

ARTICLE 9

TIME AND LEAVE

9.1 Attendance.

(a)(1) The transition to a uniform automated computer-based system for the maintenance and submission of time and attendance records has been completed. While the transition has been completed, nothing herein prevents the Court System from transitioning to a comparable system in the future. The impact of any such transition shall be subject to a demand by the Union for negotiations. A demand by the Union for negotiations shall not, however, serve to delay or otherwise bar transition/implementation.

(2) **Overtime Eligible Employees.** The Kronos system has been configured to register an overtime eligible employee's presence for his/her scheduled shift in the following manner: The system will register a swipe within the scheduled start of an employee's shift to five minutes after and reflect that the employee was present at the start of the shift. Similarly, a swipe within 15 minutes preceding the scheduled end of an employee's shift will reflect that the employee worked until the end of his/her shift. This will provide the same flexibility presently available to overtime eligible employees when they are not approved to work overtime and choose to swipe within 15 minutes before and after their shift starts and ends. Specific information captured concerning the time a swipe registers, within the parameters detailed above, will not be used by management as the sole basis for raising a concern about an employee's presence at the beginning or end of the employee's shift.

(3) **Meal Period.** Employees shall not be required to swipe in or out for their meal period during their scheduled shift.

(4) **Appointments During the Employee's Scheduled Shift.** When an employee is excused from work for an appointment and is expected to return to work before the end of his/her shift, the employee shall not be required to swipe out for the appointment or in upon the employee's return to work. This does not impact in any way upon the rules and procedures set forth in Article 9 that set the requirements for use of leave time for appointments during the workday.

(5) **Meal Period and Overtime.** When an employee works overtime on a day the employee is not scheduled to work his/her regular shift, a meal period will not be assumed and automatically deducted. Rather, the employee will be paid for overtime hours worked.

(6) **Overtime Ineligible Employees.** Overtime ineligible employees, as defined in Section 10.3 of this Agreement, shall not be required to swipe for timekeeping purposes.

(b) **Tardiness.**

(1) The Administrative Director or his/her designee may establish rules and schedules of penalties for tardiness. Such rules and schedules shall be established after consultation with the Union at labor/management meetings. Penalties imposed pursuant to such rules and schedules shall not preclude disciplinary action in cases of excessive tardiness.

(2) In the event of public transportation difficulties, strikes, severe storms or floods, or similar uncontrollable conditions affecting employees, tardiness may be excused by the Deputy Chief Administrative Judge (Courts Outside New York City) or his/her designee.

(3) Employees shall charge tardiness to accrued annual leave on a minute-for-minute basis.

(4) The District Administrative Judge or his/her designee shall excuse a reasonable amount of tardiness caused by direct emergency duties of duly authorized volunteer firefighters and volunteer ambulance drivers. In such cases, he/she may require the employee to submit satisfactory evidence that the lateness was due to such emergency duties.

9.2 Annual Leave.

(a)(1) Employees shall be entitled to combined vacation, personal, business and religious holiday leave of 20 days annually and shall be entitled to one additional day for each completed year of continuous service in the Unified Court System up to a maximum of 27 workdays annually. An employee shall not earn annual leave credit for any biweekly pay period unless he/she is in full pay status for at least seven workdays during such biweekly pay period. Annual leave shall be credited on a biweekly basis.

(2) A part-time, per diem or hourly employee eligible to earn annual leave credits pursuant to Section 9.2(g) shall earn annual leave credits as provided herein, but his/her total pay when absent on such leave shall be the amount which would have been due him/her if he/she had worked his/her usual number of hours or days during such period.

(b) A leave of absence without pay, or a resignation followed by re-employment in the Unified Court System within one year following such leave of absence or resignation, shall not constitute an interruption of continuous service for the purposes of this Section; provided, however, that leave without pay for more than six months or the period between resignation and re-employment, during which the employee is not in the service of the Unified Court System, shall not be counted in determining eligibility for additional annual leave credits under this Section.

(c) After the anniversary date on which an employee has been credited with seven days of additional annual leave credits, he/she shall thereafter earn annual leave for completed biweekly pay periods at a rate which will equal 27 days for 26 such pay periods.

(d) No accumulation of annual leave credits in excess of 54 days may be carried from one fiscal year to the next. Any such accumulation in excess of 54 days at the end of the fiscal year shall be converted into sick leave.

(e)(1) The time at which annual leave may be drawn by an employee shall be subject to the prior approval of the District Administrative Judge or his/her designee.

(2) Notwithstanding the above, employees shall be allowed to charge up to fourteen (14) hours of annual leave (prorated for employees working less than full time) for emergency circumstances, per calendar year. Such approval shall not be unreasonably withheld.

(f) As far as practicable, annual leave credits shall be used prior to appointment, promotion, reassignment or transfer to a different court or court-related agency. The court or court-related agency to which an employee is appointed, promoted, reassigned or transferred shall credit him/her with all of his/her accumulated annual leave credits not used prior to such appointment, promotion, reassignment or transfer.

(g) Employees compensated on a part-time, per diem or hourly basis who are employed at least half time and who are expected by the Administrative Director or his/her designee to be so employed continuously for nine months without a break in service exceeding one full payroll period shall be eligible to observe holidays and to accrue pro rata annual leave and sick leave which shall be granted and shall be subject to the same limitations and restrictions as would apply if they were compensated on an annual salary basis.

(h) An employee who has completed 25 years of Unified Court System or State service shall be entitled to one additional annual leave day each year.

(i) An employee who has completed 30 years of Unified Court System or State service shall be entitled to one additional annual leave day each year, in addition to the one additional annual leave day provided in Section 9.2(h).

(j) Employees entering the service of the Unified Court System shall be entitled to accrue annual leave from their initial date of hire. An employee shall not earn annual leave credit for any biweekly pay period unless he/she is in full pay status for at least seven workdays during such biweekly pay period.

(k) If an employee's properly submitted request for use of accrued leave credits is denied, the employee shall receive a written statement of the reasons for such denial.

(l) In the event the State determines that it will recess operations in a particular court or courts for at least four consecutive workdays, it may require employees during such recess to charge up to four days annual leave in each fiscal year.

9.3 Sick Leave.

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

(2) An employee shall be allowed to charge a maximum of 25 days of sick leave in any one calendar year for absences from work in the event of illness of the employee's spouse; domestic partner; natural, foster or step: parent; child; sibling; any relative residing with the employee; or an

individual for whom the employee is the primary caregiver. Such leave is subject to notice to the supervisor in accordance with Section 9.3(c) and will be used by the employee to enable the employee to care for a family member as defined herein during a time of illness. For purposes of this Section, a domestic partner shall be defined as an individual who:

- Is not legally married to anyone else and, if married before such marriage(s) have been legally terminated; and
- Is at least 18 years of age or older; and
- Is not related to the employee by blood in a manner that would bar marriage under New York State law; and
- Has shared the same residence with the employee for at least the last six (6) months; and
- Together with the employee has an exclusive mutual commitment to share responsibility for each other's welfare and financial obligations for at least the last (6) six months and expects that commitment to last indefinitely.

Documentation in support of the above may be requested by the employee's supervisor. Sick leave used for this purpose shall be charged separately as part of uniform time and attendance procedures.

(3) **Sick Leave Use During FMLA Caregiver Leave.** An employee who submits a WH-380-F form and is approved for a caregiver leave pursuant to the Family and Medical Leave Act ("FMLA") may charge absences during the FMLA period to accumulated sick leave. Sick leave charged during the FMLA period shall not be counted towards the 25 days set forth in (a)(2), i.e., these 25 "family sick leave" days remain available for the employee's use before and/or after the FMLA period.

