

July 30, 2015

The Honorable Bambi Couch Page
Richland County Prosecuting Attorney
38 South Park Street, Second Floor
Mansfield, Ohio 44902

SYLLABUS:

2015-025

Compensatory time used is part of a county employee's "completed service" for purposes of calculating sick leave accrued pursuant to R.C. 124.38.



MIKE DEWINE

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OPINION NO. 2015-025

The Honorable Bambi Couch Page
Richland County Prosecuting Attorney
38 South Park Street, Second Floor
Mansfield, Ohio 44902

Dear Prosecutor Couch Page:

You have requested an opinion whether a county employee who uses compensatory time during a pay period continues to accrue sick leave at the same rate as regular hours worked.¹ To answer your question, we will review briefly the relevant laws.

Sick leave is authorized by R.C. 124.38. “Each of the following shall be entitled for each *completed eighty hours of service* to sick leave of four and six-tenths hours with pay: (A) Employees in the various offices of the county ... service, other than superintendents and management employees ... of county boards of developmental disabilities.”² R.C. 124.38 (emphasis added). R.C. 124.38 also applies to employees of any state college or university and some employees of boards of education. R.C. 124.38(B), (C). Thus, county employees, among

¹ You have not asked about county employees who are covered by a collective bargaining agreement, and this opinion will not consider the use of sick leave accrued under the terms of a collective bargaining agreement or a policy adopted by a county. *See generally* 2013 Op. Att’y Gen. No. 2013-033, at 2-338 n.1; 2005 Op. Att’y Gen. No. 2005-027, at 2-284 n.1. Certain county employees of the county departments of job and family services are treated differently under Ohio law and may fall under exceptions to the conclusions set forth in this opinion. *See generally* R.C. 124.14(E) (county commissioners’ authority to fix the compensation, including sick leave benefits, of employees of the county’s department of job and family services).

² *See* note 1, *supra*.

others, are entitled to accrue sick leave for every 80 hours of completed service. *See* R.C. 124.38(A)-(C).

To answer your question, we must determine the meaning of “completed service” for purposes of R.C. 124.38. The phrase “completed service” is not defined by the Revised Code. Pursuant to the codified rules of construction, “[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage. Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly.” R.C. 1.42. Dictionary definitions of the words that comprise the phrase “completed service” do not provide the context or particularity suggested by R.C. 1.42. Rather, we turn to related definitions in Ohio law to inform the meaning of “completed service” as understood by R.C. 124.38. *See* R.C. 1.49(D), (F) (if a statute is ambiguous, the administrative construction of the statute and the common law or former statutory provisions, including laws upon the same or similar subjects, may be considered in determining the intention of the legislature).

The Director of the Department of Administrative Services has promulgated administrative rules to complement the Revised Code provisions in R.C. Chapter 124. In particular, the provisions of 2A Ohio Admin. Code 123:1-32 concern sick leave, and 2A Ohio Admin. Code 123:1-47-01(A)(22) provides a related definition of “completed service.” These provisions previously specifically addressed county employees and county appointing authorities, but they were changed in 2012 to apply only to employees paid by warrant of the Director of Budget and Management.³ 2013 Op. Att’y Gen. No. 2013-033, at 2-342; *see, e.g.*,

³ 2013 Op. Att’y Gen. No. 2013-033 explained:

Prior to November 18, 2012, 2A Ohio Admin. Code 123:1-32-03(A), which concerns the earning of sick leave credit under R.C. 124.38, applied to “[a]ll employees in the various offices of counties, except superintendents and management employees, as defined in [R.C. 5126.20], of county boards of mental retardation and developmental disabilities.” 1995-1996 Ohio Monthly Record, vol. 2, at p. 1431 (eff. Feb. 4, 1996). After November 18, 2012, the rule no longer applies to employees in the county civil service. 2012-2013 Ohio Monthly Record, pamphlet 4, at p. 2-535 (eff. Nov. 18, 2012).

The Director of Administrative Services has also repealed the administrative rule requiring a county to comply with the rules adopted by the Director and exempting a county from the application of the rules adopted by the Director. *Id.* at p. 2-526. The Director of Administrative Services thus has amended or repealed the administrative rules governing the implementation of R.C. Chapter 124 to indicate that the rules no longer apply to officers and employees in the county civil service.

2005 Op. Att’y Gen. No. 2005-027, at 2-285 (quoting former 2 Ohio Admin. Code 123:1-32-03(A)) (“[a]ll employees in the various offices of the counties ... shall earn sick leave credit at the rate of four and six-tenths hours for each eighty hours of *completed service*”); *see also* 1983 Op. Att’y Gen. No. 83-097 (syllabus, paragraph 3). Chapters 123:1-1 to 123:1-47 as they exist today primarily apply to employees of state colleges and universities and employees paid by warrant of the Director of Budget and Management; they no longer explicitly apply to county employees.

