

February 19, 2008

The Honorable Amanda K. Spies
Tuscarawas County Prosecuting Attorney
125 East High Avenue
New Philadelphia, Ohio 44663

SYLLABUS:

2008-005

R.C. 325.19 does not entitle a county employee to receive service credit for purposes of vacation leave for any biweekly pay period in which the employee did not work and was not scheduled to work.



STATE OF OHIO
OFFICE OF THE ATTORNEY GENERAL
MARC DANN, ATTORNEY GENERAL

Opinions Section
30 E. Broad St., 15th Floor
Columbus, OH 43215-3400
Telephone: (614) 752-6417
Facsimile: (614) 466-0013
www.ag.state.oh.us

February 19, 2008

OPINION NO. 2008-005

The Honorable Amanda K. Spies
Tuscarawas County Prosecuting Attorney
125 East High Avenue
New Philadelphia, Ohio 44663

Dear Prosecutor Spies:

You have requested the opinion of the Attorney General concerning the calculation of prior service credit for a county employee who receives vacation benefits under R.C. 325.19. You specifically ask: "Under R.C. 325.19, does a county employee accrue leave for time periods where the employee is not in active pay status but rather on disability leave?"

By way of background, you explain that:

The situation involves a long term county employee, who because of illness, exhausted all sick leave and, thereafter, under county policy, retained the right to return to her position under the county's "disability leave policy." After a period of approximately a year, the employee returned to work. The question arose as to the amount of vacation time to which the employee became entitled upon her re-employment. If the year the employee spent off on disability leave counted toward the "years of service," then the employee would be entitled to 200 hours of vacation under the statute, because the employee would have completed twenty-five (25) years. The county took the position that the year spent on disability leave did not count toward the required twenty-five (25) years under the statute.

For the reasons that follow, we conclude that, R.C. 325.19 does not entitle a county employee to receive service credit for purposes of vacation leave for any biweekly pay period in which the employee did not work and was not scheduled to work. Also, R.C. 325.19 does not entitle a county employee who has completed more than one year of county employment to accrue vacation leave for any biweekly pay period in which the employee does not work and is not scheduled to work.

Operation of R.C. 325.19

R.C. 325.19 establishes vacation benefits for certain county employees, in part, as follows:

(A)(1) The granting of vacation leave under division (A)(1) of this section is subject to divisions (A)(2) and (3) of this section. Each full-time employee in the several offices and departments of the county service, including full-time hourly rate employees, after service of one year with the county or any political subdivision of the state, shall have earned and will be due upon the attainment of the first year of employment, and annually thereafter, eighty hours of vacation leave with full pay. *One year of service shall be computed on the basis of twenty-six biweekly pay periods. . . .* A full-time county employee with fifteen or more years of service with the county or any political subdivision of the state shall have earned and is entitled to one hundred sixty hours of vacation leave with full pay. A full-time county employee with twenty-five years of service with the county or any political subdivision of the state *shall have earned and is entitled to two hundred hours of vacation leave with full pay. Such vacation leave shall accrue to the employee at the rate of three and one-tenth hours each biweekly period for those entitled to eighty hours per year; . . . six and two-tenths hours each biweekly period for those entitled to one hundred sixty hours per year; and seven and seven-tenths hours each biweekly period for those entitled to two hundred hours per year.*

. . . .

(2) Full-time employees granted vacation leave under division (A)(1) of this section who render any standard of service other than forty hours per week as described in division (J) of this section and who are in *active pay status* in a biweekly pay period, shall accrue a number of hours of vacation leave during each such pay period that bears the same ratio to the number of hours specified in division (A)(1) of this section as their number of hours which are accepted as full-time in active pay status, excluding overtime hours, bears to eighty hours.

(3) Full-time employees granted vacation leave under division (A)(1) of this section who are in *active pay status* in a biweekly pay period for less than eighty hours or the number of hours of service otherwise accepted as full-time by their employing office or department shall accrue a number of hours of vacation leave during that pay period that bears the same ratio to the number of hours specified in division (A)(1) of this section as their number of hours in active pay status, excluding overtime hours, bears to eighty or the number of hours of service accepted as full-time, whichever is applicable. (Emphasis added.)

