Section 8.3 Plan of Titles

8.3.1 Maintenance of Plan of Titles

The Corporation shall maintain a list of the titles of all classes of positions. This roster shall be known as the Plan of Titles.

8.3.2 Change in Plan of Titles; Notice

Any change, addition or deletion in the Plan of Titles shall become effective upon ten (10) days notice appropriately posted in the facilities of the Corporation.

Section 8.4 Position Classification

8.4.1 Assignment of Positions

The Appointing Officer shall assign every position to the appropriate title in the Plan of Titles. The assignment of a position to an existing title shall take into account that it is responsive to the same position description and measure of fitness.

8.4.2 Assignment of Newly Established Positions

When additional position(s) are established, the Appointing Officer shall determine which, if any, existing title in the Plan of Titles is appropriate.

8.4.3 Establishment of New Class of Positions

When a new position is established for which there is no appropriate title in the Plan of Titles, the position shall by rule be described, classified and the new class of positions made part of the Plan of Titles.

8.4.4 Modification of Duties; Requirements of Existing Position

When the duties, requirements, etc., of an existing position are to be modified in any significant way, the Senior Vice President shall determine whether another existing class of positions is appropriate or whether a new class of positions is required. The rights and status of any permanent incumbents of such positions shall not thereby be adversely affected or impaired.

Section 9.1 Authority and Approval Levels

9.1.1 Establishment of Salary Range and Pay Differentials

The establishment of a salary range for any title and the establishment of pay differentials for such conditions as specified experience, education and assignment, shall be subject to the approval of the President, except for titles that are collectively bargained.

9.1.2 Across-the-Board or General Increases

The granting of across-the-board or general increases to groups of employees, with or without an accompanying change in the salary range for the titles, shall be subject to the approval of the President, except for titles that are collectively bargained.

9.1.3 Salary Adjustment for Individual Incumbents

Standards of salary adjustments for individual incumbents within the established salary ranges shall be promulgated by the Senior Vice President, except for titles that are collectively bargained.

Section 9.2 Salary Rate Structure

9.2.1 Minimum and Maximum Salary Ranges

Each title shall have a fixed salary rate, expressed in terms of a stated minimum; or a stated minimum and maximum rate. For selected titles such as trainee titles, or titles covered by Section 220 of the New York State Labor Law the rate may be a single rate to be paid to all incumbents.

9.2.2 Single Rate for a Salary Range

The Senior Vice President may at his/her discretion substitute a single rate for a salary range for any title not collectively bargained.

9.2.3 **Determining Salary Differentials: Factors**

An established salary range for a title that is not collectively bargained shall not preclude the establishment and payment of rate differentials within such range of predetermined amounts for incumbents who meet specified conditions. Salary differentials may be established for such specific factors as education, experience or assignments which are in excess of those set forth in the position descriptions, but which are the same general character. Such a salary differential shall pertain only for the period of time that the incumbent meets the provisions that are prescribed for its payment.

9.2.4 **Adjustment of Salary Rates: Conditions**

a) The Senior Vice President may periodically direct the adjustments of salary rates for selected titles in amounts necessary to insure continuing ability to recruit and retain qualified employees and to maintain internal equity in rates within the Corporation. The Senior Vice President shall prescribe how the salaries of incumbents in title shall be affected by such changes.

b) The Senior Vice President may also provide for across-the-board general increases to employees, without changing the established salary range for the affected titles.

c) Classes of positions or titles that are collectively bargained shall be excepted from this section.

9.2.5 **Hiring at Higher than Minimum Range**

a) If the Senior Vice President determines that it has become impracticable to recruit at the stated minimum range for a title, he/she may direct that the hiring rate for all newly recruited candidates be set at a higher rate within the established rate range, provided, however, that all incumbents receiving a rate below the new hiring rate shall have their rate raised to it.

b) Further, before offering the position at the higher rate to additional candidates from an eligible list it must be offered to those persons on the eligible list who declined for reasons of insufficiency of compensation within the last year.

c) The use of the hiring rate above the stated minimum rate for the title shall be revocable at the discretion of the Senior Vice President.

9.2.6 **Fair and Equal Pay for Equal Work**

a) The principle of fair and equal pay for equal work shall be followed by the Corporation under Section 9.1.1 in establishing salary ranges for classes of positions or titles. All such positions having the same titles shall have the same salary rate, and the salary rate established for different titles shall have a relationship to each other, which reflects this principle.

b) The operation of the principle of fair and equal pay shall not preclude the payment of different rates within such established salary ranges to reflect differences in qualifications, experience and other job-related individual differences among incumbents.

Section 9.3 **Compensation for Individual Employees**

9.3.1 **Hiring Rate**

a) The hiring rate for a new employee shall normally be the stated minimum rate for the title except as otherwise provided in subsection 9.3.1(b).

b) Individual employees may be hired at rates above the stated minimum in titles designated by the Senior Vice President.

9.3.2 **Rate Adjustments for Individuals: Exceptions**

Rate adjustments for individuals within the established salary range for their titles will be granted in accordance with the designation of titles established by the Senior Vice President, and in accordance with the economic terms of any applicable collective bargaining agreement.

9.3.3 **Promotional Increases**

a) Incumbents who are promoted shall receive prescribed minimum promotional increases, which shall in no event be to a rate less than the stated minimum rate or more than the stated maximum rate for the new title.

b) The formula for determining the amount of promotional increases for classes positions shall be prescribed by the Senior Vice President, except that this shall not apply to titles that are collectively bargained.

9.3.4 **Reclassification and Increases**

An incumbent whose position is found to belong in a higher rated class of positions, and who is retained in the position because he/she meets the qualification and is eligible for appointment to the new class of positions shall, upon reclassification of the position be appointed and receive an increase subject to the provisions of Section 9.3.3 above. If he/she does not meet the qualifications and is not eligible for appointment to the new class of position he/she shall be reassigned to another position in the same title as that held prior to the classification.

9.3.5 **Merit Increases**

Merit adjustments for Group 12 employees may be granted by the Appointing Officer in accordance with criteria and eligibility requirements established by the Senior Vice President.

Section 10.1 Maintenance of Rosters and Addresses

10.1.1 Maintenance of Employment History

The Appointing Officer shall maintain a detailed employment history of each employee and each change of status and salary from the time they enter employment until separation therefrom.

10.1.2 Employee Address

Upon appointment or promotion each employee shall furnish the Appointing Officer with his/her address. The employee shall likewise inform the Appointing Officer of any changes of address during his/her employment.

10.1.3 Valid Mail Service to Employees

Any communication or service mailed to the last address, thus furnished in accordance with Section 10.1.2, above, shall be deemed a valid and sufficient communication or service upon such person.

Section 10.2 Certification of Payrolls

10.2.1 Payrolls shall not be certified except upon declaration by the Appointing Officer that the persons named therein are employed in their respective positions in accordance with law and the rules and regulations adopted thereto. The payroll of any person whose employment is in contravention of the foregoing provisions shall not be certified by the Appointing Officer.

Section 10.3 Length of Service of Employees Transferred to the Corporation

10.3.1

a) Employees who were employed by the City and who were transferred to the Corporation on July 1, 1970 under the Act, or pursuant to a transfer of functions from a City Agency in accordance with Section 10.6.2, below, shall be entitled to service credit to the extent of their allowable City service prior to transfer to the Corporation.

b) Nothing contained in these rules shall be deemed to remove from those employees described in subdivision (a) of this section the coverage of the provisions relating to their transfer as contained in the Act.

Section 10.4 Time and Leave Provisions

10.4.1 The provisions of the City Standard Leave Regulations for the positions subject to the City's Career and Salary Plan shall constitute the Time and Leave Rules of the Corporation, unless otherwise specified. Section 220 employees are covered by regulations subject to their title.

Section 10.5 Dual Employment

10.5.1

a) Except as otherwise provided by law, an employee of the Corporation shall not be eligible to receive compensation for employment in an additional position in the Corporation, or an affiliate organization, or in the employ of the City of New York or any other government jurisdiction unless the Appointing Officer certifies, in writing, that such additional employment is not in violation of any law, rules or regulations and that it is not incompatible with the position the employee holds.

b) If the employee does not receive such written certification from the Appointing Officer, the employee may not continue in his/her dual employment. A willful violation of the provisions of this section shall be deemed sufficient cause for disciplinary action, including removal.

