

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
DIVISION OF MILITARY AND NAVAL AFFAIRS
330 Old Niskayuna Road
Latham, New York 12110-2224

DMNA Regulation
Number 690-1

29 December 1995

STATE CIVILIAN
HUMAN RESOURCES MANAGEMENT
RULES AND REGULATIONS

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*SUPERSESION: This Regulation supersedes DMNA Regulations 690-1, 15 March 1993, and all subsequent changes.

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CHAPTER 1
GENERAL

1-1. PURPOSE. The purpose of this regulation is to establish policy and guidelines for all matters pertinent to the personnel administration of all state employees of the Division of Military and Naval Affairs (DMNA). However, in the case of classified service employees and other employees represented by unions, the Civil Service Law, rules and regulations, and contracts entered into by the State of New York (the "State") and employee organizations will supersede any such rule or policy as applicable.

1-2. AUTHORITY. This regulation is issued pursuant to Section 19, Military Law, State of New York. The Adjutant General may waive any provisions when it is in the best interest of the organized militia and DMNA.

1-3. DEFINITIONS.

★ a. Positions created by statute:

The Adjutant General
Deputy Adjutant General
Chief of Staff
Assistant Adjutant General for Army
Assistant Adjutant General for Air
Commander, New York Army National Guard
Commander, New York Air National Guard
Deputy Commander of the New York Army National Guard
Commanding Officer, New York Naval Militia
Commanding General, New York Guard

★ b. "Management/Confidential (MC) employees" are those Military Law employees who are policy-making managers, middle managers, specialists or any other Military Law employees so categorized as MC.

c. "Management Positions" are those positions covered by the Civil Service Law of the State and so designated by the Public Employment Relations Board. Assigned to the State Emergency Management Office, they are signified by Negotiating Unit 06.

Director of State Emergency Management Office
Assistant Director of State Emergency Management Office

Assistant Director for Planning
Supervisor of NDCD Communications and Warning
Assistant Director for Training
Director of NDCD Radiological Intelligence
Supervisor of Disaster Preparedness Planning

d. "Professional, Scientific, and Technical Positions" are those positions covered by the Civil Service Law of the State and so designated by the Public Employment Relations Board. Assigned to the State Emergency Management Office, they are signified by Negotiating Unit 05.

Disaster Preparedness Program Representative 1, 2, and 3
Senior NDCD Communications Technician
Supervisor of NDCD Radio Services
Supervisor of NDCD Warning Operations
Supervising NDCD Radiological Representative
Senior NDCD Radiological Representative
NDCD Radiological Representative
Supervisor of NCP Planning
Associate Planner
Senior Planner
Junior Engineer
Assistant Building Construction Engineer

e. "Confidential Positions" are those positions covered under the Civil Service Law of the State and designated by the Public Employment Relations Board. Assigned to the State Emergency Office, they are signified by Negotiating unit 06.

Principal Stenographer (to the Director)
Secretary I (to the Assistant Director for Training)

f. "Administrative Positions" are those positions which have not otherwise been classified as Confidential, having State position titles such as Keyboard Specialist, Clerk 1, Calculations Clerk 1, Mail and Supply Clerk, Head Clerk, and other positions authorized by the military law and those in the classified service. Assigned to various offices and facilities, they are signified by Negotiating Unit 02 or 47.

g. "Facility Operations Positions" are those positions which are established pursuant to Section 187, Military Law, State of New York, and are assigned to the various military installations throughout the state to provide for the security, maintenance, and operations of state armories, training and logistical facilities, including the public property located within. Also included in this category are operations and maintenance positions, Air Base Security Guards, and Airport Firefighters assigned to Air National Guard bases. Facility Operations positions are allocated to salary grades of comparable positions in the classified service of the state and employees occupying these positions will receive salary adjustments corresponding to comparable positions in the classified service of the state or as mandated by negotiated employee labor contracts. Located at various locations throughout the state, they are signified by Negotiating Unit 03 and 47.

h. Certain positions covered under the Military Law of the state are considered by the Public Employment Relations Board to be Management and Confidential for salary and benefit purposes. These positions are designated by Negotiating Unit 46.

i. "Operational Services Positions" include those positions so designated by the Public Employment Relations Board and assigned to the State Emergency Management Office. They are signified by Negotiating Unit 03

Electronic Equipment Mechanic
Electronic Technician

j. The term "Officer In Charge and Control" means an officer of the organized militia designated by the appropriate force commander and appointed by The Adjutant General who is responsible for all matters pertaining to the security, maintenance, and operation of the facility to which he or she is assigned. In the case of the three (3) regional offices under the jurisdiction of the State Emergency Management Office, the senior Disaster Preparedness Program Representative at each office will act as the Officer In Charge and Control even though not an officer of the organized militia.

k. The term "Position Specifications" means a written description of the general duties and responsibilities required by the position, together with the minimum qualifications for appointment or promotion.

l. The term "Official Station" means the city, town, or village in which an employee has been assigned to work (i.e., the official station for DMNA employees working at the Latham Headquarters is Latham, New York).

1-4. EQUAL EMPLOYMENT OPPORTUNITY. Employment, assignment, promotion, and other personnel actions with respect to employees of the Division of Military and Naval Affairs will be based solely upon qualifications and merit. Any personnel action based solely upon race, color, creed, sex, or national origin of the applicant or employee is prohibited. Procedures for issuance of complaints or charges of discrimination are available from the Director of Human Resources Management.

1-5. EMPLOYEES OF THE DIVISION OF MILITARY AND NAVAL AFFAIRS.

a. With the exception of those employees indicated in paragraph c below, employees of the Division of Military and Naval Affairs are governed by the Military Law and are not in the civil service of the state.

b. Facility operations positions, to which paragraph a above is applicable, are also covered under Sections 130, 131, and 132 of the Civil Service Law.

c. Certain designated personnel employed within the State Emergency Management Office are in the classified service of the state and are governed by applicable civil service law, rules and regulations, and contract agreements entered into by the state and various employee labor unions.

CHAPTER 2

APPOINTMENTS, PROMOTIONS, TRANSFERS, EMPLOYMENT OF
RETIREES, RECLASSIFICATIONS AND REALLOCATIONS,
EMPLOYMENT RESTRICTIONS

2-1. **APPLICABILITY.** This section is applicable to those employees of the Division of Military and Naval Affairs employed under the provisions of the Military Law.

2-2. **APPOINTMENTS.**

★ a. **Policy:**

With the exception of the positions of The Adjutant General; Deputy Adjutant General; Chief of Staff; Assistant Adjutant General for Army; Assistant Adjutant General for Air; Commander, New York Air National Guard; Commander, New York Army National Guard; Deputy Commander, New York Army National Guard; Commanding Officer, New York Naval Militia; and Commanding General, New York Guard, incumbents who serve at the pleasure of the Governor, appointments will be made by The Adjutant General or duly designated representative.

★ b. The Adjutant General, pursuant to Section 19 of the New York State Military Law and DMNA Regulation 690-1, may appoint, assign, transfer or terminate at will all Military Law Management/Confidential nonstatutory state positions. This authority may be delegated to the Deputy Adjutant General and to the Chief of Staff. This authority is, where applicable, subject to negotiated agreements and the New York State Civil Service Law.

★ c. **Appointment Qualifications:**

(1) **Positions Created by Statute:**

Applicants must be residents of the State of New York and citizens of the United States.

(2) **Facility Operations and Administrative Positions:**

(a) The position specifications governing each position in this category indicate the required experience, education, technical, physical, and military qualifications.

(b) Applicants must be residents of the State of New York and citizens of the United States.

d. New York State Employees' Retirement System/Federal Social Security Plan:

As a condition of employment, any person entering state service with the division on or after 1 April 1957, will be required to become a member of the New York State Employees' Retirement System and the Federal Social Security Plan. Temporary employees may be exempted from the requirement to join the retirement plan but must be enrolled to the Federal Social Security Plan.

e. Probationary Period:

(1) All appointments to permanent positions will include a probationary term of not less than 26 weeks nor more than 52 weeks. Upon completion of the employee's probationary period, one of the following actions will be approved by The Adjutant General or designated representative:

(a) Grant permanent status.

(b) Terminate.

(2) During the probationary period or while in a temporary status, an employee whose conduct, capacity, or fitness is found not to be satisfactory may be terminated with the approval of The Adjutant General.

2-3. PROMOTIONS.

a. Officer Graded Positions:

Promotion to officer graded positions will be as directed by The Adjutant General with approval of the Director of the Budget.

b. Military Law:

(1) Promotional announcements for either permanent or temporary positions will be published outlining position requirement and the qualifications necessary for employees to be considered for promotion. The procedure followed may include the filing of a written letter of application and/or oral interviews. Promotion board members for the position of Armory Superintendent will include, where possible, one (1) Latham Headquarters employee, the Regional Maintenance Supervisor for the region where the vacancy exists, and the Officer In Charge and Control of the armory where the position is based. Representatives may be designated, when required, and the composition of board members may be altered to meet extenuating circumstances.

(2) All promotions must be approved by The Adjutant General or designated representative and, in certain cases, the Director of the Budget.

(3) All employees who are promoted are subject to a probationary term of varying length dependent upon grade level. The basic probationary terms for promotion are for graded 14 and above, not less than 12 nor more than 52 weeks; for grades 13 and below, not less than 8 nor more than 26 weeks. Upon completion

of the probationary period, one of the following actions will be approved by The Adjutant General or designated representative:

(a) Grant permanent status to the employee.

(b) Extend the employee's probationary period for an additional period as determined by The Adjutant General, but not to exceed a total of 52 weeks.

(c) A probationary employee whose capacity or fitness is found to be unsatisfactory prior to the expiration of the probationary period may be terminated from the position and returned to their former position, with the approval of The Adjutant General.

(4) An employee appointed or promoted to fill a vacancy created by a promotion will be in a temporary status and will remain in a temporary status until such time as the original incumbent has successfully completed the probationary period and has been granted permanent status.

(5) If, as a result of a promotional announcement, no employee applicants are recommended or approved, The Adjutant General may appoint or promote any qualified applicant.

2-4. TRANSFERS/REASSIGNMENTS.

a. An employee may not be transferred to any position for which he/she does not possess the minimum qualifications.

b. An employee may be granted a reassignment from one facility, section, or unit to another upon consent of the Officers In Charge and Control of the facilities concerned, or the supervisors of the section or units concerned, subject to the approval of The Adjutant General. In considering such reassignments, the best interests of the state will be the primary criterion.

c. Reassignments which will not create undue hardship to the employee may be made by The Adjutant General when the reassignment is found to be in the best interest of the Division of Military and Naval Affairs. Such reassignments may be either permanent or temporary and can be made with or without the employee's consent.

d. An employee may request a transfer/reassignment, giving a location or office preference, at any time even though a vacancy may not exist in the location or office to which the transfer/reassignment is desired. Request for transfer/reassignment will be forwarded through the Officer In Charge and Control or

other appropriate supervisor, to the Director of Human Resources Management in Latham. Requests will be retained until such time as a vacancy occurs in the location or office desired, at which time the Director of Human Resources Management will make the armory or office supervisor aware of the employee's desire for transfer/reassignment. An interview may be required and recommendations made as a result of such interview.

e. When an employee transfer/reassignment is made, either at the request of the employee or by direction of The Adjutant General, the employee retains all rights such as leave credits, salary, and service for seniority purposes. As concerns seniority, in the case of transfers/reassignments involving shift assignment, prior to actual transfer/reassignment of an employee, the vacant position to which the employee is being transferred/reassigned will be the vacancy resulting after appropriate bidding procedures have been followed. The transferred/re-assigned employee may then utilize his or her seniority in bidding for future shift openings.

f. The only exception to the employee shift assignment procedures upon transfer/reassignment as outlined in paragraph 2-4e above, is that The Adjutant General, when directing the transfer/reassignment in accordance with paragraph 2-4c above, may designate the shift to which the transferred/reassigned employee is to be assigned either on a temporary or permanent basis.

2-5. EMPLOYMENT OF RETIREES.

a. Employees retired from other than State Public Service:

An individual retired from a private concern or from any employment not covered by the New York State Employees' Retirement System may be considered for employment. Such appointments will be governed in accordance with appointment policies set forth in this regulation.

b. Employees retired from the New York State Employees' Retirement System:

If approved by the State Civil Service Commission, a retired person may be employed and earn compensation in a position in the division in accordance with provisions of the New York State Civil Service Law and the New York State Retirement and Social Security Law.

2-6. RECLASSIFICATIONS AND REALLOCATIONS.

a. Classification and Compensation Advisory Agreement:

By agreement between the division, the Department of Civil Service, and the Division of the Budget, any request for reclassification or reallocation of position titles and/or salary grades established under the provisions of the Military Law, with the exception of positions designated as officer graded positions may be submitted to the Department of Civil Service, Division of Classification and Compensation for review and recommendation. Such recommendations, however, are not binding on The Adjutant General or the Division of the Budget.

b. Reclassifications:

★ (1) Employees, with the exception of employees occupying statutory positions or Military Law positions designated as Management/Confidential, may apply directly to the Director, Division of Classification and Compensation, for a review and change to the job classification and salary allocation of their positions on the form prescribed for this purpose.

(2) The Adjutant General may also make application for a change in job classification and salary allocation when the classification and salary allocation of a position or positions are determined to be inappropriate.

c. Reallocations:

The same policy concerning reclassifications applies to reallocation requests. However, a reallocation request differs from reclassification in that only a request in the salary allocation is being made, the classification of the position being deemed appropriate.

d. Appeals:

In the event the Division of Classification and Compensation denies the requested reclassification or reallocation and the employee, or The Adjutant General feels that the determination is unwarranted, an appeal may be made to the Classification and Compensation Appeals Board. The appeal must be in writing and include pertinent facts and information as to why the applicant believes that the determination is incorrect and/or unjust. The Appeals Board will review all matters pertinent to the request and render a determination.

2-7. EMPLOYMENT RESTRICTIONS.

a. The Adjutant General may refuse employment to any applicant:

- (1) Who is found to lack any of the established requirements for appointment to the position.
- (2) Who is found to have a physical or mental disability which renders them unfit for the performance of the duties of the position in which they seek employment, or which may reasonably be expected to render them unfit to continue to perform the duties of such position.
- (3) Who is addicted to the use of narcotics, or who is addicted to the use of intoxicating beverages to excess.
- (4) Who has been guilty of a crime or of infamous or notoriously disgraceful conduct.
- (5) Who has been dismissed from a permanent position in public service due to stated written charges of incompetency or misconduct, after an opportunity to answer such charges in writing, or who has resigned from or who's service has otherwise been terminated, in a permanent or temporary position in the public service, where it is found after appropriate investigation or inquiry that such resignation or termination resulted from incompetency or misconduct.
- (6) Who has intentionally made a false statement on any material fact in their application.
- (7) Who has practiced, or attempted to practice any deception or fraud in their application.
- (8) Who has been dismissed from private employment because of habitually poor performance.
- (9) Who received a dishonorable discharge from any of the United States Military Forces, Reserve Components, or from the organized militia of the state.

b. The Adjutant General may investigate the qualifications and background of any individual appointed and upon finding facts which if known prior to appointment would have warranted his or her disqualification, or upon finding of illegality, irregularity, or fraud of a substantial nature in his or her application or appointment may revoke such appointment and direct that his or his employment be terminated.

