

December 1, 2010

## **THE CITY UNIVERSITY OF NEW YORK**

### **The Dedicated Sick Leave Program Administrative Procedures**

#### **I. Program Description**

The Dedicated Sick Leave Program enables individuals who are employed full-time on an annual salary basis to donate sick leave and/or annual leave for use as sick leave by a seriously ill or injured eligible employee who has been designated by the donor. Eligible recipients may receive up to one-hundred and twenty (120) days or six (6) months of paid sick leave, whichever is greater, in any one (1) program year (September 1 – August 31), inclusive of the annual leave period for teaching faculty. Donated leave may be approved in increments not exceeding two (2) months. The Dedicated Sick Leave Program permits donations of annual leave and/or sick leave across campuses and across titles.

#### **Guidance:**

- *The term “sick leave” as used in this policy is understood to include “temporary disability leave” (the terminology used in the PSC/CUNY collective bargaining agreement).*
- *The Colleges should advise employees of the availability of the program and the procedures for participation by posting appropriate notice on college bulletin boards and including it on college websites and in written materials relating to employee benefits.*

#### **II. Criteria For Recipient Eligibility**

1. An employee must be in a full-time title employed on an annual salary basis and have at least two (2) years of continuous full-time service with the University. Those employed in substitute titles with no underlying regular annual appointment are not eligible to receive donated leave.

Guidance:

- *Full-time members of the classified, instructional, classified managerial, executive compensation and non-represented staff, including those employed at the Educational Opportunity Centers, are eligible. Employees in skilled trade titles represented by District Council 37 (Laborer, Locksmith and High Pressure Plant Tender) and those represented by Teamsters Local 237 (Maintenance Worker, Cement Mason, Roofer and Plasterer) are also eligible; all other skilled trade employees and employees represented by IATSE, Local One are presently excluded.*
  - *Service from different titles may be aggregated to meet the two years of continuous full-time service requirement.*
  - *Periods of paid leave count as service. Specified periods of unpaid leave bridge service. See Section II, paragraph 6.b below. In the event of a break in service, use rehire date for determining eligibility.*
2. An employee's illness or injury must not be job-related and must require an absence of at least thirty (30) continuous working days. Absence due to illness or injury must be supported by medical documentation acceptable to the recipient's college. The recipient's college will determine whether requests by eligible employees to receive dedicated sick leave will be approved, based solely upon the nature and severity of the illness or injury. Employees whose requests have been denied may appeal in writing to CUNY's Appeals Panel, as set forth in Section VI., paragraph 2 herein.

Guidance:

- *Consistent with the City policy, upon which the University's Program is based, Dedicated Sick Leave is permitted only for a serious illness or injury requiring an absence of at least thirty (30) consecutive work days. Typically the flu, a broken arm, or a normal pregnancy would not be considered to be a serious illness or injury under the terms of the Dedicated Sick Leave Program. The College Office of Human Resources must consult with the Vice Chancellor for Labor Relations or her designee in determining whether an employee's condition qualifies for the dedicated sick leave benefit. (See Section VI, paragraph 2 below.)*
- *Documentation must be in writing and on letterhead from a physician authorized to practice medicine or surgery by the state in which the doctor practices. Written documentation from other approved healthcare practitioners may be accepted where appropriate.*

- *Medical records relating to an employee's participation in the Dedicated Sick Leave Program must be maintained by the College's Office of Human Resources in a confidential medical file separate from the employee's personnel file.*
  - *An illness or injury that is job related would be covered under Workers' Compensation, not this Program.*
3. All annual leave, sick leave, compensatory time balances, and sick leave advancements, to the extent applicable, must have been exhausted.
  4. Dedicated sick leave may not be used to supplement or supplant income benefits under any applicable collectively-bargained or union-provided short-term or long-term disability program. If the employee has already received income benefits under any applicable union provided short-term or long-term disability program, those benefits must be reimbursed.