Section 10.6 Acquisition of Private and Public Facilities and Functions

10.6.1 **Employment of Employees in Acquired Private Facilities**

a) Whenever the Corporation acquires a private facility for the purpose of operating it, or when the Corporation assumes functions previously performed by another employer (other than a voluntary hospital or medical school in New York City), it may continue the employment of persons who were were employed for at least one year prior to the acquisition, whom HHC, in its discretion, considers eligible and necessary.

b) The positions held by those transferred employees (which may be similar or corresponding to those they previously had) shall be in the non-competitive class pending description and classification, which shall be completed within one year following acquisition.

c) In that interval, their seniority shall be the respective seniority they held amongst themselves prior to transfer to HHC.

d) When description and classification of the positions are completed, the transferred incumbents shall assume the full rights and privileges of the jurisdictional class to which such positions have been allocated.

10.6.2 **Employment of Employees in Acquired Public Facilities**

a) Whenever the Corporation acquires a public facility from another governmental employer for the purpose of operating it, or whenever the Corporation assumes functions previously performed by another public employer, provision shall be made for the transfer of necessary permanent competitive or labor class employees employed by that facility or employer, who are substantially engaged in the performance of the function to be transferred, whom HHC, in its discretion, considers eligible and necessary. The permanent employees in the competitive or labor class of that former employer who are transferred to HHC shall be transferred without further examination or qualification and they shall retain their respective civil service classification and status as employees in the Corporation in accordance with the Rules and Regulations of the Corporation.

b) Employees of that other employer who serve provisionally in a competitive title or who are serving in a position classified as non-competitive shall be employed by the Corporation on the effective date of the acquisition if the Corporation, in its discretion, considers such employees eligible and necessary and if their titles exist in the Corporate Plan of Titles. Employees so acquired are subject to the Rules and Regulations of the Corporation on the effective date of transfer.

Section 10.7 Veterans - General

10.7.1 The Corporation shall recognize all rights of veterans as prescribed by the Civil Service Law, Sections 85, 86 and 87, and those set forth in these rules.

REGULATION NO. 1

UNSATISFACTORY JOB PERFORMANCE OF PERMANENT EMPLOYEE RESULTING FROM MEDICAL DISABILITIES

This Regulation sets forth the steps to be taken when dealing with all permanent Group 12 employees whose job performance is unsatisfactory due to a medical disability in accordance with Rule 6, Section 6.2 of the Corporation Personnel Rules and Regulations. In this regulation, a "medical disability" shall include both physical and mental conditions. It shall not include those medical disabilities resulting from occupational illness or on-the-job injuries, as described in New York State Worker's Compensation Law or Section 7.3.4 a) & b) of the Corporation's Personnel Rules and Regulations.

I. SCOPE:

This regulation applies solely to all permanent Group 12 employees (competitive, non-competitive and labor class).

II. POLICY:

A. Continuing medical problems shall not constitute an acceptable excuse for unsatisfactory performance. As used in this regulation, "unsatisfactory performance" includes incompetence and/or misconduct.

B. Each Corporate facility is responsible for compliance with the Americans with Disabilities Act. When the employee is unable to perform the duties of his or her position, it must be determined whether the essential duties can be performed with or without a reasonable accommodation. If the requested accommodation is reasonable, proceeding pursuant to this operating procedure shall cease and such accommodation shall be made.

C. When in the judgment of the Director of Human Resources (or designee) an employee is unable to perform the essential duties of his/her position by reason of a medical disability, other than a disability resulting from occupational injury or disease, the Appointing Officer (or designee) may require an employee to undergo a medical assessment to be conducted by a physician selected from the Personnel Review Board Panel of Physicians.

D. Continuing unsatisfactory performance due to a medical disability may constitute the basis for placing an employee on a leave of absence for up to one year. Continuing inability to perform thereafter may result in separation from employment.

III. PROCEDURE:

A. Pre-hearing involuntary leave of absence

Notwithstanding the procedure set forth below, if the facility's Appointing Officer (or designee) determines that there is probable cause to believe that the continued presence of the employee on the job is a potential danger to persons or property, or would seriously interfere with operations, he/she may place the employee on involuntary leave of absence pending the medical assessment, hearing, and final determination of the Appointing Officer (or designee).

B. Disciplinary Process

Where the disciplinary process has been invoked, this process shall be followed.

1. If, during the course of pre-disciplinary or disciplinary procedure, there is reason to suspect that the misconduct and/or incompetence, which is the basis for the pre-disciplinary or disciplinary procedure, may be due to a medical disability, this Regulation should be followed.

2. If the employee's performance warrants pre-disciplinary measures (e.g., counseling, warning notice), and, if the performance or disciplinary conduct appears to be related to a medical problem, the supervisor, in consultation with the Director of Human Resources, may offer whatever assistance is appropriate. This may include, but is not limited to, reasonable accommodation, upon such request by the employee; a leave of absence; counseling and personal services (where available), and referral to the Occupational Health Service (OHS).

    a. Any offer of assistance, and the employee's response, should be noted in a memorandum of Counseling or Warning Notice form.

    b. If a reasonable accommodation is not possible, or assistance is not available, the matter is to be referred to the Director of Human Resources for the initiation of this Operating Procedure.

3. Where the employee's conduct involves acts of a "more serious nature," as defined in Operating Procedure 20-10, and disciplinary action is warranted, or where the preliminary steps of counseling and/or warning have been exhausted, the supervisor shall refer the matter to the facility's Director of Human Resources for disciplinary action.

   a. If at the disciplinary meeting or hearing it is determined that the cause of the employee's misconduct or incompetence may be based on a medical disability, the review officer shall, at his/her discretion, offer the employee the option of taking a medical leave of absence for up to one (1) year, subject to submission of appropriate documentation.

   b. If the employee requests an accommodation, rather than leave of absence, the Director of Human Resources must determine whether the accommodation is reasonable as set forth by the Americans with Disabilities Act, and will enable the employee to perform the essential functions of his/her position with such reasonable accommodation.

   c. If the employee does not accept the offer of a medical leave of absence, and no reasonable accommodation is possible, the review officer shall, at his/her discretion, discontinue, and hold in abeyance the disciplinary hearing process until a determination of medical fitness has been made pursuant to this Regulation.

C. **Involuntary Medical Leave of Absence**

1. If an employee's unsatisfactory job performance appears to be due to a medical disability and the employee refuses to voluntarily take a medical leave of absence and disciplinary action is not presently an effective response, this process must be followed in order to determine the employee's fitness for duty.

2. Responsibility of Department
   It shall be the responsibility of the Department Head of the employee to send the following information to the Director of Human Resources:

a. Documentation, including specific incidents with dates, detailing behavior which is the basis for believing that the employee is not fit to perform his/her duties, with or without reasonable accommodation, due to a medical disability, and

b. The functional position description for the employee.

3. Responsibility of the Director of Human Resources:
Once the Director of Human Resources receives the information from the Department Head, the following steps shall be taken:

a. Appendix "A"
The Director of Human Resources shall prepare a written statement containing the facts and providing the basis for determining that the employee is not fit to perform the duties of his/her position, with or without reasonable accommodation (otherwise known as "Appendix A"). Appendix "A" shall contain:

i. A precise description of the nature of the employee's conduct or disability, including dates, time and places of the behavior; and
ii. The manner in which it interferes with the performance of the employee's duties; and
iii. The effect on the facility's operation, personnel, patients and/or public.

b. Appointment of Physician

i. The Director of Human Resources shall appoint a physician from a panel of physicians designated by the Personnel Review Board (PRB) to conduct the examination of the employee and shall schedule examination appointment for the employee with the physician prior to sending notice to the employee.

ii. The following documents must be sent to the appointed physician prior to the examination of the employee:
- Appointment letter;
- Appendix "A";

- Notice to the employee;
- Documentation supporting incidents described in Appendix "A"; and
- Functional and Corporate position descriptions for employee's title.

c. Letter to Employee

The Director of Human Resources shall send a letter to the employee informing him/her that he/she is to undergo a medical examination and the basis for the ordered examination. The letter shall be sent by first class, registered or certified mail, return receipt requested. The letter shall contain the following information:

i. Name, address and telephone number of the physician who is to conduct the examination;
ii. Appendix "A." (See, Section III.C.3.a, above); and
iii. The date of the appointment with the physician as scheduled by the Director of Human Resources.

