

CIVIL SERVICE

CIVIL SERVICE COMMISSION

Leaves, Hours of Work and Employee Development

Proposed Readoption with Amendments: N.J.A.C. 4A:6

Proposed Repeals: N.J.A.C. 4A:6-1.6 and 1.7

Authorized By: Civil Service Commission, Robert M. Czech, Chairperson, Civil Service Commission.

Authority: N.J.S.A. 11A:2-6.d, 11A:3-7, 11A:6-1 through 11A:6-28, 18A:31-2, 30:4-178, 34:11B-1 et seq., 38:23-2, 38A:1-1, 38A:4-4, 40A:14-177, and 52:14-26.2; P.L. 2008, c. 29 and P.L. 2001, c. 351; Executive Order No. 12 (1990) and Executive Order No. 88 (2003); 10 U.S.C. § 10101, 29 U.S.C. §§ 201 et seq., 29 U.S.C. §§ 2601 et seq., 38 U.S.C. §§ 4301 et seq., 38 U.S.C. §§ 4311 et seq., and 42 U.S.C. §§ 12101 et seq.; and 29 CFR 825.

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

Proposal Number: PRN 2016-003.

A public hearing concerning the rules proposed for readoption with amendments and repeals will be held on:

February 3, 2016, at 3:00 P.M.

Civil Service Commission Room

44 South Clinton Avenue

Trenton, New Jersey

Please call Walker Ristau at (609) 777-0910 if you wish to be included on the list of speakers.

Submit written comments by March 4, 2016, to:

Henry Maurer, Director

Division of Appeals and Regulatory Affairs

Civil Service Commission

P.O. Box 312

Trenton, New Jersey 08625-0312

or electronically at: <http://info.csc.state.nj.us/cscmailer>.

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1, N.J.A.C. 4A:6 is scheduled to expire on December 3, 2015. Pursuant to N.J.S.A. 52:14B-5.1.c(2), that expiration date is extended 180 days to May 31, 2016. The Civil Service Commission (Commission) has reviewed the rules and has determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated, as required by law. Since N.J.A.C. 4A:6 was last readopted in 2008, various amendments have been adopted pursuant to Commission review of the rules.

Initially, it is noted that a number of sections in N.J.A.C. 4A:6 still refer to the Department of Personnel, Commissioner of Personnel, and Merit System Board,

although the terminology changed pursuant to P.L. 2008, c. 29. All sections will be described in this Summary with language as currently expressed in these sections. Proposed amendments to rules refer to the Civil Service Commission and Chairperson of the Civil Service Commission will be described at the end of this Summary.

Subchapter 1 concerns leaves of absence for employees in State service and in political subdivisions. N.J.A.C. 4A:6-1.1, General provisions, includes special provisions regarding leaves of absence and leave procedures in local service, as well as State and local appointing authority recordkeeping requirements, and other general leave provisions.

N.J.A.C. 4A:6-1.2, Vacation leave, sets forth eligibility criteria for vacation leave in State and local service and other provisions concerning the use and accumulation of vacation leave. In 2010, subsection (l) and Appendices A through C were added to establish “Paid Leave Bank” (PLB) days for certain State employees. See 42 N.J.R. 1116(a); 2400(b), effective October 18, 2010. Subsection (m) and Appendices D and E were added in 2011, which extended PLB days to certain employees of State colleges and universities. See 42 N.J.R. 1940(a); 43 N.J.R. 615(a), effective March 7, 2011. However, pursuant to *Communications Workers of America, AFL-CIO, et al. v. New Jersey Civil Service Commission*, Docket No. A-1110-10T3 (January 18, 2012), subsection (l) was invalidated, see 44 N.J.R. 1611(a), and subsections (l) and (m) and Appendices A through E were repealed. See 44 N.J.R. 1751(a); 2301(a), effective October 1, 2012.

N.J.A.C. 4A:6-1.3, Sick leave, sets forth eligibility criteria for sick leave in State

and local service and other provisions concerning the use and accumulation of sick leave.

N.J.A.C. 4A:6-1.4, Sick leave procedures: State service, which is limited to State service, sets forth provisions regarding sick leave reporting, proof of illness or injury, special circumstances involving chronic or recurring illnesses, situations in which examination by a State doctor may be required, and recordkeeping requirements.

N.J.A.C. 4A:6-1.5, Vacation, administrative and sick leave adjustments: State service, another rule that is limited to State service, provides instances in which an employee's vacation, administrative, and sick leave entitlements must be adjusted due to an unpaid leave of absence, workweek changes, and other similar circumstances.

Sick leave injury benefits in State service are the subject of two rule sections, N.J.A.C. 4A:6-1.6, Sick Leave Injury (SLI) requirements: State service, and N.J.A.C. 4A:6-1.7, Sick Leave Injury (SLI) reporting and appeal procedures: State service. Pursuant to P.L. 2010, c. 3, the SLI program was discontinued upon the expiration of collective negotiations agreements that included the provision of SLI benefits. The last collective negotiations agreement including a provision regarding SLI benefits expired on July 1, 2012. Therefore, it is proposed that N.J.A.C. 4A:6-1.6 and 1.7 be repealed as there is now no statutory basis authorizing the SLI program.

Numerous other leaves, limited to State service, are provided for in succeeding rules: pregnancy-disability, and child care leaves, N.J.A.C. 4A:6-1.8; administrative leave, N.J.A.C. 4A:6-1.9; leave without pay, N.J.A.C. 4A:6-1.10; education leave, N.J.A.C. 4A:6-1.14; leave for athletic competition, N.J.A.C. 4A:6-1.15; leave for emergency civilian duty, which includes American Red Cross disaster relief services,

N.J.A.C. 4A:6-1.18; leave for jury duty, N.J.A.C. 4A:6-1.19; and leave to appear as a witness, N.J.A.C. 4A:6-1.20. Conversely, leave for elective office, N.J.A.C. 4A:6-1.17, is limited to local service, while military leave, N.J.A.C. 4A:6-1.11; leave for appointment by Governor, N.J.A.C. 4A:6-1.12; convention leave, N.J.A.C. 4A:6-1.13; and leave for union office, N.J.A.C. 4A:6-1.16; are available in both State and local service. Though limited to State service, the provisions of N.J.A.C. 4A:6-1.24, regarding school volunteer leave, permit local governments to establish their own school volunteer leave programs.

