

## ARTICLE 17

### LEAVES OF ABSENCE

#### Section A.

Employees shall have the right to request a leave of absence without pay in accordance with the provisions of this Article after the successful completion of their probationary period or as otherwise provided in this Article.

#### Section B. Request Procedure.

Any request for a leave of absence without pay shall be submitted in writing by the employee to the employee's Agency Human Resource Officer at least fourteen (14) calendar days in advance of the proposed commencement date for the leave, except under emergency (which may include medical reasons) circumstances. The request shall state the reason for and the length of the leave of absence being requested.

The Agency Human Resource Officer shall consult with the Appointing Authority and furnish a written response.

Requests for leaves of absence shall be answered within fourteen (14) calendar days following receipt of all pertinent information or requested documentation.

#### Section C. Approval.

Except as otherwise provided in this Agreement, employees may be granted a leave of absence without pay for a period up to six (6) months. The Appointing Authority shall consider its operational needs, the employee's length of service, performance record and leave of absence history in reviewing requests for a leave of absence. Appointing Authority determinations under this Section shall not be arbitrary, discriminatory or capricious. Only under bona fide mitigating circumstances may a leave of absence be extended beyond six (6) months.

Except as otherwise provided in this Agreement, an employee may elect to carry a balance of annual leave not to exceed one hundred sixty (160) hours during a leave of absence. Such leave balances shall be made available to the employee upon return from a leave of absence but may be utilized only with prior approval of the Appointing Authority.

Payment for annual leave due an employee who fails to return from a leave of absence shall be at the employee's last rate of pay.

#### **1. Educational Leaves of Absence.**

The Employer may approve an individual employee's written request for a full-time educational leave of absence without pay for an initial period of time up to two years. An employee denied a medical leave of absence, or extension, shall have an educational leave approved, provided they meet the requirements of this Section. To qualify for such an educational leave, the employee must be admitted as a full-time student as determined by the established requirements of the educational institution relating to full-time status. Before the leave of absence can become effective, a curriculum plan and proof of enrollment must be submitted by the employee to his/her Appointing Authority. At the request of the Employer, the employee shall provide evidence of continuous successful full-time enrollment in such curriculum plan in order to remain on or renew such leave. Such education shall be directly related to an employable classification in the employee's Department. Such employee may return early from such a leave upon approval by the Employer. The Employer shall approve or deny the request for leave of absence without undue delay. Any denial shall include a written explanation of the denial, if requested by the employee.

Employees may also request approval for an education leave for education which is not directly related to an employable classification in the employee's Department.

Employees granted a leave of absence under this provision shall not have return rights upon expiration of the leave and shall be so advised before going on the leave, however, upon written request, they shall be entitled to have their name placed on the Departmental recall list in accordance with Article 13 provided such request is made within two (2) years of the commencement of the leave. Employees recalled under this provision shall not have such time treated as a break in service.

a. New Careers Educational Leave

Employees at downsizing agencies shall be entitled to up to a two (2) year educational leave of absence which may or may not be directly related to an employable classification in the employee's Department. Employees granted a leave of absence under this provision shall not have return rights upon expiration of the leave and shall be so advised before going on the leave. However, upon written request, they shall be entitled to have their name placed on the Department and Statewide recall lists in accordance with Article 13 provided such request is made within two (2) years of the commencement of the leave. Employees recalled under this provision shall not have such time treated as a break in service.

Employees who complete a course of study which may make them eligible for employment in a different field of employment shall be given assistance by the Employer in getting their names on Civil Service registers for classifications for which they are eligible.

