



The Reporter

News from the Civil Service Commission

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June 2019

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Welcome!

Welcome to the mid-year edition of The Reporter. The Civil Service Commission (Commission) is committed to communicating with our constituency periodically to highlight notable decisions and appeals, significant rule changes, legislative updates and policies impacting the Commission.



Deirdre L. Webster Cobb, Esq.
Chair/Chief Executive Officer

We are committed to building an environment of excellence in advancing New Jersey government with fair and efficient human resources responsive to the needs of the Civil Service workforce.

As we continue to address key issues in government, our partnership with the Governor's Office has been critical to developing solutions on key fundamental issues, such as, diversity and inclusion, salary compression, and recent amendments to Title 4A of the New Jersey Administrative Code. I look forward to continuing to work with State, county and local government entities, as well as organized labor to promote a stronger and fairer New Jersey.

Please make sure to pass along The Reporter to your peers and colleagues.

Lastly, I encourage you to take advantage of my open-door policy. If you have any issues or helpful suggestions that you would like to bring to my attention, please do not hesitate to contact my office directly.

Sincerely yours,

Deirdre L. Webster Cobb, Esq.
Chair/CEO, New Jersey Civil Service Commission

CIVIL SERVICE COMMISSION DECISIONS

Leave Entitlements – Local Service

N.J.A.C. 4A:6-1.2(h) provides, in pertinent part, that an employee who leaves service with a local jurisdiction shall be paid for unused earned vacation leave. However, there is no analogous provision for sick leave. Moreover, there are no provisions in Civil Service regulations or law that provide for payment for administrative/personal leave time. Additionally, *N.J.S.A.* 11A:6-2(f) and *N.J.A.C.* 4A:6-1.2(g) indicate that vacation leave not taken in a given year can only be carried over to the following year. The case below illustrates the application of these statutory and regulatory provisions and the Commission's jurisdiction to review leave entitlements of local jurisdiction employees.

In the Matter of Becky Candelora and Bernice Jones, Irvington Housing Authority (CSC, decided January 16, 2019)

Becky Candelora and Bernice Jones were laid off from their permanent positions of Program Director and Keyboarding Clerk 2, respectively, with the Irvington Housing Authority effective May 31, 2018. They argued on appeal that they were entitled to be paid for all unused vacation, sick and administrative leave time. Additionally, Jones asserted that she was entitled to be paid for 25 vacation days since 2015, for a total of 114 vacation days. Upon review, the Commission noted that an employee who leaves service with a local jurisdiction shall be paid for unused earned vacation leave; however, no analogous provision has promulgated for sick leave. Likewise, there is no provision for payment for administrative/personal leave time. Therefore, the appellants' claims for payment of sick and administrative/personal leave needed to be pursued through grievance procedures pursuant to any applicable collective negotiations agreement or appointing authority policy as the Commission had no jurisdiction to review. Regarding the request for vacation leave, while the Commission concluded that the appellants were entitled to be paid for their earned vacation leave upon their layoff, the Commission

could not determine the actual amount of vacation leave to which each appellant was entitled. In that regard, the Commission noted that *N.J.A.C.* 4A:6-1, *et seq.*, only provides for the minimum vacation leave to which a local employee was entitled. Furthermore, the Commission concluded that Jones would only be entitled to be paid for earned vacation leave for 2017 and 2018, noting that vacation leave not taken in a given year can only be carried over to the following year. Therefore, the Commission granted the appellants' appeals in part. To read the full text, [click here](#).

Leave of Absence – State Service

N.J.A.C. 4A:6-1.10(a) provides that in State service, an appointing authority may, with approval from the Chairperson or designee, grant leaves of absence without pay to permanent employees for a period not to exceed one year unless otherwise provided by statute. Further, a leave may be extended beyond one year for exceptional situations upon request by the appointing authority and written approval by the Chairperson or designee. Additionally, *N.J.A.C.* 4A:6-1.10(c) indicates that an appointing authority may permit an employee to return from a leave of absence without pay prior to its conclusion. Moreover, *N.J.A.C.* 4A:4-1.9(a) states, in pertinent part, that an employee with permanent status in a career service title, who is returned from an unclassified appointment under *N.J.A.C.* 4A:4-1.3, to his or her permanent title, will have rights to a position in the permanent title in the same organizational unit. Finally, *N.J.A.C.* 4A:4-1.9(b)-(f) provide the procedures to effect the return of the permanent employee. The following appeal illustrates the rights and responsibilities of the parties when a permanent career service State employee is on a leave of absence without pay to take an unclassified appointment and the employee requests to be returned to his permanent career service position prior to the end of the one year leave of absence period.