Guidance:

- *For PSC-represented employees, if an employee's illness or injury is expected to last more than six consecutive months, the long-term disability provisions of section 16.5 of the PSC/CUNY collective bargaining agreement would apply in lieu of this Program.*
  - *For classified staff employees, the College's Office of Human Resources is responsible for notifying the Union when an employee who is receiving union-provided disability benefits has been approved to receive dedicated sick leave. It is up to the Union to seek reimbursement of supplemental income benefits received. (Union Benefits Fund contact information can be obtained from the University Benefits Office.)*
5. The number of hours that comprise a day for the recipient is determined by the title of the recipient.
  6. (a) The time that an employee is on a paid parental leave, paid Family and Medical Leave Act ("FMLA") leave, paid Fellowship leave, or any other applicable paid leave will count towards service in calculating whether the employee has met the two (2) years of full-time continuous CUNY service required for recipient eligibility.
    - (b) The time that an employee is on an unpaid child care leave, unpaid Family and Medical Leave Act ("FMLA") leave, or on a Scholar Incentive Award leave will serve to bridge service which immediately precedes and follows such leave in calculating whether the employee has met the two (2) years of full-time continuous CUNY service required for recipient eligibility.

6. A prospective recipient's College may deny his/her request to use dedicated sick leave if he/she is on a disciplinary suspension.

### **III. Criteria For Donating Dedicated Leave**

An employee who wishes to donate annual leave and/or sick leave to a specific individual must meet the following criteria:

1. The employee must be in a full-time title, employed on an annual salary basis.

**Guidance:**

- *Although not employed on an annual salary basis, the University would not preclude an otherwise eligible substitute instructional staff employee from donating leave.*
2. Donations must be made in increments of one (1) day, with a minimum donation of one (1) day of annual leave or sick leave. The number of hours that comprise a day for the donor is determined by the title of the donor.
  3. Employees with fewer than five (5) years of full-time continuous CUNY service may donate only annual leave. There is no minimum length of service required to donate annual leave and no cap on the amount that may be donated. Employees with five (5) or more years of full-time continuous CUNY service may donate annual leave (without limitation) and/or sick leave up to ten (10) sick leave days per program year. In order to donate sick leave, an employee must maintain a sick leave balance of at least twenty-four (24) days.
  4. (a) The time that an employee is on a paid parental leave, paid Family and Medical Leave Act ("FMLA") leave, paid Fellowship leave or any other applicable paid leave will count towards service in calculating whether the employee has met the five (5) years of full-time continuous CUNY service required for donating dedicated sick leave.  
  
(b) The time that an employee is on an unpaid child care leave, unpaid Family and Medical Leave Act ("FMLA") leave, or on a Scholar Incentive Award leave will serve to bridge service which immediately precedes and follows such leave in calculating whether the employee has met the five (5) years of full-time continuous CUNY service required for donating dedicated sick leave.

#### **IV. Program Requirements**

1. There is no enrollment period. Donations are made on an “as-needed” basis.
2. All dedicated leave is irrevocable.

Guidance:

- *All dedicated leave is irrevocable unless the recipient is deemed to be ineligible to receive the donation, in which case the leave will be credited back to the donor. Otherwise, days which remain unused by the recipient after one year will be forwarded to the Catastrophic Sick Leave Bank. (See Section IV, paragraph 5 below.)*
3. All dedicated leave is to run concurrently with FMLA leave, i.e., a recipient’s use of dedicated sick leave shall be counted towards his/her FMLA leave entitlement as though he/she were using his/her own sick leave.
  4. The number of dedicated sick leave days will be extended by any CUNY observed holiday contained in a recipient employee’s collective bargaining agreement or CUNY policy that is observed during the period of the recipient employee’s approved dedicated leave.
  5. If the number of days dedicated is more than the number of days actually used by the recipient, the unused days will be transferred by the recipient’s College Office of Human Resources, via notice to the University Benefits Office, to the Catastrophic Sick Leave Bank after one (1) year elapses from the date of the recipient’s return to work. (The transfer of such leave shall not, however, qualify a donor for participation in the Catastrophic Sick Leave Bank.) In the event of a medically documented recurrence of the original illness or injury during this one (1) year period, the recipient will be permitted, upon approval of his/her respective College Human Resources Office, to utilize the unused balance, provided that all other leave balances have been exhausted.
  6. Each day of leave donated will be debited from the donor’s leave balance as one (1) full day; however, each day of sick leave donated will be credited to the recipient as one-half (1/2) day. Each day of annual leave donated will be credited to the recipient as one (1) full day.