4. Failure to undergo medical assessment

An employee's failure to follow a directive to undergo a medical assessment may constitute an act of misconduct and subject the employee to disciplinary action.

5. If the Findings of the Physician are that the employee is fit to perform his/her duties, with or without reasonable accommodation, this procedure ends.

a. If the conduct by the employee, which led to this procedure, is disciplinable in nature, or if the disciplinary proceeding had been held in abeyance pending the completion of this procedure, the facility may proceed in accordance with Operating Procedure 20-10.

b. The physician's findings may not be used as evidence in any future action concerning the employee, except as contradiction to any claim of the employee claiming disability as a defense to the disciplinary charges.

6. If the Findings of the Physician are that the employee is not fit to perform his/her duties, with or without reasonable accommodations, this procedure continues.

   a. Notice to the employee
   The Director of Human Resources shall notify the employee that he/she is being placed on medical leave of absence.

   b. Content of the notice to the employee
   The notice directing a medical leave shall be in writing and shall be served upon the employee in person, or by first class, registered or certified mail, return receipt requested. It shall state the reasons for the leave and the date on which the leave of absence, of up to one (1) year, shall commence and terminate, which commencement date shall be not less than ten (10) working days from the date of personal service or not less than ten (10) workdays plus five (5) days, if the notice was served by mail. The notice shall also inform the employee of appeal rights. (A sample letter is annexed.)

7. Objection to involuntary medical leave of absence

   a. The employee has ten working days from service of this notice to submit a written objection and a request for a hearing with the employee's Director of Human Resources. Filing must be either in person or by first class, certified or registered mail, return receipt requested.

   b. Once the employee requests a hearing pursuant to this regulation, the employee cannot be placed on an involuntary medical leave of absence until after a hearing is conducted, and a final determination is made by the facility's Appointing Officer (or designee), except as stated in Section III.A., above.

   c. Upon receipt of the written objection and request for hearing by the employee or his/her representative, the Director of Human Resources shall send the physician's report and recommendation to the employee, and upon the employee's request, to his/her personal physician and/or upon his or her authorized representative.

8. Transmittal of Documentation to Corporate Office of Labor Relations

a. Upon receipt of the written objection to the involuntary medical leave of absence, the Director of Human Resources shall send the following information to the Corporate Office of Labor Relations:
   i. Appendix "A;"
   ii. All documentation that was sent to Physician;
   iii. Physician's Report;
   iv. Functional and Corporate position descriptions; and
   v. All supporting documentation;
   vi. The employee's letter objecting to the involuntary medical leave of absence and request for a hearing.

b. Upon receipt of the documentation from the facility Director of Human Resources, the Corporate Office of Labor Relations shall submit the request for hearing, and supporting documentation to the PRB and request that a hearing be scheduled. The hearing should be held within thirty (30) days of receipt of the employee's written objection.

9. Failure to object to involuntary medical leave of absence

If the employee does not serve a written objection to the involuntary medical leave of absence in accordance with Section III,B.7, above, the involuntary medical leave of absence shall become effective on the date stated in the letter (See, III.C.6.a. and b.) and shall commence for a period of up to one (1) year.

10. Hearing

a. Upon receipt of the documentation from the Corporate Office of Labor Relations, in accordance with Section III.C.8.b. above, the PRB shall appoint a Hearing Officer to conduct the hearing.

b. Upon the appointment by the PRB, the Hearing Officer shall have all the powers of the Appointing Officer. A written transcript of the hearing shall be made. A copy of the transcript of the hearing shall, upon request of the employee or his/her representative, be transmitted to him/her without charge.

c. The employee may be represented at the hearing by an attorney or a certified union representative.

d. The burden of proof is on the party alleging unfitness.

e. The Hearing Officer's recommendations and record of the hearing (transcript) shall be forwarded to the Appointing Officer (or designee) for review.

11. Determination

a. The Appointing Officer (or designee) shall make a final determination within ten (10) working days of receipt of the hearing officer's report and recommendation. The final determination shall be provided to the employee and his/her attorney or representative.

b. The Appointing Officer (or designee), upon receipt of the Report and Recommendation, transcript and exhibits may:
   i. uphold the original proposed notice of leave of absence, or
   ii. withdraw such notice, or
   iii. modify the notice as appropriate.

12. Notice to Employee

a. The Appointing Office (or designee) shall notify the employee of the final determination in person or by first class, registered or certified mail, return receipt requested.

b. If the employee is placed on an involuntary medical leave of absence, the employee may draw all accumulated unused annual, sick and overtime leave.

c. The notice shall contain the date of the commencement of the leave of absence of up to one (1) year, and inform the employee of his/her right to appeal.

13. Right to Appeal

a. The Appointing Officer (or designee) shall notify the employee of his/her right to appeal the final determination to the PRB.

b. The PRB may conduct an inquiry, at its discretion, and may direct reinstatement if it finds the action of the Appointing Officer was arbitrary or capricious. The determination of the PRB shall be final and binding on both parties; however, that determination may be reviewed in accordance with Article 78 of the civil practice law and rules (CPLR).

D. Returning From Medical Leave of Absence

1. An employee placed on medical leave pursuant to this Regulation, may, within one year after the commencement of his/her leave of absence, or at any time thereafter until his/her employment status is terminated, make application to the Director of Human Resources for a medical examination by a physician from the PRB panel of physicians (other than the physician who examined him/her if leave was involuntary).

2. If, upon medical examination, the physician certifies that the employee is fit to perform the duties of the position, the Appointing Officer (or designee) shall so notify the employee within ten (10) working days of receipt of the physician's report whether he/she is to be returned to duty. If the employee is to be returned to duty, that should be accomplished with a reasonable period of time.

3. If the physician certifies that the employee is still not medically fit to perform the duties of the position, the employee may appeal that determination to the PRB. The PRB may conduct an inquiry, at its discretion, and may direct reinstatement if it finds the action of the Appointing Officer (or designee) arbitrary or unreasonable. The determination of the PRB shall be final and binding on both parties; however, that determination may be reviewed in accordance with Article 78 of the CPLR.

4. If the employee does not apply to be returned to duty within the prescribed period of the leave, or if the employee has applied to be returned to duty but has been found to remain unfit to return to duty, or if the employee does not contact the Corporate facility, his or her employment status may be terminated at the end of the one year leave of absence.

   a. Notice shall be sent to the employee of the effective date of termination.

   b. The letter shall be sent by first class, registered or certified mail, return receipt requested.

   c. A copy of Section 7.3.4 of the Corporation Personnel Rules and Regulations shall be annexed to the notice of termination, which sets forth the individual's rights concerning requests for reinstatement following the termination of his or her disability.

SAMPLE LETTER

INVOLUNTARY MEDICAL LEAVE OF ABSENCE
FOR PERMANENT GROUP 12 EMPLOYEES

[Date]

Name
Address

Dear

I have been informed by Dr._____ that as a result of his/her medical assessment of you on [date of examination], he/she found that you are medically unable to perform the essential duties of your position as _____[title]_____. A copy of Dr._____'s Report is attached for your information.

In accordance with Section 6:2:2 and Regulation 1 of the Corporation's Personnel Rules and Regulations, I am hereby advising that you shall be placed upon an involuntary medical leave of absence commencing [date – 10 business days plus 5 days for mailing from the date of this letter].

The medical leave of absence shall be for a period of up to one year from the above-cited date. If at any time during the year you believe you have recovered, and are able to resume the full duties of your position, you may apply to the Personnel Review Board for reinstatement. At that time, arrangements will be made for you to be assessed by a physician. If that physician certifies that you are then able to perform the essential duties of your positions, you will be returned to duty.

You have the right to object to the imposition of this leave of absence, and to request a hearing, within ten (10) working days from the date of receipt of this notice. An objection must be filed with the Human Resources Department, in person, or by first class, certified or registered mail, return receipt requested.

