# **18 DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES**

**389 BUREAU OF HUMAN RESOURCES**

**Chapter 11: HOLIDAYS, LEAVES OF ABSENCE AND RELATED COMPENSATION PRACTICES**

**SUMMARY**: This chapter designates holidays and related compensation procedure and presents regulations governing leaves of absence with pay and leaves of absence without pay - includes sick leave, vacation leave, military leave and educational leave; jury duty or court appearances, workmen's compensation grants and unclassified service appointments.

**1. HOLIDAYS**

A. **Holiday Schedule**

The following and any other days designated by the governor, or under authority of the Governor, are holidays; and compensatory time off shall be allowed for work done on these days except where cash payment is allowed under the approved work schedule/regulations of a given department or agency:

New Year's Day Labor Day

Washington's Birthday Columbus Day

Patriot's Day Veteran's Day

Memorial Day Thanksgiving Day

Independence Day Christmas Day

B. **Special Provisions/Requirements**

1. When a holiday falls on a Sunday, the following Monday shall be observed as the holiday.

NOTE: When a holiday falls on a Saturday, the preceding Friday shall be observed as the holiday.

2. Employees shall be eligible for holiday pay only if they were in pay status on the normal work day immediately preceding the holiday for which payment is to be made.

NOTE: Civil Service policy developed subsequent to this rule further requires that employees be in pay status for all or part of the normal work day immediately following the holiday.

3. Employees holding part-time permanent or part-time seasonal positions shall be eligible for holiday or part holiday pay only if the holiday falls on a regularly scheduled day of work.

4. When a holiday falls on the regularly assigned day off for an employee, such employee shall be compensated by equivalent time off, or by cash payment in accordance with the approved work schedule/regulations of a given department or agency.

C. **Employees Eligible for Holiday Benefits**

The terms of this rule shall apply to all employees except those serving on a project basis.

NOTE: Reference Chapter 2 for regulations governing intermittent employment.

**2. LEAVES OF ABSENCE WITH PAY**

A. **General Regulations**

1. Authorization in Advance. So far as practicable, written grants of leave with pay shall be made prior to the beginning of the periods of absence, and no payment for any absence shall be made until the leave is properly approved by the appointing authority.

2. Charges Against Credits Earned

a. Deductions from leave accumulations for an employee on leave with pay shall be made on a working-day basis.

b. No charges against leave with pay accumulations shall be made for holidays, non-work days, or non-work part days occurring at the beginning or during a period of leave with pay.

c. No charge shall be made for holidays or non-work days occurring at the end of a period of leave with pay if the employee returns to work on the first day thereafter or is granted additional leave.

3. Credits Earned While on Leave. Accrual of vacation leave and sick leave during the period of leave of absence with pay shall occur only if the employee returns to his employment on the first working day following the expiration of such leave with pay or is granted additional leave without pay.

4. Agency Records. Appointing authorities shall maintain records of vacation and sick leave accrued and used by each of their employees. Such records shall be maintained in the form and manner approved by the Director of Human Resources, and shall be subject to audit by the Bureau of Human Resources. In case of dispute of the accuracy of the records, the decision of the Director shall be final.

B. **Vacation Leave**

1. Eligibility and Rate of Accrual

a. Each employee in the classified service, except temporary emergency or project employees, shall earn vacation with pay on the following basis: One work day shall be earned for each completed full month, or hourly equivalent, of service during the first five years of employment with the state. Thereafter, provided the last five years of service shall have been continuous, vacation shall be earned on the following basis: For each completed full month, or hourly equivalent, of employment with the state, one and one-fourth (1 1/4) days shall be earned until ten years shall have been completed; one and one-half (1 1/2) days shall be earned until fifteen years shall have been completed; one and three-fourths (1 3/4) days shall be earned until twenty years have been completed; thereafter, two days shall be earned.

NOTE 1: Reference Chapter 2 for regulations governing intermittent employment.

NOTE 2: Chapter 147, P&S Law, 1976 enacted 5 MRSA, §16 which establishes these rates of accrual as the minimum rates applicable to employees in both the classified and unclassified service.

b. Continuous service for the purpose of determining eligibility for vacation leave benefits shall be defined as all uninterrupted state service, to include both classified and unclassified service employment.

2. Creditable Time

a. Service shall begin on the date of state employment, and time on layoff, suspension, or leave without pay, except as otherwise provided by the Civil Service Law or by these rules, shall not be counted in determining the date of completion of a full month or a full year of service.

b. Vacation credits shall not be earned or accumulated during periods of authorized educational leave.

