School Districts, terminal pay for annual leave

Number: INFORMAL

Date: November 18, 2005

Ms. Suzanne D'Agresta
Osceola County School Board Attorney
Post Office Box 2873
Orlando, Florida 32802-2873

Dear Ms. D'Agresta:

On behalf of the Osceola County School Board, you ask whether the limitations on terminal pay contained in section 231.40, Florida Statutes (2001), for accrued sick leave apply to terminal pay for vacation leave accrued under a contractual agreement entered into prior to July 1, 2001 and which expired on June 30, 2004.

You note that during the 2001 legislative session, sections 231.40 and 231.41, Florida Statutes (2001), were amended regarding terminal pay for accrued sick leave and terminal pay for accrued vacation leave. Section 231.40(3)(a)5., Florida Statutes (2001), provided:

"A district school board may establish policies to provide terminal pay for accumulated sick leave to any full-time employee of the district school board *other than instructional staff or educational support employees as defined in this section*. If termination of the employee is by death of the employee, any terminal pay to which the employee may have been entitled may be made to the employee's beneficiary.

a. Terminal pay may not exceed one-fourth of all unused sick leave accumulated on or after July 1, 2001, and may not exceed a maximum of 60 days of actual payment. This limit does not impair any contractual agreement established before July 1, 2001; however, a previously established contract renewed on or after July 1, 2001, constitutes a new contract.
b. For unused sick leave accumulated before July 1, 2001, terminal payment shall be made pursuant to a district school board's policies, contracts, or rules that are in effect on June 30, 2001.
c. If an employee has an accumulated sick leave balance of 60 days of actual payment or more prior to July 1, 2001, sick leave earned after that date may not be accumulated for terminal pay purposes until the accumulated leave balance for leave earned before July 1, 2001, is less than 60 days."[1]

Chapter 01-103, Laws of Florida, also amended section 231.481, Florida Statutes, relating to terminal pay for accrued vacation leave. As amended, the statute provided:

"A district school board may establish policies to provide for a lump-sum payment for accrued vacation leave to an employee of the district school board upon termination of employment or upon retirement, or to the employee's beneficiary if service is terminated by death. Effective July

1, 2001, terminal pay for accrued vacation leave may not exceed a maximum of 60 days of actual payment. This limit does not impair any contractual agreement established before July 1, 2001. For unused vacation leave accumulated before July 1, 2001, terminal payment shall be made pursuant to the district school board's policies, contracts, or rules that are in effect on June 30, 2001."[2]

According to your letter, it has been suggested that the terminal pay for accrued vacation leave should be applied in the same manner as terminal pay for accrued sick leave. Therefore, you ask whether under the above provisions terminal pay for vacation leave accrued prior to July 1, 2004, is governed by school board policy in effect at that time or is governed by the same restrictions as accrued sick leave.

Chapter 01-103, Laws of Florida, amended the separate statutory provisions for sick leave and for vacation leave for district employees. There is nothing in the language of the act that indicates that the provisions of section 231.40, Florida Statutes (2001), relating to sick leave had any application to the provisions of section 231.481, Florida Statutes (2001), relating to vacation leave. While both statutes provided for terminal pay and grandfathered in contracts entered into prior to the effective date of the 2001 legislation, July 1, 2001, section 231.40, Florida Statutes (2001), contained additional constraints not provided for in section 231.481, Florida Statutes (2001).[3] Nothing in either the language of the statute or this office's review of the legislative history surrounding the adoption of the 2001 legislation indicates that the constraints imposed by section 231.40 Florida Statutes (2001), for terminal pay for accumulated sick leave had any application to the provisions of section 231.481, Florida Statutes (2001).

Accordingly, it appears that the limitations on terminal pay contained in section 231.40, Florida Statutes (2001), for accrued sick leave did not apply to terminal pay for vacation leave accrued under a contractual agreement entered into prior to July 1, 2001 and which expired on June 30, 2004. Rather, terminal payment for unused vacation leave accumulated before July 1, 2001, under a contractual agreement enter into prior to July 1, 2001, would be made pursuant to the district school board's policies, contracts, or rules that are in effect on June 30, 2001.

I trust that the above informal comments may be of some assistance to the district school board in resolving this matter.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tfl

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[1] Chapter 231, Florida Statutes, was repealed by Ch. 02-387, Laws of Fla. Section 738 of Ch. 02-387 created s. 1012.61, Fla. Stat. (2002), containing substantially the same language as former s. 231.40. In 2004, the language relating to terminal pay for accumulated sick leave was substantially reworded by s. 1, Ch. 04-360, Laws of Fla., effective July 1, 2004. Section

1012.61(2)5., Fla. Stat., now provides:

"A district school board may establish policies to provide terminal pay for accumulated sick leave to any full-time employee of the district school board other than instructional staff or educational support employees. If termination of the employee is by death of the employee, any terminal pay to which the employee may have been entitled may be made to the employee's beneficiary. For purposes of computing the amount of terminal pay for accumulated sick leave, sick leave accrued after June 30, 2004, shall be compensated at no more than the daily rate of pay applicable at the time the sick leave was earned."

The Senate Staff Analysis and Economic Impact Statement on SB 300 (enacted as Ch. 04-360, Laws of Fla.), dated April 5, 2004, states:

"The bill deletes current statutory restrictions on the number of days of unused sick leave for which terminal pay may be received by employees other than instructional staff or educational support employees. The bill also specifies how such terminal pay for accumulated sick leave is to be calculated.

Beginning July 1, 2004, terminal pay for unused sick leave will be paid at no more than the daily rate of the employee at the time the employee earned the sick leave. Depending on the policy adopted by a district school board, employees may be paid for an unlimited number of sick leave days. To calculate the payout value of unused sick days, the bill will require a district to track the employee’s rate of pay on the date each day of sick leave is accumulated."

You state, however, that the changes have no bearing on the issue presented to this office regarding the particular individuals in question.

[2] As noted in n.1, *supra*, Ch. 231 was repealed in 2002. Substantially the same language as was formerly contained in s. 231.481 is now contained in section 1012.65, Fla. Stat.

[3] As noted *supra*, the sixty day limitation on accrued sick leave formerly contained in section has been removed from s. 1012.61, Fla. Stat. (formerly s. 231.40, Fla. Stat. [2001]). However, as previously noted, you have advised this office that the effect of the new legislation is not in question in the instant inquiry.