(b) No more than 200 days of sick leave credits may be used for retirement service credit and to pay for health insurance in retirement. An employee shall not earn sick leave credit for any biweekly pay period unless he/she is in full-pay status for at least seven workdays during such biweekly pay period.

(c) An employee absent on sick leave shall notify his/her supervisor, or the supervisor's designee if appointed, of such absence and the reason therefor on the day of such absence and within 60 minutes after the beginning of his/her workday; provided, however, that where the work is such that a substitute may be required, the District Administrative Judge or his/her designee may require

earlier notification, but no earlier than two hours prior to the beginning of the employee's workday. The District Administrative Judge or his/her designee shall waive such notice requirements where he/she has determined that a medical emergency existed which prevented the employee from complying with such notice requirements.

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

(e)(1) The Deputy Chief Administrative Judge (Courts Outside New York City) or his/her designee may require an employee who has been absent because of personal illness, as a condition of his/her return to duty, to submit the Health Care Provider Certification for Employee's Return to Work form, and the other forms currently in use (Estimated Capabilities Form and Duties Assessment Form) prior to the employee's return to work to establish that the employee is not disabled from the performance of the employee's normal duties and that the employee's return to duty will not jeopardize the employee's health or the health of other employees.

(2) If the medical reports provided by the employee are deemed insufficient the employee will be notified within five (5) workdays and asked to provide additional medical. If the employee does not provide additional medical or if the additional medical provided is deemed insufficient, the Deputy Chief Administrative Judge (Courts Outside New York City) will make a determination within five (5) workdays from the date of receipt of the additional medical as to whether the employee will be examined, at the expense of the State, by a board certified medical practitioner designated by

the State (“State Physician”), to establish if the employee is able to perform his/her normal duties and if the employee’s return to duty will not jeopardize the employee’s health or the health of other employees. The examination shall be scheduled within twenty (20) workdays after a determination is made by the Deputy Chief Administrative Judge to send the employee to be examined by a State Physician. If it is determined that the employee needs to be examined by a specialist including a psychiatrist, this examination shall be scheduled within twenty (20) work days from the date the employee is examined by the State Physician. A failure by the State to meet the time frames provided in this Section shall not be deemed as authorizing an employee to return to work.

(3) An employee who is required to undergo an examination[s] pursuant to subsection (2) above, and who does not have sufficient personal accruals to cover his/her absence during the interim period between the date their medical practitioner certifies that he/she can return to work without restrictions and the date the State renders a determination regarding his/her return to work, shall be advanced up to 10 workdays of sick leave bank credit to cover his/her absence during this interim period. If the State Physician determines that the employee’s medical practitioner was correct and the employee should have been permitted to return to work, the employee shall have all accruals that were charged during the interim period restored. If any sick leave bank credits were advanced, the State shall restore such credits to the sick leave bank.

(4) The Union shall receive a copy of the letter sent to the employee notifying him/her of the State’s determination that the employee will be examined at the expense of the State, by a board certified medical practitioner designated by the State, to establish whether the employee is able to perform his/her normal duties and to confirm that the employee’s return to duty will not jeopardize the employee’s health or the health of other employees.

(f) In addition to personal illness of an employee, personal visits to a doctor, dentist, or other medical practitioner by the employee when approved in advance when practicable by the District Administrative Judge or his/her designee may be charged against accumulated sick leave credits.

Proof of the need for such absence, satisfactory to the District Administrative Judge or his/her designee, may be required.

(g) When an employee is transferred or reassigned, his/her accumulated sick leave credits shall be transferred with him/her. When an employee is separated from service, for other than disciplinary reasons, and is subsequently reinstated or re-employed within one year after such separation, or is reinstated by action of the Chief Administrative Judge, or is reinstated or re-employed while eligible for reinstatement from a preferred list, his/her sick leave credits accumulated and unused at the time of his/her separation shall be restored.

(h) Charges to an employee's annual leave shall be changed to a charge to sick leave during a period of verified hospitalization. An employee may request that a charge to annual leave be changed to a charge to sick leave during a period of documented verified illness. Such request shall be submitted to the Deputy Director for Labor Relations or his/her designee for final determination.

(i) Incapacitated Employees.

(1) When there is reason to believe that an employee to whom the disciplinary procedures of this Agreement apply is physically and/or mentally disabled from performing the duties of his/her position, the Deputy Chief Administrative Judge (Courts Outside New York City) after consultation with the District Administrative Judge may require such employee to undergo a physical and/or psychiatric examination at the expense of the State, to be conducted by a medical officer selected by the Chief Administrative Judge or his/her designee, to establish whether he/she is able to perform the full duties of his/her position and/or whether his/her continued presence on the job will jeopardize the health and safety of himself/herself or other employees. The State shall provide the Union with a copy of the letter directing an employee to undergo a physical and/or psychiatric examination pursuant to this Section.

(2) Where the continued presence of an employee on the job represents a potential danger to persons or property or would significantly interfere with operations, the Deputy Chief Administrative Judge (Courts Outside New York City) may place such employee on an involuntary leave of absence

immediately, provided, however, that the employee shall be entitled to draw all accumulated and unused sick leave, annual leave, compensatory time, overtime credits and other time allowances standing to his/her credit. If such employee is finally determined to be physically and mentally fit to perform the duties of his/her position, he/she shall be restored to his/her position and shall have any leave credits or salary that he/she may have lost because of such involuntary leave of absence restored to him, less any compensation he/she may have earned in other employment or occupation and any unemployment benefits he/she may have received during such period.

(3) An employee who is temporarily disabled from performing the full duties of his/her position may, as far as practicable, be assigned to in-title and related duties in the same title during the period of the employee's disability. If a suitable position is not available, the State may offer the employee any available opportunity for appointment to another title for which the employee is qualified pursuant to applicable rules of the Chief Administrative Judge. If no suitable position is available, and there is no offer of appointment to another title, or the employee refuses such offer, such employee shall be placed on leave and allowed to draw all accumulated and unused sick leave, annual leave, compensatory time, overtime credits and other time allowances standing to his/her credit prior to being placed on leave without pay. An employee who chooses to draw his/her accumulated leave credits under this Section shall cease to earn and accrue sick and annual leave credits during that period. An employee placed on leave pursuant to this subsection who is not reinstated within one year after the date of commencement of such leave, may be terminated by the Deputy Chief Administrative Judge (Courts Outside New York City) and his/her position may be filled by a permanent appointment.

(4) When an employee who is not permanently incapacitated from performing the duties of his/her position has been absent from and unable to perform the duties of his/her position by reason of sickness or disability either for a consecutive period of one year or more or for a cumulative total of 250 workdays or more within a period of 24 consecutive calendar months and who reasonably

cannot be expected to be able to resume performing his/her duties on a full-time basis shortly thereafter, his/her employment status may be terminated by the Deputy Chief Administrative Judge (Courts Outside New York City) and his/her position may be filled by a permanent appointment.