In the Matter of Edward McCabe, Department of Human Services (CSC, decided March 27, 2019)

On April 5, 2014, Edward McCabe took a leave of absence without pay from his permanent title of Affirmative Action Officer 2 (AAO2) with the Department of Human Services (Human Services) to accept an unclassified appointment as the Equal

Employment Opportunity (EEO) Officer with Human Services. He accepted the EEO Officer appointment at the same salary as his AAO2 salary. On May 15, 2015, McCabe asked for a “voluntary demotion” to be returned to his permanent title, but no action was taken and he remained in his unclassified position. He asked again on October 1, 2018, but Human Services denied his request stating that this agency does not approve voluntary demotions to obtain additional money. It also indicated that McCabe’s return would leave Human Services without an EEO Officer, thus creating a hardship. The Commission found that McCabe’s request was not for a voluntary demotion, which in State service is the voluntary movement to another title with a lower-class code within the same organizational unit, as his unclassified appointment was a no range title and does not have a class code designation. The Commission noted that in State service, a leave of absence is for one year and it may be extended at the request of the employee for subsequent 12-month periods upon approval. However, it is the appointing authority which has the discretion to permit an employee to return from a leave of absence prior to its conclusion. Therefore, it was within Human Services’ discretion not to allow McCabe to return to his permanent title prior to the end of his current leave of absence, which ended on April 4, 2019. However, the Commission found that an appointing authority cannot require a permanent employee to continue a voluntary leave of absence after its expiration if he or she does not desire to request a subsequent leave of absence. Consequently, the Commission found that, for salary purposes, McCabe shall be returned to his permanent title, AAO2, effective April 5, 2019. However, to give Human Services time to plan for its operational needs, it ordered that this movement shall be effectuated May 11, 2019, which is the beginning of the first pay period in May 2019. To read the full text, [click here](#).

In the Matter of Curtis Diaz, Mercer County Department of Public Safety, Docket No. A-0587-17T2 (App. Div. January 2, 2019)

Curtis Diaz, a County Correction Officer with Mercer County, was suspended for six days for excessive absenteeism by calling out of work for three days without available leave time or extending his leave under the federal Family and Medical Leave Act (FMLA). Upon a motion for summary disposition at the Office of Administrative Law, the appointing authority alleged that the appellant was approved for six months of intermittent FMLA leave, but did not extend it when the six months expired. The appellant argued, in an uncertified brief, that he believed he had been granted one year of intermittent FMLA leave. The Administrative Law Judge (ALJ) granted the summary disposition motion and the Commission adopted the ALJ’s decision. On appeal to the Superior Court of New Jersey, Appellate Division, the appellant argued the ALJ disregarded the material fact of whether he had notice of the expiration of his FMLA leave. In this regard, the appellant claimed he misplaced a letter concerning his leave without reading it. In affirming the Commission’s decision, the court found that the ALJ’s refusal to accept statements by counsel in the appellant’s opposition brief as “facts” was not error. Moreover, it found that the appellant’s failure to read the letters approving his FMLA leave is not a defense to the charge of excessive absenteeism.

**REGULATORY AMENDMENTS
Title 4A, New Jersey Administrative
Code (N.J.A.C.)**

COURT DECISION

Set forth below is a decision of the Superior Court of New Jersey, Appellate Division, on appeal from [In the Matter of Curtis Diaz \(CSC, decided August 16, 2017\)](#). As the Appellate Division opinion has not been approved for publication, its use is limited in accordance with R. 1:36-3 of the New Jersey Court Rules.

Proposed amendments to *N.J.A.C. 4A:3* (Classification, Services and Compensation); *N.J.A.C. 4A:4* (Selection and Appointment); *N.J.A.C. 4A:6* (Leaves, Hours of Work and Employee Development); *N.J.A.C. 4A:7* (Equal Employment Opportunity and Affirmative Action); and the Job Banding Program was approved for publication in the February 19, 2019 New Jersey Register by the Commission at its January 16, 2019 meeting. A public hearing was held on March 27, 2019, and written comments were accepted up to April 20, 2019. Five comments were received. The Commission adopted all but two of the proposed