## **2. Medical Leaves of Absence.**

Upon depletion of accrued sick leave credits, an employee upon request shall be granted a leave of absence for personal illness, injury or temporary disability necessitating his/her absence from work if that employee is in satisfactory employment status. This guarantee shall only apply when the employee has had less than six (6) months medical leave of absence within the preceding five (5) years. Time off on medical leave of absence due to pregnancy shall not be counted against the six (6) month guarantee. An employee whose leaves including any extensions totals less than six (6) months during the five (5) year period shall be granted a subsequent leave(s) up to a cumulative total of six (6) months within such five (5) year period. Employees with twenty years or more of continuous service shall be granted up to an additional six months of medical leave of absence beyond the guarantee as referenced above. In all other cases an employee may be granted such leave for the above reasons. Such leave may be granted for a period of up to six (6) months upon providing required medical information. The employee's request shall include a written statement from the employee's physician indicating the medical condition and prognosis necessitating the employee's absence from work and the expected return to work date. The Employer shall not count paid leave time toward any medical leave of absence entitlement.

In addition to the operational needs of the Employer and the employee's work record, the Appointing Authority in considering requests for extension will consider verifiable medical information that the employee will be able to return at the end of the extension period with the ability to return to normal duties (any limitation and duration and date of such return).

Prior to returning to work from a medical leave of absence, the employee will be required to present medical certification of his/her fitness to resume performing normal duties (any limitations and duration and date of such return).

The Employer reserves the right to have the employee examined by a physician selected and paid by the Employer for the employee's initial request, extension and/or return to work. Employees who object to examination by a state employed doctor may be examined by a mutually

approved doctor. In the absence of mutual agreement, the parties will select a physician from recommendations from a county or local medical society, by alternate striking if necessary.

Such records are, by their very nature, confidential and such confidentiality must be preserved and protected. Where the employee claims that such verification might compromise the confidential nature of the illness or disability, the employee may submit such verification directly to the Appointing Authority.

Employees who, after providing the information as required by this Article, are subsequently denied a medical leave of absence, shall upon providing medical certification of the employee's ability to return to perform the essential functions of the job, be entitled upon request to have their name placed on all applicable recall lists, provided that such medical certification is presented within two (2) years of the date of the denial. Such employees shall be considered as laid off with recall rights as described in this Section. Employees recalled under this provision shall not have such time treated as a break in service.

### **3. Military Leave.**

Whenever an employee enters into the active military service of the United States, the employee shall be granted a military leave as provided under Civil Service Commission Rules and the applicable federal statutes. If Civil Service Rules or Regulations are revised, the parties shall meet to discuss their application to bargaining unit members.

#### **a. Temporary Military Leave of Absence.**

Any employee occupying a classified position by appointment of unlimited duration and who is a member of a reserve component of the armed forces of the United States shall be entitled to a temporary military leave of absence when ordered, whether voluntarily or involuntarily, to active duty training or inactive duty training. A temporary military leave of absence for active duty training shall be with pay equivalent to the difference between the employee's military pay and the regular state salary for each day of absence from scheduled state employment, if the military pay is less for those same days. Such leave shall not exceed fifteen calendar days of absence from scheduled employment in any calendar year. Continuous state service shall be allowed for the period of temporary military leave of absence. An employee in full pay status shall be entitled to holiday pay for a designated holiday which occurs or is observed during the period of

temporary military leave of absence. Military pay earned on a holiday shall not be considered in determining the amount of state salary for the holiday.

**b. Emergency Military Leave of Absence.**

Any employee occupying a classified position by appointment of unlimited duration and who is a member of a reserve component of the armed forces and is ordered to perform state emergency duty, by compulsory call of the Governor or the President, shall be granted a military leave as provided under Civil Service Commission Rules and the applicable federal statutes. If Civil Service Commission Rules or regulations are revised, the parties shall meet to discuss their application to bargaining unit members.

**4. Parental Leave.**

Upon written request an employee shall, after the birth of his/her child, or adoption of a child, be granted a parental leave for up to six (6) months. Parental leave shall commence immediately following the mother's medical leave or upon adoption of a child. Parental leave for males shall commence no later than six weeks following delivery, or upon adoption of a child. In those instances where both spouses are covered by this provision, such leaves may be taken either concurrently or consecutively. The Employer may grant an extension of such leave upon the request of the employee, based on operational needs of the Employer. The Employer shall consider requests for annual leave immediately prior or subsequent to maternity/paternity leaves in the same manner as requests for annual leave at other times. Parental leaves shall not count toward the six (6) month medical leave under Section C.2 above.

