

OPINION NO. 94-008**Syllabus:**

Pursuant to R.C. 325.19(A), a full-time county employee does not become entitled to receive vacation leave until completion of his first year of full-time county employment, at which time a lump sum of vacation leave, as prescribed by R.C. 325.19(A)(1), (2), and (3), is placed to his credit. Thereafter, pursuant to R.C. 325.19(A)(1), a full-time county employee accrues vacation leave on a biweekly basis in an amount, subject to R.C. 325.19(A)(2) and (3), that reflects his total service time, including prior service as a part-time county employee.

To: Steven C. LaTourette, Lake County Prosecuting Attorney, Painesville, Ohio

By: Lee Fisher, Attorney General, March 18, 1994

You have asked for an opinion concerning the operation of R.C. 325.19 and its application to a full-time county employee who has previously been employed by the county in a part-time capacity. You specifically ask:

1. Does R.C. 325.19(A) require that a full-time employee, who becomes full-time only after accruing one or more years of service time as a part-time employee, be credited with eighty hours of vacation leave immediately upon becoming a full-time employee?
2. Does R.C. 325.19(A) require that a full-time employee, who becomes full-time just one pay period shy of completing one year of service as a part-time employee, be credited with eighty hours of vacation leave immediately upon completing one pay period of service as a full-time employee?
3. Does R.C. 325.19(A) require that a full-time employee, who becomes full-time only after accruing at least eight, fifteen, or twenty-five years of service as

a part-time employee, be credited with one hundred twenty, one hundred sixty, or two hundred hours, respectively, of vacation leave immediately upon becoming a full-time employee?

4. Does R.C. 325.19(A) require that a full-time employee, who becomes full-time just one pay period shy of completing eight, fifteen, or twenty-five years of service as a part-time employee, be credited with one hundred twenty, one hundred sixty, or two hundred hours, respectively, of vacation leave immediately upon completing one pay period of service as a full-time employee?

Your letter states that the Lake County Board of Commissioners has not passed a resolution under R.C. 325.19(B) granting vacation benefits to part-time county employees. This opinion will, therefore, be limited to a discussion of the vacation benefits to which a full-time county employee is entitled by R.C. 325.19(A). It also will not address possible alternative vacation leave benefits to which various county employees may be entitled either under an applicable collective bargaining agreement or through an individual county appointing authority's adoption of a vacation leave benefit plan that exceeds the minimums established by R.C. 325.19.

Operation of R.C. 325.19

R.C. 325.19 states, in pertinent part:

(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 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 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; 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.

(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 (I) 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.

(B) A board of county commissioners, by resolution, may grant vacation leave with full pay to part-time county employees. A part-time county employee shall be eligible for vacation leave with full pay upon the attainment of the first year of employment, and annually thereafter. The ratio between the hours worked and the vacation hours awarded to a part-time employee shall be the same as the ratio between the hours worked and the vacation hours earned by a full-time employee as provided for in this section.

....

(I) As used in this section:

(1) "Full-time employee" means 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.

(2) "Part-time employee" means an employee whose regular hours of service for a county total less than forty hours per week, or who renders any other standard of service accepted as part-time by an office, department, or agency of county service, and whose hours of county service total at least five hundred twenty hours annually. (Emphasis added.)

In order to be entitled to receive vacation leave under R.C. 325.19(A), a county employee must be, among other things, a *full-time* employee, as defined in R.C. 325.19(I)(1).

Pursuant to R.C. 325.19(A)(1), the number of hours of annual vacation leave to which a full-time county employee is entitled depends upon the number of hours in that employee's standard workweek, as well as the employee's number of years of prior service; R.C. 325.19(A)(2) and (3) decrease the amount of vacation leave provided to a full-time county employee who works a standard workweek of less than forty hours or who is in active pay status in a biweekly period for less than eighty hours or the number of hours considered as full time by the appointing authority.¹

Further, in accordance with R.C. 325.19(A)(1), a full-time county employee who has completed one year of *service* with the county or any political subdivision,² upon attainment of the first year of *employment*, and annually thereafter, "shall have earned and will be due...eighty

¹ Although R.C. 325.19(A)(2) and (3) decrease the rates at which vacation leave *accrues*, such decreased rates appear also to apply to the vacation leave granted to a full-time county employee upon completion of his first year of employment, even though vacation leave does not technically "accrue" during that first year of employment. See *generally* 1985 Op. Att'y Gen. No. 85-035 (syllabus, paragraph one) ("[p]ursuant to R.C. 325.19, a full-time county employee does not accrue vacation benefits during his first year of employment").

