
A Legal Analysis on the Advancement of Sick Leave to Unclassified State Employees

What is sick leave? Sick leave is an earned benefit that is part of an employment contract. Attorney General (AG) Opinion #92-121. Sick leave benefits are not a gift, thus not prohibited by [Article VII, §14](#) of the Constitution of Louisiana, but rather a legislatively created benefit, earned by virtue of the employment itself. *Johnson v. Marrero-Estelle Volunteer Fire Co. No. 1*, 898 So.2d 351, 359, 2004-2124 (La.2005). The requirements for the acquisition and use of sick leave may vary according to the enacting legislation, civil service rules, or individual employer policies or employment contracts. Sick leave is primarily intended to provide continued compensation for employees that are unable to perform their regular duties due to personal illness or to allow employees to receive medical, dental, or optical care during the work week. State classified civil service employees are subject to the Louisiana's State Civil Service Rules as promulgated by the State Civil Service Commission. The State Civil Service Rules are subject to interpretation of the Commission, thus are not discussed further herein. Any questions regarding sick leave for classified state civil service employees should be directed to the State Civil Service Commission.

In the State of Louisiana, unclassified public employees are provided sick leave according to various statutes, including R.S. [17:47](#), [17:500](#), [17:1201](#), [17:1206](#), [17:2149](#), and [17:3311](#) governing their position. Employees that have severe illnesses or prolonged recovery may often exhaust all available accrued leave prior to being able to return to normal duties. The Legislature, through statute, has provided employers in certain professions, such as school teachers, school bus drivers, and personnel at state colleges and universities, the ability to grant advances of sick leave or extended sick leave to their employees and in limited cases has required the employer to provide the additional leave.

R.S. [42:441](#), *et seq.* provides for the establishment of annual leave transfer pools, which allow employees to donate unused accrued annual leave to be used by other employees during times of prolonged personal or family medical emergencies. The AG stated in Opinion #96-481 that employees have a limited property interest in their accrued leave, as earned accumulated leave may not be forfeited by subsequent policy changes, thus remaining subject to the rules/policies under which they were accrued. Further, the AG also stated that unclassified employees are not prohibited by the laws of the State from transferring their accrued unused leave (sick or annual) to one another via a valid donation as provided in the Civil Code, but that the employees may only transfer their leave, via donation or otherwise, if their employer has an established policy that allows transfers.

Advance Sick Leave

First, looking to the concept of the advancement of leave to employees, there are at least two distinct groups of unclassified public employees that the Legislature has specifically provided public employers the ability to advance additional sick leave upon the exhaustion of all accrued leave. The first group includes unclassified employees of public special, elementary, and secondary schools, specifically bus drivers, teachers, and other non-teaching personnel. The second group includes the teaching and non-teaching academic unclassified personnel of the state's colleges and universities.

Advancement of Sick Leave

Revised 8/16/2011

Special, Elementary, and Secondary Schools

Certain unclassified employees of public special, elementary, and secondary schools (Teachers and superintendents of special schools under R.S. [17:47](#), bus drivers under R.S. [17:500](#), teachers under R.S. [17:1201](#), and other employees under R.S. [17:1206](#)) are entitled to a minimum of 10 days of sick leave per year by statute; the individual boards may through their policies grant additional days of leave under the contracts for employment. These individuals are also entitled to a minimum of 90 days of extended sick leave (beyond accrued sick leave) at sixty-five percent (65%) pay in each six years of employment (teachers at special schools, R.S. [17:47](#)(D); bus drivers, R.S. [17:500.2](#); teachers, R.S. [17:1202](#); and other employees, R.S. [17:1206.2](#)). Again the board may choose to extend additional leave through policies or provide additional leave under contracts for employment.

The Louisiana Fourth Circuit Court of Appeal in *Morial v. Orleans Parish School Board*, 332 So.2d 503, addressed the application of R.S. [17:1201](#) and [17:1202](#) in light of [Article VII, §14](#) of the Constitution of the State of Louisiana. The Court held that the payment of extended sick leave, essentially payment of salary without corresponding work, did not constitute a gift from a state subdivision to a private person, but rather was a legislatively created fringe benefit that is earned by virtue of employment itself. The Louisiana Supreme Court in *City of Port Allen*, 439 So.2d 399 (La. 1983), and *Cabela*, 938 So.2d 11 (La. 9/6/06), both mention *Morial* through footnotes as good law in regards to [Article VII, §14](#).