3. Agency Approval/Authorization

Vacations shall be granted at such time or times as shall be mutually agreeable to the employees and appointing authorities involved.

4. Maximum Yearly Accrual

a. Employees having less than fifteen completed years of service may accumulate vacation leave to a total of twenty-four (24) work days. Those employees having more than fifteen years of service, the last five years of which have been continuous, may, accumulate vacation time to a total of thirty (30) work days, provided, however, that an employee who is about to lose a day of vacation leave because of the limitation of accrual imposed by this rule, upon advance notice to the appointing authority may within the 30 calendar days following, absent himself/herself with the consent of his/her appointing authority to prevent the loss of such day.

b. An employee on military leave (as provided in 5 MRSA, Chapter 372 § 7051) shall not be limited to 24 work days accrual of vacation leave. The employee may immediately upon reinstatement from military leave, take all vacation leave in excess of 24 work days with or without consent of the appointing authority. In the alternative, the employee may elect to be credited with the vacation leave in excess of 24 work days, but such leave shall be taken at a time determined by the appointing authority, within two years of the date of reinstatement.

5. Disposition of Credits upon Transfer or Separation

a. Separation

1. Any employee who is separated from the state service by layoff, resignation, death or otherwise, shall be paid, or shall have payment made to his/her estate for the number of working days of unused vacation leave and overtime accumulated to his/her credit --OR--

2. At his/her discretion, an employee may utilize accrued vacation credits immediately prior to separation in lieu of a lump sum payment; however, accrual of additional vacation, sick leave or holiday credits shall cease with the commencement of this intended final leave.

b. Transfer

1. Any employee who is transferred to the jurisdiction of a new appointing authority or who accepts employment under the jurisdiction of a new appointing authority or who moves from the classified to the unclassified service or vice versa, shall be paid for the number of working days of unused vacation leave and overtime accumulated to his/her credit --OR--

2. An employee who is transferred to the jurisdiction of another appointing authority or who accepts employment under the jurisdiction of a new appointing authority or who moves from the classified to the unclassified service, or vice versa, shall be entitled to credit in his/her new employment for the accumulated unused vacation credits earned in his/her former employment.

6. Disposition of Credits Upon Completion of Seasonal Work Each Year for Seasonal Employees of the Baxter State Park Authority

a. A seasonal employee of the Baxter State Park Authority may, at the conclusion of seasonal work each year and at the seasonal employee’s option, elect to be paid for the number of working days of unused vacation leave and compensating time in lieu of overtime accumulated to the seasonal employee’s credit. Election of this option by a seasonal employee of the Baxter State Park Authority may not be construed as an interruption in state service if the employee returns to classified or unclassified employment in any capacity within one year.

C. **Sick leave**

1. Eligibility and Rate of Accrual

a. Sick leave shall be earned by each employee in the classified service, except temporary, emergency or project employees, at the rate of one (1) working day for each completed full month of service.

NOTE 1: See Chapter 2 for regulations governing intermittent employment.

NOTE 2: Chapter 147, P&S Law, 1976 enacted 5 MRSA, §16 which establishes this rate of accrual as the minimum rate applicable to employees in both the classified and unclassified service.

b. Either the appointing authority or the Director of Human Resources may require such medical examination or certificate as deemed necessary before approving the utilization of sick leave.

2. Creditable Time

a. Service shall begin on the date of state employment and time on layoff, suspension or leave without pay, except as otherwise provided by law or these rules, shall not be counted in determining the completion of a full month of service.

b. Part-time employees employed normally the year round and established on a regular hourly work schedule shall be allowed sick leave credits pro-rated on the amount of time worked.

c. Sick leave shall not be earned or accumulated during periods of authorized educational leave.

3. Maximum Accrual and Restoration of Time Lapsed

Unused sick leave may be accumulated to a total of 90 working days. When the maximum limitation has been accumulated, days that would normally thereafter be earned shall lapse but shall be recorded by the appointing authority. Any employee who has such lapsed sick leave to his/her credit may apply to the Director of Human Resources to have the sick leave restored in the event of an extended illness. The Director may authorize restoration of all or any part of the lapsed sick leave after thorough investigation, including complete medical reports of the illness requiring the continued absence of the employee.

