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THE REVISED CODE DOES NOT AUTHORIZE THE PAYMENT OF HOLIDAY OR VACATION PAY TO PART-TIME COUNTY EMPLOYEES—§325.19, R.C.

SYLLABUS:

1. Neither Section 325.19, Revised Code, or any other section of the Revised Code, authorizes the payment of holiday or vacation pay to part-time county employees.

2. There is no statutory designation of what constitutes full-time employment for county employees within the purview of Section 325.19, Revised Code, and, in the absence of such designation, a full-time employee is a person who regularly works all of the working hours required by the employer as normal working hours for his employees.

Columbus, Ohio, December 5, 1962

Hon. Bernard V. Fultz, Prosecuting Attorney
Meigs County, Pomeroy National Band Building, Pomeroy, Ohio

Dear Sir:

I have received your request for my opinion in which you ask the following questions as to county employees:

“1. Are part time employees entitled to vacation pay or holiday pay under the provisions of Section 325.19 of the Ohio Revised Code?

“2. If not, is there any other code provision authorizing payment to part time employees for holiday or vacation pay, or both?

“3. Is there any criterion for determining full time employment such as is found in Section 143.11, pertaining to state employees?

“4. Is a person who works regularly, but less than a five day week, considered to be a full time or a part time employee?”

A search of the Revised Code reveals only one section which deals with vacation leave and holiday pay for county employees. Section 325.19, Revised Code, provides as follows:

“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, shall be entitled during each

year thereafter, to two calendar weeks, excluding legal holidays, of vacation leave with full pay. Employees having fifteen or more years of county service are entitled during each year thereafter, to three calendar weeks, excluding legal holidays, of vacation leave with full pay. Two calendar weeks of leave with pay will have been earned and will be due an employee upon attainment of the first anniversary of employment and annually thereafter, and three calendar weeks of leave with pay will have been earned and will be due an employee upon attainment of the fifteenth anniversary of employment and annually thereafter. The annual leave during any one calendar year may be extended to include unused vacation leave of previous years provided the total leave taken in any one year shall not exceed six weeks. An employee shall be entitled to compensation for the pro-rated portion of any earned but unused vacation leave to his credit at time of separation.

“In addition to such vacation leave, *such* county employee, working on a per diem or hourly basis, shall be entitled to eight hours of holiday pay for New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day, of each year, if he is a regular employee with at least six months fulltime county service prior to the month when such holiday occurs except that interruption of service due to illness or injury caused or induced by the actual performance of official duties and not by an employee’s negligence shall not affect such employee’s right to holiday pay.

“In the case of the death of a county employee, the unused vacation leave and unpaid overtime to the credit of any such employee, shall be paid in accordance with section 2113.04 of the Revised Code, or to his estate.” (Emphasis added)

You will note that the first paragraph of the section, dealing with vacation leave, is made specifically applicable to “full-time” employees “including full-time hourly rate” employees. You will also note that the second paragraph of the section, dealing with holiday pay is specifically applicable to “such” employees which, in view of that term’s position in the section, must be deemed to apply to the same employees covered by the first paragraph. This wording as to “full-time” employees represents a change from the form of the section as it existed prior to 1959, which included no such term and, indeed, set up a *pro-rata* system for computing the vacation earned by per diem and hourly rate employees. Under these circumstances, therefore, I must conclude that part-time employees are not entitled to vacation or holiday pay under the provisions of Section 325.19, Revised Code.

In answer to your second question, I have been unable to discover any other section of the Revised Code which might be construed to authorize holiday or vacation pay for part-time county employees.

As to the third question, Section 143.11, Revised Code, referred to therein, states that forty hours is the standard work week for all employees whose salary or wage is paid in whole or in part by the state. Unfortunately, however, there appears to be no such specific designation as to the standard work week for county employees.

Without such a specific designation, what is a full-time employee must depend on what the particular employer requires as the normal working day and the normal working week for his employees. I would assume that, as to county offices, this would approximate the forty hours per week stipulated for state workers, as that is the ordinary working week for most public, as well as private, employees.

Answering your third question, therefore, there is no statutory designation of what constitutes full-time employment for county employees and, in the absence of such designation, a full-time employee is a person who regularly works all of the working hours required by the employer as normal working hours for his employees.

Coming to your fourth question, if the person working less than a five-day week does not work the number of hours in a week considered by the employer to be normal working hours for his employees, then such person would not be a full-time employee. In this regard, I might note that in certain occupations employees might work more hours in a day than do other employees. That is, the regular work week for employees might be eight hours a day for five days, forty hours, but certain employees might work ten hours a day for four days, which is also forty hours; but all would be full-time employees, as they would be working the normal forty hours. Accordingly, whether the person concerned should be considered a full-time employee depends upon whether he works the number of hours in a week considered as normal by the employer for full-time employees, regardless of the actual days in the week on which he works.

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

1. Neither Section 325.19, Revised Code, or any other section of the Revised Code, authorizes the payment of holiday or vacation pay to part-time county employees.

2. There is no statutory designation of what constitutes full-time employment for county employees within the purview of Section 325.19, Revised Code, and, in the absence of such designation, a full-time employee is a person who regularly works all of the working hours required by the employer as normal working hours for his employees.

Respectfully,
MARK MCELROY
Attorney General