

# TITLE 10: CIVIL SERVICE COMMISSION

## CHAPTER 10-50 SICK LEAVE BANK REGULATIONS

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§ 10-50-215	Disposition of Request	§ 10-50-510	Effect on Family Medical Leave Act

Chapter Authority: 1 CMC § 8275.

Chapter History: Adopted 19 Com. Reg. 15748 (Nov. 15, 1997); Proposed 19 Com. Reg. 15638 (Sept. 15, 1997); Emergency and Proposed 15 Com. Reg. 11077 (Nov. 15, 1993) (effective for 120 days from October 18, 1993).\*

\*A notice of permanent adoption for the 1993 proposed regulations was never published.

Commission Comment: PL 8-25 (effective July 23, 1993), the "Northern Mariana Islands Government Employees Sick Leave Bank Act," is codified at 1 CMC §§ 8271-8275. 1 CMC § 8274 provides that the sick leave bank shall be administered by the Civil Service Commission. 1 CMC § 8275 authorizes the Civil Service Commission to prescribe rules and regulations necessary to administer the act.

Regarding the history of the Civil Service Commission in the Commonwealth, see the general commission comment to chapter 10 of this title.

The text of the 1993 emergency regulations was not published with the public notice of emergency and proposed regulations. The emergency regulations were in effect for 120 days from October 18, 1993.

After the 1993 emergency regulations expired, the Civil Service Commission promulgated regulations governing the government employees sick leave bank as part III of the Excepted Service Personnel Regulations. For the history of part III, see 17 Com. Reg. 13398 (May 15, 1995) (adopted); 16 Com. Reg. 11771 (Mar. 15, 1994) (proposed), as amended by 17 Com. Reg. 13918 (Dec. 15, 1995) (adopted); 17 Com. Reg. 13631 (Aug. 16, 1995) (emergency and proposed).

The sick leave bank regulations in part III were repealed in 1997 when the Civil Service Commission promulgated separate sick leave bank regulations, codified in this chapter. See 19 Com. Reg. 15748, 15756 (Nov. 15, 1997); 19 Com. Reg. 15638 (Sept. 15, 1997); see also the general history and comment sections to NMIAC, title 10, chapter 10, part 300 and NMIAC title 120, chapter 10, part 300.

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Public Law 15-69 (effective June 5, 2007), codified at 1 CMC § 8276, authorized government employees to apply for sick leave to attend to an immediate family member who is sick. Public Law 15-116 (effective Nov. 29, 2007), codified at 1 CMC §§ 8265-8267, which repealed and reenacted PL 15-69, requires that sick leave requests to attend to immediate family members in excess of two days must be supported by a certified medical statement. The provisions of PL 15-116 supersede any conflicting provisions of this chapter.

### **Part 001 - General Provisions**

#### **§ 10-50-001 Authority**

This chapter, promulgated by the Civil Service Commission under the authority of 1 CMC § 8275, implements the sick leave bank created by Public Law 8-25 and codified at 1 CMC §§ 8271, et seq.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 19 Com. Reg. 15748 (Nov. 15, 1997); Proposed 19 Com. Reg. 15638 (Sept. 15, 1997).

#### **§ 10-50-005 Purpose**

This chapter is intended to provide additional job and financial protection for employees experiencing prolonged absence from the workplace due to catastrophic illness or major injury.

Modified, 1 CMC § 3806(d).

History: Adopted 19 Com. Reg. 15748 (Nov. 15, 1997); Proposed 19 Com. Reg. 15638 (Sept. 15, 1997).

#### **§ 10-50-010 Applicability**

Except as otherwise provided, this chapter applies to all employees of the government of the Northern Mariana Islands, whether or not they are members of the Civil Service System.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 19 Com. Reg. 15748 (Nov. 15, 1997); Proposed 19 Com. Reg. 15638 (Sept. 15, 1997).

### **Part 100 - Contributions to the Sick Leave Bank**

#### **§ 10-50-101 Eligibility**

Any person employed by the Commonwealth government under a civil service or excepted service status may contribute sick leave hours to the sick leave bank, provided that, after such contribution, he or she retains at least eighty hours of accrued sick leave. Employees separating from service with the Commonwealth government for whatever reason, at the time of their separation, may contribute any or all of their accrued sick leave hours to the sick leave bank.