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

(6)(a) Absent exceptional circumstances, prior to being placed on leave pursuant to Section 9.3(i)(2) or 9.3(i)(3) or terminated pursuant to Section 9.3(i)(4), or, under exceptional circumstances, as soon thereafter as reasonably possible, an employee shall be provided with written notice thereof, including written notice of the facts relied on therefor and written notice of the employee's right to appeal the determination and of the procedures for perfecting such appeal. Such notice shall be served in person or by first class, registered or certified mail, return receipt requested, upon the employee and the Union. If such person elects to appeal, he/she shall file a written request for a hearing with the Deputy Chief Administrative Judge (Courts Outside New York City) within ten workdays from service of the notice of the determination to be reviewed. The request for such hearing shall be filed by the employee personally or by first class, certified or registered mail, return receipt requested.

(b) Upon receipt of such request, the Deputy Chief Administrative Judge (Courts Outside New York City) shall supply to the employee or his/her personal physician or authorized representative, copies of all diagnoses, test results, observations and other data supporting the determination, and imposition of the leave or termination shall be held in abeyance until a final determination is made by the Deputy Chief Administrative Judge (Courts Outside New York City) as provided in Section 9.3(i)(6)(c).

(c) A hearing shall be held by a hearing officer designated for that purpose by the Deputy Chief Administrative Judge (Courts Outside New York City). The hearing officer shall be vested with all the powers of the Deputy Chief Administrative Judge (Courts Outside New York City), and shall make a record of the hearing which shall, with his/her recommendation, be referred to the Deputy Chief Administrative Judge (Courts Outside New York City) for review and decision and which shall

be provided to the employee free of charge. The employee shall, upon request, receive a copy of the transcript of the hearing without charge. The employee may be represented at the hearing by counsel or a representative of the Union and may present medical experts and other witnesses or evidence. The burden of proving mental or physical unfitness shall be upon the State. Compliance with technical rules of evidence shall not be required. The Deputy Chief Administrative Judge (Courts Outside New York City) will render a final determination and may either uphold the original notice of leave of absence, withdraw such notice or modify the notice as appropriate. A final determination of an employee's request for review shall contain notice to the employee of his/her right to appeal from such determination and of the procedures for perfecting such appeal.

(d) If such person elects to appeal, he/she shall make application to the Chief Administrative Judge. Such employee shall be afforded an opportunity to present facts and arguments, including medical evidence, in support of his/her position at a time and place and in such manner as may be prescribed by the Chief Administrative Judge. The reviewing authority shall make his/her determination on the basis of the medical records and such facts and arguments as are presented.

(7) An employee on leave pursuant to Section 9.3(i)(2) or 9.3(i)(3) may, within one year of the commencement of such leave, make application to the Deputy Chief Administrative Judge (Courts Outside New York City) for a medical examination to be conducted by a medical officer selected for that purpose by the Chief Administrative Judge or his/her designee. An employee whose employment status has been terminated pursuant to Section 9.3(i)(3) or 9.3(i)(4), may, within one year after the termination of his/her disability, make application to the Deputy Chief Administrative Judge (Courts Outside New York City) for a medical examination to be conducted by a medical officer selected for that purpose by the Chief Administrative Judge or his/her designee. If, upon such medical examination, the medical officer shall certify that such person is physically and mentally fit to perform the duties of his/her former position, he/she shall be reinstated to the former position, if vacant, or to a vacancy in a similar position or a position in a lower title in the same occupational field in his/her former promotion unit. If no appropriate vacancy shall exist to which such

reinstatement may be made, or if the work load does not warrant the filling of such vacancy, the name of such person shall be placed on a preferred list for his/her former position in his/her former promotion unit, and he/she shall be eligible for reinstatement in such former promotion unit from such preferred list for a period of four years. In the event that such person is reinstated in a position in a title lower than that of his/her former position, his/her name shall be placed on the preferred eligible list for the former position or any similar position in such former promotion unit.

(8) This Section shall not be deemed to modify or supersede any other provisions of law applicable to the re-employment of persons retired from the public service on account of disability.

(9) Notwithstanding any other provision of this Agreement, when an employee's disability permanently incapacitates him/her from performing the duties of his/her position, his/her employment status may be terminated and his/her position may be filled by a permanent appointment. Such employees shall be entitled to due process and hearing as enumerated in Section 9.3(i).

(j) **Sick Leave Bank.** The Sick Leave Bank in existence shall continue unless otherwise mutually agreed to by the parties.

(k) **Use of Accruals at Half-Time During FMLA Leaves.** During a non-discretionary leave pursuant to the FMLA for their own serious health condition, employees may charge their leave accruals at the half-time rate. During a caregiver leave pursuant to the FMLA, employees may charge their sick leave accruals at the half-time rate.

9.4 Workers' Compensation Leave.

(I) Statutory Benefit

(a)(1) Employees necessarily absent from duty because of an occupational injury, disease or condition as defined in the Workers' Compensation Law, shall be eligible for a Workers' Compensation Benefit as provided in this Article. Determinations of the Workers' Compensation Board regarding compensability of claims shall be binding upon the parties.

(2) A workers' compensation injury shall mean any occupational injury, disease or condition found compensable as defined in the Workers' Compensation Law.

(b)(1) An employee who suffers a compensable occupational injury shall, upon completion of a ten-workday waiting period, be placed on a leave of absence without pay for all absences necessitated by such injury and shall receive the benefit provided by the Workers' Compensation Law except as set forth in this Article.

(2) An employee necessarily absent for less than a full day in connection with a workers' compensation injury as defined in Section 9.4(I)(a)(2) due to therapy, a doctor's appointment, or other required continuing treatment, may charge accrued leave for said absences.

(3) The State will make previously authorized payroll deductions for periods the employee is in pay status receiving salary sufficient to permit such deductions. The employee is responsible for making payment for any such deductions during periods of leave without pay, such as those provided in Section 9.4(I)(b)(1).

(c) An employee required to serve a waiting period pursuant to Section 9.4(I)(b)(1) shall have the option of using accrued leave credits or being placed on leave without pay. Where an employee charged credits, upon receipt of documentation from the State Insurance Fund issuing a credit to the State for the time charged, the employee shall be entitled to restoration of credits charged proportional to the net monetary award credited to the State by the Workers' Compensation Board. In the event the restoration of credits is not sufficient to restore the full amount of accrued leave used during the waiting period, the State shall credit to the employee's leave accruals the difference between the accrued leave used and the Worker's Compensation Board Credit.

(d) When annual leave credits are restored pursuant to this Article and such restoration causes the total annual leave credits to exceed 54 days, a period of one year from the date of the return of the credits or the date of return to work, whichever is later, is allowed to reduce the total accumulation to 54 days.

(e) An employee receiving workers' compensation payments for a period of disability found compensable by the Workers' Compensation Board shall be treated as though on the payroll for the length of the disability not to exceed 12 months per injury for the sole purposes of accruing seniority,

continuous service, health insurance and Welfare Fund contributions normally made by the State, and accrual of annual and sick leave. Additionally, such employee shall be treated as though on payroll for the period of disability not to exceed 12 months per injury for the purposes of retirement credit and contributions normally made by the State and/or the employee.

(f)(1) Where an employee's workers' compensation claim is controverted by the State Insurance Fund upon the ground that the disability did not arise out of or in the course of employment, the employee may utilize leave credits pending a determination by the Workers' Compensation Board.

(2) If the employee's controverted or contested claim is decided in the employee's favor, any leave credits charged shall be restored proportional to the net monetary award credited to the State by the Workers' Compensation Board.

(3) If the employee was in leave without pay status pending determination of a controverted or contested claim, and the claim is decided in the employee's favor, the employee shall receive the benefits in Section 9.4(I)(e) for the period covered by the award not to exceed 12 months per injury.

