

Calculation of Vacation Leave



STEPHEN P. POSTALAKIS
BLAUGRUND, HERBERT AND MARTIN
300 WEST WILSON BRIDGE ROAD, SUITE 100
WORTHINGTON, OHIO 43085
SPP@BHMLAW.COM

PERSONNEL COUNCIL
FRANKLIN COUNTY BOARD OF DD
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Issue



- How does a county board of developmental disabilities calculate the vacation leave of an employee with prior public service when:
 - The employee worked for other public employers, such as a teacher in a public school;
 - The employee worked in a part-time position or other positions where vacation was not earned; or
 - The employee has retired?

Service with other public employers

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- **R.C. §325.19:**
 - Each full-time employee in the several offices and departments of the county service, including full-time hourly rate employees, after service of one year with the county or any political subdivision of the state, shall have earned and will be due upon the attainment of the first year of employment, and annually thereafter, eighty hours of vacation leave with full pay.
 - One year of service shall be computed on the basis of twenty-six biweekly pay periods.

Service with other public employers

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- Full-time service with a county or “any political subdivision” is necessary for purposes of earning vacation leave currently
- Since only full-time employees are eligible to earn vacation, only full-time employment can count toward attainment of the first year of employment.

Service with other public employers

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- R.C. § 325.19 tells you how much vacation an employee gets based upon years of services, but does not tell you how to calculate it
- R.C. §9.44 provides county employees with the entitlement for prior public service:
 - Except as otherwise provided in this section, a person employed, other than as an elective officer, by the state or any political subdivision of the state, earning vacation credits currently, is entitled to have the employee's prior service with any of these employers counted as service with the state or any political subdivision of the state, for the purpose of computing the amount of the employee's vacation leave. The anniversary date of employment for the purpose of computing the amount of the employee's vacation leave, unless deferred pursuant to the appropriate law, ordinance, or regulation, is the anniversary date of such prior service.

Service with other public employers

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- R.C. § 9.44 bases county employee's vacation leave upon the employee's total prior public service, not just service with the county board
- What constitutes political subdivision for purposes of R.C. §9.44?
 - Neither R.C. §325.19 nor R.C. §9.44 offer any definition of "political subdivision."

Definition of “political subdivision”

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- Attorney General has noted that it is common to examine whether the entity is a civil service employer, which includes counties, cities, city health districts, general health districts, and city school districts.
 - See Op. Att'y Gen. No. 88-095
- Not all political subdivisions of the State of Ohio are included in the civil service
- Must examine whether the entity was created by statute, constitutes public service with the State or county (or city, township, other public body), carries out governmental functions.
 - See Op. Att'y Gen. No. 95-108

Definition of “political subdivision”

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- “In order to qualify as a political subdivision for purposes of R.C. Chapter 167, an entity must be a *public agency* that is authorized to exercise some *governmental function*, and it must exercise that function within a *limited geographical area*.”
 - See Op. Att'y Gen. No. 93-031
- R.C. §2744.01(F) defines “political subdivision” for purposes of statutory immunity:
 - Municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state.

Part-time service or position that did not earn vacation

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- Part-time employment is not considered for purposes of the first year of employment, although it can be considered for purposes of years of service under R.C. §9.44
 - See 1994 Op. Ohio Att’y Gen. No. 94-008.
- Have to make sure that employee has the “first year of full-time service”
- Once an employee has one year of service, then can look back at part-time service

Person has retired and been rehired

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- When a person retires, R.C. §325.19 requires cash out of vacation
- R.C. §9.44(C):
 - An employee who has retired in accordance with the provisions of any retirement plan offered by the state and who is employed by the state or any political subdivision of the state on or after June 24, 1987, shall not have prior service with the state, any political subdivision of the state, or a regional council of government established in accordance with Chapter 167. of the Revised Code counted for the purpose of computing vacation leave.

Person has retired and been rehired

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- Can a County Board allow a reemployed retired employee to be credited with service credit for vacation leave?
 - Not under *Ebert* powers
 - See 2009 Op. Ohio Att’y Gen. No. 2009-009
 - ✦ “R.C. § 9.44(C) is an affirmative prohibition against the employee's receipt of such service credit.”
 - ✦ “R.C. § 9.44(C) bars employees from counting pre-retirement service credit--not by implication, but expressly.”

Person has retired and been rehired

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- R.C. § 325.19(F): alternative schedules of vacation leave
- Depends upon whether County Board has both bargaining units and non-bargaining units, or only non-bargaining unit employees

Union and non-union employees

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- R.C. §325.19(F):
 - **Notwithstanding this section or any other section of the Revised Code**, any appointing authority of a county ... board ... may, upon notification to the board of county commissioners, establish alternative schedules of vacation leave and holidays for employees of the appointing authority for whom [SERB] has not established an appropriate bargaining unit pursuant to [R.C. § 4117.06], **as long as the alternative schedules are not inconsistent** with the provisions of at least one collective bargaining agreement covering other employees of that appointing authority, if such an agreement exists.

Union and non-union employees

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- “An examination of the introductory clause in the first sentence of R.C. 325.19(F) leads us to conclude that an appointing authority is authorized to vary R.C. 9.44(C) for non-bargaining unit employees to the extent that a collective bargaining agreement does so for the appointing authority's bargaining unit employees.”
- “This "notwithstanding" language authorizes an appointing authority to adopt alternative schedules that supersede provisions in any section of the Revised Code, so long as the alternative schedules provide benefits that are consistent with those found in at least one collective bargaining agreement governing the appointing authority's bargaining unit employees.”

Union and non-union employees

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- R.C. §9.44 is not included in R.C. §4117.10(A)'s list of statutes, so a CBA can override it
- To supersede the statute, the CBA must specifically address the matter and the language of CBA must be specific
- The CBA must actually conflict with the statute
- If not, then the law will prevail
 - "[i]n order to negate statutory rights of public employees, a collective bargaining agreement must use language with such specificity as to explicitly demonstrate that the intent of the parties was to preempt statutory rights."
 - See *State ex rel. Ohio Ass'n of Public School Employees v. Batavia Local School District Bd. of Education*, 89 Ohio St. 3d 191 (syllabus)

Non-union employees only

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- Look to second sentence of R.C. §325.19(F):
 - If no such collective bargaining agreement exists, an appointing authority, upon notification to the board of county commissioners, may establish an alternative schedule of vacation leave and holidays for its employees that does not diminish the vacation leave and holiday benefits granted by this section.
 - Does not contain the "notwithstanding" language
 - Conclusion was consistent with the proposition that R.C. §325.19 and R.C. §9.44 are part of the same statutory scheme and must be read *in pari materia*, and because it is most faithful to the Civil Service Review Commission's Report to the Ohio General Assembly, which was relied upon by the General Assembly in enacting Sub. H.B. 187

Non-union employees only

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- A county appointing authority that employs only non-bargaining unit employees has the power under the second sentence of R.C. §325.19(F) to adopt an alternative schedule, **upon notification to the board of county commissioners**, that supersedes R.C. §9.44(C), and grants its employees, who previously retired under a plan offered by the State of Ohio, service credit earned prior to retirement for purposes of calculating their vacation leave.