N.J.A.C. 4A:6-1.21, Family leave, sets forth provisions common to both the State and Federal family leave programs and provides useful examples regarding interaction between the two programs. N.J.A.C. 4A:6-1.21A is specific to State family leave, while N.J.A.C. 4A:6-1.21B addresses Federal family and medical leave. N.J.A.C. 4A:6-1 Appendix provides a chart that compares the major provisions of the two family leave programs.

The donated leave program, found at N.J.A.C. 4A:6-1.22, is available in State service (and in local governments that choose to participate as set forth in the rule), and provides for the donation of sick and vacation leave to an employee suffering from a catastrophic health condition or injury who has exhausted his or her paid leave benefits. N.J.A.C. 4A:6-1.22(b)1ii currently defines a “catastrophic health condition or injury” as either a life-threatening condition or “a period of disability required by his or her mental or physical health or the health of the employee's fetus which requires the care of a physician who provides a medical verification of the need for the employee's absence from work for 60 or more work days.” It is noted that the introductory

paragraph of subsection (d) was amended in 2010 to permit an employee to donate no more than 30 days to one recipient, instead of 10, and paragraph (d)1 was amended to state that that a leave recipient shall receive no more than 260 sick or vacation days, instead of 180. See 42 N.J.R. 12(a); 1166(a), effective June 21, 2010.

The voluntary furlough program, found at N.J.A.C. 4A:6-1.23, establishes a program in which employees in State service, and those working for participating local governments, may have the opportunity, under the parameters set forth in the rule, to take a voluntary furlough from employment. The program has been used over the years to assist public agencies in achieving fiscal savings and to provide employees with the opportunity to provide child care or seek further education. It is proposed that the reference to “these rules” in subsection (b) be amended to “this section” to eliminate any ambiguity.

Subchapter 2 concerns hours of work in State service. N.J.A.C. 4A:6-2.1, General provisions, provides in part that, in local service, appointing authorities may establish hours of work subject to applicable negotiations requirements. The criteria for determining workweeks are set forth in N.J.A.C. 4A:6-2.2 (for fixed workweek job titles), 2.2A (for law enforcement job titles), and 2.3 (for non-limited job titles). N.J.A.C. 4A:6-2.4 addresses holidays, while N.J.A.C. 4A:6-2.5 concerns inclement weather or emergency conditions. Finally, variations in usual work hours are addressed in N.J.A.C. 4A:6-2.6 (flexitime programs), 2.7 (alternative workweek programs), and 2.8 (adjusted hours of operation).

Subchapter 3 sets forth the eligibility requirements and procedures for obtaining Supplemental Compensation on Retirement (SCOR), a program in State service that

provides for the payment of compensation for half the value of a retiring employee's accumulated sick leave up to a maximum of \$15,000. Specifically, N.J.A.C. 4A:6-3.1 sets forth the eligibility criteria for SCOR, while N.J.A.C. 4A:6-3.2 addresses an employee's SCOR eligibility when he or she has had a break in service. N.J.A.C. 4A:6-3.3 includes the formula for computing the SCOR payment. N.J.A.C. 4A:6-3.4 delineates the SCOR application procedures. N.J.A.C. 4A:6-3.5 concerns the impact on SCOR of an intergovernmental transfer.

Subchapter 4 concerns human resource development programs. Specifically, N.J.A.C. 4A:6-4.1 includes general provisions regarding permissible human resource development programs in local service and the establishment of various employee development programs in State service by the Chairperson of the Civil Service Commission.

When N.J.A.C. 4A:6-4.2 was last readopted in 2008, the Human Resource Development Institute (HRDI) was organizationally part of the Department of Personnel. When P.L. 2008 c. 29 abolished the Department of Personnel and established the Civil Service Commission, responsibility for HRDI was transferred to the New Jersey Department of the Treasury. However, as part of the budget for the Fiscal Year 2013, responsibility for HRDI was transferred back to the Civil Service Commission and was renamed the Office of Training. Thus, amendments are proposed to N.J.A.C. 4A:6-4.2, 4.4, and 4.5 to reflect the change in terminology. Specifically, in N.J.A.C. 4A:6-4.2(a), a(1), (a)1i, (b), (b)1, (b)2, (d), (e), (f), (f)1, and (f)2 it is proposed that "Human Resource Development Institute," "HRDI," or the "Institute" be changed to the "Office of Training." In paragraph (b)1, "Institute director" is proposed to be

amended to the “designated Office of Training representative.” It is also proposed that paragraph (a)1i be amended to provide that the delivery of training and education programs be provided by the New Jersey Community College Consortium for Workforce and Economic Development instead of pre-approved vendors or consultants. This amendment reflects the current practice of the Office of Training. Furthermore, paragraph (a)4 is proposed for deletion, as this function is currently performed by the Department of Labor and Workforce Development.

N.J.A.C. 4A:6-4.3 sets forth provisions on training and education programs in State service.

N.J.A.C. 4A:6-4.4 provides for the Certified Public Manager (CPM) program in State service. It is proposed that the terminology in subsections in (a) and (b), which currently refer to the “Human Resource Development Institute” or the “Institute” be amended to “Office of Training.” It is also proposed that subsection (c) be deleted as the current Certified Public Manager program contract reflects a different payment arrangement.

N.J.A.C. 4A:6-4.5 involves career development programs in State service. It is proposed that the terminology in subsection in (a) and paragraph (a)1, which currently refer to the “Human Resource Development Institute” or the “Institute” be amended to “Office of Training.”

Other rules in Subchapter 4 include sections on tuition aid (N.J.A.C. 4A:6-4.6), employee interchange (N.J.A.C. 4A:6-4.8), internship programs (N.J.A.C. 4A:6-4.9), and the employee advisory service (EAS) (N.J.A.C. 4A:6-4.10). The latter provides for counseling, rehabilitative, and/or community services for employees who meet certain

criteria involving job performance or who have personal problems that affect job performance.