Sincerely yours,

Attachment
Sent: Regular 1st class mail
Certified, return receipt requested – Certification #_____

REGULATION NO. 2

RECIPROCAL TRANSFERS BETWEEN CIVIL SERVICE JURISDICTIONS

This Regulation sets forth the steps to be taken when dealing with the voluntary transfers of permanent competitive employees between the Corporation and other civil service jurisdictions, pursuant to Rule 7:1:6 of the Corporation's Personnel Rules and Regulations. This regulation does not apply to functional transfers.

I. SCOPE:

This Regulation is applicable only to individuals who hold permanent status in a competitive class (Group 12) title in the Corporation, or in another civil service jurisdiction.

II. POLICY:

A. Transfers Between Jurisdictions

Transfers between Corporate positions subject to this Regulation and positions subject to the jurisdiction of the State Civil Service Commission, Administrative Board of the Judicial Conference or any municipal civil service commission in the State may be approved by the Senior Vice President responsible for personnel and labor relations, provided the State Civil Service Commission, Administrative Board of the Judicial Conference or municipal civil service commission (as applicable) has adopted reciprocal rules and approves such transfers.

B. Transfers out of the Corporation

A transfer out of the Corporation is subject to the terms and conditions established by the jurisdiction to which the transfer is sought.

C. Transfers into the Corporation

A transfer into the corporation is subject to the following terms and conditions:

1. Transfers can be made only to those titles in the Group 12 Competitive Jurisdictional Classification in the Corporation's Plan of Titles, and only for those titles appropriate to the organizational unit to which the transfer is sought.

2. The current examination and qualification requirements for the position sought must not be higher than those required for the position held by the applicant.

3. An employee accepted for transfer into the Corporation under this Regulation shall be granted permanent status as a Corporation employee on the date of the transfer, subject to Section III, (B)(4), below. The effective date of a transfer shall be considered the date of the appointment to the Corporation.[1]

4. An application for transfer may be approved while the applicant is currently serving a probationary period. However, such applicant must serve a new, full one-year probationary period following the effective date of appointment to the Corporation.

5. The facility Appointing Officer's decision not to accept an applicant's request for transfer is final and not subject to review.

6. An application for transfer will not be approved if there is an existing Corporate promotion or preferred list for the title to which the transfer is sought, except in the case of a promotion list when there are fewer than three eligible candidates remaining.

7. The salary rate of the transferee shall be the salary he/she received immediately prior to the date of transfer, or the minimum salary rate of the Corporate title to which he/she is being transferred, whichever is greater. In no case, however, may the transferee's salary exceed the maximum for the title as it is then specified in the Corporation's Plan of Titles or applicable personnel order.

8. Where applicable, final approval and appointment is subject to medical clearance of the transferred employee.

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[1] In the case of subsequent downsizing, the effective date of transfer shall be considered the date of permanent appointment to the Corporation, in accordance with Section 80 of New York State Civil Service Law and Section 7 6:1 of HHC's Personnel Rules and Regulations.

D. Transfers to the Corporation are subject to the following limitations on time and leave.

1. Annual Leave. Transfer of credits to the Corporation shall not exceed the maximum number of days earnable by the employee in a two-year period in the other civil service jurisdiction, limited (based on years of service in the other civil service jurisdiction), to the number of days of annual leave Corporate employees having a similar length of service may accrue. Transferees from New York City agencies covered by the Citywide Contract who have annual leave credits in excess of two years accrual maximum, shall have the excess credits transferred only if the employee was previously directed or authorized, in writing, to forego use of all or part of his/her annual leave in any year by the Mayor, or by the appointed or elected head of the original employing agency or department.

2. Sick Leave. There shall be no limitation on transfer of accumulated sick leave balances.

3. Compensatory and/or Overtime Credits. This leave shall not be transferable.

III. PROCEDURE

A. Employees of other jurisdictions requesting to transfer to a Health and Hospitals Corporation facility.

1. Applicants employed in other jurisdictions wishing to transfer into the Corporation shall apply, in writing, directly to the Human Resources Department of the facility in which they are interested in working.

2. If the facility wishes to accept a transferee, a completed "Request for Transfer and/or Change of Title" form HHC 1142(a) and covering memorandum shall be forwarded by the facility's Appointing Officer (or designee) to the Corporation Office of Certification and Examinations, Room 100, 125 Worth Street. If acceptable, the Office of Certification and Examinations shall obtain the signature of the Senior Vice President responsible for personnel and labor relations (or designee) and forward the transfer form, along with a request for approval, to the other jurisdiction.

3. Upon receipt of a Certificate of Approval of transfer, the Office of Certification and Examinations shall contact the releasing agency and the receiving Corporation facility to arrange a mutually agreeable date of transfer.

B. Health and Hospitals Corporation employees requesting to transfer to another jurisdiction.

1. A Corporate employee requesting to transfer to a City agency shall complete and submit a Request for Transfer, New York City form DP 72, to the agency to which he or she wishes to transfer. Employees requesting transfer to another jurisdiction other than the City shall complete and submit the appropriate form of that jurisdiction.

2. The Corporation Office of Certification and Examinations, upon receipt of a request for approval of transfer from the jurisdiction to which the employee wishes to transfer, shall request from the employing facility a transcript of employment record and verification of employee's permanent status.

3. The Corporation Office of Certification of Examinations shall obtain the signature of the Senior Vice President responsible for personnel and labor relations (or designee) and forward the completed DP 72 transfer form and transcript of employment history to the other jurisdiction.

4. On transfers to City agencies, the NYC Department of Citywide Administrative Services shall issue a Certificate of Approval of transfer. The Corporation Office of Certification and Examinations, upon receipt of a Certificate of Approval of transfer, shall contact the employing facility to obtain a release date for the transferring employee. The transfer shall subsequently be confirmed, in writing, to the employing facility.

ATTACHMENT: HHC 1142a – Request for Transfer
DP-72 (City Form) – Request for Transfer and/or Change of Title

New York City Health and Hospitals Corporation

125 Worth Street, New York, New York 10013

REQUEST FOR TRANSFER

REQUEST IS HEREBY MADE FOR A CERTIFICATE OF TRANSFER			
NAME OF EMPLOYEE		SOCIAL SECURITY NUMBER	
PRESENT STATUS		**PROPOSED STATUS**	
AGENCY		HHC FACILITY	
TITLE & LEVEL		TITLE & LEVEL	
TITLE CODE NUMBER	SALARY	TITLE CODE NUMBER	SALARY
SIGNATURE OF AGENCY HEAD OR DESIGNEE	DATE	SIGNATURE OF APPOINTING OFFICER OR DESIGNEE	DATE

I HAVE READ AND UNDERSTAND THE TERMS AND CONDITIONS ON THE BACK OF THIS FORM AND I HEREBY CONSENT TO THIS TRANSFER.

SIGNATURE OF EMPLOYEE DATE

SPACE BELOW IS FOR USE OF THE OFFICE OF CERTIFICATION AND EXAMINATIONS

PREFERRED LIST IN EXISTENCE	PROMOTION LIST IN EXISTENCE	PERMANENT EMPLOYEE	DATE
☐ YES ☐ NO	☐ YES ☐ NO	☐ YES ☐ NO	
☐ RECOMMENDED APPROVAL UNDER RULE	SUBJECT TO:		
☐ RECOMMENDED DISAPPROVAL	REASON:		

SIGNATURE OF DIRECTOR

☐ APPROVED ☐ DISAPPROVED — CORPORATE OFFICER, PERSONNEL/LABOR RELATIONS (OR DESIGNEE) NEW YORK CITY HEALTH AND HOSPITALS CORPORATION — DATE

☐ APPROVED ☐ DISAPPROVED — DEPUTY COMMISSIONER FOR CITYWIDE PERSONNEL SERVICES — DATE

READ TERMS AND CONDITIONS ON REVERSE SIDE

HHC 1142a (06/01)

TERMS AND CONDITIONS

1. An application for transfer may be approved while the applicant is on probation. The employee's probationary period starts anew, and a full one-year probationary period must be served following the effective date of transfer.

2. An application for transfer shall not be approved whenever there exists a Corporate promotion or a preferred list for the position to which transfer is sought unless the list is promotional and it consists of fewer than three available eligibles.

3. Transfers are subject to the Corporation's Personnel Rules and Regulations applicable to transfers, Rules 7.1.1 through 7.1.6, and any amendments thereto.

4. The effective date of transfer shall be deemed the date of original appointment to the New York City Health and Hospitals Corporation.