² R.C. 9.44 also entitles certain county employees to receive prior service credit for time spent in the service of the state.

hours of vacation leave with full pay." Thus, a full-time county employee does not have any vacation leave placed to his credit until he has completed one year of "service" and has "attain[ed]...the first year of employment." Upon completion of the first year of employment, the employee is credited with a lump sum of vacation leave, determined in accordance with R.C. 325.19(A)(1), (2), and (3); thereafter, the employee accrues vacation leave on a biweekly basis.

"Service" for Purposes of R.C. 325.19

It is well settled that, as used in R.C. 325.19, the word "service" is not synonymous with the word "employment." Rather, "service" is a broader term than "employment," and includes not only time in which a person is an employee, but also time in service as an officer. 1989 Op. Att'y Gen. No. 89-012. Because employment is merely one type of service, a county employee who has attained the first year of employment will also have completed one year of service, for purposes of R.C. 325.19(A)(1).

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." Although R.C. 325.19 has been amended numerous times since the issuance of Op. No. 66-120, the portion of the statute governing the calculation of a year of service credit has remained unchanged. Consequently, a number of opinions issued since that time have adopted the conclusion of Op. No. 66-120. See, e.g., 1989 Op. Att'y Gen. No. 89-088 (syllabus, paragraph four); 1988 Op. Att'y Gen. No. 88-095. See also *State ex rel. North Olmsted Fire Fighters Assn. v. City of North Olmsted*, 64 Ohio St. 3d 530, 597 N.E.2d 136 (1992) (adopting a like interpretation of similar language in former R.C. 121.161, which governed vacation leave for state employees). Accordingly, for purposes of R.C. 325.19, service as a part-time employee is included in calculating one year of service.

Pursuant to R.C. 325.19(A)(1), the amount of a full-time county employee's "service" determines the number of hours of vacation leave the employee accrues each biweekly period after completion of the first year of employment. For example, a full-time county employee who has completed his first year of employment and who was previously employed by the county on a part-time basis for twenty-five years begins accruing vacation leave at the rate of seven and seven-tenths hours each biweekly period after completion of the first year of employment. In contrast, a full-time county employee who has completed his first year of employment and who was previously employed by the county on a part-time basis for only two years begins accruing vacation leave at the rate of only three and one-tenth hours of vacation leave each biweekly period upon completion of the first year of employment.

"Employment" for Purposes of R.C. 325.19(A)

The meaning of the word "employment," as used in R.C. 325.19(A)(1), is significant in determining when an employee becomes entitled to begin receiving vacation benefits. Upon completion of the first year of employment, a full-time county employee is entitled to have a lump sum of vacation leave, as prescribed by R.C. 325.19(A)(1), (2), and (3), placed to his credit. R.C. 325.19(A). Thereafter, vacation leave begins accruing at the biweekly rate specified in R.C. 325.19(A)(1), (2), or (3), with increases in the amount of vacation leave based upon the employee's years of prior "service." Your specific concern is whether prior part-time

county employment is included in determining whether a full-time county employee has attained his "first year of employment," for purposes of R.C. 325.19(A)(1).

The word "employment," as used in R.C. 325.19(A)(1), is not defined by statute. As stated in *Heidtman v. City of Shaker Heights*, 163 Ohio St. 109, 126 N.E.2d 138 (1955) (syllabus, paragraph one): "Where a statute is silent as to the meaning of a word contained therein and that word has both a wide and a restricted meaning, courts in interpreting such a statute must give such word a meaning consistent with other provisions of the statute and the objective to be achieved thereby." The meaning of the word "employment" as used in R.C. 325.19(A) must, therefore, be determined with reference to the statutory scheme of which it is part.