CHAPTER 3

SALARIES AND EXPENSES

3-1. **POLICY.** Salary provisions outlined here are contingent upon the availability of funds appropriated for those purposes.

3-2. **SALARY SCHEDULE AND SALARY ADJUSTMENT.** Salary schedules and salary adjustment (raises) are based upon agreements made between the state and employee organizations. Except for employees designated as Management/Confidential, employees will receive any salary increment (longevity increase) or salary adjustment (raise) resulting from those agreements. Management/Confidential employees may receive similar increments and salary adjustments based on approved legislation.

3-3. **COMPUTATION OF SALARY PAYMENTS.** Salary payments or salary reductions, will ordinarily be calculated based on a biweekly pay period of ten (10) workdays.

3-4. **SALARIES UPON APPOINTMENT.**

★ a. **Statutory Positions:**

Except for The Adjutant General, Deputy Adjutant General, and the Chief of Staff, positions in this category have been assigned titles and grades considered appropriate by The Adjutant General and the Director, Division of the Budget.

b. **Administrative Positions:**

By agreement with the Division of the Budget, Military Law positions within the administrative category have been assigned salary grades commensurate with the titles and duties of comparable positions in the classified service. Salary schedule and other salary provisions covered under Section 130 of the Civil Service Law and bargaining unit agreements are utilized in determining salaries.

c. **Facility Operations Positions:**

By law, facility operations positions have been assigned salary grades commensurate with similar positions in the classified service of the state. The salaries of these positions are governed under Section 130 of the Civil Service Law and bargaining unit agreements.

Any changes made to the salary schedule, longevity increments, or salary adjustments (raises) are applicable to all facility operations positions.

d. Classified Service Positions:

The salary schedule and other salary provisions for positions in the classified service of the state, are governed by Section 130 of the Civil Service Law .

e. Temporary Employees:

(1) Salaries for temporary status employees in full-time positions will be the same as those for permanent employees.

(2) In those instances for which authority is granted to hire a temporary employee in a position occupied by an incumbent who is in a leave without pay status, the temporary employee will be paid the entrance level salary as determined from the salary schedule covered under Section 130 of the Civil Service Law and bargaining unit agreements. When temporary employees are continued for a prolonged period, their salaries will be adjusted in the same manner as for employees holding a permanent or full-time temporary position. In the event a temporary employee is continued in a position as the result of a vacancy, temporary status will be considered as continuous employment for salary purposes and the original date of temporary employment will be used as the DMNA seniority date.

f. Reinstated Employees:

(1) Military Law Employees:

(a) Employees reinstated to or reemployed from a preferred list established under the termination provisions of this regulation will receive the annual salary they were receiving at the time of termination, plus any salary adjustments. However, employees who are reinstated to a position in a different salary grade assignment will have their salaries adjusted to consider previous State service.

(b) When an employee who is suspended without pay under the provisions of Chapter 6, paragraph 6-2f (11), is found not guilty of the charges made and is reinstated to his/her former or similar position, the employee will receive the same salary he/she was receiving at the time of suspension. Longevity increases or

salary adjustments authorized during the period of suspension will be included. Any salary lost as a result of suspension will be paid to the employee in a lump sum payment as soon as possible after reinstatement.

(c) An employee terminated in accordance with Chapter 4, paragraph 4-9e and Chapter 6, paragraph 6-2g(3) because of a physical and/or mental condition may apply for reinstatement within one year. A physician's report must be submitted indicating that the condition that caused the termination has been corrected. The employee must then be medically evaluated by a New York State Employee Health Service physician to confirm the report of the employee's physician. After confirmation and depending on availability, the employee may then be reinstated to his/her former or similar position at the same annual salary he/she was receiving at the time of the termination. The reinstated employee's salary will be adjusted to reflect any changes in the salary schedule.

(2) Classified Service Employees:

(a) Employees reinstated from a civil service preferred list to their former position or a similar position in the same salary grade will receive at least the same salary as paid at the time of suspension or demotion.

(b) When an employee who is suspended without pay under the provisions of Section 75 of the Civil Service Law or contract agreements between the state and an employee organization and is found not guilty of the charges made and is reinstated to his/her former or similar position, longevity increases or salary adjustments authorized during the period of suspension will be given. Any salary lost as a result of the suspension will be paid to the employee in a lump sum payment as soon as possible after reinstatement.

(c) An employee placed on leave or separated for ordinary disability in accordance with Section 72 or Section 73 of the Civil Service Law may apply for reinstatement within one year. A physician's report must be submitted indicating the condition that caused the termination has been corrected. The employee must then be medically evaluated by a New York State Employee Health Service physician to confirm the report of the employee's physician. After confirmation and depending on availability, the employee may then be reinstated to his/her former or similar position at the same annual salary as was being received at termination. The reinstated employee's salary will be adjusted to reflect any changes in the salary schedule.

g. Reemployment of Former Employees:

(1) An employee who has been permanently separated from state service for a period of less than one year and is reinstated to his/her former position is entitled to the salary attained prior to separation. In addition, any performance advance that may have been earned but not paid at time of separation and any general salary increase(s) for which the employee would be eligible will be included in the annual salary.

(2) A former employee reemployed after a one-year period will be treated as a new employee for salary purposes.

3-5. SALARIES UPON PROMOTION. Employee Qualifications - Employees selected for promotion by The Adjutant General or designated representative, who possess the full qualifications required of the position to which they are being promoted, will receive appropriate salary increases based upon the salary schedule in force at that time and governed by Section 131 of the Civil Service Law.

3-6. OTHER SALARIES AND PAY.

a. Transfer:

(1) Employees reassigned from one office or facility to another without a change in title or salary grade will have no change made in their salary. However, employees assigned to or from a location authorized "geographic location pay" will have their salary adjusted. A change in shift, day to night or vice versa, will also require a salary adjustment.

(2) The salary of an employee who transfers to or from the division and other state agencies may require adjustment to reflect applicable rules and regulations of the agencies involved.

b. Demotion:

(1) The salary of employees occupying officer graded or administrative positions (unclassified) will be as determined by The Adjutant General and the Director of the Budget and governed by Section 130 and 131 of the Civil Service Law.

(2) The salary of employees occupying facility operations positions and classified service positions will be determined as prescribed by the New York State Civil Service Law.

c. Reclassification or Reallocation:

(1) When a position recommended for reclassification is approved by the Division of the Budget, the incumbent employee will receive a salary adjustment, based upon the salary schedule in effect on the effective date of the reclassification.

(2) When a position has been recommended for reallocation and approved by the Division of the Budget, the incumbent employee will receive an increase in salary based on the salary schedule in effect on the effective date of the reallocation. Generally, an employee's salary will be adjusted to the salary step of the new salary grade which corresponds to his/her former salary step.

d. Location Pay:

Employees are entitled to receive location pay when their official work station is in New York City, or Rockland, Westchester, Nassau, or Suffolk Counties. Employees whose official work station is Monroe County and were hired prior to May 23, 1985, are also entitled to receive location pay. Location pay is in addition to annual salary and is included in the computation of overtime, holiday pay, and for retirement purposes.

e. Inconvenience Pay:

(1) Employees who are required to work a tour of four (4) or more hours between 1800 (6 p.m.) and 0600 (6 a.m.), exclusive of any hours for which an employee receives overtime compensation, are entitled to inconvenience pay. Employees assigned a tour of duty entitling them to inconvenience pay will receive pay while on authorized leave.

(2) Inconvenience pay will be included in a regular bi-weekly salary checks of employees occupying permanent night shift assignments (five days a week). Employees who perform intermittent night shift work on a permanent basis or as a result of a temporary change to the employee's work schedule will be paid on a quarterly basis.

f. Holiday Pay:

(1) Employees designated in paragraph 3-6h(1) who work on days observed as holidays by the state are not eligible for holiday pay. However, these employees may be eligible for compensatory time credits.

(2) All other employees who are required to work on days observed as holidays by the state will receive, at their option, additional compensation for time worked on such holidays or compensatory time off. The compensation for each full day worked will be at the rate of one-tenth (1/10) of their regular biweekly rate, to include location and inconvenience pay as appropriate. Employees, entitled to receive holiday pay, who are required to work on a holiday will be compensated for no less than one-half (1/2) day.

* g. Lag Pay:

(1) The "lag payroll" instituted in the 1982-85 Agreement shall remain in effect. When employees leave state service, their final salary check shall be issued at the end of the payroll period next following the payroll period in which their service is discontinued. This final salary check shall be paid at the employee's then current salary rate.

(2) The salary deferral program instituted by legislative action in 1990, and implemented in 1991, shall remain in effect. Employees shall recover monies deferred under this program at the time they leave state service, pursuant to the provisions of Chapter 947 of the Laws of 1990, as amended by Chapter 782 of the Laws of 1991.

h. Overtime Pay:

(1) Employees occupying any of the following positions are ineligible to receive overtime compensation unless specific approval is obtained from the Division of the Budget.

(a) All nonstatutory positions equated to MC 23 or SG 23 and above. Nonstatutory positions are defined as positions for which the salary is not fixed by statute but is established by the Director of the Budget.

(b) The following nonstatutory positions equated to MC 22 or SG 22 and below:

State Inspection and Survey Officer
 New York Guard Administrative Officer
 Secretarial Assistant
 Senior Budget Analyst
 Administrative Assistant
 Regional Supervisor, Facilities Operations
 Assistant Regional Supervisor, Facilities Operations

(c) The following nonstatutory positions are:

Adjutant General
Deputy Adjutant General
Deputy Director, Public Affairs and Legislative
Operations

(d) All positions allocated to MC 23 or SG 23 and above.

(e) The following positions allocated to SG 22 and
below:

Armory Superintendent I, II, III (except when over-
time work is in support of armory rentals)
Maintenance Supervisor (ANG facilities)

(2) Overtime worked by an employee in the employee's regular overtime eligible position or in an overtime eligible position allocated or equivalent to the employee's regular position will be compensated for work in excess of 40 hours at one and one-half times the regular hourly rate of pay. When the overtime is worked in an overtime eligible position which is allocated to a higher or lower salary grade than the employee's regular overtime eligible position, the employee will be paid at a rate which is based on the average regular hourly rate for the two positions.

(3) Part-time employees in overtime eligible positions who render additional services beyond 40 hours during one workweek in the biweekly payroll period are entitled to overtime compensation.

(4) Generally, recall occurs when an employee who leaves the regular tour of duty is called from home in response to an emergency situation and is then released, and not required to report to his/her normal tour of duty for a minimum of one hour. Compensation will be one and one-half (1 1/2) times the employee's hourly rate for a minimum of one (1/2) day.

i. Workers' Compensation Leave:

Full details of leave rules covered under the New York State Statutory Workers' Compensation Benefit are found in Chapter 4, paragraph 4-14 of this regulation.

j. Upon Return from Authorized Leave or Absence Without Pay:

An employee returning to duty within one (1) year or less will be reinstated at his/her former salary with any salary adjustment due.

k. Unauthorized Absence:

When an employee does not report for duty and disregards the rules concerning approval for leave, the employee will be placed in an absent without pay status for the period not approved. In the event an employee does not return to duty within a specific period or fails to submit justification for the absence, or when justification is considered inappropriate or unreasonable, the employee may be terminated in accordance with Chapter 8, paragraph 8-1c of this regulation.

l. Suspension Pending Disciplinary Actions:

An employee suspended pending the outcome of a disciplinary action may be placed in a leave without pay status.

m. Return to Duty Following Disciplinary Action Determinations:

Based upon on the final determination by The Adjutant General for disciplinary action brought against a suspended employee, one of the following salary actions may be imposed when the employee returns to duty:

(1) If found guilty and the period of suspension was determined to be part of the penalty to be imposed, the employee will be returned to the payroll in a full pay status following completion of the period of suspension.

(2) If found guilty and the period of suspension was determined to be excessive based upon the penalty to be imposed, the employee will immediately be returned to the payroll in a full pay status and will receive any pay due for the days suspended in excess of the penalty.

(3) If found not guilty, the employee will be immediately returned to the payroll in full pay status and will receive retroactive pay for all days suspended.

n. Termination as a Result of Disciplinary Actions:

An employee terminated as a result of a disciplinary action will have his/her salary stopped as of the effective date of the termination or the date of suspension, whichever is applicable.

o. Mandatory Payroll Deductions:

Employees are required by law to have deductions taken from their salary check for federal and state income taxes, Social Security, Medicare, and wage garnishees processed by the courts.

p. Optional Payroll Deductions:

Employees may voluntarily authorize deductions from their salary checks for Health Insurance, United States Savings Bonds, Employee Organization Insurances, Federated Fund Contributions, loans from New York State Employees' Retirement System, Deferred Compensation, and other deductions authorized by the State Comptroller.

3-7. TRAVEL EXPENSES.

Employees required to travel on official state business are authorized reimbursement for necessary travel expenses in accordance with DMNA Regulation 37-1, (Financial Administration - Morale, Welfare and Recreation) for military law employees, rules and regulations of the State Comptroller for classified service employees, and union contracts where applicable.

3-8. OVERTIME MEAL ALLOWANCE.

Employees required to perform overtime may be eligible for an authorized meal allowance in addition to overtime compensation or compensatory time off. Criteria authorizing this allowance and the amount of allowance are prescribed by rules and regulations of the State Comptroller and by union contracts where applicable.

3-9. MOVING EXPENSES.

Promotion, Transfer, Reassignment at the Direction of The Adjutant General:

A military law employee will be eligible for travel and moving expenses in accordance with DMNA Regulation 37-1 (Financial Administration - Morale, Welfare and Recreation) resulting in a change in home of record, either because

position abolishment or a transfer or reassignment is made in the best interest of the state.

3-10. APPROVED TRAINING AND EDUCATIONAL EXPENSES.

State Agency Sponsored Courses:

Any employee selected to attend a state or agency sponsored educational course of instruction, training seminar, or workshop, etc., will attend at no expense to the employee. If attendance requires a personal check or other payment in advance, the amount required to be advanced will be reimbursed to the employee upon submission of a properly completed voucher and attachments as required. When an employee is required to travel away from his/her official station to attend training, travel expenses may also be paid. All authorized expenses incurred will be paid in accordance with DMNA Regulation 37-1, (Financial Administration - Morale and Welfare and Recreation) for military law employees and rules and regulations of the State Comptroller for classified service employees.

CHAPTER 4

ATTENDANCE AND LEAVE RULES

4-1. BASIC WORKWEEK. Other than part-time employees and employees excluded from earning overtime compensation, the basic workweek for annual salaried employees will be five (5) days totaling forty (40) hours beginning on Thursday and ending Wednesday. However, in those offices where a shorter workweek will not interfere with the normal performance of government functions, a workweek of not less than five (5) days totaling thirty-seven and one-half (37 1/2) hours may be established with the approval of The Adjutant General. For unionized employees the particular "workday/workweek" contract articles will apply.