_____

Signature of Applicant

THE NEW YORK CITY DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES
DIVISION OF CITYWIDE PERSONNEL SERVICES
1 CENTRE STREET, 21ST FLOOR, NEW YORK, NY 10007

REQUEST FOR TRANSFER OR REDEPLOYMENT AND/OR CHANGE OF TITLE

Request is hereby made for a certificate of ☐ TRANSFER OR ☐ REDEPLOYMENT AND/OR ☐ CHANGE OF TITLE

Name of Employee | Social Security Number

PRESENT STATUS	PROPOSED STATUS
AGENCY	AGENCY
TITLE & LEVEL	TITLE & LEVEL
TITLE CODE # SALARY $	TITLE CODE # SALARY $
Signature of Agency Head or Designee / Date	Signature of Agency Head or Designee / Date

I have read and understand the terms and conditions as set forth on the reverse side of this form and all rules and regulations governing transfer, redeployment and/or change of title. *If this action is payrolled in the City's Payroll Management System (PMS), I authorize the payroll deduction of the required Personnel processing fee.*

I hereby consent to this ☐ TRANSFER OR ☐ REDEPLOYMENT AND/OR ☐ CHANGE OF TITLE

Signature of Employee / Date

THE SPACE BELOW IS FOR USE BY THE DIVISION OF CITYWIDE PERSONNEL SERVICES

Preferred List In Existence? ☐ Yes ☐ No

Promotion List in Existence? ☐ Yes ☐ No

Permanent Employee (completed probation in present title)? ☐ Yes ☐ No ☐ Promotion rights reviewed.

Rule: _____ Subject to: _____

Reason: _____

Personnel Audits & Transactions Authorized Signature / Date

RECOMMENDATION TO ORDER A RULE 6.1.9 EXAMINATION

Exam. No. _____

Is maximum salary of present title $ _____ equal to or greater than minimum salary of proposed title $ _____ ?

	☐ YES	☐ NO
Is proposed title in a direct promotional line from present title or construed as a promotion?	☐ YES	☐ NO
Is proposed title and level comparable to present title and level?	☐ YES	☐ NO
Is candidate transferring to or from the management class?	☐ YES	☐ NO
Does candidate meet the minimum qualification requirements for requested position?	☐ YES	☐ NO

au of Examinations Authorized Signature / Date

☐ APPROVED ☐ DISAPPROVED

Deputy Commissioner for Citywide Personnel Services / Date

DP-72 (R.12/97)

TERMS AND CONDITIONS

1. It is important that this form be filled out completely before it is submitted to the Division of Citywide Personnel Services for consideration.

2. An application for transfer can be approved while the applicant is on his/her probationary period. On transfer, the probationary period starts anew, as the one year period must be served completely in the same agency. **(Exception: Redeployment is governed by the Memorandum of Agreement).**

3. An application for transfer shall not be approved whenever there exists a departmental promotion or a preferred list for the position to which transfer is sought unless, in the case of a promotion list, such list consists of fewer than three available eligibles.

4. Transfers are subject to the applicable Personnel Rules and Regulations of the City of New York, Rule VI, Section I, Rules 6.1.1 through 6.1.9.

5. An application for a title change cannot be approved while the applicant is on probation. In addition, a title change is subject to a one-year probationary period unless waived by the Commissioner of the Department of Citywide Administrative Services. **(Exception: Redeployment title changes are governed by the Memorandum of Agreement).**

BUREAU OF EXAMINATIONS COMMENTS

REGULATION NO. 3

REINSTATEMENT OF PERMANENT COMPETITIVE AND NON-COMPETITIVE GROUP 12 EMPLOYEES

This Regulation sets forth the steps to be taken when dealing with the reinstatement of former permanent competitive, non-competitive and labor class employees to Group 12 positions in accordance with Section 7.3 of the Corporation's Personnel Rules and Regulations.

I. SCOPE:

This Regulation applies to former permanent competitive, non-competitive and labor class employees of the Corporation.

II. POLICY:

A. Reinstatement of Resignees and Retirees

1. Employees who have completed their probationary period and who thereafter resign or retire may, subject to the consent of the Appointing Officer, be reinstated without examination to the same title, provided that their separation was without cause or delinquency and does not otherwise violate current Corporate policies or procedures.

2. Reinstatement under this procedure must be completed within the length of time the employee previously served in a permanent capacity, but not more than four years after the date of separation from previous service. Time spent on active duty in the Armed Services of the United States (which resulted in Honorable Discharge), subsequent to the date of separation from service, shall not be considered in computing the time limitations governing reinstatement.

3. Employees reinstated within one year shall be deemed to have had continuous service. They shall be restored to the same leave status which they held at the time of their separation, and any sick leave and annual leave balances unused at the time of separation, which was not paid out at separation, shall be restored to their credit. However, the time off payroll following separation shall not be used for the purposes of computing "years of service" in determining the applicable annual

leave rate and other benefits. Upon reinstatement to the same or similar title, the employee shall be restored at the salary he/she had attained at the time of the original separation, or at the minimum of the title, whichever is greater.

4. Employees who are reinstated beyond one year following separation shall be given permanent status only. They will be classified as new appointees with regard to salaries, annual leave and sick leave accrual and retention.

B. Reinstatement After Separation for Job-Related Disability or Illness

1. An employee who has been separated from service pursuant to Section 7.3.4(a) of the Corporation's Personnel Rules and Regulations because of a job-related disability or illness (as defined in the Workers' Compensation Law) shall be entitled to a leave of absence of at least one year, unless declared permanently incapable of performing the duties of the position.

2. An employee may request reinstatement within one year following termination of the job-related disability or illness. Reinstatement of employees who have been separated from service by reason of disability resulting from occupational illness or injury requires the prior approval of the Personnel Review Board.

   If found physically and medically fit to perform the essential duties of the former position, with or without reasonable accommodation, by a physician appointed from the Personnel Review Board Panel of Physicians, the employee shall be reinstated to the former title, if there is a vacancy, or to a similar or lower title in the same occupational group.

   If no appropriate vacancy exists to which reinstatement can be made, or if the filling of a vacancy is not warranted, the name of the former employee shall be placed on a preferred list for his or her former title and he/she shall be eligible for reinstatement for a period of four years following placement on that list.

3. Upon reinstatement to the same or similar title, the employee shall be restored at the salary he/she had attained at the time of the original separation, or at the minimum of the title, whichever is greater.

4. When an employee is reinstated to a lower title, his/her salary shall be constructed as if the years of service in the former higher title had been served in the lower position. The employee shall be reinstated to the reconstructed salary or to the minimum of the title, whichever is greater.

5. In the event that such person is reinstated to a position in a grade lower than that of his former position, his/her name shall be placed on the preferred eligible list for his/her former position.

C. Reinstatement After Separation for Non-Work Related Disability or Illness

1. An employee who has been separated from service pursuant to Section 7.3.4(b) of the Corporation's Personnel Rules and Regulations, because of a non-work related disability or illness shall be entitled to a leave of absence of at least one year, unless declared permanently incapable of performing the duties of the position.

2. An employee may request reinstatement within one year following termination of the non-work related disability or illness. Reinstatement of employees who have been separated from service by reason of non-work related disability or illness requires the prior approval of the Personnel Review Board.

   If found physically and medically fit to perform the essential duties of the former position, with or without reasonable accommodation, by a physician appointed from the Personnel Review Board Panel of Physicians, the employee shall be reinstated to the former title, if there is a vacancy, or to a similar or lower title in the same occupational group, in accordance with the Personnel Rules and Regulations.

   If no appropriate vacancy exists to which reinstatement can be made, or if the filling of a vacancy is not warranted, the name of the former employee shall be placed on a preferred list for his or her former title and (s)he shall be eligible for reinstatement for a period of four years following placement on that list.

3. Upon reinstatement to the same or similar title, the employee shall be restored at the salary he/she had attained at the time of the original separation, or at the minimum of the title, whichever is greater.

4. When an employee is reinstated to a lower title, his/her salary shall be constructed as if the years of service in the former higher title had been served in the lower position. The employee shall be reinstated to the reconstructed salary or to the minimum of the title, whichever is greater.

