

Opinion No. 39

Vacation Leave—Former Period of Service—Computation of Leave

Held: A state employee's former period of service cannot be considered in computing her annual vacation leave when she re-enters the state's employ.

December 19, 1957

Mr. Robert A. James
State Board of Health
Helena, Montana

Dear Mr. James:

You have requested my opinion concerning a state employee's right to annual vacation leave when there is a break in the employee's service to the state.

In this instance the employee formerly worked for the State of Montana from April of 1949 through August of 1950, a period of six-

teen months. The employee again entered the state's employ from July 2, 1956, to May 10, 1957, a period of ten months. The employee contends she is entitled to annual vacation leave because her previous service, which occurred more than six years ago, had been for more than one year.

Chapter 131, Laws of 1949 (Sec. 59-1001, RCM, 1947), granted annual vacation leave with full pay at the rate of one and one-quarter ($1\frac{1}{4}$) working days for each month of service. An employee could work from one to eleven months, resign and receive a cash payment for her accrued vacation leave. This provision was held to be applicable to temporary employees of the Thirty-second Legislative Assembly, (See, 24 Opinions of the Attorney General, Number 1).

Chapter 152, Laws of 1951, amended Chapter 131, Laws of 1949, and required continuous employment of one year before the employee was entitled to any vacation leave. In 26 Opinions of the Attorney General, Number 80, it was held that:

"To be eligible for vacation leave an employee must be employed for a period of one year and until that period of service is reached, the right to vacation leave does not vest. However, once the condition precedent, service of one year, is met, all rights accumulated during the one year period vests, and the employee is entitled thereto as a matter of right . . ."

After a year's continuous service for the state, an employee has a vested right in her accrued annual leave. If the employee resigns, the vested right ceases when the employee has used or been compensated for unused vacation leave. If the former employee reenters the state's employ, she must be considered a new employee and her former period of employment cannot be used to compute her annual vacation leave during this second period of service.

If a former employee were permitted to tack her previous employment to her new state service, it would be a reversion to the provisions of Chapter 131, Laws of 1949, and violate the express mandate of Chapter 152, Laws of 1951. The obvious intent of the 1951 amendment was to prohibit temporary employees, i.e., employees who have not been in continuous service for one year, from receiving a vacation allowance.

Continuous employment with the state means the employee has not discontinued her state service but has for one year or more remained in the state's employ.

Therefore, it is my opinion that an employee who had previously been employed by the state for one year or more must, upon re-entering the state's employ, work a continuous period of one year before she is entitled to annual vacation leave. Her previous employment cannot be considered in computing her annual vacation leave when she re-enters the state's employ.

Very truly yours,
FORREST H. ANDERSON
Attorney General