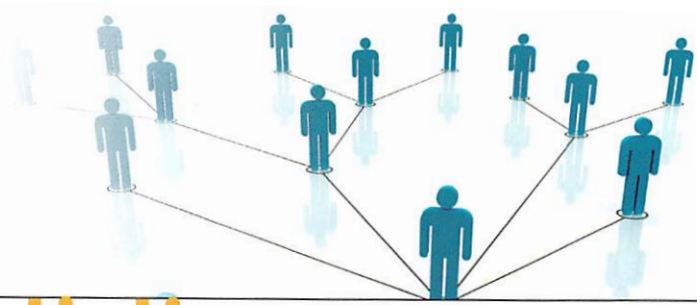


Labor Relations & Negotiations



Joseph M. Hannon, Esq.; *Genova Burns, LLC; League Labor Counsel*; and
Matthew U. Watkins, *NJ Community Solutions, LLC; League Labor Consultant*

Are Your Sick and Vacation Leave Policies Compliant?

On July 7, 2022, the Office of State Comptroller (OSC) released a report, “A Review of Sick and Vacation Leave Policies in New Jersey Municipalities.” This report, along with other reports and comments over the past decade, has left municipal officials with a lot of confusion and questions about how two laws that were passed in 2007 and 2010 impact individual municipalities’ workforces.

The OSC Report

The Office of State Comptroller (OSC) Report reviewed 60 municipalities and their vacation and sick leave policies in connection with its interpretation of the various leave entitlement laws. Its findings were as follows:

- 41 of 60 municipalities permit sick leave payment to senior employees that are unlawful under the 2007 law.
- 36 municipalities permit payments that exceed the \$15,000 cap on retirement for employees hired after May 21, 2010.
- 48 municipalities permit payments for unused sick leave other than at retirement.
- 14 municipalities have sick leave caps that take effect after May 21, 2010.
- 29 municipalities allow for annual sick leave payouts.
- 17 municipalities allow for terminal leave or early leave.
- 17 municipalities provide for bonuses and incentives to compensate employees for unused sick leave.

Recommendations for corrective action were provided in the OSC for the 60 municipalities surveyed in the report. For the remaining municipalities, the OSC recommends that they should conduct an initial assessment of their policies whether the 2007 and 2010 laws are being adhered to. Next, a legal review by an attorney and independent auditor or accountant should occur to determine the extent there are violations of these laws and prepare a corrective action plan.

The main components of these laws and its interpretations are set forth in this article.

**Out of
OFFICE**

It is our hope that we can provide some basic information to guide municipal officials in their examination of sick and vacation leave policies for their communities. To be sure, all aspects of these two laws have not been clear or tested in the courts. Additionally, as with all things related to labor issues, you should consult with your legal staff on your town's particular situation.

New law—not so new

The laws that changed the provisions for accumulated leave payouts and vacation carry-over were adopted in 2007 and amended and clarified in 2010. None of the provisions in these two laws are new, but implementation has been confusing and, according to the OSC, not fully implemented. In 2007, the legislature adopted chapter 92, which changed many provisions for pensions and accumulation of leave.

New Jersey's municipalities are guided by Local Finance Notices (LFN). For this matter, LFN 2007-28 provided guidance on how to properly implement new legislation. However, that law did not deliver its intended effect as it was severely limited in its scope. Only elected officials and high-level employees in municipalities were subject to the payout limitations set forth in that law. In 2010, the law was amended and broadened the number of employees restricted on accumulation of leave. Unfortunately, no local finance notice was prepared on this update.

Accumulated sick leave payouts

In 2007, the new law restricted certain high-ranking employees to specific amounts of time that could be accumulated or paid out upon retirement. In 2010, this was expanded to include any employees hired after May 21, 2010. The basic provision of this law was that no employee can be paid more than \$15,000 worth of sick leave upon retirement. If there was a labor agreement in effect at that time, the labor agreement prevailed until such time as the agreement expired.

