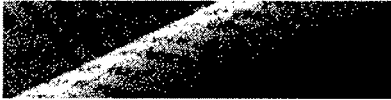




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9 NY ADC 166-4.0

9 NYCRR 166-4.0

9 N.Y. Comp. Codes R. & Regs. 166-4.0

OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK  
TITLE 9. EXECUTIVE DEPARTMENT  
SUBTITLE E. DIVISION FOR YOUTH  
PART 166. GENERAL ADMINISTRATION  
SUBPART 166-4. ATTENDANCE RULES FOR TEACHERS

Current through August 15, 2009.

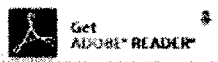
\* Section 166-4.0.\* Preamble.

The purpose of these rules is to ensure equitable treatment of persons employed in positions the principal duty of which is the teaching or instruction of patients or inmates, or the direct supervision of such teaching or instruction, and to provide uniformity in matters of attendance and leave for such persons, insofar as practicable and consistent with the efficient conduct of the division's business, who are employed on the basis of an annual school calendar year adopted by the division which shall be consistent with the school calendar year of public school teachers in New York State.

9 NY ADC 166-4.0  
9 NY ADC 166-4.0  
2008 WL 75285915  
9 NY ADC 166-4.0

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9 NY ADC 166-4.1

9 NYCRR 166-4.1

9 N.Y. Comp. Codes R. & Regs. 166-4.1

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Current through August 15, 2009.

\* Section 166-4.1.\* Attendance.

(a) Basic workweek. The basic workweek for annual salaried employees of State departments, agencies and institutions, other than those employed on a part-time basis only and other than employees excluded from the application of overtime compensation under the rules of the Director of the Budget adopted pursuant to section 134 of the Civil Service Law, shall be 40 hours; provided, however, that where a shorter workweek would not interfere with the proper performance of government functions an appointing authority may establish a basic workweek of not less than 37 1/2 hours and five days for any employees under its appointive jurisdiction as may be designated by it with the approval of the Division of the Budget; provided, however, that this section shall not be construed to increase the workweek of any employee for whom a workweek of less than 40 hours was prescribed by law, rule or administrative regulation as of January 2, 1957.

(b) Record of attendance. All employees are required to maintain a daily record of absences and time and leave credits earned and used in accordance with these rules. A daily record of attendance shall be maintained during the period covered by the school calendar and for any periods during which an employee may receive compensation which is in addition to his regular salary.

(c) Overtime. Overtime shall not be earned for time worked in excess of the basic workweek during the 10-month period an employee is paid his regular salary. An employee who is required to work in his position or in any other position allocated to a salary grade in section 130 of the Civil Service Law for the two-month period during which his regular salary is not paid shall receive additional compensation for such service.

9 NY ADC 166-4.1  
9 NY ADC 166-4.1  
2008 WL 75285916  
9 NY ADC 166-4.1

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9 NY ADC 166-4.2

9 NYCRR 166-4.2

9 N.Y. Comp. Codes R. & Regs. 166-4.2

OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK  
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Current through August 15, 2009.

\* Section 166-4.2.\* Absence with pay.

(a) Saturdays, Sundays and holidays.

(1) All Saturdays, Sundays and legal holidays shall, so far as practicable, be allowed as days off. Employees required to work on any of these days shall not be entitled to compensatory time off in lieu thereof.

(2) The days prescribed as holidays by the division's annual calendar for the school year shall be observed as holidays.

(b) Absences during school year. Except as provided by these rules and except as provided by the division's annual calendar for the school year, employees shall not be entitled to any leave of absence with pay during the school year; provided, however, that the division may grant time off with pay for religious observance, teacher conferences and other appropriate professional meetings, and for extraordinary or emergency absences. Employees may be required to make up such time off by appropriate adjustments in their daily or weekly work schedules.

(c) Sick leave.

(1) Sick leave is absence with pay necessitated by the illness or disability of the employee including illness or disability caused by pregnancy or childbirth.

(2) Employees shall earn sick leave credits at the rate of one-half day per biweekly pay period during periods they are paid their regular salary and may accumulate such credits up to a total of 150 days; provided, however, that an employee shall not earn sick leave credit for any biweekly pay period unless he is in full pay status for at least seven workdays during such biweekly pay period. A part-time employee who is required to work a fixed number of hours, five days per week, shall also earn sick leave credit as provided herein, but his total pay when absent on such leave shall be the amount which would have been due him had he been working regularly at his usual hours for such period.

(3) An employee absent on sick leave shall notify his supervisor of such absence and the reason therefor on the first day of such absence and within two hours after the beginning of the employee's workday; provided, however, that where the work is such that a substitute may be required, the division may

require the earlier notification, but not more than two hours prior to the beginning of the employee's workday. An employee who fails to so notify his supervisor may be deemed to be on leave without pay for that day. Sick leave credits shall not be used in units of less than one-half hour.