Subchapter 5 primarily concerns the Performance Assessment Review (PAR) program in State service. N.J.A.C. 4A:6-5.1, General provisions, provides for the establishment and approval of a performance evaluation system in local service. The rule also provides for the rating scales to be used in State service, as well as standardized rating cycles, and recordkeeping requirements. In 2014, technical language amendments were made to subsection (a). See 45 N.J.R. 525(a); 46 N.J.R. 497(a), effective March 17, 2014. Additionally, the introductory paragraphs to paragraph (b)2 and subsections (c) and (d) were rewritten and “Commendable” was changed to “Successful” in subparagraph (b)2ii. These amendments concern the implementation of a five-level PAR scale for non-represented State employees and represented State employees whose contracts do not require a three-level PAR rating scale.

N.J.A.C. 4A:6-5.2, PAR Procedure: State service, sets forth the procedures for completion of PARs and provides a mechanism for the filing of a complaint regarding an agency’s noncompliance with the PAR program. Subsection (a) requires an employee and his or her supervisor to jointly develop a job performance plan. Subsection (b) establishes a timeframe for the review of the job performance plan and requires the employee’s supervisor to designate an interim performance rating at the end of six months and a final rating at the end of the rating cycle. Paragraph (b)1 states that a performance plan should be closed out when a change in either the job assignment or supervisor during the evaluation period. Subsection (c) currently

requires that a performance conference be conducted after a rating below the Commendable level is received. It is proposed that “Commendable” be amended to “Successful” to reflect the 2104 amendments made to N.J.A.C. 4A:6-5.1, as outlined above. Subsection (e) provides for the supervisor’s own PAR as it relates to his or her subordinates’ PAR and the conditions in which the supervisor can receive a rating of Unsatisfactory.

N.J.A.C. 4A:6-5.3, PAR use and review: State service, provides for the consequences of specific ratings. The rule further provides for a grievance procedure regarding a PAR rating. N.J.A.C. 4A:6-5.3 was amended in 2014 to implement the five-level PAR scale for non-represented State employees and represented State employees whose contracts do not require a three-level PAR rating scale. See 45 N.J.R. 525(a); 46 N.J.R. 497(a), effective March 17, 2014.

Subchapter 6 concerns the awards program. N.J.A.C. 4A:6-6.1 provides that appointing authorities in local service may establish and administer their own awards programs. The rule also establishes the general provisions of the awards programs for State service. The remaining rules in Subchapter 6 concern awards in State service only. N.J.A.C. 4A:6-6.2 sets forth the New Jersey Employee Awards Committee for State service, while N.J.A.C. 4A:6-6.3 concerns the records of the Committee. N.J.A.C. 4A:6-6.4 sets forth the categories for Commendation awards. N.J.A.C. 4A:6-6.5 describes standards for the Suggestion Award Program, N.J.A.C. 4A:6-6.6 sets forth the procedures for the Suggestion Award Program, and N.J.A.C. 4A:6-6.7 concerns the types and amounts of awards for the Suggestion Award Program. N.J.A.C. 4A:6-6.8 describes the Service Recognition Program for employees in State service. N.J.A.C.

4A:6-6.9 encourages State departments to establish their own awards programs and N.J.A.C. 4A:6-6.10 concerns appeals.

Technical amendments are proposed pursuant to P.L. 2008, c. 29. Throughout the chapter, references to the “Department of Personnel” would be changed to the “Civil Service Commission,” “Chairperson or designee,” or “a representative of the Civil Service Commission,” as appropriate. Similarly, references to the “Commissioner of Personnel” or “Commissioner” would be changed to the “Chairperson” or “Chairperson or designee,” as appropriate. Finally, references to the “Chairperson of the Civil Service Commission or designee” would be changed to the “Chairperson or designee” and references to the “Merit System Board” would be changed to the “Civil Service Commission.”

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

Social Impact

In general, upon readoption, Subchapter 1 will continue to provide guidance to State and local appointing authorities and employees concerning leaves of absence. Subchapters 2 through 6 are primarily aimed at State service, and will continue to provide a clear regulatory framework in the areas of hours of work, the SCOR program, human resource development, employee performance evaluation, and awards programs.

More specifically, the proposed repeal of N.J.A.C. 4A:6-1.6 and 1.7 is not expected to have a social impact, as Sick Leave Injury is no longer in use. Additionally,

the Commission anticipates that the proposed readoption of N.J.A.C. 4A:6-1.11, regarding military leave would ensure that appointing authorities are aware that an employee's work hours may not be rescheduled, without his or her consent, due to a conflict with his or her required military duty. Consequently, such an employee's rights under Federal law would be protected.

The Commission anticipates that the readoption of N.J.A.C. 4A:6-1.18, Leave for emergency civilian duty: State service, will have a positive social impact. The rule authorizes leave for any State employee who meets the conditions described in the rule. For example, a State employee who is a certified disaster service volunteer of the American Red Cross is entitled to leave to participate in specialized disaster relief services when a disaster has been declared in New Jersey or in another state or territory. Therefore, the Commission anticipates a positive social impact for employees who wish to perform this necessary emergency work for the American Red Cross. Additionally, the American Red Cross and individuals and communities in need of disaster relief services both inside and outside New Jersey will benefit from this rule.

The Commission expects that the readoption of N.J.A.C. 4A:6-1.22 would have a positive social impact by continuing the donated leave program and thereby providing assistance to employees with catastrophic health conditions. Moreover, language in N.J.A.C. 4A:6-1.22 providing that an employee may be eligible for donated leave due to the donation of an organ should encourage organ donations. Availability of paid leave through participation in the donated leave program would be one less obstacle for an employee who might be interested in donating an organ or bone marrow. Thus, the readoption of this rule should have a positive impact on the public health.

Additionally, the Commission anticipates that the readoption of N.J.A.C. 4A:6-1.24 will continue to encourage the participation of State employees in New Jersey schools, by allowing them the opportunity to share their special skills and interests and helping them provide other, appropriate assistance to teachers and students. Thus, employees would have an excused absence with pay for this purpose and teachers and children would enjoy the benefit of these employees' knowledge and experience. Together, the employees and the schools could work to substantially improve New Jersey's educational system.

The readoption of N.J.A.C. 4A:6-2.2A will assist affected State appointing authorities, which would be able to use the flexibility allowed under Federal law in establishing work hours for law enforcement staff, and affected State employees would be adequately informed of their eligibility for the workweek and the manner in which overtime will be paid for their work hours.