Nonetheless, we seek a relevant definition of “completed service,” and rule 123:1-47-01(A)(22) provides a definition tailored to an administrative code chapter that amplifies R.C. 124.38. “Completed service” “[m]eans *hours actually worked, including overtime, and hours of sick leave, vacation leave, compensatory time, 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, or layoff.” 2A Ohio Admin. Code 123:1-47-01(A)(22) (emphasis added). It is reasonable to use this definition of “completed service” in rule 123:1-47-01(A)(22) to inform our consideration of R.C. 124.38. *See* R.C. 1.49; *Indus. Comm’n v. Brown*, 92 Ohio St. 309, 311, 110 N.E. 744, 745 (1915) (“[a]dministrative interpretation of a given law, while not conclusive, is, if long continued, to be reckoned with most seriously and is not to be disregarded and set aside unless judicial construction makes it imperative so to do”). Thus, pursuant to the terms of R.C. 124.38, the number of hours of sick leave a county employee shall be entitled to is based upon the number of hours the employee actually works, *including* overtime hours worked, and hours of compensatory time used.⁴

In 1977 Op. Att’y Gen. No. 77-029, the Attorney General also considered the meaning of R.C. 124.38. He determined, based on the legislative history of R.C. 124.38, that the phrase “hours of service” (found in the same language, “each completed eighty hours of service,” from where we extract the term “completed service”) means “hours in active pay status.” 1977 Op. Att’y Gen. No. 77-029, at 2-108; *see also Mahoning Cnty. TMR Educ. Ass’n v. Mahoning Cnty.*

2013 Op. Att’y Gen. No. 2013-033, at 2-342 (footnotes omitted).

⁴ R.C. 124.18 authorizes compensatory time off as an alternative to overtime pay. R.C. 124.18(D) makes R.C. 124.18 applicable to county employees: “[t]his section shall be uniformly administered for employees as defined in [R.C. 124.01].” R.C. 124.01 provides the definitions for purposes of R.C. Chapter 124, which establishes the county civil service. R.C. 124.01(A) (“[c]ivil service’ includes all offices and positions of trust or employment in the service of ... the counties”); *see* R.C. 124.01(F) (“employee” means “any person holding a position subject to appointment, removal, promotion, or reduction by an appointing officer”); *see also* R.C. 124.01(D) (“[a]ppointing authority,” means “the officer, commission, board, or body having the power of appointment to, or removal from, positions in any office, department, commission, board, or institution”).

Bd. of Mental Retardation, No. 81-CA-140, 1982 WL 6220, at *2 (Mahoning County Dec. 21, 1982) (agreeing with the reasoning and conclusion set forth in 1977 Op. Att’y Gen. No. 77-029 concerning the meaning of “hours of service”). A definition of “active pay status” further supports our conclusion. We turn again to the administrative code chapter related to R.C. 124.38, where “[a]ctive pay status” “[m]eans conditions under which an employee is eligible to receive pay, and includes, but is not limited to, vacation leave, sick leave, bereavement leave, administrative leave, compensatory time, holidays, and personal leave.” 2A Ohio Admin. Code 123:1-47-01(A)(2).

While a county appointing authority may establish a policy granting more sick leave than that provided for by R.C. 124.38, a county may not provide less sick leave than that provided for by R.C. 124.38. *See* R.C. 124.38; *Ebert v. Stark Cnty. Bd. of Mental Retardation*, 63 Ohio St. 2d 31, 32, 406 N.E.2d 1098 (1980) (“R.C. 124.38 neither establishes nor limits the power of a political subdivision. Rather, it ensures that the employees of such offices will receive at least a minimum sick leave benefit or entitlement”). R.C. 124.38 provides the minimum sick leave benefit to which a county employee is entitled. 2005 Op. Att’y Gen. No. 2005-027 examined this idea in more detail:

Because R.C. 124.38 establishes a minimum sick leave benefit for county employees, it limits the manner in which a county appointing authority may exercise its power to compensate its employees with respect to sick leave benefits. *See Cataland v. Cahill*, 13 Ohio App. 3d 113, 468 N.E.2d 388 (Franklin County 1984) (syllabus) (“[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”). Thus, a county appointing authority with the power to fix its employees’ compensation may grant its employees sick leave benefits *in excess of* those authorized by R.C. 124.38, subject to any statutory restrictions on the granting of that benefit. *Ebert v. Stark County Bd. of Mental Retardation; Cataland v. Cahill*. *See* 1981 Op. Att’y Gen. No. 81-052.

Unlike the situation in *Ebert*, however, the county appointing authority about whom you ask wishes to decrease the number of sick leave hours an employee may earn by excluding overtime hours worked and compensatory time used from an employee’s completed hours of service, the hours for which R.C. 124.38 entitles an employee to accrue sick leave benefits....

....

R.C. 124.39(C) ... does not authorize a political subdivision to adopt a sick leave accrual policy that excludes compensatory hours used from the completed hours of service for which an employee accrues sick leave benefits.

2005 Op. Att’y Gen. No. 2005-027, at 2-286 and 2-289. While 2005 Op. Att’y Gen. No. 2005-027 concerns a county policy for the payment of accrued but unused sick leave at the time of retirement, it nonetheless guides us here. There, a political subdivision was not authorized to

adopt a sick leave accrual policy that excluded compensatory time used from the completed hours of service for which an employee accrues sick leave benefits. Similarly, exclusion of compensatory time used from an employee's "completed service" for purposes of calculation of sick leave accrued pursuant to R.C. 124.38 could decrease an employee's minimum sick leave entitlement and therefore is not authorized by R.C. 124.38. *See* R.C. 124.38; *Ebert v. Stark Cnty. Bd. of Mental Retardation*, 63 Ohio St. 2d 31, 32, 406 N.E.2d 1098 (1980); 2005 Op. Att'y Gen. No. 2005-027.

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that compensatory time used is part of a county employee's "completed service" for purposes of calculating sick leave accrued pursuant to R.C. 124.38.

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is written in a cursive, flowing style.

MICHAEL DEWINE
Ohio Attorney General