(4) Where a claim for workers' compensation is controverted or contested by the State Insurance Fund, the parties will abide by the determination of the Workers' Compensation Board.

(g)(1) If the date of the disabling incident is prior to April 1, 1986, the benefits available shall be as provided in the 1982-85 State/Union Agreement.

(2) If the date of the disabling incident is on or after April 1, 1986 and prior to June 17, 1993, the benefits available shall be as provided in the 1988-91 State/Ninth JD Agreement.

(3) If the date of the disability incident is on or after June 17, 1993, the benefits available shall be as provided herein.

(h) The State and the Union shall establish a committee whose purpose shall include but not be limited to reviewing and making recommendations on the following: (1) the effects of the implementation and administration of the workers' compensation statutory benefit, including resulting savings and costs associated with it; (2) the accident and injury data focusing on incidence

of injuries or accidents in order to develop prevention strategies and means to reduce and/or eliminate the risk of on the job injury.

(i) The State retains all its managerial rights to monitor all workers' compensation claims.

(II) Injured in an Assault

(a) An employee necessarily absent from work because of an occupational injury or disease as defined under the Workers' Compensation Law, and incurred in "assaultive" circumstances, shall be granted leave from her/his position for the period of absence necessitated by such injury in accordance with the provisions set forth below. For purposes of this Section, an "assault" shall include any injury incurred through an assault to the employee, an injury suffered by the employee in the pursuit of a criminal or an injury incurred while coming to the aid of an employee, member of the public or in response to an emergency. An employee requesting leave under this Section must submit a request for such leave benefit to the Deputy Director for Labor Relations on forms to be established. Such request must be submitted within 25 workdays of the occurrence of the injury or the first day of absence due to the injury, whichever is later. The Deputy Director for Labor Relations shall waive the time limitation on filing such request where he/she determines that a medical condition existed which prevented the employee from complying with such time limitations.

(b) An employee absent on leave under this Section must remain at home and be within telephone communication of the Deputy Director for Labor Relations or his/her designee. If, for any reason, the employee must be away from home, he/she must leave a forwarding telephone number and location with the Deputy Director for Labor Relations or his/her designee.

(c) In the event that leave pursuant to this Section is denied, the State shall provide a statement in writing of the reasons for such denial. Leave under this Section may be withheld or terminated if:

(1) the employee's claim for benefits under the Workers' Compensation Law is controverted by the State Insurance Fund (at the request of the State or on the initiative of the State Insurance Fund). If final determination of the controverted claim is in favor of the employee, eligibility for leave

shall be determined as provided in accordance with this letter for all absences necessitated by the occupational injury or disease;

(2) the Workers' Compensation Board determines that the disability resulting from such injury or disease is not compensable;

(3) there is good and sufficient reason to believe that the employee could report for work on a full- or part-time basis;

(4) the employee has not submitted satisfactory medical documentation of the claimed disability upon request;

(5) the employee fails or refuses to submit to a medical examination conducted by a physician selected by the State and at the expense of the State;

(6) the employee fails or refuses to submit a timely request for such leave;

(7) it is determined that the employee is employed on a full- or part-time basis outside the Unified Court System;

(8) the employee failed to obtain prior permission during his/her regular hours of work to leave his/her home while on workers' compensation leave;

(9) the State, in its discretion, determines that an employee should return to work on a light-duty basis even if a doctor determines that the employee is medically disabled; or,

(10) the employee's services would have terminated or ceased under law, rule or regulation.

(d) An employee who is granted leave under this Section shall be allowed leave at full pay without charge to leave credits for a period not to exceed six months for each separate injury or disease; provided, however, that the cumulative total of leave shall not exceed the number of hours normally and regularly worked by the employee during the six-month period.

(e) The workers' compensation leave may be extended for an additional six months upon a determination by a State Insurance Fund physician or consulting physician or a State-selected physician that such employee is not permanently disabled and will be able to return to duty within the additional leave period.

(f) Should the employee's disability continue beyond 12 months and a determination is made by a State Insurance Fund physician or consulting physician or a State-selected physician that the employee is not permanently disabled and will be able to return to duty within the additional leave period, the employee will be granted leave under this Section for a period not to exceed an additional six months.

(g) The Deputy Director for Labor Relations or his/her designee may, at approximately the tenth month of utilization of workers' compensation leave, have an employee examined by a State Insurance Fund physician or consulting physician, or State-selected physician, to determine if the employee is permanently incapacitated from performing his/her duties. If it is determined that the employee is permanently incapacitated, the Deputy Director for Labor Relations will notify the employee by certified mail, return receipt requested with a copy to the Association, encouraging him/her to file for disability retirement or any retirement that may be available prior to the 12th month of such workers' compensation leave. Such notice shall indicate that should the employee choose not to file for disability retirement by the end of the 12th month of such leave, he/she shall not be eligible for the additional leave provided under Section 9.4(II)(i).

(h) If, at any time, it is determined through a medical examination that the injury or disease incurred by the employee is of such nature as to incapacitate the employee from the full performance of duties either permanently or for the duration of the period for which workers' compensation leave can be granted, the Deputy Director for Labor Relations will notify the employee by certified mail, return receipt requested with a copy to the Association, encouraging him/her to file for disability retirement prior to the 12th month of such workers' compensation leave. Such notice shall indicate that should the employee choose not to file for disability retirement by the end of the 12th month of such leave, he/she shall not be eligible for the additional leave provided under Section 9.4(II)(i).

(i) If an employee has applied for disability retirement under subsections (II)(g) or (h), and exhausts eligibility for workers' compensation leave under this Section prior to a determination

regarding the application for disability retirement, leave shall be granted for up to an additional six months.

(j) If it is subsequently determined that an employee was not entitled to workers' compensation leave with pay without charge to leave credits, for any period for which such employee was granted such leave as provided in this letter, the employee shall be required to make reimbursement for such paid leave from current or subsequent accumulations of leave credits at a rate and in a manner to be determined by the Deputy Director for Labor Relations.

(k) In order to enable the State to make such determinations as are authorized or required in this letter, the Deputy Director for Labor Relations may, at any time, require an employee to provide medical documentation of the disability satisfactory to him/her or to be examined at the expense of the State by a physician designated by the State.

(l) The leave benefit enumerated in this letter shall not be construed to require extension of any employment beyond the time at which it would otherwise terminate by operation of law, rule or regulation or to require the granting of any leave benefits provided herein solely because of determinations made by the Workers' Compensation Board.

9.5 Other Leaves With Pay.

(a) **Leave for Subpoenaed Appearance and Jury Attendance.** Upon application to the Deputy Chief Administrative Judge (Courts Outside New York City) or his/her designee, together with proof satisfactory to the State of the necessity of each days absence from work, an employee shall be granted a leave of absence with pay for documented absences resulting from jury service or appearance as a witness pursuant to subpoena or other order of a court or body. Provided, however, that this Section shall not apply to any absence by an employee occasioned by such an appearance where the employee, or his/her relative as defined in Section 9.5(f), has a personal interest in the underlying action or proceeding; nor shall this Section apply to any absence by an employee who receives a fee for testifying as an expert witness.

Employees entitled to leave under this Section shall not be entitled to receive any

remuneration for jury service except mileage and transportation expenses when serving on a New York State Unified Court System jury. Should an employee receive a New York State Unified Court System jury fee, the State will require reimbursement from the employee.