No social impact is expected from the amendments to N.J.A.C. 4A:6-4.2, as the amendments are mostly technical in nature and do not affect the application of the rules. Additionally, no social impact is expected from the deletion of paragraph (a)4, as this function is currently performed by the Department of Labor and Workforce Development.

Economic Impact

The rules proposed for readoption with amendments reflect current practice and, with certain exceptions, are not anticipated to result in a significant economic impact on State and local appointing authorities and employees.

The Civil Service Commission anticipates a positive economic impact from the

readoption of N.J.A.C. 4A:6-1.2(f). The vacation leave entitlements of employees of civil service jurisdictions in the career, senior executive, or unclassified service whose jobs entail duties related to a state of emergency declared by the Governor, or, in the case of State employees, who are called to active duty for certain reasons, would be honored, based on the language of subsection (f). Thus, such employees would not lose vacation time and would later be able to take or be compensated for such leave. It is anticipated that the proposed repeal of N.J.A.C. 4A:6-1.6 and 1.7 would have no economic impact, as Sick Leave Injury is no longer used.

The Commission believes that the readoption of N.J.A.C. 4A:6-1.11 would have a positive economic impact on employees taking military leave. They would not be unilaterally required to essentially “make up” work time missed due to military leave, as the appointing authority would not be able to reschedule their work time without their consent. Therefore, such employees’ work hours would not be affected by their military duty unless they agreed to a rescheduling.

However, some appointing authorities could experience added costs as a result of the readoption of N.J.A.C. 4A:6-1.11. As this rule is consistent with Federal law, appointing authorities may not unilaterally require employees to make up time due to required military duty. Therefore, additional employees may need to be called upon to fill in for these employees, possibly necessitating more expenditures for overtime compensation.

With regard to the readoption of N.J.A.C. 4A:6-1.18, State employees who are certified disaster service volunteers of the American Red Cross will be entitled to paid leave of up to 10 working days in a calendar year, in addition to up to 10 unpaid

working days, to participate in specialized disaster relief services in accordance with specified conditions. Moreover, the American Red Cross and individuals and communities in need of disaster relief services both inside and outside New Jersey would economically benefit from the help that certain New Jersey State employees are able to provide.

Although State appointing authorities would be economically impacted by the absence of some State employees under readopted N.J.A.C. 4A:6-1.18, the Commission does not anticipate a substantial impact. Relatively few employees would be eligible for the type of leave authorized by this rule.

Some State and local employees would benefit economically from the FMLA leave rule at N.J.A.C. 4A:6-1.21B. Under this rule, those employees eligible for FMLA leave would enjoy certainty about when their paid leave must be designated as FMLA leave.

The Civil Service Commission anticipates that the rules proposed for readoption with amendments will have a positive economic impact. Determining an employee's eligibility for donated leave should continue to be much easier with the readoption of N.J.A.C. 4A:6-1.22. With readoption of this rule, financial hardship on the part of the employee due to a catastrophic health condition or injury should also continue to be dramatically lessened. Conversely, the rule should continue to not have an economic impact on appointing authorities, as they would not be providing additional paid leave to employees, but rather existing sick or vacation leave donated by other employees. It is further anticipated that employees who donate leave would be minimally economically impacted, as they would be giving up paid leave that they do not actually

need.

The readoption of N.J.A.C. 4A:6-1.24 should have an overall positive economic impact. State employees would be assured paid time off from work to volunteer at schools in accordance with the criteria set forth in the rule. They would not experience any financial hardship in doing so, and would, therefore, be more likely to volunteer their knowledge and skills to assist in school programs. This assistance would help schools that are otherwise financially strapped to provide a better education for their students. Although there would be some costs to State agencies and participating local governments in providing additional paid leave, these costs would be minimal based on the 20-hour annual limit for paid leave.

The readoption of N.J.A.C. 4A:6-2.2A should have a positive economic impact on affected State appointing authorities. These agencies would be able to control overtime accrual by balancing hours of work over the entire 28-day cycle.

No economic impact is expected from the amendments to N.J.A.C. 4A:6-4.2, as the amendments are mostly technical in nature and do not affect the application of the rules. Additionally, no economic impact is expected from the deletion of paragraph (a)4, as this function is currently performed by the Department of Labor and Workforce Development.

Federal Standards Statement

With the exception of N.J.A.C. 4A:6-1.4, Sick leave procedures: State service, 1.11, Military leave, and 1.21B, Federal family and medical leave, N.J.A.C. 4A:6-1 through 6 are not subject to any Federal requirements or standards. Although N.J.A.C. 4A:6-1.4 is subject to medical confidentiality requirements of the Americans

With Disabilities Act, 42 U.S.C. §§ 12101 et seq., this section does not exceed Federal requirements or standards.

With respect to N.J.A.C. 4A:6-1.11, a Federal standards analysis is not necessary, as the rule section meets, but does not exceed, Federal statutory provisions concerning rights of employees who are in the uniformed service. Specifically, the provisions in N.J.A.C. 4A:6-1.11 that now permit an appointing authority to reschedule an employee's work time to avoid conflict with required military duty would ensure that the employee's rights under Federal law are protected. See 38 U.S.C. § 4311. Additionally, requirements concerning Coast Guard reservists are consistent with 10 U.S.C. § 10101.

As for N.J.A.C. 4A:6-1.21B, which contains informational provisions on the FMLA, subsection (j) provides that, in State service, FMLA leave without pay shall not be deducted from seniority for layoff purposes. Although the Federal law (29 U.S.C. §§ 2601 et seq.) does not include such a guarantee for seniority, the Civil Service Commission adopted this provision in 1994 in accordance with its rulemaking powers and authority to regulate layoffs in civil service jurisdictions. See N.J.S.A. 11A:2-6.d and 11A:8-1.

Therefore, a Federal standards analysis is not necessary.

Jobs Impact

It is not anticipated that the rules proposed for readoption with amendments and repeals will have any jobs impact. No jobs will be created or lost due to the rules proposed for readoption with amendments and repeals.

