

APPENDIX I: SMS/SES GUIDELINES FOR PRO-RATION/PAYMENT OF ANNUAL LEAVE



PROGRAM GUIDELINES

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| SUBJECT: <i>Senior Management Service (SMS) & Selected Exempt Service (SES) Pro-ration/Payment Instructions for Annual Leave</i> | |
| STATUTORY/RULE REFERENCE: <i>Section 110.122(3), Florida Statutes Section 121.091(13)(c)2., Florida Statutes Rule 60L-34, Florida Administrative Code (various sections) Annual General Appropriations Act (GAA)</i> | EFFECTIVE DATE: <i>May 2, 2007</i> <i>Revised:</i> <i>September 12, 2007 December 6, 2007</i> |
| FORMS: N/A | ADDITIONAL REFERENCE MATERIAL: <i>Sample Calculation Work Sheet People First Alert No. SE 17, SES/SMS Proration of Annual Leave</i> |

I. SCOPE AND PURPOSE

This document clarifies and documents how annual leave for Selected Exempt Service (SES) and Senior Management Service (SMS) employees is to be prorated, as required by the Annual General Appropriations Act. As outlined below, the most recent accrual of annual leave shall be prorated when SES and SMS employees separate/terminate from State Government, move to a Career Service position, move to a non State Personnel System (SPS) position, enter the Deferred Retirement Optional Program (DROP), separate/terminate from State Government at the end of DROP (assuming a second payment is applicable), or experience a reduction in full-time equivalency (FTE).

II. DEFINITIONS

For the purposes of this document, the following definitions apply:

Non State Personnel System Position - A position that has been allocated to any state-administered pay plan, other than Career Service, SES, and SMS, and for which the employee will continue to be paid regular salary appropriations through the State Payroll System. This includes positions with the Florida Lottery, the Legislature, the Justice Administration Commission, and the State Court System. In no case does it include employment in any of the Other Personal Services (OPS) employment categories or any position at a state university.

Prior Leave Balance - The balance (up to 480 hours) that the employee carried over on the SES/SMS Anniversary Date.

Separation or Termination from State Government - Severing employment with all positions that have been allocated to any state-administered pay plan for which the employee was paid regular salary appropriations through the State Payroll System. This includes exiting DROP, retiring, entering into an exclusively OPS employment status with the state, or becoming employed with a state university.

SES/SMS Anniversary Date - The annual recurrence of the SES/SMS Leave Accrual Month/Day.

SES/SMS Leave Accrual Month/Day - The actual calendar month and day on which the employee was first appointed to either an SES or SMS position and was first credited 176 hours of annual leave, pursuant to Rule 60L-34.0041(1), F.A.C. Provided, however, that the employee has remained in either the SES or SMS pay plan continuously since then.

III. APPLICABLE STATUTORY AND RULE PROVISIONS

A. Statutory Provisions

Section 110.122(3), F.S.: The payments authorized by this section shall be determined by using the rate of pay received by the employee at the time of retirement, termination, or death, applied to the sick leave time for which the employee is qualified to receive terminal "incentive" pay under the rules adopted by the department pursuant to the provisions of this section. Rules and policies adopted pursuant to this section shall permit terminal pay for sick leave equal to one-eighth of all unused sick leave credit accumulated prior to October 1, 1973, plus one-fourth of all unused sick leave accumulated on or after October 1, 1973. However, terminal pay allowable for unused sick leave accumulated on or after October 1, 1973, shall not exceed a maximum of 480 hours of actual payment. Employees shall be required to use all sick leave accumulated prior to October 1, 1973, before using sick leave accumulated on or after October 1, 1973.

Section 121.091(13)(c)2., F.S: Each employee who elects to participate in the DROP shall be allowed to elect to receive a lump-sum payment for accrued annual leave earned in accordance with agency policy upon beginning participation in the DROP. Such accumulated leave payment certified to the division upon commencement of DROP shall be included in the calculation of the member's average final compensation. The employee electing such lump-sum payment upon beginning participation in DROP will not be eligible to receive a second lump-sum payment upon termination, except to the extent the employee has earned additional annual leave which combined with the original payment does not exceed the maximum lump-sum payment allowed by the employing agency's policy or rules. Such early lump-sum payment shall be based on the hourly wage of the employee at the time he or she begins participation in the DROP. If the member elects to wait and receive such lump-sum payment upon termination of DROP and termination of employment with the employer, any accumulated leave payment made at that time cannot be included in the member's retirement benefit, which was determined and fixed by law when the employee elected to participate in the DROP.

