

**OPINION NO. 83-097****Syllabus:**

1. When a full-time county employee is tardy, ill or otherwise absent without approved leave, the appointing authority may not reduce the amount of vacation leave which accrues to the employee pursuant to R.C. 325.19(A) for the biweekly pay period in which the tardiness or absence occurs.

2. When a full-time state employee is tardy, ill or otherwise absent without approved leave, the appointing authority may not reduce the amount of vacation leave which accrues to the employee pursuant to R.C. 124.13 for the biweekly pay period in which the tardiness or absence occurs.
3. The sick leave credit which accrues to a county employee pursuant to R.C. 124.38 is to be prorated to the employee's hours of completed service in each pay period in accordance with 1 Ohio Admin. Code 123:1-32-03(A) and 123:1-47-01(A)(24).

To: **Thomas E. Ferguson, Auditor of State, Columbus, Ohio**  
By: **Anthony J. Celebrezze, Jr., Attorney General, December 21, 1983**

I have before me your request for my opinion in response to several questions concerning the vacation and sick leave benefits provided to state and county employees. Your first question reads as follows:

Where a full-time county employee is not in active pay status for an entire biweekly pay period, is the amount of vacation leave accruing to his credit for the pay period pursuant to Section 325.19(A), Revised Code, to be reduced proportionately?

R.C. 325.19(A) provides vacation benefits to full-time county employees in the following terms:

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 eight or more years of service with the county or any political subdivision of the state shall have earned and is entitled to one hundred twenty hours of vacation leave with full pay. 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 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; four and six-tenths hours each biweekly period for those entitled to one hundred twenty 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. (Emphasis added.)

The statute provides for a full-time county employee to accumulate vacation leave on the basis of biweekly pay periods. For purposes of this statutory section the term "full-time employee" is defined as "an employee whose regular hours of service for a county total forty hours per week, or who renders any other standard of service accepted as full-time by an office, department or agency of county service." R.C. 325.19(G)(1). My predecessor thus had occasion to note that "the twenty-six biweekly pay periods referred to in R.C. 325.19 must be interpreted as meaning those biweekly periods in which an employee actually works or is scheduled to work." 1982 Op. Att'y Gen. No. 82-055, p. 2-159.

You have specifically asked whether a full-time county employee must be in an "active pay status" during an entire biweekly pay period in order to accrue the

benefits established under R.C. 325.19(A). However, the term "active pay status" is no longer used in this statute. You have indicated that your concern lies with employees who are scheduled to work, but take unauthorized leave for part of a biweekly pay period, such as employees who are tardy or who absent themselves from work although they have already used all of the vacation and sick leave available to them. My predecessor addressed this issue in 1971 Op. Att'y Gen. No. 71-093, p. 2-319, and stated:

I can find no statutory authority for the practice of reducing the amount of vacation time accrued by an employee in active pay status because of tardiness, or because he is ill and has no remaining sick leave. . . .

On the other hand, the Revised Code provides other means for dealing with an employee who is incompetent or who neglects his duty. He is subject to a reduction in pay, to suspension, or to removal.

The employees with which you have expressed concern are regularly scheduled to work a workweek which the appointing authority considers to be full-time. There is no statutory authority for the reduction of the vacation benefits which accrue to such an employee under R.C. 325.19(A), because the employee actually works for fewer hours than he has been scheduled. See 1976 Op. Att'y Gen. No. 76-001, p. 2-2 ("It is apparent from R.C. 325.19 that vacation leave accrues to full-time county employees on the basis of pay periods, and the statute does not differentiate on the basis of hours worked." (Emphasis in original.)) I, therefore, conclude that when a full-time county employee is tardy, ill but out of sick leave, or otherwise absent without approved leave, the appointing authority may not reduce the amount of vacation leave which accrues to the employee pursuant to R.C. 325.19(A) for the biweekly pay period in which the tardiness or absence occurs.

Your second question reads as follows:

Where a full-time state employee is not in active pay status for an entire biweekly pay period, is the amount of vacation leave accruing to his credit for the pay period pursuant to Section 124.13 (formerly 121.161), Revised Code, to be reduced proportionately?

R.C. 124.13 establishes vacation benefits for full-time state employees by providing, in pertinent part:

Each full-time state employee, including full-time hourly-rate employees, after service of one year with the state, 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 state employee, or county welfare employee with eight or more years of service with the state or any political subdivision of the state shall have earned and is entitled to one hundred twenty hours of vacation leave with full pay. A full-time state employee or county welfare employee with fifteen or more years of service with the state 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 state employee or county welfare employee with twenty-five years of service with the state 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; four and six-tenths hours each biweekly period for those entitled to one hundred twenty 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. (Emphasis added.)

It is, thus, clear that the pertinent statutory language used in R.C. 325.19 and R.C. 124.13 to confer vacation leave upon full-time county and state employees is identical. Furthermore, there is no statutory authority for reduction of vacation leave benefits accruing to full-time state employees for the reasons with which you have indicated concern. Accordingly, I conclude that when a full-time state employee is tardy, ill but out of sick leave, or otherwise absent without approved leave, the appointing authority may not reduce the amount of vacation leave which the employee accrues pursuant to R.C. 124.13 for the biweekly pay period in which the tardiness or absence occurs.

Your third and fourth questions concern the proration of sick leave benefits conferred upon county employees under R.C. 124.38. You have asked the following questions:

Where a county employee is in active pay status for less than 80 hours in a biweekly pay period, is the amount of sick leave accruing to his credit pursuant to Section 124.38, Revised Code, to be reduced proportionately?