(b) **Leave for Civil Service Examinations.** An employee shall be allowed leave with pay to take Civil Service examinations at the appropriate examination center for positions in the Unified Court System. An employee also shall be allowed leave with pay to appear for an official investigation or appointment interview for competitive class, noncompetitive class or exempt class positions in the Unified Court System. Prior to such leave being granted, due notice and proof satisfactory to the State shall be submitted by the employee to the District Administrative Judge or his/her designee.

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

(d) **Leaves Required by Law.** An employee shall be allowed such other leaves of absence with pay, including military leave, as are required by law.

(e) **Leave for Civil Defense Duties.** Upon certification by the State Director of Civil Defense of the necessity for the participation in State or local civil defense drills of an employee enrolled as a civil defense volunteer, and required to perform civil defense duties, pursuant to the State Defense Emergency Act, the Deputy Chief Administrative Judge (Courts Outside New York City) or his/her designee, shall allow such employee to absent himself/herself from his/her position, without loss of pay or charge against leave credits, for such time as is necessary for participation in such drills, but not exceeding cumulatively five workdays per calendar year.

(f) **Bereavement Leave.** Leave of up to four consecutive State workdays (based on a standard Monday to Friday workweek and not to exceed a total of 28 work hours), shall be allowed immediately following the death of an employee's spouse; domestic partner; natural, foster or step parent; child; brother or sister; or the natural, foster or step child of the employee's domestic partner. Such four consecutive State workdays also shall be allowed following the death of an employee's father-in-law or mother-in-law; the parent or step parent of the employee's domestic partner; grandparent or grandchild; any relative residing with the employee; or for an individual for whom the employee has been the primary care giver.

Leave of up to two consecutive State workdays (not to exceed 14 work hours) shall be allowed immediately following the death of an employee's son-in-law or daughter-in-law or the son-in-law or daughter-in-law of the employee's domestic partner.

Also, one day (not to exceed 7 work hours) of bereavement leave shall be allowed for an employee's brother-in-law or sister-in-law.

In exceptional cases where the deceased is unavailable for burial or services, the appropriate local Administrative Judge (or his/her designee) may, in his/her discretion, upon an employee's request, waive the requirement that bereavement leave may be used immediately following the death.

For purposes of this Section, a domestic partner shall be defined as an individual who:

- Is not legally married to anyone else and, if married before such marriage(s) have been legally terminated; and
- Is at least 18 years of age or older; and
- Is not related to the employee by blood in a manner that would bar marriage under New York State law; and
- Has shared the same residence with the employee for at least the last six (6) months; and
- Together with the employee has an exclusive mutual commitment to share responsibility for each other's welfare and financial obligations for at least the last (6) six months and expects that commitment to last indefinitely.

Documentation in support of the above may be requested by the employee's supervisor.

For those employees regularly scheduled to work on a weekend or holiday, such days shall be considered State workdays for purposes of this Section only. Prior notice and authorization is not

required for leave under this paragraph. When a death in an employee's family occurs while he/she is on annual leave, such time as is excusable for bereavement shall not be charged to annual leave.

(g) Extraordinary Circumstances.

(1) Court Closures Due to Extraordinary Circumstances. An employee who has reported for duty, and because of extraordinary circumstances beyond his/her control, is directed to leave work, shall not be required to charge such directed absence during such day against leave credits. An employee who does not report for duty because of circumstances beyond his/her control shall not be required to charge such absence during such day against leave credits if the court or other facility where the employee is required to report is closed due to such extraordinary circumstances. Any release or excusal of employees due to extraordinary circumstances does not create any right to equivalent time off by employees not adversely affected by the extraordinary circumstances. Only designated management officials may direct employees to leave work. The Deputy Chief Administrative Judge (Courts Outside New York City) or his/her designee shall promulgate a list of personnel who have this authority. Except as provided in Section 9.9, if the celebration of a holiday in a locality results in the closing of a court or court-related agency and notification by posting or other means that the court or court-related agency will be closed on that date to the employees has not been given by a designated management official, employees shall not be required to charge such absence against leave credits.

(i) Employees who are required by the local Administrative Judge or his/her designee to work when the court or facility where they report to work is closed due to extraordinary circumstances, shall be credited with a minimum of five (5) hours of compensatory time regardless of the amount of time that they are required to work when the court is closed. Employees who work more than five (5) hours of their regular scheduled day on a day when the court or facility where they report to work is closed due to extraordinary circumstances shall receive additional compensatory time on a minute for minute basis. This Section shall not apply when there is a delay in the opening of a court or facility.

(2) **Delayed Openings and Early Closures Due to Inclement Weather.** When a court or court-related facility is open for any period of time on a day when there is inclement weather, employees who do not report to work shall be required to charge their annual leave for a full day's absence, except as set forth below:

- i. Delayed Opening: When a court or court-related facility opens two and one half (2½) hours or more after its regular opening time because of inclement weather, employees who do not report to work shall only be required to charge their annual leave for the amount of time their court or court-related facility was open. The balance of the employee's shift shall be excused.
- ii. Early Closing: When a court or court-related facility opens at its regular time and closes two and one half (2½) hours or less thereafter because of inclement weather, employees who do not report to work shall only be required to charge their annual leave for the amount of time their court or court-related facility was open. The balance of the employee's shift shall be excused.

The foregoing does not apply to employees who were already scheduled to be out on any type of approved leave on such day. Employees seeking to charge sick leave to cover unscheduled absences on days when a court or court-related facility opens late or closes early due to inclement weather may be required to submit documentation substantiating the need for sick leave on such date.

(iii) Employees who are directed to report to work during a delay or directed to remain at work when the court or other facility where they report to work is closed early are entitled to minute-for-minute compensatory time.

(h) **Internal Discrimination.** Subject to the reasonable operating needs of the court or court-related agency and with the prior written approval of the Unified Court System's Workforce Diversity Office, an employee shall be allowed leave with pay (i) to consult with the Workforce Diversity Office prior to filing an Internal Discrimination Claim pursuant to the Discrimination Claim Policy

and Procedure; or, (ii) to attend meetings or consultations with the Workforce Diversity Office in relation to a filed Internal Discrimination Claim. Such leave shall include reasonable travel time.

(i) **Blood Donations.** Subject to the reasonable operating needs of the court or court-related agency, an employee shall be allowed three and one-half hours leave with pay for blood donations made during an employee's normal working hours. Such leave only shall be used on the day such donation is made and shall include all time spent making such donation (including travel time to and from the collection point). This provision shall not apply to an employee who receives a fee for such donation.

(j) **Grand Jury Leave.**

(1) Peace officers who may become the subject of a Grand Jury review for using physical force pursuant to their official duties shall be granted leave while the incident is reviewed by the Grand Jury. Grand Jury Leave will run concurrently with the Grand Jury review. Once the Grand Jury review concludes, the peace officer's leave shall end and the peace officer shall return to work, unless another leave is granted.

(2) While on a leave pursuant to this subsection, a peace officer will receive the same benefits provided to employees on other leaves with pay.

(3) Except as provided in subsection 2 above, employees shall receive all the same benefits as they would on any other paid leave.

(k) **Leave for Firearms Screening.** Peace officers who have (i) successfully completed Basic Peace Officer Training; (ii) have submitted an "Application for Clerical Employees (Peace Officer Titles) Requesting Firearms Training"; and (iii) have been approved by the Office of Court Officer Staffing and Security Services to participate in firearms training, shall be eligible for up to two workdays (not to exceed 14 work hours) of leave with pay for purposes of participating in required firearms screening procedures, i.e. medical exam; Physical Ability Test (PAT); vision screening test; written psychological tests; background investigation; psychological interview evaluation board review. The use of leave under this Section is subject to approval by the Deputy Chief Administrative

Judge (Courts Outside New York City) or his/her designee. This Section shall not apply to leave to attend firearms requalification.