General Appropriations Act (annual proviso language):

All state branches, departments, and agencies which have established or approved personnel policies for employees relating to the payment of accumulated and unused annual leave shall not provide payment which exceeds a maximum of 480 hours of actual payment to each employee for accumulated and unused annual leave.

Upon termination of employees in the Senior Management Service, Selected Exempt Service, or positions with comparable benefits, payment for unused annual leave credits accrued on the member's last anniversary date shall be prorated at the rate of one-twelfth (1/12) of the last annual amount credited for each month, or portion thereof, worked subsequent to the member's last anniversary date.

B. Rule Provisions

Rule 60L-29.002, Definitions, F.A.C.:

- (5) "State Personnel System" means the employment system comprised of positions within the Career Service, Selected Exempt Service, or Senior Management Service, and within all agencies except those in the State University System, the Florida Lottery, the Legislature, the Justice Administration System, or the State Court System.

Rule 60L-34.004, General Requirements for Leaving Earning, Approval, and Use, F.A.C.:

- (6) For career service employees, leave shall be credited to the employee at the close of business on the last day of the pay period, or, in the case of separation, on the last day the employee is on the payroll. For senior management service and selected exempt service employees, leave shall be credited upon the first appointment to either of the pay plans and upon the annual anniversary date of that first appointment.

Rule 60L-34.0041, Annual Leave F.A.C.:

- (1) Employees in senior management service and selected exempt service positions shall be credited with 176 hours of annual leave.
- (4)(a) At the close of business on December 31 of each calendar year, a career service employee's annual leave balance in excess of 240 hours shall be transferred to sick leave on an hour-for-hour basis. In accordance with an agency-wide plan, the employee may carry over up to 360 hours of annual leave credits past December 31. For senior management service and selected exempt service employees, at the close of business on the day before the member's anniversary date, all annual leave credits in excess of 480 hours shall be converted to sick leave on an hour-for-hours basis.
- (5)(b) If an employee moves from one position in the State Personnel System to another position in the State Personnel System in a different agency within thirty-one days, the receiving agency shall credit the employee's unused annual leave.
- (5)(c) If an employee moves from a position in the State Personnel System to a position outside the State Personnel System, the agency shall either transfer unused annual leave credits to the system into which the employee is transferring, or, if the new system will not accept the credits, pay for the credits subject to subsection 60L-34.0041(6), F.A.C. For either transfer or payment, current year credits shall be prorated.
- (6)(b) A senior management service or selected exempt service employee who separates from state government shall be paid for unused annual leave up to a maximum of 480 hours, with the current year's accrual prorated. In case of death of an employee, the 480-hour limit shall not apply and all unused leave at the time of death shall be paid to the employee's beneficiary, estate, or as provided by law.
- (6)(d) An employee electing to participate in DROP may request payment for accrued annual leave at the time of entry into DROP; alternatively, the employee may elect to

defer payment until separation from service. If an employee elects immediate payment, then upon separation from service the employee shall be eligible for accrued annual leave payment only to the extent the employee has earned additional annual leave, which combined with the original payment does not exceed the applicable maximum amount specified in paragraphs (a) or (b) of this subsection 60L-34.0041(6), F.A.C.

IV. POLICY

- A. Pursuant to long standing State practice, when an SMS or SES employee is credited with annual leave on the anniversary date, that entire leave balance is immediately available for use. Consequently, annual leave for SMS and SES employees is managed on a “last in, first out” basis.
- B. There is no rule or statutory limit on the number of times an SES or SMS employee may receive a terminal annual leave payment. Consequently, the 480-hour limit in the GAA applies per payment and is not a lifetime cap.
- C. Annual leave is not prorated when an employee moves between the SES and SMS pay plans (pursuant to Rule 60L-34.004(6), F.A.C.) nor when an SES or SMS employee dies (pursuant to Rule 60L-34.0041(6)(b), F.A.C.). Furthermore, when such movement is between agencies, the entire balance of unused annual leave transfers to the new agency. In this case, the transferred amount may exceed 480 hours. (However, on the next anniversary date the employee is subject to the applicable provisions of Rule 60L-34.0041(4)(a), F.A.C.)
- D. There is no rule or statutory requirement that sick leave credited to SES and SMS employees on their last anniversary date shall be prorated in the same manner as annual leave. Consequently, terminal sick leave is to be prorated and capped only to the extent stipulated in s. 110.122(3), F.S.