(4) Before absence for personal illness may be charged against accumulated sick leave credits, the division may require such proof of illness as may be satisfactory to it, or may require the employee to be examined, at the expense of the division, by a physician designated by the division. In the event of failure to submit proof of illness upon request, or in the event that, upon such proof as is submitted or upon the report of medical examination, the division finds that there is not satisfactory evidence of illness sufficient to justify the employee's absence from the performance of his duties, such absence may be considered as unauthorized leave and shall not be charged against accumulated sick leave credits. Abuse of sick leave privileges shall be cause for disciplinary action.

(5) The division may require an employee who has been absent because of personal illness, prior to and as a condition of his return to duty, to be examined, at the expense of the division, by a physician designated by the division, to establish that he is not disabled from the performance of his normal duties and that his return to duty will not jeopardize the health of other employees.

(6) In addition to personal illness of the employee, the following types of absence, when approved by the division, may be charged against accumulated sick leave credits: illness or death in the employee's family, provided, however, that charge for such absence shall not exceed a maximum of 15 days in any one school year; absence of an employee certified as visually handicapped by the New York State Commission for the Blind and Visually Handicapped or, where such certification is not obtainable, who is certified by an examining physician or licensed optometrist as blind, as manifested by visual acuity of 20/200 or less in the better eye with best correction or a visual field of 20 degrees or less, or who has a hearing impairment manifested by a speech discrimination score of 40 percent or less in the better ear with appropriate correction as certified by an examining physician or by a licensed audiologist or otolaryngologist, for the purpose of obtaining a guide dog and required training related thereto, provided, however, that charge for such absence shall not exceed a maximum of 26 days in any one calendar year; and personal visits to doctor or dentist. Proof of the need for such absences, satisfactory to the division, may be required.

(7) When an employee is transferred to another position in the same or a different department or agency and such position is subject to attendance rules approved by the New York State Civil Service Commission, his accumulated sick leave credits shall be transferred with him. When an employee is separated from service for other than disciplinary reasons and is subsequently reinstated or reemployed within one year after such separation, or is reinstated by action of the State Civil Service Commission, or is reinstated or reemployed while eligible for reinstatement from a preferred list, his sick leave credits accumulated and unused at the time of his separation shall be restored; provided, however, that such sick leave credits shall not be restored except when leave records satisfactory to the appointing authority are available

(8) Every employee shall, on the date on which he becomes subject to these rules, be credited with the number of days of sick leave which he had accumulated under the Attendance Rules for Employees in New York State Departments and Institutions (see 4 NYCRR Chapter II) and had remaining to his credit as of such date.

(9) This section shall not be construed to require extension of any employment beyond the time at which it would otherwise terminate by operation of law, rule or regulation.

(d) Extended sick leave.

(1) The division may, in its discretion, advance sick leave credits to an employee absent due to personal illness who has exhausted his accumulated sick leave credits. Such advanced sick leave credits shall be repaid, as soon as practicable after the employee's return to duty, from subsequent accumulations of time credits. The outstanding unrepaid sick leave credits advanced to any employee under the provisions of this section shall not at any time exceed a total of five days.

(2) The division may, in its discretion, upon written request from an employee certified as visually handicapped by the New York State Commission for the Blind and Visually Handicapped or, where such certification is not obtainable, who is certified as blind by an examining physician or licensed optometrist as blind, as manifested by visual acuity of 20/200 or less in the better eye with best correction or a visual

field of 20 degrees or less, or who has a hearing impairment manifested by a speech discrimination score of 40 percent or less in the better ear with appropriate correction as certified by an examining physician or by a licensed audiologist or otolaryngologist, advance up to 26 days of sick leave to such employee who is absent for the purpose of obtaining a guide dog and required training related thereto, and who has exhausted accumulated leave credits, provided the cumulative total of sick leave credits charged and/or advanced for this purpose does not exceed 26 days in any one calendar year. Such advanced sick leave credits shall be repaid, as soon as practicable after the employee's return to duty, from subsequent accumulations of time credits. The outstanding unrepaid sick leave credits advanced to any employee under the provisions of this subdivision shall not at any time exceed a total of 26 days.

(e) Sick leave at half pay. The division may, in its discretion, grant sick leave at half pay for personal illness to a permanent employee having not less than a year of service after all of his sick leave credits have been used; provided, however, that the cumulative total of all sick leave at half pay granted to any employee after January 2, 1957 shall not exceed one pay period for each complete six months of his State service.

(f) Workers' compensation leave.