Guidance:

- *For example, the time and leave record of a custodial assistant who donates a sick leave day to a HEO will be debited for eight hours while the recipient HEO’s time and leave record will be credited for three and one-half hours, i.e., 50 % of a seven hour day; a seven*

*hour annual leave day donated by a HEO will be converted to an eight hour day for a recipient who works an eight hour day.*

7. Dedicated sick leave will be granted to the recipient retroactive to the first day of absence without pay. A recipient utilizing dedicated sick leave is deemed to be in active pay status as though the employee were using his/her own sick leave. Annual leave and sick leave will therefore be accrued while using dedicated sick leave, as otherwise appropriate, but will not be credited until the employee returns to work.

Guidance:

- *As with any paid leave, the period of dedicated sick leave counts as service for purposes of health benefits, salary increases, pension contributions, and as creditable service towards the attainment of tenure, a Certificate of Continuous Employment, a Certificate of Continual Administrative Service and Fellowship Leave.*
  - *In the case where a probationary classified staff employee with an underlying permanent position is eligible for dedicated sick leave, the period the employee is on dedicated sick leave shall result in the extension of the employee's probationary period by the equivalent number of days, that are in excess of the employee's total sick and annual leave days earned during the probationary year. (See Section IV, subsection 5.4.1 of CUNY Rules and Regulations.)*
8. A determination regarding a prospective recipient's eligibility should be made, and his/her consent should be obtained, before efforts are made to secure donations of leave. Every reasonable effort will be made to maintain confidentiality of employee medical information and the identity of donors.

Guidance:

- *To avoid undue pressure on subordinates or colleagues to donate leave, recipients should not solicit leave donations directly from other employees; the College Human Resources Office will be responsible for securing potential leave donations for eligible employees. Potential donors should be advised that the College Human Resources Office will not reveal the identity of individual donors to the recipient.*

## **V. Procedures For Donating Dedicated Sick Leave**

1. An employee who wishes to donate annual leave and/or sick leave to a designated employee must complete Form No. [DSL to Donate 001\_2010], "Application to Dedicate Sick Leave," and return it to his/her

respective College Office of Human Resources as soon as possible. The application shall include an attestation by the donor that he/she understands that the decision to donate sick leave and/or annual leave to another employee is irrevocable and that the donated leave will not be returned to the donor, unless the intended recipient is deemed ineligible to receive the dedicated leave. The donor's attestation shall also provide that the donor has not been coerced and is not receiving any benefit, express or implied, in return for the donated sick leave and/or annual leave. The donor's identity is confidential and may not be released to the recipient by the college.

Guidance:

- *The College Office of Human Resources should counsel employees concerning the potential impact upon the employee's Travia or terminal leave benefit when an employee seeks to donate sick leave. If as a result of a donation of sick leave or otherwise, an instructional staff member has fewer than 160 sick leave days at the time of retirement, he/she will not be eligible for the full five months of Travia Leave prior to the effective date of retirement. Similarly, if as a result of a donation of sick leave or otherwise, a classified staff member has fewer than 240 days of sick leave, he/she will not be eligible for the full 120 days of terminal leave upon retirement.*
2. The following steps are to be taken when the employee dedicating leave and the employee receiving leave are employed in the same CUNY college:

Upon receipt of an application to dedicate leave, the College Office of Human Resources must review the application, determine the accuracy of all the statements in accordance with college personnel and payroll records, and complete the appropriate section. The application must be returned to the applicant with the disposition within five (5) working days of receipt. If the employee is deemed eligible to donate leave, and the recipient has been approved to receive donated leave in accordance with Section II above, then the College Office of Human Resources shall make the appropriate adjustments in time and leave records and shall notify the donor and the recipient, respectively, of the number of days to be debited or credited and when such debit or credit will occur. In the event the recipient is determined to be ineligible to receive donated leave, the College Office of Human Resources will so notify the intended donor.

Guidance:

- *The College Office of Human Resources will document the respective debit and credit of the dedicated leave on the DSL Excel Monthly Report spreadsheet for the donor and recipient.*

3. The following steps are to be taken when the employee dedicating leave and the employee receiving leave are employed in different CUNY colleges:

Upon receipt of an application to donate dedicated leave, the donor's College Office of Human Resources must review the application, determine the accuracy of all the statements in accordance with college personnel and payroll records, and complete the appropriate section. The application must be returned to the applicant with the disposition within five (5) working days of receipt. If the employee is deemed eligible to donate leave then the donor's College Office of Human Resources shall send a copy of the approved application to the Office of Human Resources of the recipient's college within two (2) working days of the approval. The recipient's college must notify the donor's college whether the recipient has been approved to receive dedicated sick leave. If approved, the donor's Office of Human Resources will make the appropriate adjustment in the time and leave records to debit the donor's leave balances and notify him/her of the number of days to be debited and when such debit will occur. In the event the recipient is determined to be ineligible, the donor's Office of Human Resources will so notify the intended donor.