V. PROCEDURE

A. Separating/Terminating from State Government

- 1. Multiply 14.67 (176/12) by the number of calendar months for which the employee was employed for at least one day in the SES or SMS since the last anniversary date. The result is the portion of the last 176 hours that are potentially payable. This result is called “Earned Prorated Annual Leave Hours”.
- 2. Subtract all the annual leave hours used (if any) since the last anniversary date and through the last day of employment in the SES or SMS from the total number of “Earned Prorated Annual Leave Hours”. This result is called “Earned and Unused Prorated Annual Leave Hours”.
 - a. If “Earned and Unused Prorated Annual Leave Hours” is a positive number:

Add this amount to the employee’s prior annual leave balance. The result will be the “Total Hours Payable”. However, only the first 480 hours are payable and any excess shall be forfeited.

- b. If “Earned and Unused Prorated Annual Leave Hours” is a negative number:
 - i. If the number of annual leave hours that the employee has used since the last anniversary date did not exceed 176 hours, treat the negative number as a “zero”. In which case the “Total Hours Payable” will be the employee’s entire prior annual leave balance.
 - ii. If the number of annual leave hours that the employee has used since the last anniversary date exceeded 176 hours, reduce the employee’s prior annual leave balance by the amount of hours used in excess of 176. In which case the “Total Hours Payable” will be the left over amount of hours in the prior annual leave balance.

B. *Moving to a Career Service Position*

Perform the calculation the same as if the employee were terminating from State government. However, the resulting total balance (“Total Hours Payable”) shall not be paid; rather, this balance shall transfer into the Career Service. In this case, the amount transferred may exceed 480 hours. (However, once in the Career Service, the employee is subject to the applicable provisions of Rule 60L-34.0041(4)(a), F.A.C.).

C. *Upon Moving to a non SPS Position (i.e., Outside the State Personnel System)*

Perform the calculation the same as if the employee were terminating from State government, to derive the total transferrable balance which, just like the total payable balance upon separation from State government, cannot exceed 480 hours.

1. If the total balance is acceptable to the receiving agency, the employee shall transfer this total amount.
2. If the total balance is more than the number of hours that the receiving agency will accept, transfer the full amount that the receiving agency will accept and pay the employee for the remaining hours. However, the combination of hours transferred and hours paid shall not exceed 480 hours.

D. *Entering DROP*

1. Perform the calculation the same as if the employee were terminating from State government, to derive the “Total Hours Payable” upon DROP entry (up to 480 hours).
2. Determine the number of hours (out of the total balance available for payment) for which the employee desires to be paid and pay this amount (up to 480 hours).
3. The hours after payment will become the employee’s new annual leave balance for use as a DROP employee. This includes all the hours that, had the employee actually separated from State government, would have been forfeited.

E. Exiting DROP

1. Determine whether the employee was paid annual leave upon entering DROP. If the employee was paid 480 hours, no additional payment is due and the employee's entire unused annual leave balance is forfeited.
2. If not paid or paid less than 480 hours, perform the calculation the same as if the employee were terminating from State government, to derive the "Total Hours Payable" (up to 480 hours).
3. Adjust the "Total Hours Payable" amount by subtracting the amount previously paid. The remainder is the amount of the second payment. (All other annual leave hours not used are forfeited).

F. Reduction in FTE

1. Multiply 14.67 (176/12) by the number of calendar months for which the employee was employed at 1.00 FTE for at least one day since the last anniversary date. This is the portion of the 176 hours which was vested at 1.0 FTE.
2. Subtract all the annual leave hours used (if any) since the last anniversary date through the last day at 1.0 FTE from the total number of leave hours vested at 1.0 FTE.
 - a. If the above calculation yields a positive number, subtract that number from 176 hours and multiply the remaining hours by the new FTE. This is the pro-rated portion of the 176 hours that the employee will retain.
 - i. Add together the portion of the 176 hours vested at 1.0 FTE and unused and the pro-rated portion to be retained based on the new FTE.
 - ii. Add this sum to the balance carried forward on the last anniversary date. This results in the new (adjusted) leave balance available until the next anniversary date.
 - b. If the above calculation yields a negative number, but the number of annual leave hours that the employee used subsequent to the last anniversary date did not exceed 176 hours, treat the negative number as a zero and the amount of hours that the employee will retain will be the employee's prior annual leave balance (i.e., the total balance carried forward on the last anniversary date).
 - c. If the above calculation yields a negative number, but the number of annual leave hours that the employee used subsequent to the last anniversary date exceeded 176 hours, reduce the employee's prior annual leave balance by the amount of hours used in excess of 176, and the amount of hours that the employee will retain upon reduction in FTE will be the employee's remaining prior annual leave balance.