(1) Leave for absence necessitated by occupational injury or disease. Except as otherwise provided in paragraphs (2) and (3) of this subdivision, an employee necessarily absent from duty because of occupational injury or disease as defined in the Workers' Compensation Law, upon giving notice to the division that he is absent on account of such injury or disease and that he claims benefits under such law, shall be allowed leave from his position for the period of absence necessitated by such injury or disease, up to cumulatively one year including any periods of such absence during which the employee draws sick leave credits. Such leave may be extended for further periods in the discretion of the appointing authority.

(2) Converted cases. If the employee's claim for benefits under the Workers' Compensation Law is controverted by the State Insurance Fund (at the request of the division or on its own initiative) and the division is so notified, the employee shall not be entitled to leave under this section. This shall not, however, adversely affect the employee's eligibility for leave under other provisions of these rules. If final determination of the controverted claim is in favor of the employee, he shall be entitled to leave under this section, and all absences before such final determination, to the extent that the same were necessitated by his occupational injury or disease, shall be deemed to have been pursuant to leave under this section.

(3) Permanent incapacity. Leave under this section may be withheld or terminated if the division determines that the occupational injury or disease suffered by the employee is of such a nature as to permanently incapacitate him for the performance of the duties of his position.

(4) Pay during leave. An employee on leave under this section may receive pay, as follows:

(i) The division upon finding that the employee is in fact disabled from the performance of his duties, may grant the employee full pay during such leave not exceeding cumulatively six months. Such full pay may be granted irrespective of the employee's accrued credits under these rules.

(ii) Except when on full pay status under subparagraph (i) of this paragraph, the employee may draw accrued sick leave credits, subject to the provisions of these rules pertaining thereto.

(iii) If not drawing full pay under subparagraph (i) or subparagraph (ii) of this paragraph, an employee may, in the discretion of the division, be allowed to draw sick leave at half pay for which he may be eligible under these rules.

(5) Accrual of leave credits. An employee who receives full pay for any period of leave under this section shall earn sick leave credits during such period.

(6) Award credited to State. An award by the Workers' Compensation Board of compensation for any period for which the employee receives or received pay from the State shall be credited to the State as reimbursement of wages paid.

(7) Restoration of leave credits. Sick leave credits, including sick leave at half pay, used by an employee during a period of absence for which an award of compensation has been made and credited to the State

as reimbursement for wages paid shall be restored to him in full; provided, however, that no restoration shall be made for any absence of less than a full day. Credits so restored may not again be used for future absences attributable to the same injury. An employee restored to service after absence on leave under this section shall have one year from the date of such restoration to reduce his accrued leave credits to the limits prescribed in these rules.

(8) Reinstatement. Upon request of the employee for reinstatement at or prior to the expiration of the maximum period of allowed leave, the division, if in doubt as to whether the employee is physically and mentally fit to perform the duties of his position, may require the employee to undergo medical examination, by a physician designated by the division, before the employee may be reinstated. If reinstatement is denied, the employee may make application therefor in the manner prescribed by section 71 of the Civil Service Law. If an employee continues absent after the expiration of the maximum period of allowed leave, his eligibility for reinstatement shall be governed by section 71 of the Civil Service Law.

(9) Medical examination. In order to enable the division to make such determinations as are authorized or required under this section, the division may require an employee at any time to be examined by a physician designated by the division.

(10) Where the division has refused to grant the employee pay during leave pursuant to paragraph (4) of this subdivision, or, has withheld or terminated a leave of absence on the ground that the occupational injury or disease is of such a nature as to permanently incapacitate the employee for the performance of the duties of his position, the employee may request the Civil Service Commission to review the determination of the division. If the commission finds that such determination of the division is arbitrary or unreasonable, it may reserve or modify such determination.

(11) Construction. This section shall not be construed to require extension of any employment beyond the time at which it would otherwise terminate.

(g) Leave for subpoenaed appearance and jury attendance. On proof of the necessity of jury service or appearance as a witness pursuant to subpoena or other order of a court or body, an employee shall be granted a leave of absence with pay with no charge against leave credits; provided, however, that this subdivision shall not apply to any absence by an employee occasioned by such an appearance if he is a party.

(h) Leave for civil service examinations. Employees shall be allowed leave with pay to take New York State Civil Service examinations at the appropriate center provided that due notice is given by the employee to the division.

(i) Leave for quarantine. If an employee who is not ill himself is required to remain absent because of quarantine and presents a written statement of the attending physician or local health officer proving the necessity of such absence, he shall be granted leave with pay for the period of his required absence, without charge against accumulated sick leave credits. Prior to return to duty, such employee may be required to submit a written statement from the local health officer having jurisdiction that his return to duty will not jeopardize the health of other employees.

(j) Leaves required by law. The division shall grant any leave of absence, with pay, required by law.