Colleges and Universities

The second group to receive legislative permission for extended sick leave includes the unclassified academic and non-teaching personnel of state colleges and universities. Appointing authorities of the state's public universities and colleges may advance up to twenty-two (22) sick days, with pay for non-teaching personnel under R.S. [17:2149](#)(A)(4) and for unclassified academic personnel under R.S. [17:3312](#)(A)(4). R.S. [17:2149](#)(A)(5) (non-teaching personnel) and R.S. [17:3312](#)(A)(5) (academic personnel) require that the value of this advanced leave must be repaid before the time of the employee's separation from the unclassified service; otherwise the amount must be deducted from the employee's final paycheck or paid in cash to the appointing authority. If the employee moves to another state agency then the sick leave will be forwarded to the accepting agency. R.S. [17:2149](#)(A)(6) and R.S. [17:3312](#)(A)(6) provide that all advanced sick leave shall be canceled upon separation caused by disability, death, or retirement. The AG stated in Opinion #85-407, "Universities may only advance no more than twenty-two (22) hours (sic; should state days) of sick leave only when the employee has exhausted all accumulated leave." Again, as stated for R.S. [17:1201](#) and [1202](#) in *Morial*, this advanced leave would be a legislatively created fringe benefit and not a donation. Unlike the extended leave provided for under R.S. [17:1202](#), which requires payment of 65% of salary to public school teachers for up to ninety (90) days of extended sick leave (beyond accrued sick leave) for every six years of employment, any advance of sick leave to personnel of state universities and colleges under [17:2149](#) or [17:3312](#) is subject to repayment upon separation, unless separation is caused by disability, death, or retirement.

Advancement of Sick Leave

Revised 8/16/2011

It is important to note that R.S. [17:2149](#) and R.S. [17:3312](#) are only permissive in nature and do not require appointing authorities to advance sick leave. Permanent memoranda twenty (PM-20) for the Louisiana State University System stipulates that no annual or sick leave will be advanced, nor may any leave be borrowed from or transferred to other employees.

Other State Unclassified Service Employees

R.S. [42:421](#) stipulates that state employees or employees of any state agency shall accrue annual leave at the same rate as is provided for members of the classified service of the state by the Civil Service Commission. The statute does not, however, specifically address sick leave for state unclassified employees, nor does it provide for advancement of leave. As previously noted, the AG has stated in Opinion #96-481 that state law does not prohibit the donation of leave by employees to one another, but that the employer or agency must have established policies to allow such transfers of leave.

[AG Opinion No. 10-0256](#) stated that the Consolidated Drainage District #1 of Tangipahoa Parish's sick leave policy which allowed for the advancement of up to eighty (80) hours of sick leave in a two calendar year period with certain requirements, qualifications, and repayment provisions was not a prohibited donation under [Article VII, §14](#). The AG applied the *Cabela* Test and noted that several provisions of the sick leave policy restricted the granting of the advancement of leave, and most notably that the sick leave policy contained a repayment provision.

Conclusion

Agencies and political subdivisions of the State should apply the three pronged *Cabela* test, as done by the Attorney General in 10-0256, when formulating their sick leave policies for unclassified employees. In order for a transfer to not be classified as impermissible "donation" under [Art VII, §14](#), the public entity must have the legal authority to make the expenditure and must show:

1. A public purpose for the expenditure or transfer that comports with the governmental purpose for which the public entity has legal authority to pursue;
2. That the expenditure or transfer, taken as a whole, does not appear to be gratuitous; and
3. That the public entity has a demonstrable, objective, and reasonable expectation of receiving at least equivalent value in exchange for the expenditure or transfer of public funds.

Due to the very limited case law and Attorney General opinions regarding the advancement of leave, agencies and political subdivisions are highly encouraged to seek opinions of the Attorney General before finalizing policies granting any advancement of leave.