4-2. OVERTIME WORK.

a. Policy:

(1) It is The Adjutant General's policy that overtime work be held to a minimum, consistent with the needs and requirements of sound and orderly operation of the agency. Overtime is restricted except as approved or required under the following conditions.

(a) That the need for overtime has been appropriately justified in advance and has been approved as scheduled overtime by the Director of Human Resources Management.

(b) That if overtime is not accomplished due to an emergency situation, conditions detrimental to life, property, mandated security, or orderly maintenance of required services could result. Examples of these emergencies are sudden personal emergencies such as sickness which create a void in mandated shift coverage, bursting water pipes, heating system breakdown, fire, emergency call-up of troops, and severe snow storm.

(2) Overtime will not be authorized to cover absences of employees on vacation, personal, or military leaves, unless such absences are necessitated under sudden emergency conditions.

b. Definitions:

(1) Scheduled Overtime: Scheduled overtime is overtime which is known to be required in advance. Scheduled overtime is required to be approved in advance by the Director of Human Resources Management.

(2) **Unscheduled Overtime:** Unscheduled overtime is overtime necessitated by an emergency or conditions which cannot be anticipated in advance.

(3) **Compensatory Time:** Compensatory time is leave time earned by employees eligible to receive overtime and will be accounted for on a straight time basis for hours worked between thirty-seven and one-half (37 1/2) and forty (40) hours in a work-week, unless otherwise provided by the Director of Human Resources Management.

(4) **Recalls:** Recalls, which authorize employees a minimum of one-half (1/2) days pay at an overtime rate, occur when an employee leaves the regular tour of duty, is called back to work due to an emergency and is not required to return to normal duty for a minimum of one (1) hour. Being required to report early for or late departure from an employee's normal tour of duty may be considered overtime, but does not fall under the recall provisions. Recall provisions contained in negotiated labor agreements for DMNA employees covered by them, will apply to those employees.

(5) **Standby On-Call Rosters:**

(a) Employees who are required to be available for immediate recall and who must be prepared to return to duty within a limited period of time shall be listed on standby on-call assignment rosters. Assignments to such rosters shall be equitably rotated, insofar as it is possible to do so, among those employees qualified and normally required to perform the duties. The establishment of such rosters at a facility shall be subject to the approval of the department or agency involved and the Director of Budget.

(b) An employee who is eligible to earn overtime shall not be required to remain available for recall unless the employee's name appears on an approved recall roster. An employee shall be paid an amount equal to 15 percent of the employee's daily rate of compensation for each eight hours or part thereof the employee is actually scheduled to remain and remains available for recall pursuant to such roster. An employee who is actually recalled to work will receive appropriate overtime or recall compensation as provided by law. Administration of such payments shall be in accordance with rates established by the Director of the Budget. The daily rate of compensation shall be at the rate of one-tenth of the biweekly rate of compensation and will include geographic, locational, inconvenience, and shift pay as may be appropriate to the place or hours normally worked. Only employees eligible for on-call premium pay will be required to be on-call.

c. Applicability:

Except for positions exempted from earning overtime compensation as outlined in Chapter 3, paragraph 3-6g, employees will receive compensation for work performed in excess of forty (40) hours per week. For unionized employees the particular "Overtime, Recall and Scheduling" contract article will apply.

d. Authorization and Reporting of Required Overtime:

(1) Scheduled overtime requirements will be reported to the Director of Human Resources Management, as far in advance as possible giving reasons why overtime is required, the number of personnel required, and the estimated number of overtime hours required. Advance approval of the Director of Human Resources is required before any scheduled overtime may be accomplished.

(2) Unscheduled, emergency overtime may be authorized by the appropriate authority at the local level if it falls within the guidance provided under paragraph 4-2a(1)(b) above. Emergency conditions which can be expected to continue beyond a sixteen (16) hour overtime requirement shall be immediately reported to the Director of Human Resources Management, during central office duty hours, or the DMNA duty officer, after central office duty hours.

(3) Overtime justification reports, in the form prescribed by the Director of Human Resources Management, will be required for each employee performing overtime either in advance as scheduled overtime, or immediately upon completion of unscheduled, emergency overtime, and will be directed to the Division, ATTN: MNHR.

e. Work Schedule Changes: Whenever possible, temporary changes to work schedules for employees not covered by a negotiated labor agreement, will be made to prevent the necessity for overtime. These changes should be made as far in advance as possible in order that affected employees are well aware of the changes and may plan accordingly. Any such changes must, in order to preclude overtime payments, be made with appropriate employee notification, a minimum of twenty-four (24) hours in advance. Work schedule/shift change provisions contained in negotiated labor agreements for DMNA employees covered by them, apply to those employees.

f. Distribution of overtime will be in accordance with the negotiated labor agreement article dealing with overtime.

g. Determination of Overtime Earned:

(1) Total hours worked will include all the time worked by an employee when required to be on duty, but will exclude all absences from duty and all time allowed for meals. For purposes of computing total hours worked in a week, time during which an employee is excused from work because of holidays, sick leave, vacation, personal leave, compensatory time off, or other leave at full pay, will be considered as time worked. Hours of work determined to be in excess of forty (40) hours in a given workweek will constitute overtime earned.

(2) Total hours required for actual travel and/or services performed while in a travel status, during other than normal work hours, will be considered as overtime performed provided that:

(a) The trips are not between the employee's residence and official station.

(b) The trip is for the purpose of conducting state business and has been authorized in advance.

(c) Travel cannot be performed during regular work hours and the delay of travel would incur additional expenses plus undue delay in employees returning to their official station.

(d) The trip is not taken for the purpose of attending a professional conference or convention.

(3) The smallest unit of time eligible to be credited as overtime in any one day is one-quarter (1/4) hour.

h. Exceptions for Overtime Eligibility:

(1) Employees ineligible to be compensated for work in excess of forty (40) hours per week, may, if approved by the Director of the Budget, be eligible for compensation either in extreme emergency conditions or as a result of waiver of the Division of the Budget's overtime rules and regulations.

(2) Criteria used by the Division of the Budget in considering the designation of a period as one of extreme emergency are as follows:

(a) To be considered an emergency for the purposes of paying overtime compensation, an emergency situation must generally be of not less than three (3) days duration, and

(b) an employee must work a number of hours clearly in excess of the hours his or her position should reasonably require, and

(c) an employee must have been specifically directed by his or her supervisor, or other appropriate authority, to perform duties for the number of hours which payment is requested, and

(d) the emergency is a situation that is nonrecurring and one that cannot be forestalled or generally anticipated in advance.

(3) The waiving of eligibility restrictions contained in Division of the Budget overtime rules and regulations for other than extreme emergency conditions, as outlined in paragraph (2) above, is very rare. Only when the Director of the Budget determines that strict adherence to overtime rules would be detrimental to the sound and orderly administration of state government would such a waiver be granted.

(4) Employees ineligible to be compensated for overtime work should request consideration for exception only when it can be clearly demonstrated that the required overtime was necessitated and meets the required criteria in paragraphs (2) and (3) above. These requests are to be submitted to the Director of Human Resources Management. No payment for overtime compensation may be made to ineligible employees without specific written approval from the Division of the Budget.

4-3. RECORD OF ATTENDANCE.

a. Daily time records, showing actual hours worked by each person, will be maintained. The Adjutant General may exempt certain military law employees from this requirement while classified service employee exemptions must be approved by the Department of Civil Service.

b. Those employees exempted by The Adjutant General or by the Department of Civil Service are exempted only from the requirement of showing actual hours worked and are not exempt from the requirement of maintaining an accurate and complete record of daily attendance, including charges to appropriate leave credits for absences. Further, this exemption does not serve to modify the basic workweek.

4-4. LEAVE APPROVALS. With the exception of unscheduled use of sick leave or other emergency leave, advance approval for the use of leave credits must be obtained from the employee's supervisor or other locally designated approving authority. Rules concerning the time by which requests for leave must be submitted shall be locally established. Such rules shall also contain the required period of time during which an employee is required to report an unscheduled absence caused by illness or emergency.

4-5. TARDINESS.

a. Tardiness is defined as reporting to the work station after the scheduled starting time or returning late from lunch, without prior supervisory approval.

b. Appropriate charges and penalties for tardiness are as follows:

(1) For total tardiness in one biweekly period not exceeding 30 minutes, appropriate charges to leave credits must be made in 15 minute increments for each 15 minutes of tardiness or fraction thereof. However, no penalties will be charged.

(2) For total tardiness in one biweekly period exceeding 30 minutes but not more than 120 minutes, appropriate charge to leave credits must be made in 15 minute increments for each 15 minutes of tardiness or fraction thereof. In addition, a penalty of 15 minutes for each 15 minutes of tardiness or fraction thereof, must be charged, starting from the first minute the total tardiness started.

(3) Total tardiness in one biweekly period exceeding 120 minutes requires that appropriate charges to leave credits be made in 15 minute increments for each 15 minutes of tardiness or fraction thereof. In addition, a penalty of 30 minutes for each 15 minutes of tardiness or fraction thereof, must be charged, starting from the first minute the total tardiness started.

c. Imposition of tardiness penalties will not preclude disciplinary action in cases of persistent tardiness.

d. Tardiness penalties will be charged against annual leave credits in not less than one-quarter (1/4) hour units. If annual leave credits are exhausted, penalties will be deducted from compensatory time or personal leave credits, in that order. If annual leave, compensatory time, or personal leave credits are not available, appropriate payroll deductions will be taken from the employee's salary.

e. Under certain weather conditions, an employee or group of employees may be excused for tardiness with the approval of The Adjutant General. A full days absence under such conditions cannot be excused and must be charged against leave credits.

f. The tardiness of community volunteer firemen and/or community ambulance service volunteers due to voluntary duty may be excused provided the employee submits satisfactory evidence of the performance of duty. Absences, as opposed to the tardiness necessitated by voluntary duty, are properly chargeable against the employee's leave credits.

4-6. SATURDAYS, SUNDAYS, AND HOLIDAYS.

a. The majority of officer graded, Management/Confidential, and administrative positions are assigned a workweek of Monday through Friday; therefore, Saturdays and Sundays are not a part of the normal workweek and are considered days off.

b. Those employees occupying positions in the facility operations group may be assigned to a shift schedule which includes a Saturday, Sunday, or both as part of their normal workweek. Employees in this category will receive weekdays off in lieu of Saturdays and Sundays.

c. With certain exceptions as outlined in paragraphs d and m, employees eligible to earn overtime may be entitled to overtime payment if they are required to work on their days off. A temporary change to work schedules, which alters an employee's days off, will not entitle the employee to overtime unless the number of hours worked in a given week exceeds forty (40) hours. Employees whose normal day off falls on a legal holiday, as enumerated in paragraph d, will be authorized compensatory time off in lieu thereof.

d. Generally, the following holidays are granted as days off with pay: New Year's Day, Martin Luther King Day, Washington's Birthday (observed), Memorial Day, Independence Day, Labor Day, Columbus Day, Election Day, Veterans Day, Thanksgiving Day, and Christmas Day. Lincoln's Birthday is designated as a floating holiday. When these holidays fall on a weekend and are not celebrated on another weekday, they are paid holidays only for those employees who normally work on these days. Provisions contained in negotiated labor agreements for Division employees covered by them are applicable.

(1) Section 63 of the Public Officers Law provides that a veteran who served on active duty in the Army, Navy, Marine Corps, Air Force, or Coast Guard of the United States in time of war or in peacetime, or served in the armed forces of a foreign country allied with the United States in time of war, who has been discharged or separated from service under honorable conditions, will be granted leave with pay without charge to leave credits on Memorial Day and Veterans Day. Section 249 of the Military Law also provides that employees who have served as members of the National Guard, Naval Militia, or the Marine Corps Reserve during peacetime and who have been honorably discharged shall be granted leave without charge to leave credits on Independence Day (4 July).

(2) When Memorial Day, Veterans Day, or Independence Day fall on a Saturday and are not observed as a holiday by the State of New York, an eligible veteran as defined in Section 63 Public Officers Law, who receives holiday pay for working on either or all of these days is also entitled to be credited with a day of compensatory time off.

e. Only those employees required to properly secure facilities or conduct essential governmental services should be required to perform normal duty assignments on holidays. No charge will be made to leave credits when an employee does not perform duty on a holiday, as excepted under paragraph k.

f. Employees eligible to earn overtime who are required to work on days observed as holidays by the state shall be granted holiday pay, or, in accordance with Chapter 4, paragraph 4-6g, compensatory time off.

g. Any employee eligible to receive holiday pay may elect compensatory time off in lieu of holiday pay provided proper notification is filed with the Director of Human Resources Management on or before the end of the State fiscal year. This notification will remain in effect for the fiscal year for which filed.

h. Provided a temporary change to the work schedule has not been made, employees directed to work on a holiday falling on their normal day off will be considered in an overtime status and will be eligible to receive overtime payment in addition to holiday pay or compensatory time off for working the holiday.

i. Employees ineligible to earn overtime will be authorized compensatory time off if required to work on a holiday.

j. Within the context of the negotiated labor agreement, temporary changes to work schedules are authorized in order to facilitate the rotation of employees, thereby guaranteeing that all employees will not be required to work on all holidays. Changes must be published in advance for the information of all concerned.

k. Employee absent on sick leave on a holiday may, at their option, charge their absence against accumulated sick leave credits if the holiday is a regularly scheduled workday for the employee. If so charged to sick leave, the employee is entitled to compensatory time off in lieu of the holiday.

l. With the exceptions outlined under paragraph m, compensatory time off earned in lieu of holidays shall be added to the employee's vacation credits. Employees shall liquidate this time according to the rules governing vacation credits.

m. Per diem or hourly-rate employees will not receive pay or compensatory time off for any days not worked, including Saturdays, Sundays, and Holidays.

4-7. CONTINUOUS STATE SERVICE. For the purposes of this section, continuous state service will mean uninterrupted state service, in a pay status, as an employee of the State of New York. A leave of absence without pay, termination of employment from the division followed by reinstatement or reemployment, or employment of state employees from other state agencies, within one (1) year following the termination of employment, shall not constitute an interruption of continuous state service. A leave without pay for more than six (6) months between termination and reinstatement, reemployment or employment during which the employee is not in state service, will not be counted in determining eligibility for any additional vacation credits, or authorization for sick leave at one-half (1/2) pay.

4-8. VACATION.

a. Employees appointed prior to 1 April 1957, will earn and accumulate vacation as follows:

(1) Employees with a basic workweek of forty (40) hours will earn and accumulate vacation at the rate of six (6) hours for each biweekly pay period, with the exception of the 13th and 26th biweekly pay periods, for which they will be credited with eight (8) hours each.

(2) Employees with a workweek of thirty-seven and one-half (37 1/2) hours will earn and accumulate vacation at the rate of five and three-quarter (5 3/4) hours for each biweekly pay period with the exception of the 13th and 26th biweekly pay periods, for which they will be credited with six (6) hours each.

b. Personnel appointed on or after 1 April 1957 will, upon the completion of thirteen (13) continuous biweekly pay periods of service, be credited vacation as follows:

(1) Employees with a basic workweek of forty (40) hours will be credited with fifty-two (52) hours vacation. Thereafter, they will earn and accumulate vacation credits at the rate of four (4) hours per biweekly pay period.

