

DEPARTMENT OF ADMINISTRATIVE & FINANCIAL SERVICES
Bureau of Human Resources

June 19, 2009

HUMAN RESOURCES MEMORANDUM 11-09

TO: All Agency Heads, Agency Human Resource/EEO Representatives

SUBJECT: State Government Closure Days - Administration & Process

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Public Law 2009, Chapter 213, Part SSS requires that all executive branch state departments, agencies, and offices be closed for 20 days over the next two fiscal years. Human Resources Memorandum 06-09 identified those dates, designated as State Government closure days. These closure days (also known as "shut down days") are considered temporary layoff days and should be coded as such when completing time sheets.

This memorandum is intended to provide agencies with information and instructions concerning processing and record keeping requirements necessary to implement these temporary layoffs, and to incorporate the answers to recent questions. The closures will affect all employees, programs, and offices, regardless of employee position type or funding source, unless otherwise exempted by the Commissioner of the Department of Administrative and Financial Services.

Employees are to be informed not to report to work on each of the State Government closure days, unless they have been specifically exempted from the closure days. **Employees may not be allowed to work without compensation.** It is incumbent on each appointing authority to ensure that all employees are informed of the closures.

Employees otherwise exempt from overtime under state and federal law (also known as "FLSA Exempt" employees) will lose that exemption during the week in which a closure day occurs. This means that such "FLSA Exempt" employees will become "hourly" employees during the week in which a closure day occurs (i.e. they must be paid for each hour worked or allowed to work and will be eligible for premium overtime pay for any hours actually worked over 40 in that week). "FLSA Exempt" employees must be informed that they must keep accurate records of hours worked during those weeks (accurately complete timesheets), that they may not perform any work on a closure day, and that they must not work more than 4/5^{ths} of their authorized weekly hours in any week containing a closure day.

A closure "day" is considered 1/10th of an employee's authorized biweekly hours, whether full-time or part-time, regardless of work schedule.

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- If the authorized biweekly hours exceed 80, 8 hours will constitute a closure “day.”
- Employees whose normally scheduled hours on the day designated as a closure day would be more than 8 (e.g.: employees who work 4 ten-hour days) may (upon mutual agreement with the appointing authority): (1) use vacation, compensatory time, or personal leave time for the balance of the closure day; or (2) revert to a five day, eight-hours-per-day schedule for the workweek that includes the closure day; or (3) other arrangements upon mutual agreement with the appointing authority. *The result must be that the employee takes time off without pay equivalent to 1/10th of their authorized biweekly position hours.*
- No paid leave time may be substituted for time off without pay. If an employee is already scheduled for vacation, sick leave, compensatory time, or personal leave for a closure day, the time off must be taken without pay (coded as Temp Layoff). (Leave time would not be deducted from leave balances for the closure day.)
- In the past, employees were allowed to take alternate time off without pay in many circumstances. At this time, any arrangement for alternate time off without pay must be referred to the Commissioner of the Department of Administrative and Financial Services for determination.

Other important considerations of the temporary layoff are:

- Time not worked during temporary layoff will be counted as time worked for purposes of computing overtime.
- The temporary layoff does not constitute a break in continuous service.
- The temporary layoff does not affect health, dental, or life insurance benefits.
- Temporary layoff will not impact leave accrual rates.
- Employees who are on seasonal leave are not affected by a closure day that occurs during his or her seasonal leave.
- Employees on unpaid Family Medical Leave (FML) on a closure day are not affected by the closure day. If an employee is on sick leave and FML (that is, paid leave) on a closure day, the sick leave must be changed to temporary layoff for the closure day. In both of these situations, closure days count toward the FML entitlement.
- On closure days, the fact that an employee receives standby pay will not affect normal processing. Pay the employee the standby pay, but eight hours of regular pay will be charged to temporary layoff.
- With respect to military leave, treat an employee on paid military leave as if the employee is required to work on a closure day. No other paid leave time may be substituted for temporary layoff.
- Employees on unpaid leave (for any reason) on a closure day are not affected by the closure day.
- Employees not scheduled to work on a closure day (i.e. if the closure day falls on their regular day off) are not affected by the closure day. **NOTE:** This does **not** apply to employees on an Alternate Work Schedule (e.g. compressed workweek).

Employees on Alternate Work Schedules will normally revert back to a normal five day, eight-hours-per-day schedule for the workweek that includes a closure day. In any case, the result must be that employees on Alternate Work Schedules take time off without pay equivalent to 1/10th of their authorized biweekly position hours.

- With respect to Voluntary Employee Incentive Program (VEIP) participation, if an employee is on full-time unpaid leave under the VEIP on a closure day, the employee is not affected by the closure day. If an employee is on a part-time schedule due to VEIP participation, the employee should be treated as all other part-time employees for the closure day (1/10th of the authorized biweekly position hours charged to temporary layoff).
- Generally speaking, temporary layoff time will not count toward average final compensation ("high three" years) for retirement purposes. Having the equivalent value of the temporary layoff day count toward the average final compensation would require funding legislation to satisfy constitutional requirements regarding the unfunded liability. A provision was built in to the law to allow employees to "buy back" time from closure days in certain circumstances. The Maine Public Employees Retirement System should be consulted on any issues related to retirement.
- With respect to workers' compensation, the law is very complex and workers' compensation benefits are highly individualized. Specific questions should be addressed to the appropriate workers' compensation case manager in the Division of Employee Health.
- Workers' Compensation "Return-to-Work" (RTW) employees are not exempt from the closure days. RTW employees should be treated the same as other employees in their particular work settings.

S / Alicia Kellogg

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