
Betty Montgomery Auditor of State

Bulletin 2005-004

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TO: County Auditors
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County Prosecuting Attorneys
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County Child Support Enforcement Agencies
County Hospitals
County Boards of Health
County Administrators
County MRDD Boards
Independent Public Accountants

FROM: Betty Montgomery
Ohio Auditor of State

SUBJECT: Payment for Unused Sick Leave upon Separation

On May 12, 2005, the Ohio Attorney General issued opinion 2005-020 to clarify the ability of a county office, department, commission, or board to establish a policy that permits an employee to receive payment for accrued, unused sick leave upon separation (other than retirement). The opinion was written in response to a request by the Williams County Prosecutor who sought guidance on sick leave payout policies for the Williams County Sheriff's Office. This opinion may affect the operations of various county offices, departments, commissions, or boards who receive at least one-half of their funding from the county general fund and who are the appointing authority authorized to hire personnel and fix their compensation, including fringe benefits.

In general, Revised Code § 124.39 establishes the procedures for paying accrued, unused sick leave to employees of political subdivisions. Revised Code § 124.39(C), in part, authorizes a political subdivision to adopt a policy "permitting an employee to receive payment upon a termination other than retirement," and specifically requires that

a policy offering a sick leave payout under division (C) of this section must be adopted in one of the following ways:

- (1) By resolution of the board of county commissioners for any office, department, commission, or board that receives at least one-half of its funding from the county general revenue fund;
- (2) By order of any appointing authority of a county office, department, commission, or board that receives less than one-half of its funding from the county general revenue fund. Such office, department, commission, or board shall provide written notice to the board of county commissioners of such order; or
- (3) As part of a collective bargaining agreement.

Therefore, if you are a county office, department, commission, or board that receives more than one-half of your funding from the county general fund and you wish to 1) modify the statutory entitlement to payout for accrued, unused sick leave as provided in Revised Code § 124.39(B), or 2) allow a payout of additional accrued, unused sick leave for non-union employees pursuant to Revised Code § 124.39(C), you must have a policy approved by resolution of your county board of commissioners. The Attorney General points out that it was the intent of the General Assembly that boards of county commissioners have final authority for such decisions, unless the matter involves employees covered by a collective bargaining agreement. Additionally, pursuant to Revised Code § 124.39(C)(3), an office, department, commission, or board with authority to negotiate and enter into collective bargaining may adopt provisions that alter statutory sick leave provisions through an agreement for employees covered by the agreement.

Beginning with audits of calendar year 2005, the Auditor of State's Office (AOS) [or contracting Independent Public Accountants (IPAs)] will test counties' compliance with this requirement. To that end, the AOS will use the following audit procedures to determine compliance:

1. During testing of payroll expenditures at various county offices, departments, commissions, and boards, determine if significant payouts were made during the audit period for accumulated sick pay for separated employees.
2. Determine if the payouts were made in accordance with Revised Code § 124.39(B). Review payouts against the law and pertinent resolutions.
3. If the payouts were not made in accordance with Revised Code § 124.39(B), review any collective bargaining agreement affecting these employees and inspect its provisions regarding these types of payouts pursuant to Revised Code § 124.39(C)(3).

4. If there are no applicable provisions in a collective bargaining agreement, determine whether the county office, etc., receives 50 percent or more of its funding from the county's general fund.
5. If the county office, etc., receives 50 percent or more of its funding from the county's general fund, obtain a copy of any board of county commissioner resolutions pertaining to this subject. This would apply to those employees not covered by a collective bargaining agreement, as well as those who were covered by such an agreement but the agreement does not include a provision granting this particular benefit.
6. If the county office, etc., receives less than 50 percent of its funding from the county's general fund, obtain a copy of that office's appointing authority's written order pertaining to this particular benefit for separated non-retirees (or for any employees who were covered by a collective bargaining agreement but the agreement does not include a provision granting this particular benefit). Inspect documentation that the board of county commissioners was notified of the policy.

Entities will be subject to adverse audit consequences, up to and including findings for recovery, for sick leave payouts not made in accordance with the requirements of the law as discussed in Opinion 2005-020 of the Ohio Attorney General. Therefore, the AOS or contracted IPA will determine compliance of sick leave payouts that were formally approved after May 12, 2005.

The AOS strongly recommends that you consult with your legal counsel to determine whether you are an office, department, commission, or board that is subject to the provisions of R.C. § 124.39, and if so, whether or not your applicable personnel policies are in compliance with the law.

If you have any legal questions regarding the information presented in this Bulletin, please contact the AOS Legal Division at (800) 282-0370. Please direct any accounting and auditing questions to the AOS Accounting and Auditing Support Group at (800) 282-0370.



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