

**OPINION NO. 82-093****Syllabus:**

1. Pursuant to R.C. 325.19, a full-time county employee is entitled to accrue vacation leave at the rates of four and six-tenths hours, six and two-tenths hours, and seven and seven-tenths hours each biweekly period upon completion of the eighth, fifteenth, and twenty-fifth years of service, respectively.
2. A full-time county employee is entitled to use the vacation leave accrued under R.C. 325.19(A) as soon as it accrues.
3. R.C. 325.19(C) entitles an employee to payment upon separation for any unused vacation leave he has accrued during the current year and to any unused vacation leave accrued to his credit, with the permission of his appointing authority, for the three years immediately preceding his last anniversary date of employment.

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**To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio**  
**By: William J. Brown, Attorney General, November 15, 1982**

I have before me your opinion request in which you ask several questions concerning the accrual and use of vacation benefits by county employees pursuant to R.C. 325.19. Your specific questions are as follows:

1. When is the accrual rate of vacation credit to be adjusted due to completion of the eighth, fifteenth and twenty-fifth years of service?
2. When is an employee first entitled to use of the vacation credit derived from the increased accrual rate?
3. When is an employee first entitled to payment of vacation credit derived from the increased accrual rate upon separation?

Your first question asks when the accrual rate of vacation benefits under R.C. 325.19 is adjusted to reflect the completion of the eighth, fifteenth, and twenty-fifth years of service. For ease of discussion, I will address only the change in accrual rate resulting from the completion of eight years of service. The same analysis, however, applies to increases based upon the completion of fifteen and twenty-five years of service.

R.C. 325.19, which establishes vacation benefits for county employees, states, in pertinent part:

(A) 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.

. . . .

(C) Days specified as holidays in section 124.19 of the Revised Code shall not be charged to an employee's vacation leave. Vacation leave shall be taken by the employee during the year in which it accrued and prior to the next recurrence of the anniversary date of his employment; provided, the appointing authority may, in special and meritorious cases, permit such employee to accumulate and carry over his vacation leave to the following year. No vacation leave shall be carried over for more than three years. (Emphasis added.)

Pursuant to R.C. 325.19(A) "[a] full-time county employee with eight or more years of service. . . shall have earned and is entitled to one hundred twenty hours of vacation leave with full pay." You have indicated that some confusion exists as to whether this provision entitles a county employee to accrue vacation at an increased rate after completion of his seventh year of service so that upon completion of the eighth year of service he will have had three weeks of vacation leave placed to his credit during that eighth year, or whether the increased accrual rate commences upon completion of his eighth year of service. The latter interpretation is, in my opinion, the correct reading of the statute.

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 for 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.

This reading of the statute is also required by that portion of R.C. 325.19(C), which states that vacation leave "shall be taken by the employee during the year in which it accrued," with certain provisions for carrying over unused vacation benefits, thus entitling an employee to use his vacation benefits as soon as they accrue to him. 1982 Op. Att'y Gen. No. 82-064. If an employee accrued vacation leave at the increased rate of four and six-tenths hours per biweekly period during his eighth year of service, he would also be entitled to use those three weeks of vacation prior to completion of his eighth year of service. Until completion of his

eighth year of service, however, an employee is not entitled to three weeks of vacation leave.

Therefore, upon 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.

Your second question asks when an employee first becomes entitled to use vacation leave accumulated at the increased accrual rates. R.C. 325.19(C) states that, "[v]acation leave shall be taken by the employee during the year in which it accrued and prior to the next recurrence of the anniversary date of his employment. . . ." The statute also provides for the carry-over of vacation benefits for up to three years with permission of the appointing authority. Since an employee's vacation accrual rate increases at the beginning of his ninth, sixteenth and twenty-sixth years, and because he is entitled to use his vacation leave at any time during the year in which it accrues, Op. No. 82-064, an employee may use any vacation leave accumulated at the increased rates set forth above as soon as such vacation benefits are placed to his credit.

Your last question asks when an employee is first entitled to payment upon separation for vacation benefits derived from the increased accrual rates based upon completion of eight, fifteen and twenty-five years of service. Concerning payment for unused vacation leave upon separation, R.C. 325.19(C) states:

An employee is entitled to compensation, at his current rate of pay, for the pro-rated portion of any earned but unused vacation leave for the current year to his credit at time of separation, and in addition shall be compensated for any unused vacation leave accrued to his credit, with the permission of the appointing authority, for the three years immediately preceding the last anniversary date of employment.

Pursuant to this portion of the statute, an employee is entitled to payment upon separation for any unused vacation leave that has accrued to his credit during the current year, and that vacation leave that has accrued to his credit, with the approval of his appointing authority, for the three years immediately preceding the last anniversary date of his employment.<sup>1</sup> As stated above, an employee who has completed eight years of service is entitled to have an additional forty hours of vacation leave placed to his credit and will accrue four and six-tenths hours of vacation leave during the first biweekly period in his ninth year of service and biweekly thereafter. If that employee separates from county service at the end of the first biweekly period of his ninth year of service, he is entitled to payment upon separation for those forty-four and six-tenths hours. An employee who separates from service during, but prior to the completion of, his eighth year of service,

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<sup>1</sup>While the statute suggests that it will be necessary to pro-rate the employee's earned but unused vacation leave for the current year, the necessity to pro-rate vacation leave earned during the year of separation was obviated by the enactment of the biweekly accrual method in 1974. Prior to this amendment, vacation leave accrued to the employee only upon each successive annual recurrence of his anniversary date of employment. See 135 Ohio Laws, Part II 334 (Am. S.B. 408, eff. July 22, 1974).

however, is entitled only to any unused vacation leave accrued to his credit during his eighth year or, with the permission of his appointing authority, during the three years immediately preceding his last anniversary date of employment. Such employee is not entitled to receive any pro-rated portion of the forty hours of vacation leave that would otherwise be placed to his credit upon completion of his eighth year of service.

It is, therefore, my opinion, and you are advised, that:

1. Pursuant to R.C. 325.19, a full-time county employee is entitled to accrue vacation leave at the rates of four and six-tenths hours, six and two-tenths hours, and seven and seven-tenths hours each biweekly period upon completion of the eighth, fifteenth, and twenty-fifth years of service, respectively.
2. A full-time county employee is entitled to use the vacation leave accrued under R.C. 325.19(A) as soon as it accrues.
3. R.C. 325.19(C) entitles an employee to payment upon separation for any unused vacation leave he has accrued during the current year and to any unused vacation leave accrued to his credit, with the permission of his appointing authority, for the three years immediately preceding his last anniversary date of employment.