**5. Family and Medical Leave Act.**

Under the provisions of the Federal Family and Medical Leave Act (FMLA), upon request, an employee who has worked for the state for at least twelve months and 1,250 hours during the twelve month period, is entitled to a combined total of twelve work weeks of paid or unpaid leave in a twelve month period for all qualifying leave types. The twelve month period during which an employee's twelve week entitlement occurs will be as provided in the Compensation Standards and Procedures approved by the Civil Service Commission.

- a. Leave entitlement under the provisions of the FMLA shall be granted to eligible employees for:

- Care for a newborn or recently adopted child.
- Care for a foster child placed with the employee.
- To care for a spouse, parent or child with a serious health condition.
- To take time off work because of the employee's own serious health condition.

It is understood that when an employee uses his/her entitlement to FMLA leave, the amount of time used under the FMLA shall count towards the employee's guarantee of the like type of contractual leave of absence as indicated below:

FMLA Leave Types: Contractual Leave Types:

Birth or adoption . . . . . Parental Leave

Foster Care Placement . . . None

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Medical Leave for Self . . . . Up to three months of Medical Leave of Absence in a five year period

When both spouses work for the state, they are limited to a combined total of twelve work weeks of FMLA leave in the case of a birth, adoption or foster care placement of a child.

b. Use of Leave Credits/Employee Initiated:

Employees entitled to leave under the FMLA may use accumulated annual or personal leave for any FMLA leave type. Accumulated sick leave credits must be depleted prior to going on an unpaid medical leave. Sick leave credits may be used for a family medical leave, but sick leave credits may not be used for a parental leave. The use of such time, and the order in which it is used, must be indicated by the employee, in writing, at the time the request is made. Employees are not required to request that leave credits be used, however, the use of leave credits may be required by the Employer in accordance with this Section. Employees on FMLA reduced work schedule or intermittent FMLA leave shall also have the option to use leave credits for the employee's FMLA time as provided in this Section. At the onset of an unpaid FMLA leave, employees may elect to be paid off on all or part of unused annual leave balance.

c. Use of Leave Credits/Employer Initiated:

If leave usage qualifies under the FMLA, the employer will have the option to utilize the employees leave credits as follows:

Family Medical Leave - Sick leave to no less than eighty (80) hours balance.

d. Reduced or Intermittent Schedule.

Employees who are on a reduced FMLA work schedule or FMLA intermittent work schedule shall have such time deducted from their twelve week entitlement in a twelve month period on a per hour basis except for part time and permanent-intermittent employees, whose time shall be pro-rated. Reduced or intermittent schedules may be taken for FMLA parental leave only with the approval of the Employer. The Employer may temporarily reassign (not to exceed the twelve week entitlement) an employee requesting an FMLA intermittent or FMLA reduced work schedule by placing the employee in a vacant bargaining unit position. It is understood and agreed that the placement of employees in such positions shall not cause the displacement or replacement of Bargaining Unit members. When employees are temporarily reassigned in accordance with this Section, the Local Union will be notified, in writing, by the Agency Human Resource Director prior to the assignment being made. Such notice shall contain the name of the employee and the position to which the employee is being temporarily assigned, as well as the employee's work schedule and shift hours.

e. Insurances.

While an employee is on an unpaid FMLA leave, the Employer shall pay the Employer's share of current medical insurance (excluding vision and dental). The employee is responsible for his/her share. If the employee does not return to work at the end of the unpaid FMLA leave, the Employer may recoup the Employer's share of insurance premiums paid during the unpaid FMLA leave, unless the reason the employee did not return was a continuation or recurrence of the same health related condition or circumstances beyond the control of the employee.

f. Return from FMLA Medical Leave.

Prior to returning to work from a FMLA medical leave of absence, the employee may be required to present a fitness for duty medical certification.