(2) Employees with a workweek of thirty-seven and one-half (37 1/2) hours will be credited with forty-eight and three-quarters (48 3/4) hours vacation. Thereafter, they will earn and accumulate vacation credits at the rate of three and three-quarters (3 3/4) hours per biweekly pay period.

(3) Additional vacation credits will be earned upon completion of each full year of continuous service, in accordance with the following schedule:

Completed Year of Continuous Service	Additional Vacation Credits
1	1 day
2	2 days
3	3 days
4	4 days
5	5 days
6	6 days
7	7 days

(4) After the anniversary date on which an employee has been credited with seven (7) days of additional vacation credits, the employee will then earn vacation for each completed biweekly pay period at the rate prescribed in Chapter 4 para 4-8a (1) and (2), as appropriate.

c. Management/Confidential employees having twenty (20) or more years of continuous state service will earn additional longevity vacation credits as follows:

Completed Years of Continuous Service	Additional Vacation Credits
20 to 24	1 day
25 to 29	2 days
30 to 34	4 days
35 or more	5 days

d. Additional longevity vacation credits will be earned and credited to employees covered under applicable bargaining unit agreements as appropriate and as stated in the specific "Attendance and Leave" article of subject labor agreements.

e. Employees eligible for additional longevity vacation credits will receive credit for the time on their anniversary date each year.

f. Employees will not earn vacation credits for any biweekly pay period in which they are not in full pay status for at least seven (7) workdays. Further, no additional vacation credits will be earned by an employee unless the employee has been in a full pay status for at least thirteen (13) of the twenty-six (26) biweekly pay periods immediately preceding their anniversary date.

g. Employees not covered by a negotiated labor agreement, may accumulate vacation credits without limitation provided they do not exceed forty (40) days as of the first day of any calendar year. Employees covered by a negotiated labor agreement will refer to the particular contract article concerning vacation credit accumulation for specific provisions.

h. Request for vacation time off will be granted for the periods desired by an employee to the extent possible. In the event more employees request the same vacation time off than can be reasonably accommodated, vacation time off will be granted according to seniority within salary grade. To assist in the scheduling of vacation time, offices and installations may establish an annual date or periods within which an employee must request vacation.

i. When accumulated vacation credits cannot be liquidated through no fault of the employee, an Officer In Charge and Control or office director may request, in writing, an exception to the limitation imposed on maximum accumulations. Exceptions may be granted only by the Director of Human Resources Management.

j. The time at which vacation may be used will be subject to the prior approval of the Officer In Charge and Control or other appropriate supervisor. Vacation credits will not be liquidated in units of less than one-quarter (1/4) hours.

k. Upon separation from service, except resignation without due notice, an employee, the estate, or beneficiary will be compensated for unliquidated vacation credits up to a total of thirty (30) days.

l. Temporary employees of this agency who have six (6) months of continuous employment during a state fiscal year qualify for coverage under this regulation. They will earn and accumulate vacation at the same rate and are subject to the same regulations as permanent employees.

m. At the discretion of The Adjutant General, an employee may be advanced vacation credits during the second through the seventh years of continuous service. Credits will not exceed the number of additional vacation credits earned for the previous year of service and will be proportioned according to the number of pay periods served during the current year. Vacation credits advanced will be deducted from additional vacation credits due on the employee's anniversary date.

n. The original appointment is normally considered the anniversary date for purposes of crediting additional or longevity vacation credits earned. However, anniversary dates will be adjusted because of a leave of absence without pay or period of absence in excess of six (6) months between separation from state service and reinstatement, reemployment or employment.

4-9. SICK LEAVE.

a. Sick leave is absence with pay necessitated by illness or other disability of an employee. This includes illness or disability caused by pregnancy or childbirth.

b. Employees will earn sick leave credits as follows:

(1) Employees with a basic workweek of forty (40) hours will earn sick leave at the rate of (4) hours per biweekly period. Sick leave may be accumulated to a maximum of 1,600 hours (200) days.

(2) Employees with a workweek of thirty-seven and one-half (37 1/2) hours will earn sick leave at the rate of three and three quarters (3 3/4) hours per biweekly pay period. Sick leave may be accumulated to the maximum of 1,500 hours (200) days.

(3) Management/Confidential employees who do not have state service credit predating 1 January 1986, are covered under the Income Protection Plan. All enrollees accrue sick leave credits of eight days per year (four days of sick leave every six months). The first four days are earned six months after initial enrollment, and the next four are earned on the employee's anniversary date. Sick leave may be accumulated to the maximum of 1,500 hours (200 days).

c. An employee who is absent on sick leave must notify or have his or her supervisor notified of the absence within two (2) hours after the beginning of the workday on the first day of the absence. However, where the work is such that a substitute may be required, the Officer In Charge and Control, or other appropriate supervisor, may require earlier notification. An employee may not be required to notify his/her supervisor more than two (2) hours prior to the beginning of the employee's workday.

d. Before an absence because of personal illness can be charged against accumulated sick leave credits, proof of illness may be required. This proof may consist of either a certification from the employee indicating his/her inability to perform duty or a physician's certificate, whichever is required by the employee's supervisor. Supervisors must advise their employees, in advance, of their specific requirements. In all cases, a physician's certificate will be required for periods of sickness exceeding three (3) consecutive working days unless exempted by The Adjutant General. In the event proof of illness is not submitted, or if submitted and found to be unsatisfactory, the absence will be considered as unauthorized leave without pay and will not be charged against accumulated sick leave credits. As specifically stated in DMNA Sick Leave Abuse Program, abuse of

sick leave privileges will be cause for disciplinary action. Employees who exhibit the potential for sick leave abuse may be placed in a sick leave watch program, monitored by the supervisor and MNHR. The supervisor will formally counsel any employee placed in the Sick Leave Abuse Program.

e. A person who has been absent because of personal illness, may, as a condition of return to duty, or as soon after as possible, be required to have an examination by the New York State Employee Health Service. The examination will be to establish the employee's capability to perform the duties of his or her position and to assure that the return to duty will in no way jeopardize the employee's health or health of any other employee. If the physician's report indicates the employee is incapable of performing his or her duties on a full-time basis, the employee may not return to work and will continue in a leave or leave without pay status or at a specific time, be terminated from service. Employees may be prohibited from returning to work in light duty status because of the potential for additional employee injury.

f. Statements and reports from physicians will be treated as confidential information. However, the statements and reports may be used by a hearing officer or other official in those instances requiring a determination based upon them.

g. In addition to personal illness, the following types of absence may be charged against accumulated sick leave when approved by the appropriate supervisor:

(1) Illness or death in the employee's immediate family, provided that charges for the absence shall not exceed fifteen (15) days in any one (1) calendar year.

(2) Personal visits to the physician, dentist, or other certified medical practitioner.

h. When an employee is separated and is reinstated or reemployed within one (1) year after separation, his or her sick leave credits unused at the time of separation will be restored.

i. The employee's supervisor may request an advance of sick leave credits and/or sick leave at one-half (1/2) pay for an employee who has a minimum of one (1) year state service and has exhausted all accumulated sick leave, annual leave, and personal leave. DMNA Form MNHR-8, Request for Advance Sick Leave and/or Sick Leave at Half Pay, will be initiated by the employee according to the instructions contained on the form. Unlike ordinary sick leave, sick leave at half pay is discretionary and must be approved by the Director of Human Resources Management.

If advanced leave is approved, such advance sick leave will be repaid immediately from any leave credits earned. Utilization of any earned leave credits prior to the complete repayment of advance sick leave is not authorized. Any leave used prior to complete repayment of the advanced sick leave will be considered as leave without pay unless a new DMNA Form MNHR-8 is submitted and approved. When an employee who has been granted advance sick leave does not return to duty, the Officer In Charge and Control, or other appropriate supervisor, will attempt to secure reimbursement to the state for the advance sick leave. The outstanding unrepaid sick leave credits advanced to an employee working under this rule will not at any time exceed a total of five (5) working days. If sick leave at half pay is approved, the cumulative total of all sick leave at half pay granted will not exceed one (1) biweekly pay period for each completed six (6) months of state service. If an employee is incapacitated and is unable to initiate a request for either or both of the above types of leave, the employee's designee or supervisor may act in the employee's behalf.

j. Any retiring state employee, who is eligible to continue State Health Insurance coverage in retirement, will be entitled to a reduction in the monthly payment for health insurance based on the dollar value of unused sick leave, to a maximum of 165 days. The dollar value of the unused sick leave is calculated by multiplying the number of unused sick leave days as of the date of retirement by the employee's current daily rate of pay. The Health Insurance Section of the Department of Civil Service will determine the actual equivalent in monthly installments. The monthly contribution for coverage of the retiree and eligible dependents, if appropriate, will be reduced by the amount of the monthly installment. The remaining amount owed, will be deducted from the retiree's monthly retirement allowance.

k. Employees hired on a temporary basis qualify for sick leave at the same rate and are subject to the same conditions as permanent employees.

l. Maternity Leave:

(1) A female employee who is requesting maternity leave will provide a medical doctor's statement indicating the estimated date of childbirth. This statement will serve as the basis for considering maternity leave, when requested, and will also provide the employee's supervisor with information required for considering a temporary replacement or in distributing the resulting workload.

(2) Disability arising out of pregnancy will be treated the same as other disabilities in using sick leave with and/or without pay. Absences during pregnancy or following childbirth may also be charged to vacation or personal leave, if approved in advance.

(3) Any employee unable to work and on leave of absence because of pregnancy or childbirth will not be considered for advance sick leave at half pay, unless she is determined to be medically disabled from the performance of her duties and then only for such period of her leave as she continues to be so disabled. The Director of Human Resources Management, upon request of the employee, may grant the use of vacation or personal leave credits and/or leave without pay during pregnancy and prior to the onset of any medical disability.

(4) For the purpose of this rule, a female employee will be considered disabled from the performance of her duties, without need for a medical doctor's statement, for a period of four (4) weeks prior to the anticipated due date and six (6) weeks following the actual date of childbirth. Any period of claimed disability exceeding those periods is required to be supported by a medical doctor's statement and be approved by the Director of Human Resources Management, in order for the employee to be eligible to utilize sick leave credits or be considered for advance sick leave or sick leave at half pay.

4-10. CHILD REARING LEAVE.

a. When the pregnancy and period of disability related to it ends, as outlined in Chapter 4, paragraph 4-9 l (4) above, an employee may request a leave of absence for child rearing purposes. Employees, either male or female, are entitled to child rearing leave of up to seven months after the date of the child's delivery. Leave may be charged to accumulated vacation or personal leave credits until such credits are exhausted, at which time the employee would be placed in a leave without pay status. Sick leave credits may be utilized only during the disability period, six weeks after delivery. When both parents are state employees, the seven month period may be divided between them in separate blocks, not to exceed a total of seven months.

b. In a legal adoption, child rearing leave may also be granted for up to seven months, and the period may begin at any time from the date the child begins living with the adoptive family to the effective date of adoption. Guidelines for shared leave when both adoptive parents are state employees as outlined in Chapter 4, paragraph 4-10 a, apply.

c. Extension of child rearing leave beyond the seven month period will be at the discretion of The Adjutant General. Such unpaid leave of absence will not exceed two years.

4-11. PERSONAL LEAVE. Personal leave is leave with pay for personal business to include religious observance. Employees, with the exception of those employed for less than ninety days, are entitled to personal leave not exceeding five days a year. Personal leave is credited as follows:

a. Employees will be credited with five days of personal leave at the time of appointment and will be credited with five days of personal leave on each subsequent anniversary date. The date of appointment will become the employee's anniversary date for personal leave.

b. An employee who is not in a pay status on the anniversary date is not credited with personal leave until he/she returns to a full pay status. The date of return to a full pay status will become the new anniversary date for personal leave.

c. Any personal leave remaining unused at the close of business on the date preceding the anniversary date will be canceled.

d. Employees will not be required to give a reason for the use of personal leave. However, prior approval for its use must be obtained from the employee's supervisor.

e. Personal leave credits will not be used in units of less than one-quarter hour.

f. There is no compensation for unused personal leave credits at time of separation from state service.

4-12. COMPENSATORY TIME CREDITS. These credits are recorded on the employee's time sheet under the category "Comp Time."

a. Compensatory time is leave time earned by employees eligible to receive overtime compensation and is accounted for on a straight time basis for those hours worked between thirty-seven and one-half (37 1/2) hours and forty (40) hours in a workweek. Compensatory time is expected to have supervisory approval. These credits are recorded on the employee's time sheet under the heading "ERND C.T."

b. Employees may accrue a maximum of 240 hours of compensatory time during any fiscal year. Unused accrued compensatory time expires on the last day of the fiscal year.

c. Upon separation from state service, an employee may receive a lump sum payment for accrued compensatory time, not to exceed thirty (30) days.

4-13. LEAVE FOR EXTRAORDINARY CONDITIONS.

a. An employee who has reported for duty and is directed to leave work because of circumstances beyond his/her control, other than those related to weather conditions, will not be required to charge this time off against leave credits. Authority to excuse

employees for extraordinary conditions must be obtained from The Adjutant General with the approval of the Governor's Office of Employee Relations.

b. Employees requesting leave because of excessive heat or other extraordinary weather conditions must charge the leave against leave credits.

c. In extreme emergency conditions The Adjutant General or designated representative, may excuse employees from duty for any period of time he so determines. Such time off will not be charged against an employee's leave credits.

4-14. WORKERS' COMPENSATION LEAVE.

a. The New York State Statutory Workers' Compensation Benefit is insurance that provides cash benefits and medical care if you become disabled because of an injury or sickness related to your job. If death results, benefits are payable to your surviving spouse and dependents as defined by law. The insurance carrier for New York State is the State Insurance Fund (SIF). The benefit is available up to a maximum of twelve (12) months for each injury or illness sustained.

b. An employee who sustains an injury or sickness related to their job, must report it as soon as possible. Failure to report injury can result in the case being controverted and/or disciplinary action.

c. The following is a summary of the benefit:

(1) SIF will determine whether claims filed by employees for the Workers' Compensation Benefit will be paid or controverted (contested). If a claim is controverted by SIF, final determination will be made by the Workers' Compensation Board.

(2) Employees may charge leave for the first five working days of the initial waiting period. Accruals will be restored on a prorated basis depending on the percentage of disability. When the employee returns to work and is absent for partial days due to therapy, a doctor's appointment, or other required continuing treatment, the employee may charge accrued leave to cover the absences. For any full days when absent and not charging leave credits, employees will be placed on leave without pay and may be eligible for wage replacement benefits from SIF.

(3) An employee whose disability lasts no more than seven calendar days will not be eligible for the Workers' Compensation Statutory Benefit and must charge credits for time lost from work.

(4) The restoration of sick leave accruals is at the discretion of the Workers' Compensation Board.

d. The employee's employment may be terminated by the appointing authority, upon a medical finding of a permanent disability, or after a cumulative year of absence due to an injury or sickness related to your job.

