

**Opinion No. 22****Statutes—Annual Vacation Leave—State, County and City Employees.**

**Held:** Senate Bill 106 of the Thirty-First Legislative Assembly provides that from and after passage and approval, each employee of State, County or City is entitled to annual vacation leave of one and one-quarter working days for each month of service, with a maximum allowable accumulative total of thirty days.

**The service is to be computed from the date of employment.**

May 12th, 1949.

Mr. A. A. O'Claire, Secretary  
State Fish and Game Commission  
Helena, Montana

Dear Mr. O'Claire:

You have requested my opinion as to the specific date from which leave for an employee will be computed under the provisions of S. B. 106, which will be Chapter 131 of the Montana Session Laws of 1949, and have presented the following set of facts:

"We have an employee whose employment date would be March 1, 1945. Should we compute leave time for this employee from March 1, 1945, allowing a maximum of 30 days for time worked, or should his leave be computed from the date of passage and approval of this act?"

Section 1, of the act states:

"Each employee of the State, or any county or city thereof, is entitled to and shall be granted annual vacation leave with full pay at the rate of one and one-quarter working days for each month of such service, such service to be computed from the date of employment."

Section 2 of the Act states that such annual leave may be accumulated to a total of not to exceed thirty working days.

Section 8 repeals all acts and parts of acts in conflict with this act.

Section 9 states that the act shall be in full force and effect from and after its passage and approval.

You ask whether Section 9 is to be read so that it will alter the computation base set forth in Section 1.

Section 9, which effectuates the act immediately upon its passage and approval (the act was signed March 1, 1949), cannot be read to exert any substantive effect on the clear expression of Section 1. The absence of Section 9 would not alter the substance of the act, but would have postponed its effective date until July 1, 1949, under the terms of Section 90 of the Revised Codes of Montana, 1935.

Section 1 clearly expresses the legislative intention to use the date of employment as the base for computation of service. To attempt to establish any other date would necessarily be to arbitrarily close our eyes to the plain language of the statute.

The only objection that could be raised to the use of the date of employment would come from Section 3 of the Revised Codes of Montana, 1935, which states:

"No law contained in any of the codes or other statutes of Montana is retro-active unless expressly so declared."

However, Section 3 has only the force and effect of a Statute and if in conflict with the instant statute is repealed by Section 8 thereof.

Moreover, it is settled law that a statute is not retroactive merely because it draws upon antecedent facts for its operation. (See *Cox v. Hart*, 260 U. S. 427, 67 L. Ed. 332, 337, *Lewis v. Fidelity and D. Co.* 54 S. Ct. 848, 92ALR794, 803; *Earle v. Froedtert Grain and Malting Co.* (Wash.) 85 Pac. 2nd 264).

It is therefore my opinion that the computation of leave time is based on the employment date of each individual employee. On the facts you set forth, it is my opinion that the computation of vacation leave time would be from March 1, 1945 and the employee would be allowed a maximum of 30 days for time worked.

Very truly yours,  
ARNOLD H. OLSEN,  
Attorney General.