

**OHIO ASSOCIATION OF COUNTY BOARDS  
OF MENTAL RETARDATION  
AND DEVELOPMENTAL DISABILITIES**

**2008 Spring Conference**

**Calculation of Vacation Leave  
Based Upon Prior Public Service**

Presented by:

**STEPHEN P. POSTALAKIS**  
**BLAUGRUND, HERBERT & MARTIN, INCORPORATED**  
300 W. Wilson Bridge Road, Suite 100  
Worthington, Ohio 43085  
(614) 764-0681  
spp@bhmlaw.com

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## ISSUE

County boards of MR/DD have had a recurring question over the past several years: is an employee with prior public service entitled to use vacation in his/her first year of employment with the county board of MR/DD? The simple answer to this question is yes. Assuming an employee has one (1) year of service with a county or other political subdivision of the State of Ohio, he/she is entitled to accrue and use vacation leave at a level commensurate with his/her years of service.

## DISCUSSION

The first place to start is the statute itself: R.C. §325.19.<sup>1</sup> With respect to this issue, R.C. §325.19(A) provides in pertinent part:

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. (Emphasis added).

The underlined language is the crucial text for the question at hand. First, a full-time county employee does not accrue vacation during his/her first year of employment. See 1985 Op. Ohio Att'y Gen. No. 85-035. Rather, "upon the attainment of the first year of employment," the employee has "earned and will be due" eighty (80) hours of vacation. So at the start of the second year of employment, the individual has a credit of eighty (80) hours of vacation leave. Thereafter, an employee entitled to eighty hours of vacation leave annually (employee in the first seven years of employment) accrues vacation leave at the rate of three and one-tenth hours each biweekly period. A full-time county employee is entitled to use the vacation leave accrued under R.C. §325.19(A) as soon as it accrues. See 1982 Op. Ohio Att'y Gen. No. 82-093.

Of course, the question at hand revolves around employees that have worked elsewhere in the public sector, and are starting work for the county board. The Attorney General has stated that a full-time county employee who completes one year of county service, although such service is with more than one county, becomes entitled to eighty hours of vacation leave with full pay upon completion

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<sup>1</sup> Of course, R.C. §325.19 does not apply to superintendents and management employees so their vacation leave is whatever the county board grants to them under contract. See R.C. §§325.19, 5126.0226(A), and 5126.21(C).

of the first year of service. Such vacation leave is to be paid entirely by the county in which the employee completes his/her first year of service. See 1985 Op. Ohio Att'y Gen. No. 85-035. Thus, if an employee had seven (7) months of prior full-time service, after five (5) months of full-time service with a new county employer, which would be one (1) year of service, the employee would be entitled to eighty (80) hours of vacation leave upon completion of that first year of service.<sup>2</sup>

Reduced to simple terms, R.C. §325.19 states that a full-time employee, who has earned vacation leave (after one year of service and upon attainment of the first year of employment), does so annually thereafter. There is no exception in the law that prevents an individual who has prior years of service from earning and accruing vacation leave simply because the individual is going to work for another county.

We must also examine the provisions of R.C. §9.44. This statute requires a county board of MR/DD to base an employee's vacation leave upon the employee's total prior public service, not just service with the county board. R.C. §9.44(A) provides:

(A) Except as otherwise provided in this section, a person employed ... 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.

In analyzing both of these statutes, the Attorney General stated, in 1982 Op. Ohio Att'y Gen. No. 82-064, that an employee with seven years of prior service was entitled to accrue and use vacation leave upon his return to county employment:

Because a full-time county employee does not become entitled to vacation leave under R.C. 325.19 until he has attained one year of service with the county or any other political subdivision of the state, such an employee does not accrue vacation benefits during his first year of employment. n1 The provision contained in R.C. 325.19(C) which requires that vacation leave be taken during the

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<sup>2</sup> Since only full-time employees are eligible to earn vacation, only full-time employment can count toward attainment of the first year of employment. 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.

year in which it accrues does not, therefore, apply to an individual in his first year of employment. After the first year of employment, however, an employee begins accruing vacation leave at the rate of three and one-tenth hours every two weeks, R.C. 325.19(A), and must use such leave during the year in which it accrues and prior to the next recurrence of the anniversary date of his employment, unless his appointing authority allows him to carry such leave over to the following year. R.C. 325.19(C).

n1 Pursuant to R.C. 9.44 a county employee earning vacation credits currently is also entitled to service credit for time served with the state for purposes of computing his vacation benefits.

As noted above, Op. No. 65-125 interpreted the phrase "anniversary of employment" as the annual recurrence of the date of last hire. Since issuance of that opinion, however, the legislature has enacted R.C. 9.44 ..., which specifies that a rehired county employee's anniversary date, for purposes of vacation leave, is, with certain exceptions, the anniversary date of his prior service. Applying the provisions of R.C. 325.19 and R.C. 9.44 to the situation you pose, the employee, having over seven years of county service, has already completed one year of service, and is, therefore, entitled to begin accruing vacation benefits immediately upon reemployment and may use such benefits as soon as they accrue. (Emphasis added).

As the foregoing demonstrates, once an employee has service of one (1) year with the county or a political subdivision, he/she is entitled to accrue and use vacation leave in accordance with his/her requisite years of service. If a county board hires an individual that has more than one (1) year of service, the county board must do the following:

- (1) Pursuant to R.C. §9.44, credit the employee with his/her total years of service for purposes of computing the annual vacation leave to be earned by the employee;
- (2) Permit the employee to accrue and use vacation leave commensurate with his/her years of service; and
- (3) Grant a lump sum of forty (40) hours of vacation leave if the employee reaches his/her eighth, fifteenth, or twenty-fifth years of service with the county board.

## **CONCLUSION**

Once a full-time county employee has completed his/her first year of service, whether such service is earned with one employer or a combination of employers, he/she is entitled to (1) a lump sum of eighty (80) hours of vacation and (2) accrue and use vacation leave in accordance with the formula set forth in R.C. §325.19. If a county board hires an individual who has more than one (1) prior year of service, the county board must (1) credit that individual with his/her prior years of service pursuant to R.C. §9.44 and (2) permit the employee to accrue and use vacation leave immediately upon employment.