(k) Leave for civil defense duties. Upon certification by the State Director of Civil Defense of the necessity for the participation in State or local civil defense drills of an employee enrolled as a civil defense volunteer and required to perform civil defense duties pursuant to the State Defense Emergency Act, the division may allow such employee to absent himself from his position, without loss of pay or charge against leave credits, for such time as is necessary for participation in such drills, but not exceeding cumulatively five workdays per calendar year.

9 NY ADC 166-4.2  
9 NY ADC 166-4.2  
2008 WL 75285917  
9 NY ADC 166-4.2

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9 NY ADC 166-4.3

9 NYCRR 166-4.3

9 N.Y. Comp. Codes R. & Regs. 166-4.3

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SUBPART 166-4. ATTENDANCE RULES FOR TEACHERS

Current through August 15, 2009.

\* Section 166-4.3.\* Leaves without pay.

(a) Leave of absence; duration.

(1) A permanent employee or an employee holding a position by permanent or temporary appointment who requests leave because of pregnancy or childbirth, may, in the discretion of the division, be granted a leave of absence, without pay, for a period not exceeding two years. Such leave may be extended beyond two years, for periods aggregating not in excess of an additional two years only with the approval of the Civil Service Commission. In an exceptional case, a further extension may be permitted by the commission for good cause shown and where the interests of the government would be served. For the purpose of this section, time spent in active service in the military forces of the United States or of the State of New York shall not be considered in computing the period of leave.

(2) This section shall not be construed to require the extension of any employment beyond the time at which it would otherwise terminate by operation of law, rule or regulation.

(b) Successive leaves of absence. Where a leave of absence without pay has been granted for a period which aggregates two years, or more if extended pursuant to subdivision (a) of this section, a further leave of absence without pay shall not be granted unless the employee returns to his position and serves continuously therein for six months, immediately preceding the subsequent leave of absence.

9 NY ADC 166-4.3

9 NY ADC 166-4.3

2008 WL 75285918

9 NY ADC 166-4.3

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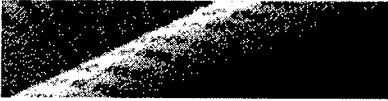
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9 NY ADC 166-4.4

9 NYCRR 166-4.4

9 N.Y. Comp. Codes R. & Regs. 166-4.4

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Current through August 15, 2009.

\* Section 166-4.4.\* Suspension of rules.

These rules may be suspended in whole or in part, in an emergency, for the duration of same and to the extent made necessary by the nature of the emergency, on approval by the State Civil Service Commission of a written request by the division.

9 NY ADC 166-4.4  
9 NY ADC 166-4.4  
2008 WL 75285919  
9 NY ADC 166-4.4

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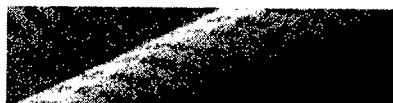
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9 NY ADC 166-4.5

9 NYCRR 166-4.5

9 N.Y. Comp. Codes R. & Regs. 166-4.5

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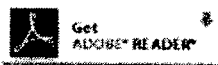
\* Section 166-4.5.\* Amendment of rules.

These rules may not be amended except on approval by the State Civil Service Commission of a written request by the division.

9 NY ADC 166-4.5  
9 NY ADC 166-4.5  
2008 WL 75285920  
9 NY ADC 166-4.5

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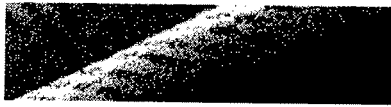
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9 NY ADC 166-4.6

9 NYCRR 166-4.6

9 N.Y. Comp. Codes R. & Regs. 166-4.6

OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK  
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Current through August 15, 2009.

\* Section 166-4.6.\* Applicability.

(a) Except as otherwise expressly provided in any rule or rules, these attendance rules shall apply to the following employees in the division who are employed in positions the principal duty of which is teaching or instruction of patients or inmates, or the direct supervision of such teaching or instruction; who are employed on the basis of a calendar year similar to the school calendar year of public school teachers in New York State; and who are compensated in accordance with section 136 of the New York State Civil Service Law.

- (1) Institutional Vocational Instructors, G-12.
- (2) Senior Institutional Vocational Instructors, G-15.
- (3) Institution Teachers, G-12.
- (4) Senior Institution Teachers, G-15.

(b) These rules shall not be construed to be required or allow extension of leave with pay except for periods during which the employee is normally paid his regular salary.

(c) The provisions of these attendance rules, insofar as they apply to employees in the negotiating units, established pursuant to article 14 of the Civil Service Law, shall be continued; provided, however, that during periods of time when there is in effect agreement between the State and an employee organization reached pursuant to the provisions of said article 14, the provisions of such agreement and the provisions of such rules shall both be applicable. In the event the provisions of the agreement are different from the provisions of the attendance rules, the provisions of the agreement shall be controlling.

9 NY ADC 166-4.6  
9 NY ADC 166-4.6  
2008 WL 75285921  
9 NY ADC 166-4.6

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