5. In the event that such person is reinstated to a position in a grade lower than that of his former position, his/her name shall be placed on the preferred eligible list for his/her former position.

III. PROCEDURE

A. Reinstatement of Resignees or Retirees

1. Resignees or retirees who wish to be reinstated shall apply to the Human Resources Department of the facility in which they wish to be employed.

2. Applicants shall complete a Request for Reinstatement Form (Form HHC-3530, agreeing to the terms and conditions of the proposed reinstatement, along with an Application for Employment Form (Form HHC-568).

3. A request for reinstatement does not confer a right to reinstatement. Reinstatement is at the discretion of the Corporation and the Appointing Officer of the facility/network.

4. Employees reinstated after more than one year of separation, shall be required to undergo medical assessment, investigation, fingerprint clearance or any other qualifying tests required by the Appointing Officer as a precondition of their reinstatement.

5. An official transcript of the applicant's employment record shall be obtained from his or her former facility, if different from the facility to which the applicant is applying for reinstatement.

6. The Human Resources Department of the facility to which the applicant is seeking reinstatement shall obtain an endorsement from the applicant's former employing facility to insure that the applicant is eligible for reinstatement and was not separated from a former position for cause or delinquency.

7. After all personnel and budgetary approvals to effect the reinstatement have been obtained, the applicable Human Resources Department shall prepare the PAF Form (Form HHC-732), reflecting this action, and shall make the appropriate entries on the official personnel record.

8. The reinstated employee shall be advised, in writing, of the effective date of reinstatement, and the title, salary and probationary period (s)he will be required to serve, unless the latter is waived by the Appointing Officer.

B. Reinstatement After Separation for Job-Related Disability or Illness

1. Employees separated from service due to disability resulting from occupational illness or injury as defined in the Workers' Compensation Law who wish to be reinstated shall file an appeal with the Personnel Review Board (PRB). The appeal shall also include the termination letter and medical documentation indicating the applicant is fit to perform the essential duties of his/her former permanent position, with or without reasonable accommodation. The PRB shall assign a physician in the appropriate specialty who shall examine the applicant and submit a report to the Chairman of the PRB indicating whether the employee is fit to perform the essential duties of the former position with or without reasonable accommodation.

2. Upon receipt of the physician's report finding the former employee medically and mentally fit to perform the essential duties of the former position, with or without reasonable accommodation, the PRB shall issue a Decision of Reinstatement, subject to vacancy in the title.

   a) Once the PRB Decision is issued, the Human Resources Director, or designee, shall determine whether a vacancy exists in the applicant's former position, or in a similar or lower title in the same occupational group, or to a vacancy in another title for which the applicant qualifies.

   b) If a vacancy exists which the facility intends to fill, the Human Resources Director, or designee, shall notify the former employee, in writing, of the date, time and location of said reinstatement.

   c) If no appropriate vacancy exists to which reinstatement may be made, or the workload does not warrant the filling of such vacancy: The Human Resources Director, or designee, shall notify the former employee in writing that his or her name shall be placed on a preferred list.

d) A copy of this letter, with the PRB Decision, shall be forwarded to the Corporation's Office of Certification and Examinations.

e) The Corporation's Office of Certification and Examinations shall place the name of such person on a preferred list for his/her former position, and he/she shall be eligible for reinstatement from such preferred list for a period of four (4) years.

f) In the event that such person is reinstated to a position in a grade lower than that of his/her former position, his/her name shall be placed on the preferred list for his/her former position. He/she shall be eligible for reinstatement from such preferred list for a period of four (4) years.

C. Reinstatement After Separation for Non-Job Related Disability or Illness

1. Employees separated from service due to disability resulting from non-work related illness or injury who wish to be reinstated shall file an appeal with the Personnel Review Board (PRB). The appeal shall also include the termination letter and medical documentation indicating the applicant is fit to perform the essential duties of his/her former permanent position, with or without reasonable accommodation. The PRB shall assign a physician in the appropriate specialty who shall examine the applicant and submit a report to the Chairman of the PRB indicating whether the employee is fit to perform the essential duties of the former position with or without reasonable accommodation.

2. Upon receipt of the physician's report finding the former employee medically and mentally fit to perform the essential duties of the former position, with or without reasonable accommodation, the PRB shall issue a Decision of Reinstatement, subject to vacancy in the title.

3. Once the PRB Decision is issued, the Human Resources Director, or designee, shall determine whether a vacancy exists in the applicant's former position, or in a similar or lower title in the same occupational group, or to a vacancy in another title for which the applicant qualifies.

   a. If a vacancy exists which the facility intends to fill, the Human Resources Director, or designee, shall notify the former employee, in writing, of the date, time and location of said reinstatement.

   b. If no appropriate vacancy exists to which reinstatement may be made, or the workload does not warrant the filling of such vacancy:

i. The Human Resources Director, or designee, shall notify the former employee in writing that his or her name shall be placed on a preferred list.

ii. A copy of this letter, with the PRB Decision, shall be forwarded to the Corporation's Office of Certification and Examinations.

iii. The Corporation's Office of Certification and Examinations shall place the name of such person on a preferred list for his/her former position, and he/she shall be eligible for reinstatement from such preferred list for a period of four (4) years.

iv. In the event that such person is reinstated to a position in a grade lower than that of his/her former position, his/her name shall be placed on the preferred list for his/her former position. He/she shall be eligible for reinstatement from such preferred list for a period of four (4) years.

Attachment: HHC 3530 – Request for Reinstatement

NEW YORK CITY HEALTH AND HOSPITALS CORPORATION
REQUEST FOR REINSTATEMENT

TO BE COMPLETED BY APPLICANT

FACILITY:	DATE:
NAME OF EMPLOYEE:	SOCIAL SECURITY NO.:
ADDRESS:	

TO BE COMPLETED BY FACILITY/NETWORK HUMAN RESOURCES

FORMER PERMANENT STATUS	PROPOSED STATUS
Title: _____ Title Code No.: _____ Date of Employment: From: _____ To: _____ Leave of Absence: From: _____ To: _____ Salary: _____ Status: ☐ Competitive ☐ Non-Competitive Corporate Facility: _____	Title: _____ Title Code No.: _____ Salary: _____ Status: ☐ Competitive ☐ Non-Competitive Corporate Facility: _____
If the total time for eligibility for reinstatement includes employment in a title other than that listed above, please supply the following information: Title: _____ Years: _____ Months: _____ Days: _____ I hereby certify that _____ was separated from the above described position for reasons other than fault or delinquency on his/her part. _____ Signature of Appointing Officer (of Corporate facility, or network from which applicant was separated)	I have read, understand and consent to the terms and conditions of reinstatement as set forth on the reverse side of this form. _____ Signature of Applicant _____ Date

I hereby certify that there is not a preferred list in existence.

Signature of Personnel Director: _____ Date: _____

☐ Approved, to be effective on: _____

Signature of Appointing Officer: _____

READ TERMS AND CONDITIONS ON OTHER SIDE

HHC 353 (11/00)

TERMS AND CONDITIONS

1. This Request for Reinstatement must be accompanied by an Application for Employment, HHC Form 568.

2. A request for reinstatement does not confer a right to reinstatement. Reinstatement is at the discretion of the Corporation and the Appointing Officer of the facility/network.

3. The applicant must have completed his/her probationary period in a Group 12 competitive or non-competitive class position, prior to separation from service.

4. Reinstatement after a separation of more than one year is subject to investigation, fingerprint clearance, medical assessment or any other qualifying tests and deemed to be conditional pending a favorable report on these requirements.

5. Reinstatement must be accomplished within the prescribed period of time indicated in Rule 7.3.2 of the Corporation's Personnel Rules and Regulations.

6. Reinstatement beyond one year after separation from service will confer permanent status only. The employee will otherwise be deemed a new employee, as of the effective date of reinstatement to the Corporation.

7. Reinstated employees are subject to a probationary period, unless such probationary period is waived by the Appointing Officer.