Pursuant to R.C. 325.19(A)(1), the General Assembly has granted a fixed number of hours of vacation leave to full-time county employees who work a standard workweek of forty hours. Within R.C. 325.19(A)(2) and (A)(3), however, the General Assembly has proportionately reduced the number of hours of vacation leave accrued by a full-time county employee who works a standard workweek of less than forty hours or who is in active pay status in a biweekly period for less than eighty hours or other standard considered as full time.

The scheme established by R.C. 325.19(A), therefore, evidences a clear legislative intent to grant vacation leave to a full-time county employee, after completion of his first year of employment, in an amount based upon the number of hours for which that person is employed in a standard workweek, and also to reduce vacation benefits for any employee who is in active pay status in a biweekly pay period for less than eighty hours. To allow a full-time employee to include prior part-time county employment in calculating attainment of his first year of employment would, in effect, retroactively grant the employee vacation benefits for employment as a part-time employee just as if such time were spent as a full-time employee, a result clearly not intended by the General Assembly. Cf. 1980 Op. Att'y Gen. No. 80-057 at 2-227 (contrasting the terms service and employment, as used in R.C. 325.19, stating: "The effect [of allowing a county employee prior service credit for time spent as an officer] is not to award vacation leave benefits to a county officer retroactively upon reemployment with the county, but is, rather, to enable him to accrue vacation leave as a county employee at a rate which reflects his years of service as an officer").

For example, if, for purposes of R.C. 325.19(A)(1), prior part-time employment were included in calculating attainment of the first year of employment, a person who begins full-time county employment, working a standard workweek of forty hours, and who has prior county service of eleven months as a part-time employee would complete his first year of employment after working only one month as a full-time county employee; at that time, eighty hours of vacation leave would be placed to his credit. Such employee would receive the same amount of vacation leave as would a full-time county employee who had worked a standard workweek of forty hours for each of the fifty-two weeks during that same twelve month period. Such a result is contrary to the legislative intent that a full-time county employee receive vacation leave in an amount based upon the number of hours that employee regularly works.

The legislative intent may, however, be carried out by reading "employment," as used in R.C. 325.19(A)(1), as referring only to full-time employment, the only type of employment subject to division (A) of R.C. 325.19.³ Under such a reading, the two employees in the

³ R.C. 325.19(B) permits a board of county commissioners to grant vacation leave benefits to its part-time employees. As with the scheme for full-time employees, vacation leave is

example above would receive the same number of vacation leave hours, but only after both had completed one year of full-time employment. These employees would, however, have different amounts of service credit for purposes of accruing vacation leave benefits under R.C. 325.19(A) in the future. After completion of the first year of full-time employment, the employee who had been previously employed for eleven months on a part-time basis would have twenty-three months of service credit, while the employee who had not been previously employed would have only twelve months of service credit.

Thus, a reading of the word "employment," as used in R.C. 325.19(A)(1), as including only full-time county employment, carries out the legislative intent that the amount of vacation leave received by a full-time employee reflect the number of hours the employee works in a standard workweek. Accordingly, only when a person has completed one year of *full-time* county employment, even though such full-time employment may be completed in more than one county, Op. No. 89-012, does he receive a lump sum of vacation leave, as prescribed by R.C. 325.19(A)(1), (2), and (3). Annually thereafter, vacation leave accrues to the employee on a biweekly basis in accordance with R.C. 325.19(A) for the time he remains a full-time county employee. Consequently, in the examples you describe, a full-time county employee is not entitled to receive vacation benefits under R.C. 325.19(A) until he has completed one year of employment as a full-time county employee, at which time he will become entitled to have a lump sum of vacation leave, as prescribed by R.C. 325.19(A)(1), (2), and (3), placed to his credit.