Modified, 1 CMC § 3806(e), (f).

History: Adopted 19 Com. Reg. 15748 (Nov. 15, 1997); Proposed 19 Com. Reg. 15638 (Sept. 15, 1997).

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### § 10-50-105 Procedure

All contributions shall be made on forms prescribed by the Director of Personnel Management. The contributor may elect to contribute sick leave hours to either or both:

- (a) The general account, available to any eligible employee, or
- (b) A designated account, available only to the eligible employee designated by the contributor. If the designated employee does not use the hours contributed to his or her designated account within four pay periods of the contribution, the remaining hours will be deposited into the general account.

Modified, 1 CMC § 3806(f).

History: Adopted 19 Com. Reg. 15748 (Nov. 15, 1997); Proposed 19 Com. Reg. 15638 (Sept. 15, 1997).

### Part 200 - Withdrawals from the Sick Leave Bank

#### § 10-50-201 Limitation on Number of Hours

Withdrawal of sick leave bank hours for extended sick leave is a privilege, not a right. No employee may withdraw any hours from the sick leave bank, whether from the general account or from his or her designated account, if he or she has already withdrawn one hundred sixty hours. However, if the employee has returned to the bank some or all of those hours, as provided in part 300, he or she may withdraw additional hours up to the amount returned. Examples:

- (a) An employee has withdrawn 70 hours and has not returned any hours. That employee can withdraw up to an additional 90 hours.
- (b) An employee has withdrawn 160 hours and has not returned any hours. That employee cannot withdraw additional hours.
- (c) An employee has withdrawn 160 hours and has returned 160 hours. That employee can withdraw up to an additional 160 hours.
- (d) An employee has withdrawn 160 hours and has returned 50 hours. That employee can withdraw up to an additional 50 hours.

Modified, 1 CMC § 3806(d), (e), (f).

History: Adopted 19 Com. Reg. 15748 (Nov. 15, 1997); Proposed 19 Com. Reg. 15638 (Sept. 15, 1997).

#### § 10-50-205 Eligibility

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Any person employed by the Commonwealth government, its agencies, or instrumentalities, may apply for withdrawal of hours first from an account designated for his or her use, if any, and then from the general account of the sick leave bank provided that:

- (a) The employee's need to be absent from work is due to the injury or illness of the employee, or the quarantine of the employee, the employee's family, or the employee's residence;
- (b) The employee is not qualified for workers' compensation because the injury or illness is not work related;
- (c) The employee is expected to have exhausted all personal sick leave, annual leave, and allowable advance sick leave prior to recovery from the illness or injury for which the additional sick leave hours are requested;
- (d) The additional hours requested by the employee will not cause the employee to exceed the withdrawal limit established in § 10-50-201;
- (e) The employee is expected to return to government service
  - (1) In the same position, or
  - (2) If the injury or illness prevents the employee from performing the essential job functions of the same position even with reasonable accommodation, to some other position with the Commonwealth government;
- (f) The request for sick leave does not extend beyond the term of the employee's employment;
- (g) The sick leave bank has sufficient hours to accommodate the employee's request; and
- (h) The employee's appointing authority, as defined in the Personnel Service System Rules and Regulations, NMIAC § 10-20.2-257(a), recommends approval of the employee's withdrawal request. An appointing authority can refuse to recommend approval only if:
  - (1) The employee's additional absence will significantly interfere with the agency's ability to perform its responsibilities; or
  - (2) The employee is seeking the additional sick leave for recuperation from a work-related injury or illness that is otherwise compensable under the Workers' Compensation Act.

Modified, 1 CMC § 3806(f), (g).

History: Adopted 19 Com. Reg. 15748 (Nov. 15, 1997); Proposed 19 Com. Reg. 15638 (Sept. 15, 1997).

Commission Comment: In the original section, subsection (e) appeared twice. The Commission deleted the repeated section and redesignated subsections (f) through (h). The Commission changed "to recommend refusal" to "to recommend approval" in subsection (h) to correct a manifest error.

In subsection (h), the Commission corrected the spelling of "recommend." The Commission inserted a comma after the word "agencies" in the initial paragraph pursuant to 1 CMC § 3806(g).