9.6 Leaves Without Pay.

(a) **Leave of Absence; Duration.** A permanent employee may, in the discretion of the Deputy Chief Administrative Judge (Courts Outside New York City) or his/her designee, be granted a leave of absence, without pay, for a period not exceeding two years. Such leave may be extended beyond two years, for periods aggregating not in excess of an additional two years. In an exceptional case, a further extension may be permitted by the Deputy Chief Administrative Judge (Courts Outside New York City) or his/her designee, for good cause shown and where the interests of the government would be served. For the purposes of this Section, time spent in active service in the military forces of the United States or of the State of New York shall not be considered in computing the period of leave.

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

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

(c) Leave Without Pay for Child Care.

(1) A combined confinement and child care leave of absence without pay shall be granted to an employee (male or female) who becomes the parent of a child up to four years of age, either by birth or by adoption, for a period of up to 12 months. A period beyond 12 months, but not more than another successive 12-month period, may be granted at the discretion of the Deputy Chief Administrative Judge (Courts Outside New York City) or his/her designee subject to the staffing

needs of the court. The use of this maximum allowance will be limited to one instance only during the term of this Agreement.

(2) Prior to the commencement of confinement and child care leave, an employee shall be continued in pay status for a period of time equal to all of the employee's unused accrued annual leave.

(3) Notwithstanding subsection (c)(ii), a pregnant employee shall have the option to be continued in pay status for a period of time equal to all or part of her period of disability using accrued sick leave or annual leave.

This Section shall not be construed to require extension of the employment of a temporary, provisional, contingent permanent or other employee beyond the time at which it would otherwise terminate by operation of law, rule or regulation.

9.7 Payment of Accruals Upon Separation.

(a) At the time of separation from Unified Court System service, an employee or his/her estate or beneficiary, as the case may be, shall be compensated in cash for annual leave credits not in excess of 80 days (560 hours) accrued and unused as of the effective date of separation and for compensatory time not in excess of 54 days (378 hours) accrued and unused as of the effective date of separation. Any accumulation of compensatory time in excess of 54 days at the time of separation shall be converted into sick leave. Cash compensation for annual leave shall be adjusted where an employee is transferring to a different state entity and meets the requirements under a valid reciprocal agreement for the transfer of leave credits. In the case of resignation, the Chief Administrative Judge or his/her designee may require, as a condition for such payment, that written notice of such resignation be given to the Chief Administrative Judge or his/her designee at least two weeks prior to the last day of employment.

(b) An employee on leave from his/her position due to his/her 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 in cash for accrued and unused annual leave and overtime

credits not in excess of 30 days in each category accrued and unused as of the last date on which his/her name appeared on the State payroll.

9.8 Written Agreement Required for Transfer of Leave Credits. For the purposes of applying the provisions of this Article, employment in the Executive or Legislative branches of State service shall be credited as service in the Unified Court System; provided, however, that except as otherwise provided by law, leave credits may not be transferred upon movement from such positions to positions within the negotiating unit except where such credits are earned and accumulated in accordance with provisions which are substantially equivalent to the time and leave provisions of this Agreement and there is a written agreement between the President of the Civil Service Commission and the Chief Administrative Judge governing the transfer of leave credits upon such movements. Other public employment may be credited as State service for purposes of determining transferability of leave credits provided such employment was subject to attendance and leave provisions substantially equivalent to the time and leave provisions of this Agreement, and provided there is a written agreement between the Chief Administrative Judge and the public agency wherein such employment occurred governing the crediting of such employment and the transfer of leave credits upon movement of employees to and from such agency and positions included within this negotiating unit.

9.9 Holidays. All legal holidays enumerated herein shall be allowed as paid days off, or holiday pay as set forth in Section 9.11 shall be allowed in lieu thereof. The days prescribed by law for the observance of New Year's Day, Martin Luther King, Jr.'s Birthday, Lincoln's Birthday, Washington's Birthday, Memorial Day, Juneteenth, Independence Day, Labor Day, Columbus Day, Election Day, Veterans Day, Thanksgiving Day and Christmas Day shall be observed as holidays.

A Statewide committee will be established with representatives from all unions representing nonjudicial court employees to ascertain whether the day after Thanksgiving Day could be substituted for a presently existing holiday.

9.10 **Retroactive Time Credits.** Nothing in this Article shall be construed to provide for the granting of annual leave, sick leave or other time and leave credits for service rendered prior to the effective date of this Agreement, provided, however, that nothing in this Agreement shall affect time or leave credits lawfully earned prior to the effective date of this Agreement.

9.11 **Holiday Pay.**

(a) An employee who is entitled to time off with pay on days observed as holidays by the State as an employer will receive at his/her option additional compensation for time worked on such days or compensatory time off. Such additional compensation for each such full day worked will be at the rate of 1/10 of his/her biweekly rate of compensation. Such additional compensation for less than a full day of such work will be prorated. Such rate of compensation will include geographic, location, inconvenience and shift pay as may be appropriate to the place or hours worked. In no event will an employee be entitled to such additional compensation or compensatory time off unless he/she has been scheduled or directed to work.

(b) An employee required to work on Thanksgiving Day (the fourth Thursday in November), Christmas Day (December 25) or New Year's Day (January 1) shall receive a 100% cash premium for all hours worked on such day in addition to any holiday pay or compensatory time off granted under subsection (a) above.

9.12 **Holiday Falling on Saturday or Sunday.** A holiday falling on a Saturday or a Sunday shall be observed on the preceding Friday or following Monday subject to the operational or staffing needs of the court or court-related agency.

9.13 **Workweek.** The State and the Union recognize their mutual goal of best serving the public. Toward that goal the parties also recognize that the State has the right to modify starting and ending times of work schedules as follows: The workweek shall be 35 hours. Employees' currently scheduled workweek or work schedule shall be maintained unless changed in accordance with this provision. Permanent changes in employees' workweek or work schedule shall be made upon reasonable notice to the Union. The impact of permanent changes in employees' workweek or work

schedule shall be subject to negotiations with the Union. This Section shall not, however, be a bar to consideration of Alternative Work Schedule requests from individuals.

9.14 **Conferences.** Four days leave per annum without charge to an employee's leave credits may be allowed to attend conferences of recognized professional organizations or to attend Continuing Legal Education ("CLE") programs or educational seminars presented by such organizations or other appropriate organizations or institutions. Such conferences must be directly related to the employee's profession or professional duties. This leave is subject to the approval of the Deputy Chief Administrative Judge (Courts Outside New York City) or his/her designee and the staffing needs of the unit. There shall be no prohibition on the employee's virtual attendance at such conferences and programs where such option is available.

9.15 **Request for Reassignment or Transfer.** To the extent that an employee's request for reassignment or transfer can be accommodated, the State shall do so. The issue of reassignments and transfers shall be a subject for consideration by the Labor/Management Committee which may suggest and make recommendations regarding procedures to be established.

9.16 **Scheduling.** Subject to the reasonable operating needs of the court or court-related agency, employee service in title in the Unified Court System shall be used to resolve conflicts among employees in the same title in scheduling hours of annual leave, holiday work or flexible time. If two or more employees in the same title have the same length of service in title and in the Unified Court System, a conflict in scheduling shall be resolved by lot. Prior service which was credited by the Unified Court System on April 1, 1977 will be used in determining length of service.