R.C. 325.19(A) thus entitles a county employee to receive a certain number of hours of vacation leave each year after the first year of employment. The number of hours of vacation leave to which an employee is entitled under R.C. 325.19 depends upon the number of years of prior

service the employee has rendered, R.C. 325.19(A)(1), as well as the number of hours the employee is in active service each biweekly pay period, R.C. 325.19(A)(3).¹

Prior Service for Purposes of R.C. 325.19

The calculation of an employee's prior service credit for purposes of R.C. 325.19 was explained in 1994 Op. Att'y Gen. No. 94-008 at 2-31, in part, as follows:

Pursuant to R.C. 325.19(A)(1), "[o]ne year of service shall be computed on the basis of twenty-six biweekly pay periods." Thus, whether a county employee has completed a year of service for purposes of R.C. 325.19 depends on whether the employee has completed twenty-six pay periods. As stated in the syllabus of 1966 Op. Att'y Gen. No. 66-120, in determining the amount of an employee's prior service for vacation leave purposes, "credit should be given for periods of service which were part-time, and credit should be given for periods of service which were full-time but were seasonal or irregular during the course of the year."

Thus, an employee receives one year of service for twenty-six completed pay periods. *See, e.g.*, 2003 Op. Att'y Gen. No. 2003-021 at 2-165 ("county employees are entitled to vacation leave based on years of service and, in turn, one year of service is computed on the basis of twenty-six biweekly pay periods. An employee need not have worked full-time during a biweekly pay period in order to receive full service credit for that period").

¹ Because you ask about vacation benefits afforded a county employee by R.C. 325.19, this opinion will not address vacation benefits to which a county employee may be entitled pursuant to a collective bargaining agreement under R.C. Chapter 4117, *see, e.g.*, 2005 Op. Att'y Gen. No. 2005-020 at 2-188 ("Ohio law also empowers the sheriff and other public employers to enter into collective bargaining agreements with the exclusive representatives of bargaining units of public employees. The collective bargaining agreements may vary fringe benefits (such as sick leave or payment for unused sick leave) from the amounts provided by statute, increasing or decreasing the benefits granted to the employees"). Similarly, you have not indicated that the appointing authority of the employee you describe has adopted a vacation leave policy for its employees under its authority to set such employees' compensation, *see, e.g., Cataland v. Cahill*, 13 Ohio App. 3d 113, 114, 468 N.E.2d 388 (Franklin County 1984) ("[s]ick leave and vacation leave prescribed by statute are minimums only and, where the appointing authority is authorized to establish compensation of employees, either sick-leave or vacation-leave benefits in addition to the minimums prescribed by statute may be granted as part of compensation"), or an alternative vacation leave schedule under R.C. 325.19(F), *see, e.g.*, 2008 Op. Att'y Gen. No. 2008-004 (county appointing authority's power to establish alternative vacation leave schedule). Accordingly, this opinion will address the vacation benefits to which a county employee is entitled only as prescribed by R.C. 325.19.

As described in your opinion request, the employee about whom you ask was on disability leave for one year, and was then rehired by the county. You question whether the year the employee was on disability leave constitutes a year of completed service for purposes of R.C. 325.19.

It appears that the employee you describe was placed on disability leave without pay for six months, followed by a six-month disability separation, in accordance with the county's personnel policy. We further understand that, during that twelve-month period, the employee was in a no pay status. Assuming that this employee did not work and was not scheduled to work for any pay period within that one year, the employee did not complete any biweekly pay period during that time for purposes of R.C. 325.19. *See* 1989 Op. Att'y Gen. No. 89-088 at 2-419 (R.C. 325.19 "has been construed as meaning that an employee is entitled to service credit for each biweekly pay period in which the employee actually worked or was scheduled to work. Op. No. 88-095; Op. No. 87-055; 1982 Op. Att'y Gen. No. 82-055"). Because the employee you describe completed no biweekly pay periods during her one year of disability, she is not entitled to receive service credit for those pay periods.