4. Authorization for Use

Employees may utilize their allowance of sick leave on the basis of application therefor approved by their respective appointing authorities and reported to the Director of Human Resources, for absences necessitated by:

a. inability to perform the duties of their positions by reason of illness or injury;

b. necessity for acute medical or dental care;

c. exposure to contagious disease under circumstances in which the health of the employees with whom associated or members of the public necessarily dealt with would be endangered by attendance on duty; or

d. illness or death in the immediate family of the employees for such periods as the attendance of the employees shall be necessary. Immediate family as used here shall mean the spouse and the parents of the spouse; and the parents, guardian, children, brothers, sisters or wards of the employee.

5. Expiration Upon Separation

All sick leave shall expire on the date of separation from the state service, and no employee shall be reimbursed for sick leave outstanding at the time of termination of his state employment.

NOTE: Maine State Retirement Law provides that up to 90 days of sick leave accrued and unused at time of separation may be credited as membership service upon retirement.

6. Special Provisions

a. Reappointments

A former state employee who is reappointed within four years of his separation from the service under the provisions of the Civil Service Law and these rules, with probationary or permanent status, may have his previously accumulated and unused balance of sick leave revived and placed to his credit upon approval of the new appointing authority.

b. Transfers

An employee who is transferred to the jurisdiction of another appointing authority or who accepts employment under the jurisdiction of a new appointing authority without interruption of his/her services to the state shall be entitled to credit in his/her new employment for the accumulated unused sick leave earned in his/her former employment.

c. Unclassified Service Appointments

Accumulated sick leave unused at the time of grant of leave of absence to an employee to accept employment in the unclassified service shall be restored at the time of reinstatement of the employee to his classified service position.

NOTE: With the enactment of 5 MRSA, §16, employees who move from the classified service to the unclassified service, or vice versa, may, with approval of appointing authorities, transfer accumulated sick leave credits from one appointing authority to the other, provided such movement is without a four year break in service.

D. **Worker's Compensation Grants**

1. ln the event an employee is paid or awarded any weekly compensation under the provisions of the Worker's Compensation Act, then the amount that might otherwise be allowed such employee under the provisions of these rules shall be reduced by the amount so paid or awarded under the Worker's Compensation Act. In any such case, the total amount paid to the employee involved shall not exceed the weekly salary rate to which the said employee is then entitled, and seniority in employment shall continue to accumulate.

2. Deductions from available leave credits may be made to pay for such days or parts of days as is necessary to compensate for the balance of the regular weekly salary.

E. **Military Leave With Pay**

Employees in the classified service who are members of the national guard or other authorized state military or naval forces, and those classified employees who are members of the army, air force, marine, coast guard or naval reserve shall be entitled to leave of absence from their respective duties, without loss of pay, and shall accrue sick and annual leave and seniority during periods of annual training not to exceed 17 calendar days in any calendar year, as specified by provisions of the National Defense Act or Armed Forces Reserve Act of 1952.

F. **Jury Duty and Court Appearances**

1. Upon approval of the appointing authority, any employee, except intermittent, holding a position in the classified service shall be granted a leave of absence with pay for service upon a jury or appearance before a court, legislative committee, or other judicial or quasi-judicial body as a witness in action involving the federal government, the state, or a political subdivision thereof in response to a subpoena or other direction by proper authority; provided that for such period of required absence he/she shall be entitled only to the difference between his/her regular compensation and the compensation fees received for such services.

2. Any absence whether voluntary or in response to a legal order to appear and testify in private litigation not as an officer or employee of the state, but as an individual, shall be taken as annual leave, as leave of absence without pay, or as a deduction from authorized accumulated overtime.

**3. LEAVES OF ABSENCE WITHOUT PAY**

A. **Personal Leave**

Permanent employees may be allowed to be absent from duty without pay for a period not exceeding a total of twelve months in any fourteen consecutive months on the basis of applications for leave without pay approved by their respective appointing authorities and the Director of Human Resources under the following conditions:

1. Such leave shall be granted only when it will not result in undue prejudice to the interests of the state as an employer beyond any benefits to be realized. An application for leave of absence for military school, travel or study calculated to equip the employee to render more effective service to the state may be deemed to involve such compensating benefits to be measured against the loss or prejudice to the interests of the state involved in keeping open the position or filling it temporarily until the return of the employee.

2. No such leave shall be granted primarily in the interests of the employee, except in the case of an employee who is shown by record of service ratings or by other evidence, to be of more than average value to the state, whose services it is desirable to retain, even at some sacrifice.