Agriculture Industry Impact

It is not anticipated that the rules proposed for readoption with amendments and repeals would have any agriculture industry impact. The rules concern leaves, hours of work, and employee development in the public sector.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since the rules proposed for readoption with amendments and repeals will have no effect on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules will regulate employment in the public sector.

Housing Affordability Impact Analysis

Since the rules proposed for readoption with amendments concern leaves, hours of work, and employee development in civil service jurisdictions, they 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 rules proposed for readoption with amendments concern leaves, hours of work, and employee development in civil service jurisdictions, they would have no impact on smart growth development or new construction within Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 4A:6.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 4A:6-1.6 and 1.7.

Full text of the proposed amendments follows (additions indicated in boldface

thus; deletions indicated in brackets [thus]):

SUBCHAPTER 1. LEAVES OF ABSENCE

4A:6-1.1 General provisions

(a) In local service, appointing authorities shall establish types of leaves and procedures for leaves of absence.

1. (No change.)

2. An appointing authority may grant a permanent employee[s] a leave of absence without pay for a period not to exceed one year. A leave may be extended beyond one year for exceptional circumstances upon request of the appointing authority and written approval of the [Department of Personnel] **Chairperson or designee**.

3. – 4. (No change.)

(b) (No change.)

(c) Records of all employee leaves of absence and types of leave shall be maintained by State and local appointing authorities and reported to the [Department of Personnel] **Civil Service Commission** for the official State record in the prescribed manner and form.

(d) – (e) (No change.)

4A:6-1.2 Vacation leave

(a) - (f) (No change.)

(g) Appointing authorities may establish procedures for the scheduling of vacation

leave. Vacation leave not used in a calendar year because of business necessity shall be used during the next succeeding year only and shall be scheduled to avoid loss of leave, provided, however, that:

1. In State service, vacation leave not taken by an employee in the career, unclassified, or senior executive service in a given year because of duties directly related to a state of emergency declared by the Governor shall accumulate until, pursuant to a plan established by the employee's appointing authority and approved by the [Commissioner of Personnel] **Chairperson or designee**, the leave is used or the employee is compensated for that leave;

2. In State service, vacation leave not taken by an employee in the career, unclassified, or senior executive service who is called to active duty in response to the continuing global war on terrorism, armed conflict with Iraq, or other areas of heightened tension throughout the world, including the defense of the Homeland Security of the United States, shall accumulate until, pursuant to a plan established by the employee's appointing authority and approved by the [Commissioner of Personnel] **Chairperson or designee**, the leave is used or the employee is compensated for that leave; and

3. In local service, vacation leave not taken in a given year because of duties directly related to a state of emergency declared by the Governor may accumulate at the discretion of the appointing authority until, pursuant to a plan established by the employee's appointing authority and approved by the [Commissioner of Personnel] **Chairperson or designee**, the leave is used or the employee is compensated for that leave.

(h) – (k) (No change.)

4A:6-1.4 Sick leave procedures: State service

(a) – (h) (No change.)

(i) An appointing authority shall provide the [Department of Personnel] **Civil Service Commission** with a record of an employee's unused sick leave when the employee separates from State service. [The Department of Personnel] **A representative of the Civil Service Commission** shall provide an appointing authority with a record of an employee's unused sick leave if an employee is reemployed. Upon reemployment, an employee is entitled to utilize any unused sick leave from the previous period of employment. Such unused leave carried over shall be used before any leave accrued after reemployment. However, such unused leave carried over shall not be counted for purposes of Supplemental Compensation on Retirement. See N.J.A.C. 4A:6-3.2.

(j) (No change.)

4A:6-1.5 Vacation, administrative, and sick leave adjustments: State service

(a)– (g) (No change.)

4A:6-1.6 and 1.7 (Reserved)

4A:6-1.10 Leave without pay: State service

(a) In State service, an appointing authority may, with [Department of Personnel]

approval **from the Chairperson or designee**, grant leaves of absence without pay to permanent employees for a period not to exceed one year unless otherwise provided by statute. A leave may be extended beyond one year for exceptional situations upon request by the appointing authority and written approval by the [Department of Personnel] **Chairperson or designee**.

1. An appointing authority may, with [Department of Personnel] approval **from the Chairperson or designee**, grant leaves of absence without pay to nonpermanent career service State employees for exceptional situations. Such leaves shall not exceed six biweekly pay-periods, or the equivalent, and shall not continue beyond termination of the appointment. Such leaves may be extended up to an additional six months, upon request of the appointing authority and written approval by the [Department of Personnel] **Chairperson or designee**, in cases of personal illness or disability. Leave without pay for nonpermanent employees may be terminated at any time.

2. (No change.)

(b) - (c) (No change.)

(d) Appointing authorities shall set procedures subject to review by the [Department of Personnel] **Chairperson or designee** for leave without pay.

(e) (No change.)

4A:6-1.14 Education leave: State service

In State service, an appointing authority may, with [Department of Personnel] approval **from the Chairperson or designee**, grant an employee in

the career, senior executive, or unclassified service education leave with or without pay for the purpose of obtaining training that is of direct value to the State, but is not available through State inservice training programs. See N.J.A.C. 4A:6-4.6 for tuition aid programs.

4A:6-1.22 Donated leave program

(a) – (f) (No change.)

(g) In local service, an appointing authority may establish a donated leave program, which shall be consistent with the provisions of (a) through (f) above, with approval of the [Commissioner] **Chairperson or designee**.

1. The appointing authority shall submit to the [Commissioner] **Chairperson or designee** a donated leave program proposal no later than 30 days before the planned implementation of the program. The proposal shall include a summary of consultations with affected negotiations representatives concerning the program and name the donated leave program administrator for the appointing authority.

2. The appointing authority shall not implement a donated leave program unless the program has been approved by the [Commissioner] **Chairperson or designee**.

3. The appointing authority shall retain all records concerning implementation of an approved donated leave program subject to [Department of Personnel] **an audit by a representative of the Civil Service Commission**.

4. The appointing authority may suspend or terminate the donated leave

program at any time upon 30 days written notice of such suspension or termination to the [Commissioner] **Chairperson or designee**, all affected employees, and labor negotiations representatives.

4A:6-1.23 Voluntary furlough program

(a) (No change.)

(b) In local service, an appointing authority may establish a voluntary furlough program, which may differ in detail but which shall be consistent with the purpose of [these rules] **this section**, with approval of the [Commissioner] **Chairperson or designee**.