**Section D. Waived Rights Leave of Absence.**

The Employer may grant a waived rights leave of absence to an employee in those situations when an employee must leave his/her position for reasons

beyond his/her control and for which a regular leave of absence is not granted. Employees do not have the right to return to state service at the end of a waived rights leave of absence but will have the continuous nature of their service protected, provided they return to work prior to the expiration of such leave. All requests for a waived rights leave of absence must be made to the employee's Appointing Authority in writing specifying the reason for the request. An employee granted a waived rights leave of absence may not carry any annual leave balance during such leave. An employee shall receive a written explanation concerning the conditions of a waived rights leave of absence.

Employees who wish to take an educational leave of absence when such education is not directly related to an employable classification in the employee's Department may request a waived rights leave of absence for this purpose. Consistent with operational needs, such leave shall be granted for not more than three (3) years. Employees who complete a course of study which may make them eligible for employment in a different field of employment shall be given assistance by the Employer in getting their names on Civil Service registers for classifications for which they are eligible.

#### **Section E. Jury and Witness Duty.**

Employees engaged in jury duty, including the jury selection process, shall be released from scheduled work assignment for such duty.

Employees so released may elect one of the following arrangements:

1. Leave of absence without pay, with employee retaining jury fees; or
2. Annual leave, with employee retaining jury fees; or
3. Administrative leave with pay, with all jury fees received (excluding travel and meal allowances) being remitted to the Agency.

An employee shall, upon being notified of jury duty, give notice to his/her Agency personnel office. During jury duty, the employee's schedule shall be changed to the day shift, Monday through Friday, except in the Department of Education, the employee shall have the option of working their regularly scheduled shift. This scheduling change shall be exempt from the provisions of Article 15. In those cases where an employee receives administrative leave, such leave shall not include shift differential.

Employees subpoenaed to appear as witnesses in court shall be released for such appearance. Employees required to appear in court as witnesses to give testimony arising out of their duties as state employees shall be released for

such appearance on administrative leave. Afternoon or night shift employees shall be permitted an equivalent amount of time off from scheduled work on their preceding or succeeding shift for such appearance. Employees shall remit to the Agency all witness fees received (excluding travel and meal allowances). An employee shall, upon being notified of witness duty, give notice to his/her Agency personnel office.

#### **Section F. Return From Leave of Absence.**

An employee returning from an approved leave of absence of ninety (90) calendar days or less will be restored to his/her previous permanent assignment. An employee returning from an approved leave of absence of more than ninety (90) calendar days may be temporarily assigned until a permanent assignment is made in accordance with Article 14, Assignment and Transfer. In accordance with the provisions of this Agreement, the Employer shall make a good faith effort to place the employee back in their assignment and position they held prior to their leave of absence. Employees who request an earlier return to work prior to the expiration of an approved leave of absence may return only with the approval of the Appointing Authority and will be temporarily assigned until a permanent assignment is made in accordance with Article 14, Assignment and Transfer.

#### **Section G. Layoff.**

Employees on a leave of absence who would be laid off if they were in active employment status shall not be exempt from lay off by virtue of being on a leave of absence.

#### **Section H. Voluntary Personal Leave.**

In recognition of the unusual circumstances existing in this Bargaining Unit, employees shall be entitled to one voluntary personal leave of absence for a period of six (6) months under the following conditions: (1) if there is an Agency, Department or Statewide temporary recall list for such employee's class and level and (2) if an employee on such recall list is willing to accept the six (6) month appointment.

Employees who are recalled to such six (6) month appointment shall not be entitled to exercise any rights under the Assignment and Transfer Article for such period of time. Such six (6) month appointment shall be considered a limited term appointment. The acceptance or rejection of such six (6) month appointment shall not affect the employee's rights to permanent recall. Upon mutual agreement only, the employee who has taken a voluntary personal leave of absence may return prior to the expiration of such leave.

**Section I. Seniority Accumulations During Leaves of Absence.**

An employee shall continue to accumulate Bargaining Unit seniority not to exceed six (6) years at his/her class/level during the following type of leaves:

1. medical;
2. military;
3. parental;
4. FMLA unpaid leave of absence not covered in 1 through 3 above.