*Guidance:*

- *The donor and recipient College Office of Human Resources will document the respective debit or credit for the dedicated leave on the DSL Excel Monthly Report spreadsheet for the donor or recipient.*

## **VI. Procedures For Receiving Dedicated Sick Leave**

1. The employee must complete Form No. [DSL to Receive 002\_2010], "Application to Receive Sick Leave," include medical documentation, and forward the application to his/her College Office of Human Resources. The application will include a release by the intended recipient permitting the College Office of Human Resources or a physician retained by the College to seek clarification or additional information from the employee's physician concerning the medical documentation submitted by the intended recipient. The release shall also provide that the employee shall submit to an examination by a physician retained by the College if deemed necessary. Where practicable, applications should be submitted when the employee has been absent for twenty (20) continuous working days and anticipates being absent in excess of thirty (30) continuous working days, and will not have sufficient leave to cover the projected period of his/her absence.



Guidance:

- *An employee must request dedicated sick leave in writing, using CUNY's authorized leave Form No. DSL-2-2010. "Application to Receive Sick Leave". If an employee is unable to complete the application, the College Office of Human Resources may accept an application filled out by a family member or other individual on the employee's behalf, as appropriate. Oral requests must be followed up with a written application and medical documentation.*
2. The College Office of Human Resources must review the application, determine the accuracy of all statements in accordance with college personnel and payroll records, and complete the appropriate section. All discrepancies must be resolved with the employee before a determination is made, based solely upon the nature and severity of the illness or injury as indicated by the medical documentation. The College Office of Human Resources shall consult with the Vice Chancellor for Labor Relations or designee, prior to rendering a determination as to whether the applicant's condition qualifies for this benefit. Dedicated Sick Leave approvals will be made in increments not to exceed two (2) months. Employees needing more than two (2) months of Dedicated Sick Leave will be required to submit additional medical documentation for each subsequent two (2) month period, up to a maximum of one-hundred and twenty (120) days or six (6) months of paid leave, whichever is greater. The application of an employee who has been granted or denied approval to receive leave should be returned to the applicant with the disposition within five (5) working days of receipt by the College Office of Human Resources, to the extent feasible. The College Office of Human Resources must inform an employee whose request has been denied that denial of the request may be appealed in writing to CUNY's Appeals Panel, in care of the University Benefits Office, 535 East 80<sup>th</sup> Street, New York, New York 10075, within fifteen (15) working days of the employee's receipt of the denial. The CUNY Appeals Panel will be constituted as follows:
- a) For classified staff, the appeals panel shall consist of the Vice Chancellor for Human Resources Management, the Vice Chancellor for Labor Relations, or their respective designees, and a classified staff union representative;
  - b) For instructional staff, the appeals panel shall consist of the Vice Chancellor for Human Resources Management, the Vice Chancellor for Labor Relations, or their respective designees, and a PSC union representative;
  - c) For classified managerial staff, executive compensation staff, and other non-represented employees, appeals shall be decided by the Vice Chancellor for Human Resources Management or designee;

All decisions issued by CUNY's Appeals Panel shall be final and shall not be subject to any further appeal by way of employee collective bargaining agreement or otherwise.

Guidance:

- *The types of discrepancies to be resolved by the College Human Resources Office prior to consulting with the Vice Chancellor for Labor Relations might include questions regarding incomplete documentation or leave balances.*
  - *Consultation by the College Office of Human Resources with the Vice Chancellor for Labor Relations, or her designee, should take place by telephone.*
3. Following approval of an eligible employee's application to receive sick leave from the Dedicated Sick Leave Program, the College Office of Human Resources will match the application to any approved request(s) to dedicate leave to the employee that have been forwarded to the recipient's college. If the employee is to receive dedicated leave, the College Office of Human Resources shall make the appropriate adjustments in his/her time and leave records and shall inform him/her of the number of days to be credited and when such credit will occur.

Guidance:

- *The College Office of Human Resources will record the credited leave on the DSL Excel Monthly Report spreadsheet for the recipient.*