1. The appointing authority shall submit to the [Commissioner] **Chairperson or designee**, through the appropriate regional office, a voluntary furlough program proposal no later than 30 days before the planned implementation of the program. The proposal shall specify departments to be affected, employees or titles to be affected, include a summary of consultations with affected negotiations representatives concerning the program and name the voluntary furlough program administrator for the appointing authority.

2. The appointing authority shall not implement a voluntary furlough program unless the program has been approved by the [Commissioner] **Chairperson or designee**.

3. The appointing authority shall retain all records concerning implementation of an approved voluntary furlough program subject to [Department of Personnel] **an audit by a representative of the Civil Service Commission**.

4. (No change.)

(c) (No change.)

(d) An employee who wishes to extend a voluntary furlough beyond 30 days may request up to 60 days' furlough extension leave without pay. This furlough extension leave shall be taken in blocks of 10 work days, which need not be consecutive.

1. – 2. (No change.)

3. Requests for furlough extension leave are subject to the approval of the appointing authority and the [Department of Personnel] **Chairperson or designee.**

(e) – (k) (No change.)

SUBCHAPTER 2. HOURS OF WORK

4A:6-2.5 Inclement weather or emergency conditions: State service

(a) – (b) (No change.)

(c) Each State department and agency shall annually review its criteria for the designation of essential attendance employees and, based on these criteria, update its roster of such employees. Employees so designated shall be notified no later than October 31 of each year of this designation and shall at that time be provided with a copy of the department or agency's Essential Employee Attendance Plan. The Plan shall include the responsibilities, requirements, and expectations of such employees in the event that a period of inclement weather or other adverse situation requires the curtailment of State operations or services.

1. Each State department and agency shall provide the [Department of Personnel] **Civil Service Commission** and affected union representatives with its updated roster of essential attendance employees no later than November 15 of each year. The [Department of Personnel] **Civil Service Commission** shall make this information available to the Office of Emergency Management.

(d) (No change.)

4A:6-2.6 Flexitime programs: State service

(a) – (b) (No change.)

(c) [Department of Personnel] **Civil Service Commission** assigned workweeks for affected titles, for example, 35 or 40 hours, shall be retained.

(d) Establishment, modification, or termination of a flexitime program shall not become effective without the approval of the [Commissioner] **Chairperson or designee**. Requests for these actions shall be submitted at least 30 days in advance of the proposed effective date to the [Department of Personnel] **Civil Service Commission** and shall include:

1. – 9. (No change.)

(e) An appointing authority may authorize a complete or partial temporary suspension of the flexitime program if required by operational needs. Within 10 days of the suspension of the program, the appointing authority shall submit to the [Commissioner] **Chairperson or designee** a fully detailed justification and specify the duration of the suspension.

(f) – (h) (No change.)

4A:6-2.7 Alternative workweek programs: State service

(a) - (c) (No change.)

(d) [Department of Personnel] **Civil Service Commission** assigned workweeks for affected titles, for example, 35 or 40 hours, shall be retained.

(e) Appointing authorities shall develop, subject to [Department of Personnel] approval **by the Chairperson or designee**, appropriate sick, vacation, and administrative leave schedules for employees participating in an alternative workweek program.

(f) (No change.)

(g) Establishment, modification, or termination of an alternative workweek program shall not become effective without the approval of the [Commissioner] **Chairperson or designee**. Requests for these actions must be submitted at least 30 days in advance of the proposed effective date to the [Department of Personnel] **Civil Service Commission** and shall include the same items listed in N.J.A.C. 4A:6-2.6(d).

(h) An appointing authority may authorize a complete or partial temporary suspension of the alternative workweek program if required by operational needs. Within 10 days of the suspension of the program, the appointing authority shall submit to the [Commissioner] **Chairperson or designee** a fully detailed justification and specify the duration of the suspension.

(i) – (k) (No change.)

4A:6-2.8 Adjusted hours of operation: State service

(a) (No change.)

(b) [Department of Personnel] **Civil Service Commission** assigned workweeks, for affected titles, for example, 35 or 40 hours, shall be retained.

(c) Except for emergency situations of limited duration, adjustments in hours of daily or shift operation shall not become effective without the approval of the [Commissioner] **Chairperson or designee**. Requests for these actions should be submitted at least 30 days in advance of the proposed effective date to the [Department of Personnel] **Civil Service Commission** and shall include:

1. – 6. (No change.)

(d) (No change.)

SUBCHAPTER 3. SUPPLEMENTAL COMPENSATION ON RETIREMENT

4A:6-3.1 Eligibility: State service

(a) (No change.)

(b) Employees in the categories in (a) above shall be eligible for SCOR upon separation from employment based on retirement from a pension system administered by the State of New Jersey.

1. Employees removed for cause after an opportunity for a hearing, who retire in lieu of removal, or who retire under circumstances which would warrant removal, shall not be eligible for SCOR. However, the [Commissioner] **Chairperson or designee** may allow SCOR in such cases where removal was based on a medical disability or where the Commission finds sufficient mitigating circumstances to

warrant supplemental compensation.

2. – 5. (No change.)

4A:6-3.4 SCOR procedures: State service

(a) – (b) (No change.)

(c) After receipt of the notice of retirement approval and SCOR application, the appointing authority shall forward to the [Department of Personnel] **Civil Service Commission** within 45 days:

1. – 3. (No change.)

(d) The [Department of Personnel] **Chairperson or designee** shall review the request to ensure that eligibility criteria as set forth in N.J.A.C. 4A:6-3.1 have been met.

1. (No change.)

2. If eligibility criteria have not been met, the request shall be disapproved and the employee shall be provided written notice of the reasons for disapproval and the right to appeal to the [Commissioner] **Civil Service Commission**.

(e) – (g) (No change.)

4A:6-3.5 SCOR: Intergovernmental transfers

(a) – (b) (No change.)

(c) The sending jurisdiction shall not pay SCOR to any law enforcement officer, including a sheriff's officer and a county correction officer, approved for an intergovernmental transfer, and shall certify to the receiving jurisdiction and the

[Department of Personnel] **Civil Service Commission** that no SCOR was paid.