4-15. LEAVE FOR COURT AND JURY DUTY. A permanent employee will be granted a leave of absence with pay without charge to leave credits upon submission of proof of a call to jury duty, to attend court pursuant to a subpoena, or other order of the court. The leave covers the time in attendance in court and reasonable travel time preceding and following attendance. The excused employee will be required to perform his/her normal duties at the employment location for any time that does not fall within the above limitations. Any employee who is a party to an action and whose attendance is on a voluntary basis is not covered under the foregoing and will be required to charge appropriate leave credits for any leave requested.

4-16. LEAVE FOR CERTAIN EXAMINATIONS. A Division of Military and Naval Affairs employee, upon providing sufficient advance notice, is entitled to leave with pay, without charge to leave credits, to take any New York State Civil Service examination for a state position. Those employees who work either 8 hours prior or 8 hours after a scheduled examination will have their schedule adjusted accordingly. Time off will include actual time of the examination and travel time to and from the examination center. When appropriate, meal time may be included.

4-17. LEAVE FOR QUARANTINE. An employee who is not ill but is required to remain absent because of a quarantine must present a written statement from the attending physician or local health officer substantiating the quarantine. Upon approval, leave with pay for the period of his/her required absence without charge against accumulated credits, will be granted. Prior to return to duty, the employee may be required to submit a written statement from the local health officer stating that his/her return to duty will not jeopardize the health of other employees.

4-18. MILITARY LEAVE.

a. Ordered Military Duty:

Ordered military duty is the performance of military duty pursuant to orders issued by state or federal authority.

b. Pay for Thirty Days:

(1) While engaged in the performance of ordered military duty, military law employees will be paid their salary for any and all periods of absence. Covered periods are not to exceed a total of thirty (30) calendar days or twenty-two (22) workdays, whichever is greater in any one (1) calendar year, and not to exceed thirty (30) calendar days or 22 workdays in any one (1) continuous period of absence.

(2) Employees are urged to exhaust their military leave credits with pay privileges prior to applying for the use of annual or personal leave credits.

(3) An employee who has exhausted his/her leave of absence with pay privilege under this section may apply for use of annual or personal leave credits in order to remain in a full pay status during such military duty. If no leave credits are available, the employee will be placed in a leave without pay status.

(4) If, because of sickness or injury, an employee's orders are extended or he/she continues to be hospitalized beyond the initial period indicated in the orders, available sick, personal, or annual leave may be granted.

c. No request for absence for ordered military duty need be submitted when the duty does not interfere with the employee's normal work hours.

d. Request for and utilization of military leave will require military orders to be submitted to an employee's supervisor.

e. Absence for ordered military duty will not be requested or granted in less than one (1) day increments.

f. It is the policy of The Adjutant General that, whenever possible, employee duty assignments be arranged whether temporarily or permanently, so that attendance at normal weekly and/or weekend training assemblies will not interfere with duty assignments.

4-19. LEAVE FOR WAR VETERANS TO CONTINUE STUDY. Section 246 of the Military Law provides that war veterans, as defined by the section shall be granted a leave of absence without pay, not to exceed four (4) years, to further their education or to take training courses. Proof of attendance and successful matriculation shall be sent to the Director of Human Resources Management, in writing, on a quarterly basis.

4-20. LEAVE OF ABSENCE WITHOUT PAY.

a. A permanent employee may, with the approval of the Director of Human Resources Management, be granted a leave of absence without pay for a period of six (6) months. Leaves may be extended for additional six (6) month periods up to but not exceeding a two (2) year aggregate. Absences beyond a two (2) year period, unless leave is extended as provided here, will be considered a resignation. For purposes of this rule, time spent in ordered active service in the military forces of the United States or of the State of New York will not be considered in computing the leave period.

b. Where a leave of absence without pay has been granted for periods totaling two (2) years, a further leave of absence without pay will not be granted unless the person returns to his or her position and serves continuously for six (6) months immediately preceding any subsequent leave of absence without pay.

c. Notwithstanding the provisions of paragraph b, a leave of absence without pay, with the approval of the Director of Human Resources Management, may be extended beyond two (2) years, where illness or disability renders and employee temporarily incapable of efficiently performing the duties of his or her position.

d. An employee must request an extension of an approved leave of absence without pay at least two (2) weeks prior to the expiration of the approved leave. An employee who does not return to duty upon the expiration of an approved leave without pay shall be considered to have resigned effective on the day following expiration.

e. Leaves of absence for education must be supported by proof of matriculation.

4-21. DRAWING OF EARNED CREDITS UPON TERMINATION OR ENTRY INTO THE ARMED FORCES.

a. At the time an employee terminates service with the division and, in the case of resignation, gives notice of resignation to the appropriate supervisor at least two (2) weeks prior to the last day of work, the employee or beneficiary will be compensated for vacation credits not in excess of thirty (30) days unused as of the effective date of termination. No employee removed from state service as a result of disciplinary action or who resigns after charges of incompetency or misconduct will be entitled to compensation for vacation credits.

b. An employee on leave from his/her position because of entry into the armed forces of the United States for active duty (other than for training) as defined by Title 10 of the United

States Code, may elect to receive compensation for vacation credits not in excess of thirty (30) days unused as of the last day on which his/her name appeared on the State payroll.

c. An employee who resigned to assume a position in another state agency may transfer unused vacation credits with the approval of the new agency.

4-22. WRITTEN AGREEMENT WITH THE DEPARTMENT OF CIVIL SERVICE ON TRANSFER OF TIME CREDITS.

The Adjutant General has entered into a reciprocal agreement with the President of the Civil Service Commission allowing the transfer of employee leave credits and seniority for attendance and leave purposes to other State agencies.

4-23. LEAVE FOR PROFESSIONAL MEETINGS AND EXAMINATIONS.

Subject to the prior approval of the Director of Human Resources Management, employees may be allowed a maximum of five (5) days per year without charge to leave credits to attend conferences of recognized professional organizations of which the employee is a member such as the National Guard Association of the United States, Militia Association of New York, the Enlisted Association of New York, American Society for Public Administration, or the National Emergency Management Association. The conference must be directly related to the employee's profession or professional duties. In addition, with proper advance notice, employees may absent themselves from duty without charge to leave credits for the purpose of participating in one (1) professional examination each year in his/her discipline. In the event the examination is administered in several parts, the several parts shall be considered a single examination.

4-24. LEAVE FOR SOCIAL AFFAIRS OR DIVISION FUNCTIONS.

a. Employees attending social affairs sponsored by the division, singularly or in cooperation with an employee organization, may be authorized leave without charge to leave credits if the affair is approved in advance by The Adjutant General. Division functions or ceremonies requiring employees to be absent from duty to attend, will not be charged against employee leave credits.

b. Social affairs sponsored by employee organizations or groups of individual employees may be conducted. However, employees participating in those functions are required to charge appropriate credits for time off during the normal workday.

4-25. FAMILY AND MEDICAL LEAVE ACT OF 1993.

a. The Family and Medical Leave Act of 1993 (FMLA) requires employers to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for certain family and medical reasons. Employees are eligible if they have worked for New York State for at least one year, and for 1250 hours over the previous 12 months.

b. Unpaid leave will be granted for any of the following purposes:

(1) To care for the employee's child after birth, or placement for adoptive or foster care.

(2) To care for the employee's spouse, son or daughter, or a parent who has a serious health condition.

(3) For a serious health condition that makes the employee unable to perform the employee's job.

c. Employees will be required to provide advance leave notice and medical certification as follows:

(1) Employees must ordinarily provide 30 days advance notice when the leave is foreseeable.

(2) Employees will be required to submit a medical certificate to support a request for leave because of a serious health condition, as well as a return to work certification.

4-26. SUSPENSION OF RULES.

The rules contained in this section may be suspended in whole or in part by The Adjutant General in an emergency for the duration of it, and to the extent necessary based on the nature of the emergency.

CHAPTER 5

EMPLOYEE BENEFITS AND SERVICES

5-1. HEALTH AND DENTAL INSURANCE. All employees are eligible to participate in state health and dental insurance programs on a voluntary basis. Payroll deductions may be required depending on the type of coverage selected.

5-2. RETIREMENT AND SOCIAL SECURITY.

a. With certain exceptions, employees are required to join the New York State Employees' Retirement System (NYSERS) and the Federal Social Security Program.

b. In addition to retirement benefits, both the New York State Employees' Retirement System and the Federal Social Security Program contain benefits for disability and death.

c. Certain individuals employed prior to 1 July 1954 are eligible, or earning eligibility, for retirement under the provisions of Section 214 or 215 of the New York State Military Law.

5-3. WORKERS' COMPENSATION PROGRAM.

a. The New York State Statutory Workers' Compensation Benefit is insurance that provides cash benefits and medical care if you become disabled because of an injury or sickness related to your job. If death results, benefits are payable to your surviving spouse and dependents as defined by law. The insurance carrier for New York State is the State Insurance Fund (SIF).

b. The following Workers' Compensation Benefit was implemented on 1 July 1992:

(1) An employee who sustains an injury or sickness related to their job, must report it as soon as possible after it occurs using a SIF Intake Form C-142.1S (11/86) which replaces DMNA Form 1038. When the SIF Intake Form has been completed, supervisors must immediately contact the Health Benefits Administrator, MNHR or transmit the form by facsimile. A hard copy of the completed form will be mailed to MNHR within seven days. Failure to report injury can result in the case being controverted and/or disciplinary action being taken.

(2) The Form C-2, Employees Report of Injury, will be completed by the supervisor or a co-worker. The last copy is retained for the employee's records and all other copies are forwarded for processing to the Health Benefit Administrator, MNHR.

In order for the State Insurance Fund to pay wage replacement benefits, they require an accident report from the agency and a medical report from a physician indicating the disability is related to the injury.

(3) An employee whose disability lasts no more than seven consecutive calendar days is not eligible for the Workers' Compensation Benefit and may charge leave credits for absence from work.

(4) In the event an employee does not have sufficient leave credits to cover absence, sick leave at 1/2 pay will be granted, unless the employee requests otherwise.

(5) When an employee is disabled beyond seven (7) consecutive calendar days, supervisors will again notify the Health Benefits Administrator, MNHR and the employee will be placed on leave without pay to effect payment of the Workers' Compensation Benefit.

(6) The SIF will determine whether claims filed by employees for the Workers' Compensation benefit will be paid or controverted (contested). When a claim is controverted by SIF, the final determination for the payment of the benefit will be made by the Workers' Compensation Board. During this period of controversion, the employee may charge leave accruals.

(7) When an employee's claim is accepted by SIF, the employee will receive a wage replacement check instead of a full salary check. The wage replacement benefit is available up to a maximum of twelve (12) months for each injury or illness sustained.

(8) Under Workers' Compensation Law, a disability is classified as either total or partial.

(a) The benefit for a total disability (100 percent) is based on the employee's average weekly wage.

(b) An employee who has a partial disability receives a percentage of the benefit based on percentage degree of disability.

(c) When the disability is reduced to 50 percent or less and the employee is within 45 days of full recovery, he or she may qualify for participation in the Mandatory Alternate Duty program. A New York State Estimated Physical Capabilities Form must be completed by the employee's physician to establish eligibility for this program.

c. Implementation of the Workers' Compensation benefit requires that all on-the-job accidents and injuries incurred, however minor, or work related illnesses and occupational diseases/disabilities must be reported through MNHR to the SIF and Workers' Compensation Board. Employees who fail to report promptly may lose their right to the Workers' Compensation Benefit.

5-4. WORKERS' COMPENSATION BENEFITS.

a. While receiving Workers' Compensation payments directly from the State Insurance Fund, the employee will be treated as though he/she was on the payroll for the length of disability for up to a minimum of 12 months. This means employees will be entitled to accrue seniority, continuous service credit, and earn vacation, sick leave, and personal leave.

b. While an employee is out of work and on leave without pay as a result of a work related illness or injury, health insurance coverage for the employee, spouse, and other dependents will automatically continue. However, the employee will be responsible for paying the health insurance premium when he/she returns to work. When returned to the payroll, the employee will pay, through payroll deduction, a health insurance premium for the current coverage plus additional money to a maximum of \$55.00 until premiums are fully repaid for the period of time while on Workers' Compensation disability leave without pay.

c. The employee will be treated as though he/she is on the payroll for retirement service credit. If an employee contributes to the NYSERS, he/she will be responsible for those payments.

d. If the employee is a member of the NYSERS, he/she may be eligible for accidental or ordinary disability retirement benefits. Members on the Statutory Workers' Compensation Benefit Program are considered to be "on the payroll" while they are accumulating service credit and will be eligible to obtain loans against their retirement accounts.

e. If the employee is seriously and permanently disabled, he/she may be entitled to the payment of monthly social security benefits, provided he/she is covered by the Federal Disability Insurance Benefit and should write or call the nearest field office of the Social Security Administration for further information.

f. If an employee should die as a result of a compensable injury, surviving spouse and dependents, as defined by law, may be entitled to weekly cash benefits pursuant to the New York State Workers' Compensation Law. Further information is available from the local Workers' Compensation Office.

5-5. MANDATORY ALTERNATE DUTY.

a. The parties agree to develop, as soon as possible, a mandatory alternate duty policy for employees who request or are directed to return to work after suffering an occupational injury or disease. The mandatory alternate duty policy will allow management to recall an employee to duty and will allow an eligible employee to request to return to duty subject to the eligibility criteria in the policy. The basic tenets of the mandatory alternate duty policy shall include, but not be limited to, the following:

(1) An employee's level of disability must be classified as 50 percent or less disabled by the State Insurance Fund.

(2) Mandatory alternate duty assignments shall be based upon medical documentation satisfactory to management. Such satisfactory documentation must include a prognosis of a return to the full duties of the injured worker's original job within 60 calendar days from the date upon which the alternate duty assignment begins. Time limits, consistent with or similar to those contained in Article 10.19 of the Institutional Services Unit Agreement or as developed jointly by the parties, will be utilized for those situations when the state requires that an employee be medically examined. Medical documentation shall not be reviewable under Article 34 of the New York State Division of Military and Naval Affairs and the Civil Service Employees Association Collective Bargaining Agreement.

(3) Management shall have the authority to make mandatory alternate duty assignments to tasks that can be performed by the employee not necessarily within their original job duties, title series, work schedule, work location or workweek.

(4) Mandatory alternate duty assignments shall be for a period up to 60 calendar days per injury. Such assignment may be extended at management's discretion not to exceed the term of the disability.

(5) When an employee's mandatory alternate duty assignment expires or is terminated, such employee shall either be returned to full duty status or returned to being covered by the provisions of the Worker's Compensation statute.

(6) If the above conditions are met and if management is not able to provide the eligible employee with such alternate duty assignment, that employee's compensation will be adjusted to equal the employee's "100 percent disabled" statutory benefit for the period the employee qualified for an alternate duty assignment based on medical documentation, described in 11.8 of the New York State Division of Military and Naval Affairs and the Civil Service Employees Association Collective Bargaining Agreement, for up to 60 calendar days.