9.17 **Early Release.** The Deputy Chief Administrative Judge (Courts Outside New York City) shall authorize the release of an employee without charge to leave credits by 1:00 p.m. when:

- a. the indoor temperature in the courtroom or office where such employee is assigned is sixty (60) degrees Fahrenheit or below at 9:00 a.m. and does not exceed sixty (60) degrees Fahrenheit by 12:00 p.m.; **or**

- the indoor temperature in the courtroom or office where such employee is assigned is eighty (80) degrees Fahrenheit or above at 9:00 a.m. and is not below eighty (80) degrees Fahrenheit by 12:00 p.m.; **and**
- b. there is no location to which the employee may be temporarily relocated where the indoor temperature is above sixty (60) degrees Fahrenheit or below eighty (80) degrees Fahrenheit; **and**
 - c. the operational needs of the court or facility do not require the employee to remain on duty. In the event it is necessary for an employee to remain on duty as part of a skeleton force, he/she shall receive minute-for-minute compensatory time for any time worked during the remainder of their regular shift (exclusive of the unpaid meal break). *For illustrative purposes only*, an employee that works a 9:00 a.m. to 5:00 p.m. shift that is required to remain on duty to 5:00 p.m. would be entitled to four (4) hours of compensatory time.
 - d. Notification of such early release shall be made to the Courts and the Union by a designee of the Deputy Chief Administrative Judge (Courts Outside New York City).
 - e. Indoor temperature readings will be monitored by an appropriate management representative to be determined locally.

ARTICLE 10

OVERTIME

10.1 **Overtime Policy.** Employees shall receive compensation for work performed between 35 and 40 hours per week in cash compensation at a straight-time rate as provided in Section 10.6, or compensatory time, pursuant to Section 10.8, at the employee's option.

Employees shall receive compensation for work performed in excess of 40 hours per week at a rate equal to one and one-half times their hourly rate of pay as provided in Section 10.6. It is the policy of the State that overtime work be held to a minimum consistent with the needs and requirements of sound and orderly administration of State government.

10.2 Definitions. Wherever used in this Article:

(a) "Overtime" shall mean only hours worked in excess of 35 hours in any workweek by an eligible employee.

(b) An "eligible employee" shall mean any employee who is not deemed ineligible to earn overtime pay, as provided under Section 10.3.

(c) "Scheduled overtime" shall mean overtime which is susceptible to scheduling and approval in advance of need.

(d) "Unscheduled overtime" shall mean overtime which is necessitated by emergency conditions which cannot be anticipated in advance.

10.3 Exclusions.

(a) Employees who meet the criteria for exclusion from the overtime provision of the Fair Labor Standards Act ("FLSA") shall not be eligible to receive contractual overtime compensation.

(b) With respect to previously-made determinations on contractual overtime exclusions such determinations shall be continued upon execution of this Agreement.

(c) In the event that the State determines that an individual employee whose title had previously been considered as eligible for contractual overtime compensation meets the FLSA criteria for exclusion, it will provide the Union with thirty (30) days prior notice of such determination and afford the Union, during this thirty (30) day period, with the opportunity to assert that such individual employee/title should continue to be eligible for overtime compensation.

(d) With respect to new titles, the State shall undertake a review of all such titles, as they are established, for the purpose of determining overtime eligibility for contractual overtime using FLSA criteria. Upon request by the Union, the State and the Union shall meet to discuss whether the title in question should be eligible to receive contractual overtime compensation.

(e) The Administrative Director may waive the restriction contained in Section 10.3(a) whenever he/she determines that strict adherence to such restriction would be detrimental to the sound and orderly administration of the Unified Court System.

(f) Nothing in this Section shall be construed as a waiver of the Union's right to appeal the State's determinations to the appropriate forum, or as a waiver of the State's right to implement changes in accordance with the provisions herein.

10.4 Authorization for Overtime Work.

(a) Unscheduled overtime work must be authorized in advance by the Administrative Judge.¹

(b) Notification of unscheduled overtime shall be forwarded to the Director of Budget and Finance at the close of the biweekly payroll period in which the overtime is authorized.

(c) Scheduled overtime work must have the prior approval of the Administrative Director or his/her designee.

(d) The Administrative Judge will take all reasonable steps to provide for an equitable distribution of scheduled overtime opportunities among qualified permanent employees of the appropriate work unit, provided, however, that such overtime opportunities may be denied to an employee who has been determined to have a poor record of attendance and/or tardiness by the final determination of discipline or the alternate discipline procedure for time and attendance infractions.

(e) There shall be no rescheduling of days off or hours of work to avoid the payment of overtime.

(f) In the absence of a sufficient number of volunteers, unscheduled overtime can be required of any employee who, in the judgment of his/her supervisor, is needed to do the work.

(g) Overtime performed in a higher or lower title can be performed only on a volunteer basis. Extra service work can also be performed on a voluntary basis.

(h) Eligible employees shall be eligible for overtime for actual travel and/or service performed while in travel status, provided that:

(1) The trip is not between the employee's residence and his/her official workstation.

(2) The trip is for the purpose of conducting State business and is authorized in advance.

¹ The term Administrative Judge as used in this Article refers to: Administrative Judge of the Ninth Judicial District (Rockland, Westchester, Putnam, Orange, Dutchess).

(3) Authorization is granted only when travel during regular work hours is less economical or unduly delays the employee's return to his/her official workstation.

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

10.5 Determination of Overtime Earned.

(a) Total hours worked shall include all the time worked by an employee when required to be on duty or at a prescribed workplace and shall exclude all absences from duty and all time allowed for meals and shall exclude all absences from duty and all time allowed for meals. Overtime work shall also exclude all preparation of transcripts except those transcripts prepared pursuant to Section 299 of the Judiciary Law provided such work is performed beyond 40 hours, and provided that no other compensation will be received from any other source by the court reporter for production of the transcript. In addition, the court reporter's supervisor must determine that such transcript cannot be produced during normal working hours and the supervisor must give advance written approval for the production of the transcript on an overtime basis. Such work will be deemed scheduled overtime work. For purposes of computing total hours worked in a week, time during which an employee is excused from work because of holidays, sick leave at full pay, annual leave, compensatory time off or other leave at full pay shall be considered as time worked by the employee. Compensatory time off granted in the same workweek in which it is earned, except compensatory time off granted in lieu of a holiday worked in such workweek, does not add to the total hours worked and is not to be construed as time worked by an employee.

(b) Employees who volunteer to standby in their homes or who are required, ordered, and/or scheduled on an involuntary basis to standby in their homes subject to recall shall receive payment on the basis of ½ hour overtime for each hour of standby time in cash, if eligible for cash payment or compensatory time off, if eligible for compensatory time.

(c) Employees recalled from home for unscheduled overtime work shall be guaranteed overtime payment in cash for at least four hours, if eligible for cash payment, provided, however, if

an employee is ineligible for cash overtime payment, he/she shall be guaranteed compensatory time off for at least four hours.

(d) Overtime shall be paid on a minute for minute basis.

10.6 Computation of Cash Compensation. Payment for overtime shall be computed in the following manner:

(a) If an employee works overtime in his/her regular position or title or in a position the title of which is allocated to the same salary grade as his/her regular position, he/she shall be compensated for work between 35 and 40 hours at a straight-time rate and for work in excess of 40 hours at one and one-half times the regular hourly rate of pay.

