.00			32	2.00
45	32	2.25			36	2.25
50	35	2.50			40	2.50
55	39	2.75			44	2.75
60	42	3.00			48	3.00
65	46	3.25			52	3.25
70	49	3.50			56	3.50
75	53	3.75			60	3.75
80	56	4.00			64	4.00
85	60	4.25			68	4.25
90	63	4.50			72	4.50
95	67	4.75			76	4.75

APPENDIX D

10-Month State College and University Employee Proration Chart

Employed all of FY 2010 but not in Pay Status all of FY 2010

# of pay periods in pay status	SDF Day Obligation	Rounded SDF Day Obligation	Rounded PLB Days
22	6.00	6	3.0
21	5.73	6	3.0
20	5.45	5	2.5
19	5.18	5	2.5
18	4.91	5	2.5
17	4.64	5	2.5
16	4.36	4	2.0
15	4.09	4	2.0
14	3.82	4	2.0
13	3.55	4	2.0
12	3.27	3	1.5
11	3.00	3	1.5
10	2.73	3	1.5
9	2.45	2	1.0
8	2.18	2	1.0
7	1.91	2	1.0
6	1.64	2	1.0
5	1.36	1	0.5
4	1.09	1	0.5
3	0.82	1	0.5
2	0.55	1	0.5
1	0.23	0	0.0

APPENDIX E
12-Month State College and University Employee Proration Chart

Employed all of FY 2010 but not in Pay Status all of FY 2010

# of pay periods in pay status	SDF day obligation	Rounded SDF day obligation	Rounded PLB days
26	6.00	6	3.0
25	5.77	6	3.0
24	5.54	6	3.0
23	5.31	5	2.5
22	5.08	5	2.5
21	4.85	5	2.5
20	4.62	5	2.5
19	4.38	4	2.0
18	4.15	4	2.0
17	3.92	4	2.0
16	3.69	4	2.0
15	3.46	3	1.5
14	3.23	3	1.5
13	3.00	3	1.5
12	2.77	3	1.5
11	2.54	3	1.5
10	2.31	2	1.0
9	2.08	2	1.0
8	1.85	2	1.0
7	1.62	2	1.0
6	1.38	1	0.5
5	1.15	1	0.5
4	0.92	1	0.5
3	0.69	1	0.5
2	0.46	0	0.0
1	0.23	0	0.0