5-6. UNEMPLOYMENT INSURANCE. All employees are protected by unemployment insurance. No payroll deductions are required for this coverage.

5-7. SURVIVOR'S BENEFIT PROGRAM.

a. The New York State Employees' Retirement System provides a Survivor's Benefit Program for both active and retired employees who meet certain specific requirements.

b. For active employees, this plan is a supplement to the ordinary death benefit payable by the NYSERS. It offers assistance to beneficiaries when they do not qualify for an ordinary death benefit payment from the NYSERS equal to at least 1/2 of the employee's annual salary.

c. There is a separate program for active Management and Confidential employees. The specifics of each plan are available from the Director of Human Resources Management.

d. Under current rules, the beneficiary of a retired state employee who retired on or after 1 April 1970, would receive a Survivor's Benefit of \$3,000. To be eligible, a state employee must have 10 or more years of full-time state service within the last 15 years immediately prior to retirement.

5-8. CSEA EDUCATIONAL BENEFITS.

CSEA/LEAP (TUITION VOUCHER PROGRAM)

a. The purpose of the Labor Education Action Program (LEAP) is to provide educational benefits to CSEA-represented state employees, enabling them to achieve greater career mobility and promotional opportunity, and to prepare for future state workforce needs.

b. Eligibility Requirements

In order to be eligible to participate in LEAP, you must be:

(1) A CSEA-represented state employee who received a paycheck dated May 3, 1995 or May 10, 1995.

(2) CSEA-represented employees who are otherwise eligible for LEAP but were on an approved nondisciplinary leave without pay or who were receiving Workers Compensation benefits during these payroll periods may also apply for LEAP.

c. Who Will Receive a LEAP Voucher?

Vouchers will be awarded based upon available funding to eligible applicants whose properly completed applications are received by the deadline date. When the negotiated funding level does not allow LEAP to award vouchers to all eligible applicants, a priority system is used which is based upon each individual's recent history with LEAP and anniversary date (date of appointment to service.) Vouchers are then awarded, as available funding will allow, to applicants in order of priority.

d. What Voucher Will Cover:

A LEAP voucher will cover tuition for either one graduate or undergraduate course up to a maximum of 3 to 4 credits, or one noncredit course. All fees are the student's responsibility. The value of a voucher may not exceed an amount equivalent to 4 credits at the SUNY four-year college tuition rate.

e. LEAP Reimbursement Program:

Even if the school you would like to attend is not listed in the LEAP catalog, you may still apply for a tuition benefit through the LEAP program. If approved for funding, you would be required to pay for the course yourself and successfully complete the course with a passing grade. You would be awarded a LEAP voucher which would entitle you reimbursement of tuition costs, paid directly to you, upon successful completion of the course. In order to extend LEAP tuition benefits to as many individuals as possible, LEAP vouchers will not cover lab fees. Vouchers may be used to pay for tuition costs only.

5-9. PEF EDUCATIONAL BENEFITS.

PSTP Program (Tuition Voucher Program)

a. Program Description:

PEF's Tuition Support (Voucher) Program allows students to take a course(s) of their choice at a PEF/PSTP approved school. Tuitions, up to the program maximum, will be paid by PEF/PSTP directly to the school. Vouchers may generally be used for up to \$600.00 per semester for graduate/undergraduate study, unless otherwise restricted or noted in the PEF/PSTP catalog.

b. Eligibility:

In order to be eligible to participate in the PEF/PSTP Tuition (Voucher) Program you must be a PEF represented state employee in the PS&T bargaining unit or be on a Civil Service Preferred List. Employees working less than half-time and those on full-time educational leave shall receive 50 percent of the current benefit - seasonal employees are not eligible.

c. Expenses Covered:

Currently a maximum of \$600.00 per participant per semester for graduate/undergraduate credit courses has been set.

Partial payment for a course exceeding PEF/PSTP's tuition coverage limit of \$600.00 per semester or a cap of \$1200.00 per fiscal year.

5-10. MC EDUCATIONAL BENEFITS.

Tuition Reimbursement

a. As an incentive to pursue an education related to job or career, the MC Tuition Reimbursement Program provides financial support for approved educational activities on a reimbursement basis.

b. Employee Eligibility Criteria:

Employees must have six (6) months continuous state service immediately prior to beginning course work, meet all the requirements of the program, and be a Management/Confidential employee at course completion to qualify for reimbursement.

Employees must be working half-time or more and meet the continuous service requirement to be eligible for reimbursement. Employees working less than half-time or on an unpaid leave of absence are not eligible for tuition reimbursement. Employees on full-time paid leave while attending school full-time are not eligible for reimbursement.

c. Qualifying Course Work:

Educational activities eligible for reimbursement are job-related or career-related credit or non-credit courses, training seminars, or workshops offered by approved schools or organizations. Credit courses taken on an audit basis are not reimbursable. Application for assistance under this program will be made to the Training Officer in advance of course attendance.

d. Expenses Covered:

Employees are required to pay all fees in advance and then complete the initial tuition reimbursement form no later than 10 working days after beginning of course work. If all criteria has been met after course completion, reimbursement will be made when appropriate addition form has been submitted with payment receipt and satisfactory course grade report. An employee may receive 75 percent cost of tuition, per semester, to a maximum of \$750.00 per fiscal year. Some lab fees may also be reimbursed.

IF AN EMPLOYEE IS INTERESTED IN ANY OF THESE PROGRAMS, ADDITIONAL INFORMATION CAN BE OBTAINED FROM THE TRAINING OFFICER LOCATED IN THE STATE HUMAN RESOURCES OFFICE.

5-11. VISION CARE. Vision care programs administered either by the state or union benefit funds will be made available to eligible employees and their eligible dependents. Payroll deductions are not required for this benefit.

5-12. HEARING CARE. Management and Confidential employees and their eligible dependents are covered by a hearing care program which provides for an audiological examination every four years. Payroll deductions are not required for this benefit.

5-13. OTHER INSURANCES. Group life, automobile, homeowners, and renters insurance will be made available to certain employees depending on bargaining unit and specific guidelines established for those programs. Employees represented by certain bargaining units are also eligible for disability insurance. Premiums for insurances selected will be deducted from payroll checks on a biweekly basis.

5-14. BLOOD PROGRAM. The New York State Employees' Blood Program is established to provide supplies of blood and blood products which can assist employees, their dependents and retirees. Bloodmobiles are generally held twice annually at the Latham Headquarters.

5-15. EMPLOYEE SUGGESTION PROGRAM. The Civil Service Commission has established a New York State Employee Suggestion Program to stimulate thinking by state employees about means to improve the efficiency, economy, and effectiveness of state operations. All state employees of the Division and its retirees from state service are eligible to submit suggestions in accordance with guidelines published by the New York State Department of Civil Service. The Director of Human Resources Management will promote this program and make guidelines available.

5-16. EMPLOYEE ASSISTANCE PROGRAM (EAP). The EAP is established to assist employees and their families in resolving problems that may impact on their work lives. This support and referral program is voluntary, free, and confidential.

5-17. DIRECT DEPOSIT. Employees may elect to have biweekly salary deposits made directly to their bank or credit union. Employees selecting this option receive a biweekly check report instead of a regular paycheck.

5-18. DEFERRED COMPENSATION PLAN. This plan will be made available to all state employees. It is a voluntary, tax advantaged savings plan which enables employees to defer a portion of their annual salary, not to exceed \$7,500 per year. Payroll deductions are made on a biweekly basis.

CHAPTER 6

EMPLOYEE RELATIONS

6-1. GRIEVANCES.

a. Employees covered by bargaining unit agreements will follow grievance procedures as outlined in their respective agreements. Agency Management/Confidential employees, not covered by a bargaining unit agreement, shall have the right to present a grievance, free from interference, coercion, restraint, discrimination, or reprisal in accordance with Executive Order No. 42, 14 October 1970. These employees will refer to Appendix I, "Grievance Procedures" contained in "Handbook for Management/Confidential Employees." Employees shall have the right to present their grievance individually or have a representative of their own choosing present at all steps of the grievance procedure.

b. Grievance procedure steps for employees not covered by a bargaining unit agreement:

(1) Step 1. The employee, or his/her representative, shall present the grievance orally or in writing to the employee's supervisor not later than forty-five (45) calendar days after the date on which the act or omission giving rise to the grievance occurred. The supervisor may require a meeting with the grievant in an effort to settle the grievance informally. The person receiving the grievance shall take whatever steps are necessary to ensure that proper disposition of the grievance is made. He/she shall reply to the employee or designated representative orally or in writing within five (5) working days following the date of receipt of the grievance.

(2) Step 2. If the employee or his/her representative wishes to appeal an unsatisfactory decision from Step 1, the appeal must be presented in writing, within fifteen (15) working days of the receipt of the Step 1 decision, to the Director of Human Resources Management. A copy of the appeal shall also be sent to the person who passed upon the grievance at Step 1. The appeal shall contain a short, plain statement of the grievance. The Director of Human Resources Management or designated representative, shall meet with the employee and/or his/her representative within twenty (20) working days after receipt of the appeal to review the grievance. The Director of Human Resources Management, shall issue a written decision to the employee and/or his/her representative by the end of the fifteenth (15th) working day following the day on which the review was held.

(3) Step 3. An appeal from an unsatisfactory decision at Step 2 shall be presented, in writing, by the employee or his/her designated representative within fifteen (15) working days of the receipt of the Step 2 decision. The Adjutant General or his duly designated representative shall meet with the employee and/or his/her representative within twenty (20) working days following the receipt of the appeal to review the grievance. The Adjutant General shall issue a written decision by the end of the twentieth (20th) working day on which the Step 3 review was held.

(4) Step 4. Any appeal from an unsatisfactory decision at Step 3 shall be presented, in writing, by the employee or his/her representative within fifteen (15) working days of the receipt of the Step 3 decision to the Grievance Appeals Board, Governor's Office of Employee Relations. The grievant shall also furnish a copy to The Adjutant General. The Chairman of the Grievance Appeals Board or his/her designee shall schedule a review within twenty (20) working days of receipt of the appeal and issue a decision in writing to the employee, his/her representative, and The Adjutant General. The Adjutant General is authorized, subject to approval of the Grievance Appeals Board, to combine Steps 2 and 3 or to vary the time limits in Steps 1, 2, and 3. The time for presenting a Step 1 grievance shall be extended by the time an employee is absent from the job through illness or disability, provided the illness or disability extends for at least ten (10) calendar days.

(5) Grievance forms will be readily available for all employees from the Director of Human Resources Management.

c. Settlement or award recommended by the Grievance Appeals Board may or may not be retroactive as the equities of each case demand, but in no event shall the resolution be retroactive to a date earlier than 45 days prior to the date the grievance was first presented at the Step 1 level.

d. Failure of the supervisor, Director of Human Resources Management, or The Adjutant General to answer a grievance within the time limit prescribed in the grievance procedure will permit the employee or his/her representative to progress the grievance to the next step for decision.

e. Any grievance not appealed by the employee or his/her representative to the next level within the time limit prescribed in the grievance procedure will be considered settled on the basis of the last decision and will not be subject to further appeal or consideration.

f. The employee will identify his/her representative, if any, to the appropriate state official(s) at all steps, giving name, address, and official designation, and if a state employee, title, official working station, and department. A representative who is a state employee shall notify his/her supervisor immediately upon learning of this designation, stating the name of the aggrieved and the time and place of the grievance review or discussion.

g. The time and place for the discussion or hearing or grievance will, as far as practicable, be mutually agreeable to the parties concerned; however, in certain restricted employment areas, The Adjutant General may designate the time and place of presentation.

h. An investigation or inquiry required or authorized may be conducted by any designee or the Grievance Appeals Board.

i. An employee's right to process a grievance will not be lost solely because the employee has left the division or because the employee has left state service, provided the right had fully accrued prior to separation from the division where the grievance originated, and provided, that he/she presents the grievance no later than 45 calendar days after the date on which the act or omission giving rise to the grievance.

j. Termination of the services of probationary employees is not reviewable by the Grievance Appeals Board except where the petitioner presents prima facie proof to the board that the decision of the appointing officer may have been arbitrary or capricious. In such cases the board may:

- (1) Authorize the processing of the grievance through the agency procedure, or
- (2) assume original jurisdiction in resolving the grievance.

k. Time off for Processing of Grievances.

(1) An employee and his/her representative, if an employee, shall be allowed time off from their regular duties as is necessary and reasonable, without loss of pay or vacation or other time credits, for the processing of a grievance.

(2) Time will be granted for the presentation of a grievance at any step to the Grievance Appeals Board. It will not include time for preparation of the presentation of a grievance, but will include reasonable time for discussion between the employee and his or her representative immediately

prior to the presentation and reasonable travel time if necessary. An employee will be permitted to discuss with his or her representative prior to the initiation of a Step 1 proceeding any complaint or matter for the purpose of aiding him or her in deciding whether he or she wishes to proceed with the grievance. If the discussion is to take place during the regular work hours of an employee, the employee must first obtain the permission of his or her supervisor to be absent from work and furnish the name of the grievant or his/her representative, as the case may be.

(3) If any step must be scheduled outside regular working hours or continued beyond regular working hours, the additional time will not be considered in computing earned overtime nor will compensatory time off be granted. If practicable, supervisors may reschedule the employee's and/or representative's working hours to coincide with discussions or meetings scheduled outside working hours.

6-2. REMOVAL AND OTHER DISCIPLINARY ACTIONS.

- ★ a. A permanent employee, except those employees described in paragraphs 1-3a and 1-3b, will not be removed or otherwise subject to any disciplinary penalty provided in this section, except for incompetency, misconduct, or those exceptions as outlined in Chapter 6, paragraph 6-2g.
- b. Employees covered by bargaining units will follow disciplinary actions contained within specific negotiating unit agreements.
- c. Division employees not covered by a collective bargaining unit will follow procedures outlined herein. Whenever allegations are made by any person, or information is received that an employee covered here has violated any rule, regulation, or order of the Division of Military and Naval Affairs, the appropriate supervisor will be notified immediately. The supervisor will notify The Adjutant General, who may appoint an investigating officer and direct an investigation of the alleged violation. A report will be prepared after completion of the investigation including written statements of the complainant or complainants, written statement of witnesses interviewed, and full and complete written statement of the accused employee whenever possible. The completed report will be forwarded promptly to The Adjutant General with the recommendations of the investigating officer.
- d. Employee Rights:
 - (1) Employees not covered by collective bargaining agreements are entitled to representation or to obtain the

services of an attorney, at their own expense, at each step of the disciplinary process.

(2) No employee shall be required to submit to an interrogation before a contemplated notice of discipline or request for resignation, or after a notice of discipline has been served upon them unless they are notified in advance, in compliance with the provisions hereinafter set forth, and apprised in writing of their rights as set forth here, and afforded the opportunity of having a representative present. If the employee does not request representation or does not provide representation within a reasonable time, the interrogation may proceed.

(3) No employee will be requested to sign any statement regarding incompetency or misconduct unless the statement has been supplied to him or her. Any statements or admissions signed by the employee without having been supplied to him or her in advance, may not be used against him/her.