Where a county employee is in active pay status for more than 80 hours in a biweekly pay period, is the amount of sick leave accruing to his credit pursuant to Section 124.38, Revised Code, to be increased proportionately, or is the employee's entitlement under this section limited to 15 days of sick leave per year?

R.C. 124.38 sets forth sick leave benefits for county employees by providing, in pertinent part:

Each employee in the various offices of the county, municipal, and civil service township service, each employee of any state college or university, and each employee of any board of education for whom sick leave is not provided by section 3319.141 of the Revised Code, shall be entitled for each completed eighty hours of service to sick leave of four and six-tenths hours with pay. Employees may use sick leave, upon approval of the responsible administrative officer of the employing unit, for absence due to personal illness, pregnancy, injury, exposure to contagious disease which could be communicated to other employees, and to illness, injury, or death in the employee's immediate family. Unused sick leave shall be cumulative without limit. When sick leave is used, it shall be deducted from the employee's credit on the basis of one hour for every one hour of absence from previously scheduled work. The previously accumulated sick leave of an employee who has been separated from the public service shall be placed to his credit upon his re-employment in the public service, provided that such re-employment takes place within ten years of the date on which the employee was last terminated from public service. An employee who transfers from one public agency to another shall be credited with the unused balance of his accumulated sick leave up to the maximum of the sick leave accumulation permitted in the public agency to which the employee transfers. The appointing authority of each employing unit shall require an employee to furnish a satisfactory written, signed statement to justify the use of sick leave. If medical attention is required, a certificate stating the nature of the illness from a licensed physician shall be required to justify the use of sick leave. Falsification of either a written, signed statement or a physician's certificate shall be grounds for disciplinary action including dismissal. (Emphasis added.)

The Department of Administrative Services has promulgated rules for the administration of sick leave benefits conferred under R.C. 124.38. 1 Ohio Admin. Code 123:1-32-03(A) provides as follows:

Sick leave credit. All employees in the various offices of the counties and state colleges or universities, including part-time,

seasonal, and intermittent, shall earn sick leave credit at the rate of four and six-tenths hours for each eighty hours of completed service unless the county agency has adopted policies for accumulation of sick leave in accordance with the provisions of section 124.39 of the Revised Code.<sup>1</sup> Sick leave credit shall be prorated to the hours of completed service in each pay period. (Footnote added.)

The term "completed service" as used therein is defined under 1 Ohio Admin. Code 123:1-47-01(A)(24) which provides:

For purposes of Chapter 123:1-1 through 123:1-47 of the Administrative Code:

. . . .

"Completed service"—Means hours actually worked, including overtime, and hours of sick leave, vacation leave, or personal leave used, but does not include time on disability separation, leave of absence without pay, the period an employee is receiving disability leave benefits, military leave without pay or layoff. In the case of an employee who works on a seasonal or academic year basis but is paid on an annual basis, completed service shall not include the period of time during which the employee is paid but is not working.

Your questions pertaining to R.C. 124.38 use the phrase "active pay status." However, this phrase does not appear in the statutory or regulatory language concerning the accrual of sick leave benefits for county employees. Rather, the rules of the Department of Administrative Services clearly provide that sick leave credit accruing to a county employee must be prorated to the employee's hours of completed service in each pay period.

You have indicated, however, that discussion in an opinion of my predecessor has raised concerns regarding the amounts of sick leave an employee may accrue during one year. In 1977 Op. Att'y Gen. No. 77-029, p. 2-107, reference was made to the analysis by the Legislative Services Commission of Am. Sub. H.B. 93, 107 Gen. A. (1967) (eff. May 17, 1967), which changed the basis upon which sick leave is credited to an employee. The analysis indicated that, under the amendments proposed in Am. Sub. H.B. 93, a full-time employee could earn fifteen days of sick leave each year. Reference to this comment in the analysis of Am. Sub. H.B. 93 has caused some confusion in that it may appear to imply that an employee cannot earn sick leave benefits in excess of fifteen days per year. However, the language of R.C. 124.38 imposes no ceiling on the amount of sick leave an employee may earn. Rather, it merely establishes the method by which sick leave is to be computed and credited to an employee. Further, the rules promulgated by the Department of Administrative Services impose no maximum limit on the hours of sick leave which a county employee may accrue. The pertinent rules simply provide for proration to the employee's completed hours of service. Accordingly, if a county employee completes more than eighty hours of service during a biweekly pay period, the amount of sick leave credit must be proportionately increased pursuant to the statutory formula.

In summary, it is my opinion, and you are advised, that:

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<sup>1</sup> R.C. 124.39 authorizes political subdivisions, and state colleges or universities, to adopt plans for the reimbursement of unused sick leave credit, but does not provide for alternative methods by which sick leave may accrue to an employee. However, the Supreme Court, in Ebert v. Stark County Board of Mental Retardation, 63 Ohio St. 2d 31, 32, 406 N.E.2d 1098, 1099-1100 (1980) (per curiam), declared that R.C. 124.38 provides a minimum sick leave benefit to employees of the various offices addressed by the statute. An appointing authority may grant its employees a greater sick leave benefit than is conferred by R.C. 124.38, pursuant to its authority to fix compensation. 1982 Op. Att'y Gen. No. 82-055; 1981 Op. Att'y Gen. No. 81-052.

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