(b) When the overtime is worked in a position allocated to a salary grade lower than the employee's regular position, he/she shall be compensated for work between 35 and 40 hours at a straight-time rate and in excess of 40 hours at one and one-half times the hourly rate of pay of the maximum salary of the lower position plus such longevity increments to which he/she would otherwise be entitled were he/she in such lower grade position, but in no event in excess of a straight-time rate of pay in his/her regular position for work between 35 and 40 hours and in excess of one and one-half times the hourly rate of pay of his/her regular position for work in excess of 40 hours.

(c) When the overtime is worked in a position which is allocated to a higher salary grade than the grade of the employee's regular position, he/she shall be compensated for work between 35 and 40 hours at a straight-time rate and in excess of 40 hours at one and one-half times the hourly rate of compensation he/she would be entitled to if he/she were permanently promoted to the higher position.

(d) The hourly rate of compensation shall be determined by dividing the basic annual rate of compensation plus any additional compensation payable because of an assignment differential, the location of employment, or because work is performed between 6 p.m. and 6 a.m. by 1,827. The hourly rate of compensation for per diem employees shall be determined by dividing the per diem rate by seven.

10.7 Time of Payment of Cash Compensation. When cash payment for scheduled overtime has been approved, employees shall be paid for such overtime compensation in excess of 35 but less than 40 hours per week at the employee's option, and for more than 40 hours by the close of the second biweekly payroll period following the period during which the overtime is earned.

10.8 Compensatory Time Off. Eligible employees shall have the option to receive either cash compensation at a straight-time rate or compensatory time off on an hour-for-hour basis for overtime worked in excess of 35 hours but not in excess of 40 hours in a workweek.

10.9 Overtime Meal Allowances.

(a) A meal allowance of \$9 will be paid to:

(1) any employee required to work at least three hours beyond his/her normally scheduled workday unless he/she is receiving cash compensation for such overtime work; or,

(2) any court clerk assigned to a deliberating jury beyond his/her normally scheduled workday, in lieu of overtime compensation during the dinner hours.

(b) An employee ineligible to receive cash compensation for overtime worked who is required to work at least seven hours on his/her regularly scheduled day off, shall be entitled to receive one overtime meal allowance. An employee required to work at least ten hours on his/her regularly scheduled day off, shall be entitled to receive a second overtime meal allowance.

10.10 Exceptions. The restrictions and limitations contained in this Article may be waived by the Administrative Director whenever he/she determines that strict adherence to the rules would be detrimental to the sound and orderly administration of the Unified Court System.

10.11 Conflict with FLSA. In the event that a tribunal of competent jurisdiction determines that any determination made pursuant to this Article is in conflict with the FLSA, then such determination shall be of no force and effect and the applicable portion of the FLSA shall govern. The grievance and arbitration procedure of the Agreement shall not apply to alleged conflicts between determinations made pursuant to this Article and the Fair Labor Standards Act.

ARTICLE 11

TRAVEL EXPENSES

11.1 **Per Diem Meal and Lodging Expenses.** The State agrees to reimburse, on a per diem basis, as established by the employee travel rules of the Chief Administrative Judge, employees who are eligible for travel expenses, for their actual and necessary expenses incurred while in travel status in the performance of their official duties for hotel lodging, meals and incidental expenses related thereto (hotel tips, etc.) for a full day at rates stated in the employee travel rules of the Chief Administrative Judge for managerial or confidential employees.

11.2 **Mileage Reimbursement.** The personal vehicle mileage reimbursement rate for employees in this unit shall be consistent with the maximum mileage allowance permitted by the Internal Revenue Service ("IRS").

ARTICLE 12

PRINTING OF AGREEMENT

The Agreement will be available on the Unified Court System website upon ratification and final approval by the Unified Court System and the Union.

ARTICLE 13

PERSONNEL AND PAY PRACTICES

13.1 **Identification Cards.** All employees shall be supplied with identification cards. The State shall replace identification cards damaged or lost in the performance of duty.

13.2 **Legislation.** Prior to introducing legislation which will affect employees covered by this Agreement, either party will submit copies of such proposed legislation to the other.

13.3 **Statements of Policy or Procedure.** All statements of policy or procedure which are applicable to employees shall upon promulgation be made known and delivered in writing to the Union.

13.4 **Reassignments and Transfers.** Except through the established disciplinary procedure, no employee shall be reassigned or transferred for the purpose of imposing discipline.

13.5 Salary Computation. Biweekly salaries will be computed on the basis of ten workdays.

13.6 Evaluations and Personnel Folders.

(a) An employee shall be given a copy of every statement concerning his/her work performance or conduct prepared during the term of this Agreement, if such statement is to be placed in his/her permanent personnel folder. Prior to being given a copy of such statement, the employee must sign a form which shall indicate only that he/she was given a copy of the statement but that he/she does not necessarily agree with its contents. The employee shall have the right, but not the obligation, to answer any such statement filed and the answer shall be placed in the employee's personnel folder. Only evaluatory statements prepared by a superior with respect to the employee's work performance or conduct, which are given to the employee in accordance with the procedure outlined above, may be used in any subsequent disciplinary actions against the employee.

(b) An employee shall be permitted to view his/her personnel folder once a year upon request, and when an adverse personnel action is initiated against the employee by the State. The view shall be in the presence of a designee of the State and held at such time as the State may prescribe.

(c) Upon an employee's written request, any material in his/her personnel folder of an adverse nature, with the exception of disciplinary actions, personnel transactions and evaluatory statements concerning work performance, shall, if over five years old, be removed from the personnel folder. Upon an employee's written request, any material including disciplinary actions, personnel transactions and evaluatory statements concerning work performance, may, if over three years old, be removed at the discretion of the Deputy Chief Administrative Judge (Courts Outside New York City).

13.7 Notice of Reassignment. Except in an emergency, an employee shall receive reasonable written notice of reassignment.

13.8 Withholding Paychecks. The State shall not withhold entire paychecks when an employee has no leave balance to cover absences without pay, due to illness, up to a maximum of five days, provided the affected employee has five years of service as a member of the New York

City or New York State Employees' Retirement System. Appropriate deductions shall be made in a subsequent paycheck. Employees with a negative leave balance at the start of the pay period shall not be covered by this Section.

13.9 Salary Garnishments. The State shall make reasonable efforts to notify employees of pending salary garnishments.

13.10 Orientation Kits. When an orientation kit is supplied to a new employee in a title covered by this Agreement, only the Union which represents such new or promoted employee shall be permitted to have Union literature included in this kit. Such Union literature shall be subject to the reasonable approval of the Deputy Director for Labor Relations.

13.11 Resumption of Deductions. To the extent practicable and allowed by the State Comptroller, all of an employee's payroll deductions shall be resumed when an employee returns from a leave.

13.12 Posting of Vacancies. When vacancies in promotional titles included in this negotiating unit are authorized to be filled, a notice of such vacancy shall be posted at all relevant work locations at least five workdays prior to filling except when such vacancies are to be filled on an emergency basis. An inadvertent failure to post at a particular location shall not invalidate an otherwise valid appointment.

13.13 Waiver of Fees for Civil Service Exams. The State agrees that to the extent the Chief Administrative Judge determines, pursuant to the Rules of the Chief Judge and Chief Administrative Judge, to establish examination fees for Civil Service examinations, the State will waive such examination fees for employees.

13.14 Notice of Termination. Employees in noncompetitive confidential ("NCCF") or exempt confidential ("EXCF") positions shall be given at least five (5) State workdays' written notice of termination.