_____

Signature of Applicant

New York City-Health and Hospitals Corporation
Personnel Rules and Regulations
Index

NEW YORK CITY HEALTH AND HOSPITALS CORPORATION
125 Worth Street • Suite 500 • New York • New York 10013
212•788•3664 Fax: 212•788•3355

Pamela S. Silverblatt
Senior Assistant Vice President
Operations

TO: Distribution "D"

FROM: Pamela S. Silverblatt

DATE: December 14, 2000

SUBJECT: Amended Guidelines on the Family and Medical Leave Act of 1993

I enclose for your information and compliance amended Corporation guidelines coordinating the granting of leave under the Family and Medical Leave Act (FMLA) of 1993 with leave provisions contained in the Citywide Agreement between the City of New York and District Council 37, AFSCME, AFL-CIO, the Leave Regulations for Employees Under the Career and Salary Plan, and Operating Procedure No. 20-26, "Time and Leave Regulations Governing Group 11 Employees".

The guidelines are based on the New York City guidelines issued by the Department of Citywide Administrative Services on April 17, 2000. The amendment provides for coverage for "Domestic Partners" as defined in Section 1-112(121) of the Administrative Code of the City of New York.

Attachment

c: Frank J. Cirillo, Senior Vice President, Operations

NEW YORK CITY HEALTH AND HOSPITALS CORPORATION

GUIDELINES ON THE FAMILY AND MEDICAL LEAVE ACT OF 1993

PURPOSE

To amend the procedure which coordinates the granting of leave under the Family and Medical Leave Act of 1993 ("FMLA") with leave provisions contained in the Citywide Agreement between the City of New York and District Council 37, the "Leave Regulations for Employees Who Are Under the Career and Salary Plan," and Operating Procedure No. 20-26, "Time and Leave Regulations Governing Group 11 Employees."

Interim guidelines on the FMLA, based on the U.S. Department of Labor's Interim Final Rule, were issued by memorandum from the office of the Vice President, Corporate Affairs, dated May 10, 1994. These guidelines are based on the federal agency's Final Rule.

BACKGROUND

The federal Family and Medical Leave Act of 1993 entitles eligible City employees to 12 weeks of leave in a 12-month period for child care and for the serious health condition of the employee or covered family members. The FMLA became effective on August 5, 1993 for Group 11 employees and employees in Group 12 titles not certified to collective bargaining units; on February 5, 1994, it became effective for employees covered under collective bargaining agreements with the City of New York and the Health and Hospitals Corporation.

GENERAL PROVISIONS

The following FMLA provisions are integrated with existing time and leave benefits contained in the Citywide Agreement, the "Leave Regulations for Employees Who Are Under the Career and Salary Plan," and managerial leave regulations as contained in Operating Procedure 20-26. FMLA provisions apply to eligible full-time and part-time employees in all jurisdictional classifications (competitive, non-competitive, labor, and exempt) and include provisional, temporary, and seasonal employees. Each facility must designate an FMLA Coordinator to assist in effectuating these provisions.

1. Certain individuals are excluded from the definition of "employee" under the FMLA. A person who:

   a. is not subject to the civil service laws of the political subdivision which employs the employee, and

   b. holds a public elective office; or

c. is selected by the holder of such public elective office to be a member of his/her personal staff; or

d. is appointed by such public elective officeholder to serve on a policymaking level; or

e. is an immediate adviser to such public elective officeholder with respect to the constitutional or legal powers of the office of such officeholder; or

f. is an employee in the legislative branch or legislative body of . . . [the] political subdivision

is not eligible for FMLA leaves.

2. An eligible employee is one who has worked for the employer for a total of at least 12 months preceding the start of the leave. The 12 months need not be consecutive. If an employee is maintained on the payroll for any part of a week, the week counts as a week of employment. To be eligible, the employee must also have actually worked 1,250 hours over the 12-month period immediately preceding the start of the leave.

3. An eligible employee is entitled to a total of 12 weeks of leave in a 12-month period. Leave may be taken upon the birth of a child to the employee, to care for such child; or upon the placement of a child with the employee for adoption or foster care, to care for such child ("FMLA child care leave"). Leave may also be taken to care for a child of the employee when the child has a serious health condition, as defined herein; to care for the employee's parent or spouse when such person has a serious health condition; and for the employee's own serious health condition.

"Child" means a biological, adopted or foster child of the employee; a legal ward or stepchild of the employee; or a child for whom the employee stands in loco parentis. A child must either be under the age of 18 or incapable of self-care because of mental or physical disability. "Spouse" means a husband or wife as defined or recognized under state law for purposes of marriage in the state where the employee resides. "Parent" means the biological parent of the employee, or a person who stands or stood in loco parentis for the employee when the employee was a child, as defined herein; it does not include "in-laws."

4. In addition, an eligible employee with a domestic partner may take up to 12 weeks of leave to care for the employee's domestic partner if such person has a serious health condition. Any FMLA leave already taken during the previous 12 months, pursuant to Section 3 above, will be subtracted from the 12 weeks allowed for this purpose. Leave taken for this purpose does not diminish the employee's entitlement to the 12 weeks of FMLA leave permitted pursuant to Section 3 above. "Domestic Partner" means domestic partner as defined in Section 1-112(121) of the Administrative Code of the City of New York.

5. The 12-month period in which the 12 weeks of leave entitlement occurs is a "rolling" 12-month period measured backward from the date any FMLA leave is to be used. Under this method of leave calculation, each time an employee is to take FMLA leave, the leave entitlement would be the balance of the 12 weeks which had not been used during the immediately preceding 12 months.

6. Serious health condition, as further explained below, means an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health care provider.

A serious health condition which involves inpatient care (i.e., overnight stay) in a hospital, hospice, or residential medical facility also includes any period of incapacity, and any subsequent treatment, related to such inpatient care.

Incapacity means inability to work, attend school, or perform other regular daily activities due to the serious health condition, or consequent treatment, or recovery from the serious health condition. When leave is taken for the employee's own serious health condition, incapacity means the inability to work at all or to perform any one of the essential functions of the employee's position within the meaning of the Americans with Disabilities Act of 1990 and its implementing regulations.

A serious health condition which involves continuing treatment by a health care provider includes one or more of the following:

a. A period of incapacity of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves treatment two or more times by a health care provider, a nurse or physician's assistant under the direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by a health care provider; or

b. A period of incapacity of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider; or

c. Any period of incapacity due to pregnancy or for prenatal care; or

d. Any period of incapacity due to a chronic serious health condition which requires periodic visits for treatment, continues over an extended period of time, and may cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.); or

e. A period of incapacity which is long term or a permanent incapacity due to a condition for which treatment may not be effective (e.g., Alzheimer's Disease,

stroke, etc.). Active treatment by a health care provider may not be necessary but continuing supervision by a health care provider is required; or

f. Any period of absence to receive multiple treatments (including any period of recovery resulting from treatment) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, for restorative surgery after an injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical treatment, such as cancer (chemotherapy, radiation, etc.), kidney disease (dialysis), etc.

7. Health care providers include doctors of medicine or osteopathy authorized to practice medicine or surgery; podiatrists, dentists, clinical psychologists, optometrists, chiropractors in certain instances, nurse practitioners, nurse-midwives, and clinical social workers, authorized to practice in the state; and Christian Science practitioners listed with the First Church of Christ Scientist in Boston, Massachusetts; or any other health care provider determined by the U.S. Department of Labor to be capable of providing health care services.

8. Leave taken for the employee's own serious health condition or to care for a covered relative's serious health condition may be taken on an intermittent or reduced leave schedule in cases of medical necessity. Certification from a health care provider stating the medical necessity for leave on an intermittent or reduced leave basis and the duration and schedule of the leave satisfies the medical necessity requirement. However, the employee must attempt to schedule leave so as not to disrupt the facility's operations. If an employee requests intermittent leave or leave on a reduced leave schedule that is foreseeable based on planned medical treatment, including a period of recovery from a serious health condition, the employer may require the employee to transfer temporarily to an available alternative position for which the employee is qualified and which has equivalent pay and benefits, which better accommodates recurring periods of leave than does the employee's regular position. Transfer to an alternative position shall require compliance with any applicable collective bargaining agreement, federal law (such as the Americans with Disabilities Act), and State law.

9. Entitlement to FMLA child care leave expires 12 months after the birth or placement of the child with the adoptive or foster parent. Child care leave may not be taken on an intermittent or reduced leave schedule. Paid annual leave and non-FLSA compensatory time must be used concurrently with FMLA child care leave, but if FMLA leave is to be extended by City provided child care leave (for birth or adoption), only that portion of the FMLA leave which is not coincident with paid leave is to be counted against the City child care leave entitlement. If an employee commences child care leave and has no annual leave or compensatory time, FMLA child care leave is to be counted in its entirety against the City child care leave entitlement. If FMLA child care leave has not been taken and the 12-month eligibility period has elapsed, City child care leave may be taken at any time until the child's fourth birthday.