Accrual of Vacation Leave under R.C. 325.19

Part of your question concerns the amount of vacation leave to which the employee became entitled upon her re-employment with the county, following her disability leave. As explained in 2002 Op. Att'y Gen. No. 2002-011 at 2-61 to 2-62:

Following the first year of employment, the employee has earned and is credited with eighty hours of vacation leave. . . . It is generally understood that a county employee must work for an entire year before being granted any vacation leave, and will then be granted eighty hours of vacation leave that may be used beginning in the second year of employment. This procedure is consistent with the language providing that eighty hours of vacation leave is "earned and will be due upon the attainment of the first year of employment." R.C. 325.19(A)(1); *see* 1994 Op. Att'y Gen. No. 94-008; 1989 Op. Att'y Gen. No. 89-012; 1985 Op. Att'y Gen. No. 85-035.

During each of the next six years, the employee accrues vacation leave biweekly at a rate at which the amount accrued each year totals eighty hours. This is the amount of vacation leave to which the employee is entitled for years two through seven. At the end of each of those years, the employee has accrued a year's worth of vacation.

During the eighth year, the employee also accrues eighty hours of vacation leave. However, the statute makes a change in the amount of vacation leave earned, stating that a full-time county employee with eight years of service "shall have earned and is entitled to" one hundred twenty hours of vacation leave. Thus, upon completion of the eighth year, the employee has earned and is entitled to one hundred twenty hours of vacation leave, but has accrued only eighty hours of vacation leave during that year. Accordingly, upon completion of the eighth year,

the forty hours of vacation leave to which the employee has become entitled, but which did not accrue during the eighth year, must be placed to the employee's credit. (Footnote omitted.)

Thus, R.C. 325.19(A) grants an employee forty hours of vacation leave upon completion of eight, fifteen, and twenty-five years of service, in addition to the vacation leave with which the employee was credited in each biweekly pay period during the eighth, fifteenth, and twenty-fifth years.

The employee you describe had accumulated twenty-four years of service prior to the year she spent on disability. Again, assuming that the employee did not work and was not scheduled to work during any biweekly pay period during that year, she is not entitled to receive service credit for any biweekly pay period during that year for purposes of calculating the amount of vacation leave to which she is entitled under R.C. 325.19 upon her return to county employment following her disability. Instead, upon the employee's return to county employment, she will begin accruing vacation leave at the rate of six and two-tenths hours each biweekly period until she completes twenty-five years of service.² Upon completion of twenty-five years of service, R.C. 325.19(A) entitles this employee to have placed to her credit forty hours of vacation leave in addition to the amounts with which she was credited while employed during that twenty-fifth year of service. 2002 Op. Att'y Gen. No. 2002-011 (syllabus) (“[p]ursuant to R.C. 325.19(A)(1), a full-time county employee has earned and is entitled to be credited with forty hours of vacation leave upon the completion of eight, fifteen, or twenty-five years of service, in addition to the amount of vacation leave already accrued on a biweekly basis during each of those years”). In addition, upon completion of the employee's twenty-fifth year of service, R.C. 325.19(A) entitles the employee to begin accruing vacation leave at the increased rate of seven and seven-tenths hours each biweekly period.

² In addition, assuming that the employee you describe did not work and was not scheduled to work during any pay period during her year of disability, she was not in active pay status during that year, and did not accrue any vacation benefits during that time. *See, e.g.*, 1982 Op. Att'y Gen. No. 82-055 (syllabus, paragraph 2) (stating, in part, “[f]ull-time [county] employees . . . who work during only nine months of the year are not entitled to accrue . . . vacation leave pursuant to R.C. 325.19 for the three months during which they are not scheduled to work, regardless of the number of installments in which the salary of such employees is paid”).

Conclusion

Based upon the foregoing, it is my opinion, and you are hereby advised that, R.C. 325.19 does not entitle a county employee to receive service credit for purposes of vacation leave for any biweekly pay period in which the employee did not work and was not scheduled to work.

Respectfully,

A handwritten signature in black ink, appearing to read "Marc Dann". The signature is fluid and cursive, with a long horizontal stroke at the end.

MARC DANN
Attorney General