We assume that by 2022, all agreements in place in 2010 should have

expired, and labor contracts should reflect the \$15,000 cap for anyone hired after May 21, 2010. Any county, municipality, or authority should all have the \$15,000 cap in all agreements for those employees hired after May 2010. The law still exists that any executive employee, such as administrator or department head, is already capped at \$15,000 upon retirement. The \$15,000 cap is only to be paid to those individuals who are retiring from a State-administered or locally administered retirement system.

Annual sick leave buyback

There are many communities that have provisions in their labor contracts or personnel policies that provide for some mechanism of buying back annual sick leave allocations every year. Oftentimes, this is written into a collectively bargained agreement or even in an ordinance. To be sure, annual sick leave buy back provisions are no longer allowed under the law. It has been that way since 2010.

Furthermore, the state law says that provisions in a labor contract that have expired after 2010 may no longer have this provision. New Jersey municipalities, counties, and municipal authorities all should review their agreements to ensure

that buybacks are not occurring at the end of a given year. While not as clear as the accumulated sick leave payouts on retirement, this prohibition was highlighted in the OSC report as a payout that should not be made by municipalities.

Vacation carryover

Furthermore, both laws served to restrict the amount of carryover of vacation time to one year's worth of that employee's allotment. There are provisions for the law to be extended based on declared state of emergencies. Obviously during the pandemic many employees could not use their accumulated time, but you should be reducing that number as quickly as possible. To be clear, the carryover amount is one full year accumulation. Effectively this means that at the beginning of a given year, no employee should have more than two years of accumulated vacation leave on the books. If they do, you should immediately negotiate a schedule with that employee to use up their time quickly in the new year.

This is earned leave time that an employee has earned through contract or policy. As such, do not make the mistake of telling an employee to "use it

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or lose it.” Review your policies regarding vacation leave accrual and use and formulate any plan of usage within those policies and these accumulation laws.


Civil service and non-civil service communities

In 2007 and 2010, the law had distinguished between civil service and non-civil service communities as it relates to implementation of the provisions of the law. At this point, there are no differences between a civil service or non-civil service communities. All public employees are subject to the provisions described.

sick days each year was also decided by PERC in *Township of Little Falls, 42 NJPER 87 (2015)*. In this matter, the issue was whether a clause in a collective negotiations agreement providing for the option to sell back a maximum of 5 sick days per year was negotiable. PERC determined that since N.J.S.A. 40A:9-10.4 only provided for the payment of accumulated leave time “at the time of retirement” the buyback option could not be made to employees hired on or after the effective date of the statute, i.e., May 21, 2010. For those employees, the matter was preempted by statute. The issue was not preempted for employees

preempted from negotiations.

Moving forward, it is important for each municipality to review the OSC report for the relevant accumulation and payout laws in connection with your current labor contracts and policies. We are hopeful that this article gives you some information to ensure compliance with the law. 

 To download the OSC report, visit: www.nj.gov/comptroller/reports/2021/approved/20220707.shtml

It is important for you municipality to review the OSC report...with your current labor contracts and policies.

Guidance from PERC

As we all know, the Public Employment Relations Commission (PERC) provides decisions that guide New Jersey employers on public employees and their representatives in employment matters. On this matter, PERC has reviewed sick and vacation leave policies in certain circumstances. In general, vacation and sick leave issues are mandatorily negotiable. However, as with any subject in public sector negotiations, an otherwise negotiable issue becomes non-negotiable if a statute or regulation speaks expressly, specifically, and comprehensively on an issue.

PERC has held that N.J.S.A. 18A:30-3.5 and 3.6 preempt negotiations of accumulated sick leave payments for employees covered by the statute and who commenced service with the employer on or after the date of the effective law. This matter, *Howell Twp. Bd. Of Ed., 41 NJPER 421 (2015)*, concerned the accumulation of sick leave payment on retirement based on the 2007 law therefore only applying to high-ranking officers and employees.

The issue of payment of accumulated

hired before May 21, 2010, and therefore was arbitrable.

While PERC has not definitively ruled on every aspect of these laws, these two cases indicate that issues related to these statutes have a high likelihood of being

A session, OSC Sick & Vacation Leave Report: Lessons to Learn, is planned for the annual Conference on **November 15 at 3:45 p.m. in Room 303, ACCC**. For those of you needed more information or wish to question us on clarification, please plan to attend that session.





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