(4) No recording devices or stenographic record may be used during an interrogation unless the employee is advised in advance that a transcript is being made and is thereafter supplied a copy.

(5) In all disciplinary proceedings, the employee will be presumed innocent until proven guilty and the burden of proof on all matters will rest upon the employer.

(6) An employee may not be coerced, intimidated or suffer any reprisals, either directly or indirectly, that may adversely affect work hours, wages, or working conditions as a result of the exercise of his/her rights under this section.

e. Resignation: Any employee covered by this section who is advised that he/she is alleged to have been guilty of misconduct or incompetency and is requested to resign will be provided a written statement stating that:

(1) The employee has a right to consult a representative or an attorney before executing the resignation and a reasonable period of time will be allowed for such purposes, and

(2) the employee may decline the request to resign and in lieu thereof a notice of discipline may be served upon him/her before any disciplinary action or penalty can be implemented, and

(3) in the event a notice of discipline is served, the employee has the right to object to such notice by filing a grievance, and

(4) the employee has the right to refuse to sign the

resignation and that any refusal in this regard cannot be used against him/her in any subsequent proceeding.

f. Disciplinary Procedure:

(1) Where The Adjutant General or his designee seeks the imposition of a written reprimand, suspension without pay, fine not to exceed \$300, reduction in grade, or dismissal from service, the Notice of Discipline will contain a description of the alleged acts and conduct including reference to dates, times and places, as far as may be practicable.

(2) The Notice of Discipline served on the employee will be accomplished by a written statement indicating that:

(a) The employee has the right to object by filing a grievance within ten days.

(b) The grievance procedure, as its final step, provides for a hearing by an independent arbitrator from a list provided by the Governor's Office of Employee Relations.

(c) The employee is entitled to representation or to obtain the services of an attorney who may be present at every stage of the grievance proceedings. Step 1 of the Disciplinary Grievance Process is at the local level (supervisor/employee). Step 2 of the Disciplinary Grievance Process is between the agency's labor relations representative and the employee.

(d) No penalty can be implemented until the independent arbitrator's determination is rendered and the penalty upheld, if such an arbitrator becomes involved.

(3) The penalty proposed may not be implemented until the employee:

(a) Fails to file a grievance within fourteen (14) days,
or

(b) fails to file a timely appeal as provided below, or

(c) until and to the extent that it is upheld by the independent arbitrator.

(4) The Notice of Discipline may be the subject of a grievance before The Adjutant General, or designated representative, at Step 3 of the grievance procedure. Such grievance must be filed by the employee within fourteen (14) calendar days following the receipt of the Notice of Discipline. The employee is entitled to meet with The Adjutant General, or designee within

fifteen (15) working days of the receipt of the grievance to present his or her position. A decision shall be rendered within five (5) working days of that meeting.

(5) If the grievance is not resolved, it may be appealed to independent arbitrator by filing a notice with The Adjutant General within ten (10) working days of the receipt of the Step 3 decision.

(6) The Office of Employee Relations has agreed to provide, and keep up-dated, a listing of five independent arbitrators. These arbitrators will be placed on a rotation roster for use in those cases where a Step 4 hearing is necessary. In the event the scheduled arbitrator is unavailable to hear a particular case due to circumstances beyond his/her control, the next arbitrator on the list will be used. The arbitrator assigned shall be mutually acceptable to both parties.

(7) The independent arbitrator will hold a hearing within ten (10) working days after selection or as soon thereafter as possible and a decision will be rendered within five (5) working days of the date of review or within five (5) working days after receipt of the transcript if either party elects a transcript as provided in this chapter.

(8) The independent arbitrator's decision with respect to guilt or innocence, penalty, or probable cause for suspension will be final and binding upon the parties and he/she may approve, disapprove, or take any other appropriate actions warranted under the circumstances including, but not limited to, ordering reinstatement and back pay for all or part of the period of suspension. If the arbitrator, upon review, finds probable cause for the suspension, he/she may consider such suspension in determining the penalty to be imposed.

(9) Change of shift, days off, job assignment, or transfer or reassignment to another installation or section will not be made for the purpose of imposing discipline.

(10) A grievance may be settled at any stage of the disciplinary grievance procedure. The terms of the settlement will be agreed to in writing. An employee executing such a settlement shall be offered the opportunity to have an attorney or representative present before signing the settlement.

(11) Prior to exhaustion of time limits or initiation by an employee of the grievance procedure applicable to discipline, the employee may be suspended without pay should The Adjutant General determine that there is probable cause to believe that the employee's continued presence on the job represents a

potential danger to persons or property or would severely interfere with normal operations. This determination is reviewable by a independent arbitrator when rendering a decision to determine whether The Adjutant General had probable cause. A Notice of Discipline will be served in accordance with the sub-paragraph f, of this section no later than five central office working days following any such suspension.

(12) Any fees and expenses of the arbitrator will be divided equally between the Division of Military and Naval Affairs and the employee. Each party shall bear the costs of preparing and presenting its own case. The estimated arbitrator's fees and estimated expenses may be collected in advance of the hearing.

(13) Either party wishing a transcript at the disciplinary arbitration hearing may provide for one at its own expense and will provide a copy to the arbitrator and the other party.

(14) An employee shall not be disciplined for an act, except for that which would constitute a crime, that occurred more than eighteen (18) months prior to the notice of imposition of discipline.

g. Exceptions:

Any division employee may be terminated by The Adjutant General without following the disciplinary action procedures outlined above, or as contained in negotiated agreements, under the following circumstances:

(1) An employee is found to have falsified his/her employment records knowingly and with intent to deceive.

(2) An employee is found to have committed a crime resulting in a conviction.

(3) The employee is found, after a thorough review of a physician's statement received from either the employee and/or a state selected physician, to be physically or mentally incapable of performing the full-time duties of the position occupied, or of any other position which is available, and for which the employee is otherwise qualified.

(4) The employee is an active member of the organized militia of New York State or a federal reserve and is discharged under other than honorable conditions.

(5) The employee occupying a position which required active status as a member of the organized militia (i.e., Air Base Security Guard or Airport Firefighter) loses such status, through his/her own negligence or neglect.

6-3. TRAINING. Bulletins or other types of notification will be issued to each employee or posted conspicuously on employee bulletin boards announcing training opportunities for which employees may be eligible. Instructions for making application will be included. Generally, all training opportunities offered will be conducted during an employee's normal duty hours. Exceptions may include correspondence courses or mandatory training requirements which an employee must complete to be eligible to compete for promotional opportunities. DMNA Regulation 37-1 prescribes policy for procedures to be used by employees regarding transportation to any state sponsored training programs.

6-4. EMPLOYEE APPRAISAL AND PERFORMANCE.

a. Employees covered by a collective bargaining agreement will follow those procedures contained in the "Performance Evaluation" articles of the labor contracts.

b. Annually, all employees not covered by a negotiated labor contract will receive ratings and employee appraisals according to the procedures governing Management/Confidential employees. Those procedures are published separately.

6-5. SERVICE AWARD PROGRAM.

a. A service award program will be established to recognize state employees of the division for their state service. A distinguishing certificate will be presented to employees with a minimum of five (5) years of service. Thereafter, awards are presented upon completion of each five-year period. When funding is available, an additional intrinsic award may accompany the certificate. The value of such awards will not exceed limits established by the Director, Human Resources Management and current Division of Budget Bulletins governing longevity awards.

b. Presentation of service awards will be made monthly at an appropriate ceremony in the presence of their co-workers.

c. Employees invited to attend luncheons will be authorized reimbursements for mileage in accordance with the Office of the State Comptroller's Rules and Regulations. If an employee is required to travel a considerable distance in a one-day period, a per diem allowance to cover lodging expenses may be authorized. Authorization for such per diem requires advance approval.

6-6. POLITICAL ACTIVITIES.

a. In accordance with the State Ethics Commission Regulation (Part 932), incumbents of policy-making positions are prohibited from serving as an officer of a political party or political organization. Refer to Section 932.2 of the State Ethics Commission Regulation for specific restrictions.

b. All other employees of the division not covered under paragraph a above, who are considering accepting or contesting for any public office or who have been requested to serve as an officer of any political party or party committees, to include a political party's National Committee, must first request approval of The Adjutant General or designated representative, with sufficient information in order to determine whether the holding of such public office, or serving as an officer on a committee of a political organization, will interfere with the duties and responsibilities of the employee's full-time position or in any way be cause for a conflict of interest with his or her state position, or be a violation of the Hatch Act.

c. No employee of the division is under any obligation to contribute to any political fund or to render any political service, nor shall they be removed or otherwise prejudiced for refusing to do so.

6-7. OUTSIDE EMPLOYMENT.

a. In accordance with the State Ethics Commission Regulation (Part 932), incumbents of policy-making positions are limited in their participation in outside employment or activities. Refer to 932.3 and 932.4 of the regulation for specific guidelines.

b. All other officers or employees of the division not covered under paragraph a above, who are considering full- or part-time outside employment, will make their immediate supervisor aware of the particulars of such outside employment to include hours of work, type of duties to be performed, and name and address of the prospective employer. In the case of self-employment, the employee must demonstrate that such self-employment presents no conflict of interest with his or her state position. In all cases, outside employment requires the prior approval of The Adjutant General reviewable each fiscal year. Requests will be forwarded annually through the Director of Human Resources Management not later than 1 March.

6-8. FINANCIAL DISCLOSURE STATEMENT.

In accordance with the Ethics in Government Act, certain division employees will be required to file a Financial Disclosure Statement with the State Ethics Commission by 15 May each year. All individuals required to file will be advised annually of this requirement by the Director of Human Resources Management.

6-9. GRATUITIES, GIFTS, AND CONFLICT OF INTEREST.

a. In accordance with Section 73 of the Public Officers Law, no employee shall, directly or indirectly, solicit, accept, or receive any gift having a value of seventy-five dollars (\$75.00) or more, regardless of its form (i.e., money, service, loan, travel, entertainment, hospitality, thing, or promise) under circumstances in which it could reasonably be inferred that the gift was intended or expected to influence the employee in the performance of his/her official duties or was intended as a reward for any official action on his/her part. Furthermore, no employee shall, directly or indirectly, offer or give such gift to another employee under these circumstances.

b. In accordance with Section 74 of the Public Officers Law, no officer or employee of a state agency should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge or his duties in the public interest.

c. An officer or employee of a state agency should not by his/her conduct give reasonable basis for the impression that any person can improperly influence him/her or unduly enjoy his/her favor in the performance of his/her official duties, or that he/she is affected by kinship, rank, position, or influence of any party or person.

d. An officer or employee of a state agency should endeavor to pursue a course of conduct which will not raise suspicion among the public that he/she is likely to be engaged in acts that are in violation of his/her trust.

6-10. PERSONAL APPEARANCE. Every division employee is a representative of the State of New York. The views of the public are generated not only by how employees conduct themselves in the performance of their jobs, but also in their appearance. In this respect, locally established policies in connection with personal appearance will be complied with. Noncompliance could result in a disciplinary action.

6-11. USE OF OFFICE EQUIPMENT AND FACILITIES.

a. All office equipment is only to be used for official purposes, therefore, using calling cards, copy machines, personal computers, facsimile machines, modems, or other government

property for personal use is prohibited. Unauthorized use will be grounds for disciplinary action as appropriate.

b. Telephone equipment and services are provided to support the necessary functions of the division and are to be used for official business; prudent use of phones for essential local personal calls is however, permitted. Such calls, however, will be limited in number and restricted to brief messages rather than conversations and, in all circumstances, are subject to the operational needs of the directorate. Long distance calls for personal purposes are strictly prohibited.

c. Employees are not to accept collect calls, except when specifically directed or in actual emergencies. When possible, the originator of a collect call must be identified by name, calling location, and telephone number, and informed that they will/may be contacted by other means. In no instance will collect calls of a personal nature be charged to a division number or calling card.

d. When usage reports used to monitor the utilization and cost-effectiveness of existing services show that an employee is not in compliance with these guidelines, they may be liable for costs incurred and may be subject to disciplinary action.

6-12. CHAIN OF COMMAND. The Division of Military and Naval Affairs is unique in State government in that the majority of its employees are considered in the military service of the State. This, however, does not change the "chain of command" which is followed in all State agencies. The employee's immediate supervisor is the individual to whom an employee reports and confers on any matter concerning his/her work and employment. In certain cases, the immediate supervisor may be unable to resolve an employee's question, problem, or request properly and will seek out the correct answer or solution or refer the employee to the appropriate responsible office.

6-13. EMPLOYEE HISTORY FOLDER.

a. For employees covered by a collective bargaining agreement, provisions contained in the appropriate article dealing with "Review of Personal History Folder" will apply.

b. For employees not covered by a collective bargaining agreement, the following provisions are applicable:

(1) From the date an employee is first appointed, an employee history folder, containing all pertinent personnel data, will be maintained on file by the Director of Human Resources Management. Examples of items filed are: employee's original job application and other employment forms, orders covering a transaction which affects an employee's salary, copies of correspondence, salary garnishee, performance evaluations, probationary reports, and letters of commendation.

(2) Upon advance request in writing to the Director of Human Resources Management, employees may review their official personnel folder in the presence of an employee designated by the Director of Human Resources Management. Files may not be removed, however, copies of documents may be requested.

6-14. USE OF MILITARY RANK. The division has a number of employees active in the forces of the State organized militia or federal reserve force. It is the policy of The Adjutant General that employees falling in either of the above categories be given the courtesy and respect of their military rank and be addressed by such rank during duty hours.

6-15. DISTRIBUTION OF REQUIRED OVERTIME.

a. Employees covered by a collective bargaining agreement will follow procedures contained in the article "Overtime, Recall, and Scheduling."

b. For employees not covered by a collective bargaining agreement who are overtime eligible, the following is applicable:

(1) Emergency or approved scheduled overtime will be distributed equitably among qualified employees who normally do such work unless none of these employees are available. Where possible, distribution will be made on a rotational basis.

(2) The initial rotation list will be based upon seniority. Refusal of overtime will be treated as overtime worked for the purpose of placement on the rotational list.

(3) Nothing contained above forms a basis for any claim for wages or overtime for hours not worked.

6-16. SHIFT AND DAY ASSIGNMENTS. Employees covered by a collective bargaining agreement will follow the provisions contained in the article "Workday/Workweek" for shift and day assignments. Employees not covered by a collective bargaining agreement, will, in most instances, be assigned day shift hours

as directed by The Adjutant General. The normal workweek for such employees will be Monday through Friday, with Saturday and Sunday off.

6-17. VACANCY CONTROL. The Adjutant General may establish a vacancy control on any position authorized the Division. Additionally, vacancy control may be imposed upon the agency by the New York State Division of the Budget during time of fiscal emergencies.