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### § 10-50-210 Procedure

An employee shall request a withdrawal of hours from the sick leave bank from the Office of Personnel Management, whether from a designated account or the general account, as needed, in increments of up to eighty hours, on a form prescribed by the Director of Personnel Management.

- (a) The request must be received at the Office of Personnel Management at least five working days before the proposed effective date, with all required approvals and supporting documents.
- (b) The request must be supported by a statement of an attending physician which includes:
  - (1) An estimate of the time the employee must be absent from work;
  - (2) A confirmation of the employee's injury or illness, or the quarantine of the employee, the employee's family, or the employee's residence; and
  - (3) A confirmation that the illness or injury will not constitute a permanent disability that, even with reasonable accommodation that can be made without undue hardship to the government employer, will prevent the employee from performing the essential job functions of his or her position.

Modified, 1 CMC § 3806(e), (f).

History: Adopted 19 Com. Reg. 15748 (Nov. 15, 1997); Proposed 19 Com. Reg. 15638 (Sept. 15, 1997).

The Commission inserted a comma after the word "family" in subsection (b)(2) pursuant to 1 CMC § 3806(g).

### § 10-50-215 Disposition of Request

The Director of Personnel Management shall grant or deny the request promptly in writing. No properly supported request from a qualified employee shall be denied unless:

- (a) There are insufficient hours in the sick leave bank to grant the request; or
- (b) The employee's appointing authority, with adequate justification, has not approved the request; or
- (c) The employee is expected to be compensated for any lost work time through workers' compensation; or
- (d) Based on the employee's physician's statement, the Director of the Office of Personnel Management determines that the employee will not be able to return to work in the same position or any other government position due to a residual disability; or
- (e) The employee already has a withdrawal balance of one hundred sixty hours.

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(f) The Director of the Office of Personnel Management finds that there is sufficient evidence to believe the employee is malingering.

Modified, 1 CMC § 3806(e), (f).

History: Adopted 19 Com. Reg. 15748 (Nov. 15, 1997); Proposed 19 Com. Reg. 15638 (Sept. 15, 1997).

### **Part 300 - Returning Hours Used from the Sick Leave Bank**

#### **§ 10-50-301 General Account**

Withdrawal of sick leave hours from the sick leave bank's general account will be treated as a debt owed by the employee to the sick leave bank.

(a) After recuperation and return to active service, an employee is required to return the hours he or she used from the sick leave bank's general account. The Department of Finance shall automatically deduct two sick leave hours per pay period from the employee's regularly accruing sick leave until all of the hours the employee used from the general account of the sick leave bank have been returned.

(b) An employee may choose to pay for the hours used from the general account, rather than have a deduction of sick leave hours. In that case, the employee must arrange with the Department of Finance for an allotment.

(c) If an employee leaves government service while he or she still owes hours to the general account, the government shall

- (1) Assume any accrued unused sick leave or annual leave; or
- (2) Deduct the value of the hours from the employee's final pay check; or
- (3) Reduce credited service time; or
- (4) Seek other redress from the courts, except the government shall not seek recovery of any unrecovered hours against a decedent's estate.

Modified, 1 CMC § 3806(e), (f).

History: Adopted 19 Com. Reg. 15748 (Nov. 15, 1997); Proposed 19 Com. Reg. 15638 (Sept. 15, 1997).

#### **§ 10-50-305 Designated Account**

Hours withdrawn from a designated account are counted in determining whether the employee has reached the 160-hour limit established by § 10-50-201. Employees are therefore encouraged to return hours to the sick leave bank withdrawn from a designated account. If an employee elects to return the hours withdrawn from a designated account, he or she shall arrange with the Department of Finance to deduct the hours from his or her accruing sick leave or arrange for an allotment from their pay checks, as provided in § 10-50-301(b).

Modified, 1 CMC § 3806(c).

History: Adopted 19 Com. Reg. 15748 (Nov. 15, 1997); Proposed 19 Com. Reg. 15638 (Sept. 15, 1997).

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### **§ 10-50-310 Hours Previously Withdrawn from the Sick Leave Bank**

(a) Any person who on the effective date of this chapter owed more than 160 hours to the sick leave bank will have the hours in excess of 160 forgiven. The person's records will be amended to show that only 160 hours had been withdrawn from the bank.