SUBCHAPTER 4. HUMAN RESOURCE DEVELOPMENT: TRAINING,
EDUCATION, CAREER DEVELOPMENT, AND EMPLOYEE ASSISTANCE
PROGRAMS

4A:6-4.1 General provisions

(a) In local service, appointing authorities may implement Human Resource Development (HRD) programs and may, subject to the terms and approval of the [Commissioner] **Chairperson or designee**, participate in programs set forth in this subchapter.

(b) In State Service, the [Commissioner] **Chairperson or designee** shall establish training and education, performance evaluation, and assistance programs for employees. The [Commissioner] **Chairperson or designee** shall also review and approve career development programs for employees. These responsibilities may be delegated to agencies other than the [Department of Personnel] **Civil Service Commission** only by written order of the [Commissioner] **Chairperson or designee**.

4A:6-4.2 [Department of Personnel] **Civil Service Commission** functions: State service

(a) The [Commissioner] **Chairperson or designee** shall administer [a Human Resource Development Institute (HRDI or the Institute)] **an Office of Training**, which is responsible for the following functions:

1. Planning, development, and delivery of all training and education programs for State employees, except for programs exempted by Executive Order No. [12(1990)] **12 (1990)** or by the [Commissioner of Personnel] **Chairperson** through a written delegation order. The [Institute] **Office of Training** shall also be responsible for the planning, development, and delivery of all evaluation (see, for example, N.J.A.C. 4A:6-4.5) and assistance programs (see, for example, N.J.A.C. 4A:6-4.3 and 4.6) for State employees.

i. Delivery of training and education programs, evaluation programs, and assistance programs shall be provided by [pre-approved vendors or consultants] **the New Jersey Community College Consortium for Workforce and Economic Development**. If [no pre-approved vendor or consultant] **the New Jersey Community College Consortium for Workforce and Economic Development** is available to deliver a specific program, the [Institute] **Office of Training** shall negotiate the most cost-effective contract with an outside vendor or consultant to deliver the program. Under limited circumstances, [Institute] **Office of Training** staff shall deliver training.

2. – 3. (No change.)

[4. Coordination of State service programs for employees seeking agency, career, or location changes and for employees affected by job displacement.]

(b) In cooperation with State agencies, the [Human Resource Development Institute] **Office of Training** shall assess State government Human Resource Development (HRD) needs and develop training and education plans and programs for each agency and for the State government as a whole. The [Institute] **Office of**

Training shall deliver or, consistent with (a)1i above, arrange the delivery of these programs, as appropriate.

1. Neither agency employees nor outside vendors or consultants may develop or deliver training and education programs that the [Institute] **Office of Training** is capable of developing or delivering, as provided in (a)1i above, without the prior written approval of the [Institute director] **designated Office of Training representative**. If the [Institute] **Office of Training** is not capable of developing or delivering, as provided in (a)1i above, a program of instruction that an agency needs, the [Institute] **Office of Training** director may authorize the agency to assign employees temporarily to develop or deliver the program, or to hire a pre-approved vendor or consultant for the same purpose. The [Institute] **Office of Training** staff shall supervise and direct the delivery of any such program.

2. No State agency except the [Institute] **Office of Training** may employ or retain any person whose primary duty is staff training or human resource development, except as specifically permitted by Executive Order No. [12(1990)] **12 (1990)** or by the [Commissioner of Personnel] **Chairperson or designee** through a written delegation order.

(c) (No change.)

(d) The [Institute] **Office of Training** shall evaluate the results and effects of all State government HRD programs based on the following criteria:

1. – 4. (No change.)

(e) The [Institute] **Office of Training** shall maintain a comprehensive system to record the training and education experiences of its clients, including all State

government employees.

(f) Each State agency may designate a customer liaison to the [Institute] **Office of Training**, whose responsibilities, which shall be in addition to his or her other job assignments in the agency, shall be the following:

1. Review and approve the designation of members of the agency to participate in HRD programs, subject to eligibility criteria established by the [Institute] **Office of Training**.

2. Assist the [Institute] **Office of Training** in setting HRD priorities related to the agency's mission and goals.

4A:6-4.4 Certified Public Manager Program: State service

(a) The [Human Resource Development Institute] **Office of Training** shall develop and administer the Certified Public Manager Program (CPM) for supervisors and managers. The program shall meet criteria established by the National Certified Public Managers Consortium. The [Commissioner of Personnel] **Chairperson or designee** shall be Chief Administrative Officer of the program. The Director of the [HRDI] **Office of Training** shall be the Program Director.

(b) The Program shall consist of progressive levels of instruction delivered jointly by the [Institute] **Office of Training** and an institution of higher education selected by the [Department of Personnel] **Civil Service Commission**.

(c) For that part of the program for managerial training, the employee shall be responsible for 25 percent of the cost and the department or agency for 75 percent of the cost, provided however that the HRDI Director may set a different cost

allocation depending upon the fiscal condition of the department or agency. If a different cost allocation is set, HRDI shall notify affected departments or agencies prior to soliciting nominations for employee participants.]

4A:6-4.5 Career Development Programs: State service

(a) Departments or agencies may, with the written approval of the [HRDI] **Office of Training** Director and consistent with their goals, workforce planning, and technological changes, implement programs that prepare employees to move to new assignments or career opportunities.

1. A department or agency shall seek written approval from the [Institute] **Office of Training** Director for a program referred to in (a) above by submitting a written plan. This plan shall include the program's goals, objectives, target population, projected outcome, and evaluation criteria for the program's success.

(b) (No change.)

4A:6-4.6 Tuition aid program: State service

(a) (No change.)

(b) The tuition aid program may be submitted for approval as part of the HRD plan (See N.J.A.C. 4A:6-4.3) or as a separate plan for approval by the [Department of Personnel] **Chairperson or designee** and shall include:

1. – 5. (No change.)

(c) – (f) (No change.)

(g) Each State department or agency shall also submit semi-annual reports to the

[Department of Personnel] **Civil Service Commission** in such form and detail and according to such time schedule as the Department shall prescribe and include:

1. – 4. (No change.)
5. Other information as may be requested by the [Commissioner]

Chairperson or designee.