CHAPTER 7

LABOR RELATIONS

7-1. THE PUBLIC EMPLOYEES' FAIR EMPLOYMENT ACT.

a. The Public Employees' Fair Employment Act (Taylor Law), enacted in 1967, guarantees most employees the right to be represented by employee organizations of their own choosing in collective negotiations with their public employer. Division employees who are part of any collective bargaining agreement are covered by the Public Employees' Fair Employment Act.

b. Military law employees who are not a part of a negotiated labor agreement are considered to be under the State's Management/Confidential category for purposes of obtaining all other benefits coverage accorded these type positions. Further, employees occupying these positions are precluded from membership in any formal organization/union advocating the negotiation of terms and conditions of employment.

c. Employees occupying positions in the State Emergency Management Office, which are in the classified service of the state and are not Management/Confidential, are covered under the Public Employees' Fair Employment Act. Employees of the State Emergency Management Office have been assigned to the various bargaining units; therefore, agreements between the bargaining units and the state are applicable.

CHAPTER 8

SEPARATIONS AND TERMINATIONS

8-1. RESIGNATIONS.

a. Any employee who finds it necessary to resign his/her position must notify his/her supervisor in writing as soon as possible, but at least two (2) weeks prior to the effective date of the resignation. Early notification serves two purposes:

(1) Establishes eligibility of an employee to receive payment for any unliquidated vacation credits.

(2) Allows the supervisor to plan for replacement of the employee.

b. Once submitted, a resignation may not be withdrawn, canceled, or amended without the consent of The Adjutant General.

c. When an employee is absent without leave and without a valid explanation for a period of fourteen (14) consecutive calendar days, the absence shall be considered a resignation, effective on the date the absence commenced.

d. An employee who fails to return to his/her position following the expiration of an authorized leave of absence or extension of leave, without submitting a valid explanation, shall be considered to have resigned.

e. Nothing contained in Chapter 8, paragraph 8-1c shall be considered to excuse the unauthorized absence of an employee for periods of less than fourteen (14) days, and any such unauthorized absence may be regarded as misconduct.

8-2. TERMINATIONS.

The Adjutant General will determine the appropriateness and feasibility of following the procedures established here. Should the position or positions affected not lend themselves to orderly and appropriate transition, the incumbent employees may be terminated.

a. Administrative positions in Negotiating Units 46 and 47:

(1) When a reduction in force (RIF) occurs within the Division of Military and Naval Affairs due to the abolishment of positions, agency reorganization, realignment of functions, or personal services funding reductions, the following layoff procedures will be followed for the administration of RIF for administrative positions within Negotiating Units 46 and 47.

(2) When a RIF occurs, nonpermanent employees, comprised of temporary and probationary employees, must be laid off before permanent or permanent probationary employees. Permanent probationary employees are those serving in a probationary period because of a job promotion or transfer into a different job title.

(3) The RIF is based on the employee's seniority date. The definition of seniority is not synonymous with seniority for other purposes such as retirement, anniversary dates, leave accrual, or for bidding for shift work or pass days. For purposes of reduction in force, an employee's seniority date is defined as the date of original appointment in state service and continuous service since that date. The date is adjusted, however, based on status as a veteran, or disabled veteran, as defined in Section 85 of the Civil Service Law.

(4) An employee who resigned from the division and was subsequently reappointed after more than one year had elapsed will have their seniority date recomputed starting the date of reappointment. Prior service does not count in terms of seniority date calculation in this case.

(5) DMNA employees with retention rights are entitled to exercise horizontal and vertical displacement or retreat rights where applicable.

(6) Horizontal displacement is the process which occurs when an employee with the greatest seniority displaces an employee with less seniority in the same title and salary grade.

(7) Vertical displacement ("bumping") is the process which occurs when an employee displaces another employee in a position in a lower level direct line job title. As an example, direct line job titles, for the purpose of vertical displacement (bumping), are interpreted to mean those positions that have the same title except for job level designation (i.e., senior, principal, chief). Titles must have a common generic root. For example, the generic root of Principal Accountant is Accountant; therefore, the next lower level title in the "direct line" is Associate Accountant.

(8) When the employee has not previously held the job title into which he or she is being vertically displaced based on

seniority, a probationary period of at least ninety (90) days will be required to be served to determine the capabilities of the employee to perform the duties and responsibilities of his or her new assignment. An unsuccessful probationary employee will be offered an entry level position, if available, or laid off and placed on the Division of Military and Naval Affairs Preferred List for the position title from which the original displacement took place.

(9) Retreat is the process which occurs when an employee does not have the opportunity to displace another employee horizontally or vertically, but may have retreat rights to a former position. Retreat occurs when an employee displaces another employee who is serving in a position which was the last lower level titled position held on a permanent basis by the employee who has retreat rights. Employees who have the right to displace another employee horizontally or vertically, are not eligible to exercise retreat rights.

An example of retreat:

When a Principal Account Clerk, SG-14, position is abolished and the incumbent does not have seniority to be reassigned horizontally or to displace another employee vertically in the direct line series, the retreat procedure becomes the only retention right. The employee can retreat to the last lower level position held on a permanent basis. For example, when the employee's last lower position was a Keyboard Specialist, SG-6, this would then be the position to which the employee would be eligible to retreat. In order to retreat, the lower level position must be incumbered (occupied). When this position is not incumbered, retreat cannot take place and the employee is laid off and placed on the Division of Military and Naval Affairs Preferred List for the position title from which he/she was laid off.

(10) The RIF policy for DMNA Administrative positions contained in Negotiating Units 02 and 06 are outlined in the New York State Department of Civil Service Guidelines for the Administration of Reductions in Force and Civil Service Law Sections 75, 80, and 80a.

(11) Specific notices will be sent to advise employees directly affected of layoff, horizontal and vertical displacement, or retreat rights where applicable.

(12) Permanent employees required to be reduced in title and/or salary grade, transferred, or laid off as a result of these termination procedures, will be placed on a Division of

Military and Naval Affairs Preferred List for a maximum of four years from the date of action taken. During the period of these lists, employees involved will be given appropriate consideration for reinstatement to the position title from which they were required to be reduced or laid off from or a lower level title in the direct line series of promotion, or other titles considered to be appropriate based on a high degree of similarity between duties and minimum qualifications.

b. Facility Operational Positions:

(1) Positions to be abolished will be grouped with similar and lower salary graded positions, under the circumstances indicated, within geographic layoff units as follows:

(a) The closing of one or multiple facilities. All facilities which are within a sixty (60) mile radius of a single facility to be closed will be grouped together to comprise a single layoff unit.

(b) For abolishment of a specific position or positions, within a number of installations, geographic layoff units will be comprised of all facilities as follows:

1 Layoff Unit 1: To include the counties of Niagara, Erie, Genesee, Chautauqua, Orleans, Wyoming, Allegany.

2 Layoff Unit 2: To include the counties of Steuben, Livingston, Monroe, Ontario, Schuyler, Seneca, Wayne, Yates.

3 Layoff Unit 3: To include the counties of Chemung, Broome, Tompkins, Cortland, Onondaga, Tioga, Cayuga.

4 Layoff Unit 4: To include the counties of Oswego, Jefferson, Oneida, Madison, Otsego, St. Lawrence, Chenango, Lewis, Herkimer.

5 Layoff Unit 5: To include the counties of Fulton, Montgomery, Saratoga, Schenectady, Albany, Rensselaer, Columbia, Schoharie.

6 Layoff Unit 6: To include the counties of Washington, Warren, Franklin, Clinton, Essex, Hamilton.

7 Layoff Unit 7: To include the counties of Greene, Delaware, Ulster, Dutchess, Orange, Rockland, Westchester, Putnam, Sullivan.

8 Layoff Unit 8: To include the five counties of Bronx, Kings, New York, Queens, Richmond.

9 Layoff Unit 9: To include the counties of Nassau and Suffolk.

(2) Grouping of positions within geographic layoff units in seniority order:

(a) Group 1: Armory Superintendent, or similar functional titles, by salary grade level. This group of employees will be transferred to vacant fillable positions of the same title and salary grade. If no such vacancies are available, these employees will have the ability to displace equal or lower graded employees in groups 1, 2, and 3, having less seniority. In the event the Armory Superintendent and/or the displaced employee has not previously held the position title into which they are being transferred or have selected based on seniority, they will be required to serve a probationary period of at least ninety (90) days to determine their capabilities in the new position. An unsuccessful probationary employee will be offered an entrance level position, if available, or terminated and placed on the Division's preferred list for the title originally affected.

(b) Group 2: Armory Mechanic, or similar functional titles by salary grade level. This group of employees will be transferred to vacant fillable positions of the same title and salary grade. If no such vacancies are available, the employees will have the ability to displace equal or lower graded employees in groups 2 and 3, having less seniority. Any reduction in salary grade will require reduction in the affected employee's salary.

(c) Group 3: Maintenance Helper, or similar functional titles. This group of employees will be transferred to vacant fillable positions of the same, or like title and salary grade. If no such vacancies are available, the employees will have the ability to displace another Maintenance Helper, or similar functional titles, having less seniority.

(3) Positions of Air Base Security Guard and Airport Firefighter assigned to the various Air National Guard bases throughout the state will be considered in one (1) statewide layoff unit. Any required employee displacements will be effected in the same manner as facility operational employees, such procedures being restricted to employees occupying such position titles only.

(4) The definition of seniority is not synonymous with seniority for other purposes such as retirement, anniversary dates, leave accrual, or for bidding for shift work or pass days. For purposes of reduction in force, the employee's

seniority date is defined as date of original appointment in state service and continuous service since that date. The date is adjusted, however, based on status as a veteran or disabled veteran, is defined in Section 85 of the Civil Service Law. If an employee resigned from the division and was thereafter re-appointed more than one (1) year after resignation, his/her seniority starts from the date of reappointment and his/her prior service does not count. The critical date is the date of original appointment or reappointment as outlined above, and not the date of promotion to an employee's current position.

(5) Specific notices will be sent to employees directly affected (i.e., employees occupying positions in a specific installation which has been mandated to be closed). Each employee will be advised of the required closing, the reason, and the procedures that are to be followed in the termination/transfer of employees.

(6) Notices will also be forwarded to all facilities within the geographic area established advising the employees of the extent that they could be affected based upon the required terminations and/or transfers.

(7) In addition to notices being forwarded to employees in the affected geographic area, letters may be forwarded to eligible employees soliciting their voluntary retirement.

(8) In the event that the time limitation required to effect abolishment of positions is such that written notifications and responses would create undue delay, telephone or other means of communication may be used, any agreements or actions resulting therefrom to be confirmed in writing.

(9) Before any specific termination/transfer actions are taken as concerns covered employees, The Adjutant General may terminate or reduce employees to permanent position assignments as follows:

(a) Temporary employees in affected areas will be terminated if necessary.

(b) Probationary employees, occupying entrance level positions, in affected area will be terminated if necessary.

(c) Employees occupying promotional positions on a temporary or probationary status may be reduced to their permanent position if necessary.

(d) Permanent employees, not covered under these procedures, in the geographic area, will be terminated if necessary.

(10) If an employee refuses reasonable reassignment or transfer, either in their present or a lower salary grade, the employee may be terminated. If the offered reassignment or transfer is considered unreasonable by the employee or if there are attendant hardships to be considered, the employee may present in writing, the reason(s) for refusal or hardship(s) for review and determination by The Adjutant General. If a favorable determination is rendered, the employee will be placed on a preferred list.

(11) Any displacement actions taken in connection with any of the above will be predicated on, and only be effected provided the senior employee has the qualifications and capability of performing the displaced junior employee's duties and responsibilities.

(12) Any employee affected by these procedures has the right to appeal, in writing, to The Adjutant General if they believe the procedures have not been correctly applied in their case. The employee must appeal within five (5) working days after notification has been made, either verbal or written, of actions to be taken. The appeal must give specific detailed reasons as to why the employee believes the action taken, or to be taken, is improper. Any favorable determination rendered as the result of an appeal may alter other proposed employee actions.

(13) After procedures have been followed utilizing the geographic layoff units established, an employee due to be terminated may apply for transfer available in the position title and salary grade which he or she occupies, or to a position in a lower salary grade, if qualified.

(14) Permanent employees required to be reduced in title and/or salary grade, transferred, or laid off as a result of these termination procedures, will be placed on a Division of Military and Naval Affairs Preferred List for a maximum of four years from the date of action taken. During that period, employees involved will be given appropriate consideration for reinstatement to the position title from which they were required to be reduced or laid off or a lower level title in the direct line series of promotion, or other titles considered to be appropriate based on a high degree of similarity between duties and minimum qualifications.

(15) An employee on the preferred list who declines an offered reinstatement to a higher graded position formerly held, or a transfer or reemployment from the preferred list, will be removed from the list, unless the offered transfer, reinstatement, or reemployment is considered to be unreasonable.

(16) At the time a permanent employee is notified of termination and placement on the division's preferred list, he or she will be supplied with an updated summary of "Rights and Benefits Available To Employees Separated from the Division of Military and Naval Affairs." When an employee is required to be reassigned to another facility location as a result of these procedures, bidding procedures for revised shift assignments will immediately be accomplished, to include the reassigned employee. The use of the word reassigned, for the purposes of this procedure, does not provide an employee eligibility for moving expenses as described in Chapter 3, paragraph 3-9, this regulation.

8-3. RETIREMENT.

a. For the most part, employees appointed after 30 June 1954, are members of the New York State Employees' Retirement System and retirement will be based upon the applicable laws in effect at the time the employee retires. Even though application for service retirement is directed to the New York State Employees' Retirement System at least thirty (30) days prior to the anticipated retirement, it is required that employees also notify their supervisors at the same time.

b. Sections 214 and 215, Military Law, State of New York, authorize employees meeting certain requirements and qualifications to retire under specific military retirement provisions.

8-4. TRANSFER TO ANOTHER STATE AGENCY. The Division maintains a reciprocal agreement with the Civil Service Commission, Department of Civil Service, which authorizes employees to transfer leave time upon either employment in the division or employment of a division employee in another state agency. Military law employees in the division are not in the classified service of the state; therefore, an employee leaving the division to accept a position with another state agency must resign his or her position. Certain sections of the civil service law authorize the use of some, if not all, service with this division in the new agency for salary and other purposes. No changes occur concerning employee benefits, such as health insurance, retirement, etc., when changing from one state agency to another, unless there is a change in bargaining unit. Employees are required to give notice at least two (2) weeks before accepting assignment with another state agency.

8-5. DEATH. In the event an employee dies while in the service of the division, his/her beneficiary will receive any salary payments due the deceased employee, together with any death benefits provided by the New York State Employees' Retirement System or the Survivor's Benefit Program. Immediate notification

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of the death of any employee is important since specific actions are required to effect payment for death benefits and/or insurance.

8-6. DISCHARGE.

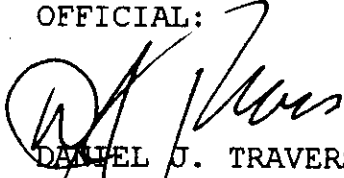
No permanent employee may be discharged from the division without due process as provided in this regulation.

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The proponent office of this regulation is the Directorate of Human Resources Management. Users are invited to send comments and suggested improvements and changes on DA Form 2028 (Recommended Changes to Publications and Blank Forms), directly to The Adjutant General, Division of Military and Naval Affairs, ATTN: MNHR, 330 Old Niskayuna Road Latham, New York 12110-2224.

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