(b) Persons will not be required to return hours withdrawn from the sick leave bank prior to the effective date of this chapter because those hours shall be presumed to have been withdrawn from a designated account. However, persons are encouraged to voluntarily return the hours because they will be counted against the 160-hour limit established by § 10-50-201.

Modified, 1 CMC § 3806(c), (d), (f).

History: Adopted 19 Com. Reg. 15748 (Nov. 15, 1997); Proposed 19 Com. Reg. 15638 (Sept. 15, 1997).

Commission Comment: The "effective date" referred to in this section is November 25, 1997, the effective date of the 1997 regulations.

### **Part 400 - Accommodation and Disability**

#### **§ 10-50-401 Physician's Statement**

If the attending physician determines that the illness or injury for which the employee seeks extended sick leave will constitute a permanent disability preventing the employee from being able to perform the essential job functions of his or her previous position, the physician will issue a statement to that effect and describe the physical or mental limitations the employee is expected to experience.

History: Adopted 19 Com. Reg. 15748 (Nov. 15, 1997); Proposed 19 Com. Reg. 15638 (Sept. 15, 1997).

#### **§ 10-50-405 Alternative Position**

In a case where an employee is not expected to be able to perform the essential job functions of his or her previous position, even with reasonable accommodation, the Director of Personnel Management must determine, based on the physician's statement, whether the disability precludes the employee from being reasonably accommodated in another equivalent government position that can be performed by a person with that particular disability.

History: Adopted 19 Com. Reg. 15748 (Nov. 15, 1997); Proposed 19 Com. Reg. 15638 (Sept. 15, 1997).

#### **§ 10-50-410 Disability**

If the Director of Personnel Management determines that the expected disability precludes the employee from performing the essential job functions of any equivalent government position, the Director of Personnel Management shall deny additional sick leave hours to the employee. The Director of Personnel Management shall then recommend the employee apply for disability retirement benefits.

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History: Adopted 19 Com. Reg. 15748 (Nov. 15, 1997); Proposed 19 Com. Reg. 15638 (Sept. 15, 1997).

### **Part 500 - Miscellaneous**

#### **§ 10-50-501 Appeal**

Any employee denied hours from the sick leave bank has the following recourse:

(a) The employee shall, within two business days of the denial, request the Director of Personnel Management reconsider his or her decision to deny the request. The employee may supplement the original withdrawal request with additional information. The Director of Personnel Management must issue a written final decision within five business days of the request for reconsideration. If the Director affirms the original denial, the decision shall include the specific reason(s) for the denial and a summary of the evidence relied upon.

(b) If the employee chooses to appeal the Director of Personnel Management's final decision, the appeal must be filed at the Commission office within five business days after the employee receives the final decision. The appeal shall be processed by the Commission in the same manner as it processes a grievance under Personnel Service System Rules and Regulations, NMIAC § 10-20.2-294(c) through § 10-20.2-294(h).

Modified, 1 CMC § 3806(c), (e), (f).

History: Adopted 19 Com. Reg. 15748 (Nov. 15, 1997); Proposed 19 Com. Reg. 15638 (Sept. 15, 1997).

#### **§ 10-50-505 Records**

The Director of Personnel Management or his designee shall maintain records of all hours contributed to, withdrawn from, and returned to the sick leave bank.

Modified, 1 CMC § 3806(f).

History: Adopted 19 Com. Reg. 15748 (Nov. 15, 1997); Proposed 19 Com. Reg. 15638 (Sept. 15, 1997).

#### **§ 10-50-510 Effect on Family Medical Leave Act**

All hours withdrawn from the sick leave bank shall be counted towards the leave time provided by the federal Family Medical Leave Act of 1993 and implemented in the Commonwealth by the Personnel Service System Rules and Regulations, NMIAC § 10-20.2-625 and the Excepted Service Personnel Regulations, NMIAC § 10-10-135.

Modified, 1 CMC § 3806(c).

History: Adopted 19 Com. Reg. 15748 (Nov. 15, 1997); Proposed 19 Com. Reg. 15638 (Sept. 15, 1997).