4A:6-4.8 Employee interchange program

(a) The [Commissioner] **Chairperson or designee** may approve an Employee Interchange Program that is intended to improve the management of government through shared experience, communication, and learning among public, private, and academic organizations. See N.J.S.A. 52:14-6.10 et seq., and [N.J.S.A.] 11A:2-[11j]11.j.

(b) (No change.)

(c) An interchange program shall provide that:

1. The length of any interchange shall not be more than 12 months or less than two months. The [Commissioner] **Chairperson or designee** may approve an assignment of less than two months in emergency situations. The [Commissioner] **Chairperson or designee** may extend an interchange for up to an additional six months to complete work in progress.

2. – 4. (No change.)

(d) An employee may not be assigned to an interchange program for more than 12 months in any 36-month period, unless the length of the interchange is extended by the [Commissioner] **Chairperson or designee** pursuant to (c)1 above.

(e) An employee interchange may be terminated by either the receiving or sending agency by giving 30 days written notice to the other agency, the employee, and the [Department of Personnel] **Civil Service Commission**.

(f) (No change.)

4A:6-4.9 Internship programs: State service

(a) (No change.)

(b) A proposed internship program must be submitted in writing to the [Commissioner] **Chairperson or designee** by the agency head and include a detailed description of the program, its benefits, program participants, program costs, and relevant data. The [Commissioner] **Chairperson or designee** may request additional information and may approve, disapprove, or modify the request.

4A:6-4.10 Employee Advisory Service: State service

(a) The [Department of Personnel] **Civil Service Commission** shall establish an Employee Advisory Service (EAS) to assist State employees in achieving and maintaining the highest level of job performance of which they are capable. EAS shall provide access to counseling, rehabilitative, and/or community services for a State employee who:

1. – 4. (No change.)

(b) – (g) (No change.)

SUBCHAPTER 5. PERFORMANCE EVALUATION

4A:6-5.1 General provisions

(a) In local service, an appointing authority may establish an employee performance evaluation program. A performance evaluation system must be reviewed and approved by the Chairperson [of the Civil Service Commission] or designee in order to be used in promotions or layoff.

(b) In State service, a Performance Assessment Review (PAR) program shall apply to all employees in the career service, and those in unclassified titles as designated by particular departments or agencies.

1. (No change.)

2. The PAR program shall use standardized forms and rating scales for different performance appraisal models to be designated by the Chairperson [of the Civil Service Commission] or designee and, except as provided in (d) below, a three-level rating scale to include the following ratings:

i. – iii. (No change.)

3. (No change.)

(c) (No change.)

(d) The Chairperson [of the Civil Service Commission] or designee may modify the PAR program based on specific employee or agency needs and implement for State appointing authorities, unless precluded by a collective negotiations agreement, a five-level rating scale to include the following ratings:

1. – 5. (No change.)

4A:6-5.2 PAR procedure: State service

(a) – (b) (No change.)

(c) When a rating below the [Commendable] **Successful** level is received, a performance conference shall be conducted after three months or such shorter period of time as determined by the supervisor.

(d) – (e) (No change.)

(f) [The Department of Personnel] **A representative of the Civil Service Commission** may require additional reports, information, or audits of an agency's PAR program.

(g) A complaint that an entire agency or unit is in violation of this subchapter shall be presented to the PAR coordinator within the personnel office for the subject department. The PAR coordinator shall, within 30 days, investigate the complaint, respond in writing to the individual(s) presenting the complaint, and implement remedial action as appropriate. If the individual(s) is (are) dissatisfied with the response of the PAR coordinator, or if no action has been taken within 30 days of the complaint, the individual(s) may appeal the matter to the PAR Program Coordinator, [Department of Personnel] **Civil Service Commission**.

(h) (No change.)

4A:6-5.3 PAR use and review: State service

(a) In both a three-level and a five-level **Performance Assessment Review (PAR)** rating scale, an employee receiving an annual PAR rating below the Successful level shall be denied an anniversary date increment.

1. An appointing authority may request an anniversary date increment for an

employee who was denied an increment because of receiving an Unsatisfactory rating in a three-level or a five-level rating scale, but whose performance has subsequently improved. If approved by the Chairperson [of the Civil Service Commission] or designee, such increment shall not be effective until a pay period beginning at least 90 days after the employee's anniversary date. In the case of a five-level rating scale, if an employee who had received a rating of Two - Needs Improvement/Development demonstrates an improved performance within 90 days following the rating, the increment shall be restored to the employee retroactively.

2. (No change.)

(b) – (g) (No change.)

SUBCHAPTER 6. AWARDS PROGRAM

4A:6-6.1 General provisions

(a) – (b) (No change.)

(c) The awards program applies to all employees in the executive branch of State government, whether in the career, senior executive, or unclassified service, including autonomous agencies within executive departments; applicable employees in the Judiciary; and all employees in the Office of Legislative Services.

4A:6-6.2 New Jersey Employee Awards Committee: State service

(a) The New Jersey Employee Awards Committee (Committee) shall be established in the [Department of Personnel] **Civil Service Commission** under the supervision of the [Commissioner] **Chairperson or designee**. The Committee

shall consist of seven persons, each of whom shall be employed in a different department in the Executive Branch.

1. Committee members shall be appointed by the Governor upon nomination by the [Commissioner] **Chairperson or designee**, for staggered terms of three years or until a successor is appointed. If a vacancy on the Committee occurs by reason other than expiration of term, the vacancy shall be filled for the unexpired term. No member shall serve more than two consecutive full terms.

2. – 3. (No change.)

4. The Secretary shall submit monthly reports to the [Commissioner] **Chairperson or designee** concerning operations of the Awards Program, which shall include data on activity level, processing time, and program benefits to the State. This data will also be furnished to each agency's chief executive officer. The Secretary shall submit an annual report of the Committee's activities to the Governor through the [Commissioner] **Chairperson or designee**.

5. The administrative work of the Committee shall be performed by the Secretary and other necessary staff designated by the [Commissioner] **Chairperson or designee**.

(b) (No change.)

4A:6-6.10 Appeals: State service

(a) – (c) (No change.)

(d) The Committee shall render the final administrative decision, which shall not be subject to further appeal to the [Commissioner] **Chairperson or designee** or the

[Merit System Board] **Civil Service Commission.**

(e) (No change.)