Vacation Benefits Following the First Year of Employment Under R.C. 325.19(A)

After completion of the first year of full-time employment, a full-time county employee's annual vacation leave is not granted in a lump sum, but accrues to the employee on a biweekly basis. The amount of vacation leave that accrues is determined by the number of years of service to that employee's credit. For example, a full-time county employee who has ten years of service and who works for forty hours per week is entitled to receive one hundred twenty hours of vacation leave per year; such leave accrues to the employee at the rate of four and six-tenths hours per biweekly pay period.

The scheme governing the timing of granting increases in annual vacation leave was explained in 1982 Op. Att'y Gen. No. 82-093 at 2-258 to 2-259, as follows:

R.C. 325.19(A) specifies when an employee begins accruing vacation leave at an increased rate based upon his years of service, by providing, in pertinent part, "vacation leave shall accrue to the employee at the rate of...four and six-tenths hours each biweekly period to those entitled to one hundred twenty hours per year...." Since an employee is not entitled to one hundred twenty hours of vacation until he has completed at least eight years of service, his vacation leave does not properly begin to accrue at the increased rate until he has completed his eighth year.

granted to part-time county employees upon attainment of the first year of employment, and annually thereafter, and the number of hours awarded are based upon the number of hours worked by that part-time employee. Since you have not asked, this opinion will not consider the meaning of the word "employment," as used in division (B) of R.C. 325.19.

....
...[U]pon completion of his eighth year of service an employee becomes entitled to begin accruing vacation benefits at the increased rate of four and six-tenths hours per biweekly period. Similarly, upon completion of fifteen and twenty-five years of service a full-time county employee is entitled to accrue vacation benefits at the rates of six and two-tenths hours and seven and seven-tenths hours, respectively, each biweekly period. However, notwithstanding the fact that an employee is not entitled to accrue vacation leave at the increased rate of four and six-tenths hours per biweekly period until he has completed eight years of service, since an employee is entitled to one hundred twenty hours of vacation leave upon completion of eight years of service, at such time an employee is entitled to have forty hours of vacation leave placed to his credit. Similarly, forty hours of vacation leave should be placed to an employee's credit upon completion of fifteen and twenty-five years of service, notwithstanding the fact that such additional hours do not actually accrue to the employee during his fifteenth or twenty-fifth year of service.

Applying the foregoing to the examples described in your third and fourth questions, it is evident that a full-time county employee who has eight, fifteen, or twenty-five years of prior service as a part-time county employee, after completion of the first year of full-time employment, accrues vacation leave at the increased rates described in R.C. 325.19(A) based upon his total service time, *i.e.*, one year of service for his first year of full-time county employment plus service credit for his previous part-time county employment. For example, upon completion of his first year of full-time county employment, an employee who works a standard workweek of forty hours is entitled to have eighty hours of vacation leave placed to his credit, and, if he has eight years of previous part-time county service, to begin accruing vacation leave under R.C. 325.19(A) at the advanced rate of four and six-tenths hours each biweekly period. Similar increases in the biweekly accrual of vacation leave are granted to a full-time county employee who has fifteen or twenty-five years of prior service as a part-time county employee, as long as the employee has completed one year of full-time county employment.⁴

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that, pursuant to R.C. 325.19(A), a full-time county employee does not become entitled to receive vacation leave until completion of his first year of full-time county employment, at which time a lump sum of vacation leave, as prescribed by R.C. 325.19(A)(1), (2), and (3), is placed to his credit. Thereafter, pursuant to R.C. 325.19(A)(1), a full-time county employee accrues vacation leave on a biweekly basis in an amount, subject to R.C. 325.19(A)(2) and (3), that reflects his total service time, including prior service as a part-time county employee.

⁴ An employee who does not complete his first year of full-time county employment until after completion of his eighth, fifteenth, or twenty-fifth years of service does not, however, receive the additional one week of vacation leave that would have been placed to his credit if he had been a full-time county employee at the time he completed those years of service, because he was not, at those times, a full-time county employee receiving vacation leave under R.C. 325.19(A). Once a full-time county employee has completed one year of full-time county employment, however, R.C. 325.19(A) allows him to accrue vacation leave as a full-time county employee at the rate that reflects his total years of service time, including prior service as a part-time county employee.