changes at its May 22, 2019 meeting. The amendments broaden the definition of “immediate family;” require the agreement of a program manager or division director in an abbreviated classification determination; standardize timelines for requests for classification reviews; clarify that examination requirements be met by the announced closing date whether or not the application filing date is changed; provide that a leave of absence while an employee is receiving Workers’ Compensation benefits should not be deducted from an employee’s “continuous service” or seniority for the calculation of vacation leave accrual; allow for an employee to earn one-half month’s leave allowance if he or she is on the payroll for greater than 14 calendar days in a month, but less than 23 calendar days in a month; modify the requirement that an appointing authority “must” consult with the supervisor of the Employee Advisory Service (EAS) program to a recommendation that an appointing authority “should” consult with the EAS program staff seeking removal of an employee receiving service from the EAS program; clarify standards and violations of the State Policy Prohibiting Discrimination in the Workplace, including the complainant’s burden to articulate a sufficient nexus between the alleged conduct to a protected category and the requirement that State departments and agencies retain written records of discrimination and harassment complaints as confidential records indefinitely; and delete all references to the Job Banding program in Title 4A in response to the New Jersey Supreme Court case, *Communication Workers of America, AFL-CIO v. New Jersey Civil Service Commission*, 234 N.J. 483 (2018), which invalidated the program.

N.J.A.C. 4A:6-1.5(b) provided that an employee was to earn one-half month’s allowance if he or she is on the payroll from the 9th through the 23rd day of the month. Subsection (b) had been proposed for amendment to address appeals that the Commission received regarding the equity of the application of this rule in instances where an employee was in a pay status for more than 15 days in a month, but the employee was not in pay status on the 9th or 23rd of the month, and he or she was not entitled to leave time for that month. For example, in *In the Matter of Maria L. Hess, Department of Community Affairs* (decided, CSC July 18, 2018), the Commission relaxed *N.J.A.C. 4A:6-1.5(b)* and credited the employee with one-half month’s allowance

of leave time as she was in pay status for 22 calendar days in July, which is seven more calendar days than the time period encompassed by the 9th through the 23rd days of the month. See also, *In the Matter of Maryellen Marnier* (CSC, decided March 27, 2018).

For more information on proposed and recently adopted regulations, please visit our website at <https://www.state.nj.us/csc/about/about/regulations/proposed.html>. Additionally, to view enacted regulations and laws which affect Civil Service employees and employers, please follow this link: <https://www.state.nj.us/csc/about/about/regulations/>. If you wish to register for the Rules e-Notification system, which e-mails recipients regarding Civil Service regulatory activity, please [click here](#).

LEGISLATIVE UPDATE

Senate bill S1758 was introduced on February 5, 2018 to codify in statute for State employees in the career, senior executive, and unclassified service the Donated Leave Program currently maintained by the Commission pursuant to N.J.A.C. 4A:6-1.22. In part, the program allows an employee who has exhausted all accrued, sick, vacation, administrative, and other applicable leave time to receive donations of sick leave and vacation leave from co-workers. In order to be eligible for donations, an employee must have the State employer’s approval and meet certain criteria, including but not limited to, a catastrophic health condition or injury or a period of disability requiring the care of a physician who provides medical verification of the need for an absence from work of 60 or more work days.

In addition to the foregoing, S1758 was proposed to provide that the State employee would also be eligible to use the donated leave for a period of disability required by pregnancy of the employee which requires the care of a physician who provides a medical verification of the need for the employee’s absence from work for 30 or more work days, regardless of whether the absence from work commences before the expected delivery date or after the actual delivery date, and before exhausting all accrued vacation and administrative leave. On July 26, 2018 and March 25, 2019, the bill was passed in the Senate and Assembly, respectively.

On May 13, 2019, Governor Phil Murphy conditionally vetoed the bill. He recommended the bill be revised so that all covered employees under the program, including employees with a pregnancy disability, be required to exhaust all accrued sick, vacation, administrative leave, and other applicable leave time prior to receiving donated leave. The Governor noted that all participants should be treated equally. Additionally, the Governor recommended that the Commission be granted flexibility to adopt regulations and update the program as necessary, provided that employee benefits are not reduced or made less favorable in the process.

HELPFUL LINKS

Accessing Commission Decisions

The Commission's website is located at <https://nj.gov/csc>, where you can find information regarding job announcements and examinations, employee programs, helpful links for employers, forms and publications, regulations and laws governing Civil Service, the Commission meeting agenda, and Commission decisions. The full texts of decisions are available on-line for cases decided on or after July 16, 2014. To access the text of a decision, first use the search function for Search Minutes/Decisions (<https://nj.gov/csc/about/meetings/search>). You can search by meeting date, appellant or appointing authority name, or keyword. When you retrieve the minutes for the meeting, look for the agenda item pertaining to your search. The decision can be accessed through a link in the item. If you know the meeting date on which the appeal was decided, you can access the minutes directly through the Minutes of Previous Meetings page (<https://nj.gov/csc/about/meetings/minutes/>). Click the meeting date and a list of agenda items will appear. Minutes of meetings and associated decisions are posted after approval of the minutes, usually at the next scheduled meeting of the Commission.

Civil Service Commission

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