3. The Director of Human Resources shall refuse to approve any proposed leave without pay which is judged to be contrary to the best interest of the state.

B. **Sick Leave Without Pay**

Upon application of a probationary or permanent employee, a leave of absence without pay may be granted by an appointing authority for the entire period of disability because of sickness or injury. Such leave need not be limited to one year, but the appointing authority or the Director of Human Resources from time to time, may require that the employee submit a certificate from the attending physician or from a designated physician. In event of a failure or refusal to supply such certificate or if the certificate does not clearly show sufficient disability to preclude the employee from the performance of his/her duties, the appointing authority, with the approval of the Director, may cancel such sick leave and require the employee to report for duty on a specified date.

C. **Leaves to the Unclassified Service**

1. Upon approval of the Director of Human Resources, an appointing authority may grant a leave of absence without pay to a permanent or probationary employee in the classified service to permit the employee to accept an appointive position in the unclassified service. Such leaves may be continued during the period of service in the unclassified service position; and the employee shall be restored to the status and position held at the time of the grant of leave of absence, within one year of the date of termination of the unclassified service employment, upon written application to the Director.

NOTE: Under provisions of 5 MRSA, Chapter 71, Sub-§2, employees in permanent status in the classified service who accept an appointment to a major policy-influencing position shall have the right, for twelve (12) months subsequent to the major policy-influencing appointment, to be restored to the classified position held immediately prior to the major policy appointment or a position equivalent thereto. Such return will not result in a loss of Civil Service status, seniority, retirement or other rights to which uninterrupted service in the classified position would have provided.

2. Officers and employees in the unclassified service who resigned from positions in the classified service in which they had permanent status, to accept unclassified appointment, prior to the effective date of these rules may be granted reemployment rights on eligible registers for the same or similar classes of employment previously held, provided application is made to the Director of Human Resources within one year of the termination of unclassified appointment.

**4. EDUCATIONAL LEAVE**

NOTE: Under 5 MRSA §§ 723 and 724, all requests for educational leave, with or without pay, that exceed 30 calendar days must be processed by the Educational Leave Advisory Board established for this purpose.

Eligibility requirements, application procedure and other general guidelines are available from the Bureau of Human Resources and/or heads of state departments and agencies.

**5. CANCELLATION OF LEAVES**

A. All leaves of absence shall be subject to the condition that the appointing authority may cancel the leave at any time upon prior written notice to the employee and the Director of Human Resources specifying a reasonable date of termination of the leave, and the reason for such cancellation --OR--

B. The Director of Human Resources, upon prior notice to the employee and the appointing authority, may cancel an approved leave of absence at any time the Director finds that the employee is using the leave for purposes other than those specified at the time of approval.

**6. ABSENCE WITHOUT LEAVE**

A. Any absence of an employee from duty that is not authorized by a specific grant of leave of absence under the provisions of these rules, or taken as earned vacation leave about to expire, shall be deemed to be absence without leave.

B. Any such absences shall be without pay and may be made grounds for disciplinary action.

C. In the absence of such disciplinary action, any employee who absents himself for three consecutive days without leave shall be deemed to have resigned, but such absence may be covered by a subsequent grant of leave without pay in accordance with the provisions of section 3 of this Chapter.

**7. RETURN FROM LEAVE OF ABSENCE**

A. **Reinstatement Provisions**

1. Except as otherwise provided by law, a permanent or probationary employee granted a leave of absence must be returned to his/her employment at the expiration of his/her leave, unless the position formally occupied has been abolished and no person with less seniority or status is employed in the same class in the same agency or organizational unit at the date of expiration of the leave.

2. Subject to the same exception, such employee may be returned to his/her employment at any time prior to the expiration of his/her leave, provided the appointing authority files written notice of such action with the Director of Human Resources.

3. A permanent or probationary employee who is denied reinstatement by the appointing authority prior to the expiration of his/her leave shall have his/her name placed on the appropriate eligible registers under provisions of Chapter 7. Such action shall not affect the right of the employee to return to employment at the expiration of his/her leave of absence as above provided unless he/she is appointed from such register prior to the date of expiration of the leave of absence.

B. **Layoff Provisions**

he name of a permanent or probationary employee who is laid off prior to the expiration of his/her leave because of abolition of his/her position as above provided, shall be placed on the appropriate eligible registers under provisions of Chapter 7.

STATUTORY AUTHORITY:

5 MRSA Ch. 69; c.71; c.372 §7036

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