10. When the need for FMLA leave is foreseeable, an employee must give the facility FMLA Coordinator at least 30 calendar days advance notice before the leave begins. If the employee does not, the employer can delay the start of the FMLA leave. If leave is to be delayed by the facility because of the employee's failure to comply with the 30-day requirement, it must be clear that the employee had notice of this requirement. It is therefore imperative that the notice entitled "Your Rights under the Family and Medical Leave Act of 1993" be posted conspicuously at the worksite and, where appropriate, included in the facility's employee handbook. If the employee's foreseeable leave is to be delayed because there was no reasonable cause for the untimely notification, an administrative review must be conducted by designated facility personnel. If the need for leave is unforeseeable, the employee is ordinarily required to give notice within one or two business days when the need for leave becomes known to the employee.

In those cases where paid leave is used concurrently with FMLA leave, if the City's notice requirements are less stringent than the notice requirements of the FMLA, only the less stringent requirements may be imposed.

11. When an employee requests leave for an FMLA qualifying purpose but does not request to use FMLA leave, it is the facility's responsibility to designate such leave as FMLA leave. Such designation may be made before or after the leave commences, as long as it is made within two business days, absent extenuating circumstances, of the facility acquiring knowledge that the leave is for an FMLA qualifying purpose. If the facility learns, subsequent to the commencement of leave, that the leave or some portion thereof, is or was for an FMLA qualifying purpose, the facility must designate such leave as FMLA leave retroactively to, and/or prospectively from, the FMLA qualifying event.

The facility may designate leave as FMLA leave after the employee returns to work only if the facility was not aware of the reason for the leave prior to such time or the facility preliminarily designated leave as FMLA leave while awaiting medical certification. In the former instance, leave must be designated as FMLA leave within two business days of the employee's return to work, with appropriate notice to the employee. In the latter case, the preliminary designation of FMLA leave becomes final upon receipt of medical certification confirming the leave was for an FMLA qualifying purpose. If the employee requests leave to be counted as FMLA leave after returning to work, the employee must notify the facility of the FMLA qualifying purpose of the leave within two business days of returning to work.

If the facility's initial notice to the employee designating FMLA leave is oral, the facility must confirm the designation in writing, in any format, no later than the following payday or, if there is less than one week between the oral notice and the next payday, written notice must be no later than the subsequent payday.

12. When an employee requests leave for an FMLA qualifying purpose, the attached Form HHC 2127, "Request for Leave under the Family and Medical Leave Act," and a copy of the notice entitled "Your Rights under the Family and Medical Leave Act of 1993" must be immediately provided to the employee. The employee must, in turn, submit the

completed form as soon as practicable. Please note that the facility may not deny or delay the leave because the employee has not submitted written notice as long as the employee has provided timely oral notice of the need to take leave for an FMLA qualifying reason. The facility FMLA Coordinator or designee must sign the request form indicating the disposition and return it to the employee within 5 working days of receipt. The approved request form may be used as written confirmation of an FMLA designated leave, as required in section 11, if it is returned to the employee within the time constraints stated in section 11.

Please note that the request form contains notice to the employee of specific obligations of the employee and the consequences of the failure to meet these obligations, as well as certain obligations of the employer. Among the items discussed are the requirements for documents to support the leave and the return to work, the employee's status as a "key" employee, the right to be restored to the same or equivalent position, and the requirement to substitute paid leave.

13. Appropriate paid leave balances (including managers' vested leave balances as applicable) must be used concurrently with FMLA leave. For instance, all paid sick leave must be used and counted against the 12-week FMLA leave entitlement if absence is due to the employee's own serious health condition. If all sick leave balances have been exhausted and annual leave is used due to the employee's own serious health condition, the annual leave used shall be counted against the FMLA entitlement. Compensatory time balances, except for compensatory time subject to the Fair Labor Standards Act, must also be used and counted against the FMLA entitlement. Similarly, all paid annual leave and non-FLSA compensatory time must be used and counted as FMLA leave if absence is for any other FMLA qualifying purpose. After all leave balances have been exhausted, any leave that is advanced or granted for either the employee's own serious health condition or other FMLA qualifying reasons will be counted against the employee's FMLA entitlement. If an employee chooses to use FLSA compensatory time for an FMLA qualifying purpose, such time used may not be counted against the employee's FMLA leave entitlement.

14. An employee will be required to present medical documentation to support a request for FMLA leave when a serious health condition is involved. For the employee's own serious health condition, such documentation should include the date the serious health condition commenced, the probable duration of the condition, the diagnosis, the regimen of treatment prescribed, a statement that the employee is unable to perform all or any one of the essential functions of the employee's position, or in the case of leave to care for a covered relative's serious health condition, a statement that the relative requires assistance for basic medical needs, hygiene, nutritional needs, safety, transportation, or psychological comfort. Documentation should be requested at the time the employee requests leave or in the case of unforeseen leave, soon after the leave commences. Documentation must be provided within 15 calendar days from the facility's request where practicable. (Use attached Form HHC 2128, "Certification of Physician or Health Care Provider" or if not practicable, provide appropriate documentation in another form.)

15 An employee will be required to present documentation to support a request for FMLA leave to care for a newborn child or a child who has been adopted or received into foster care. Documentation should be requested at the time the employee requests leave, or in the case of unforeseen leave, soon after the leave commences. Documentation must be provided within 15 calendar days from the facility's request where practicable. (See attached Form HHC 2129, "Child Care Leave Certification under the Family and Medical Leave Act.")

16. An employee on FMLA leave for his/her own serious health condition may be required to provide medical documentation certifying fitness to return to work before restoration.

17. An employee who returns from FMLA leave must be restored to his or her previous position or to an equivalent position. An equivalent position is a position in the same civil service title which has the same pay, benefits, and working conditions (including the same worksite or a geographically proximate worksite). A geographically proximate worksite is one that does not involve a significant increase in commuting distance or time. If the employee is denied restoration or other benefits, the facility must be able to show that the employee would not have continued to be employed, or to have received the benefits, if the employee had been continuously employed during the leave period.

18. FMLA leave is not considered a break in service for the purpose of pay and benefits; however, the time spent on unpaid leave is not counted as service in determining benefits, including pensions.

19. Where the restoration of a "key" employee would cause substantial and grievous economic injury to its operations, an employer may refuse to restore such employee provided certain procedures have been followed. A "key" employee is a salaried employee who is among the highest paid ten percent of salaried and unsalaried City employees. A "key" employee must be advised in writing of his/her status as such, and the implications of such status, at the time leave is requested. If it is determined, while the employee is on leave, that restoration will cause grievous economic injury, the facility must notify the employee by certified mail that it intends to deny restoration on completion of leave and must state the basis for its determination. The "key" employee must be given a reasonable time in which to return to work. If he/she does not return to work at that time, the "key" employee may still request restoration at the end of the leave period. If the facility's determination remains the same, the employee must be notified by certified mail that restoration is denied. Please note that "key" employees who are also permanent employees covered under the Civil Service Law, Section 75, must be restored to their positions unless the appropriate procedures required by Civil Service Law have been followed. In addition, "key" employees who are on City provided child care leave concurrent with FMLA child care leave are to be restored to their positions pursuant to the City's leave provisions.

20. Group health insurance must be maintained for an employee on FMLA leave on the same terms as if the employee had continued to work. However, the employer may recover its share of health plan premiums for the period of time the employee was on unpaid leave if

the employee does not return to work after the FMLA leave has expired, unless there is a continuation or onset of a serious health condition or another circumstance occurs which is beyond the employee's ability to control. The NYC Office of Labor Relations has issued additional information on health insurance and welfare funds under separate cover.

21. FLMA leave records must be maintained by the facility as described in Section 825.500 of the regulations issued by the U.S. Department of Labor, which is attached.

22. Employees who exercise their rights under the FMLA are protected as described in Section 825.220 of the regulations issued by the U.S. Department of Labor, which is attached.