

VOLUME NO. 33

Opinion No. 28

**MILITARY LEAVE - Temporary state employees. Section 77-157, Revised Codes of Montana, 1947.**

**HELD: Temporary state, county, or city employees are not entitled to receive pay while on a military leave of absence.**

September 11, 1970

Mr. Clayton R. Herron, Counsel  
State Fish and Game Department  
State Capitol Station  
Helena, Montana 59601

Dear Mr. Herron:

You have requested my opinion on whether temporary state employees are eligible for receiving full pay while on military leave under section 77-157, Revised Codes of Montana, 1947.

Section 77-157, R.C.M. 1947, provides:

“That any person who is a member of the organized national guard of the state of Montana . . . and who is an appointee of or employee of the state of Montana, or any of its departments, or any county or city within the state, shall be given leave of absence with pay for attending regular encampments . . . without time being charged against him on his annual vacation.”

The foregoing section provides that only an appointee or an employee is entitled to the benefits of this provision. Although this section does not expressly distinguish between “temporary” and “permanent” employees, it appears that such a distinction was intended by the legislature. Such a conclusion is based on the provision in section 77-157, R.C.M. 1947, that a person on a military leave of absence is not to have such time charged against his annual vacation.

Section 59-1001, R.C.M. 1947, provides:

“Each employee of the state, or any county or city thereof, who shall have been in continuous employment and service of the state, county or city thereof, for a period of one (1) year from the date of employment is entitled to and shall be granted annual vacation leave with full pay according to the following schedule: . . .”

This section was interpreted in 33 **Opinions of the Attorney General**, opinion no. 4, to require one year of continuous employment before a public employee is eligible, as a matter of right, to receive annual vacation leave. Consequently, section 77-157, R.C.M. 1947, applies only to an appointee or employee who is entitled as of right to annual vacation leave.

In addition, the legislature has distinguished between “permanent” and “temporary” employees regarding benefits for those employees who served in the military. For example, section 77-701, R.C.M. 1947, specifically provides that re-employment right protections are extended to a person who “leaves a position, other than a temporary position.”

**THEREFORE, IT IS MY OPINION**, that section 77-157, R.C.M. 1947, entitles permanent state, county, or city employees to receive pay while on a military leave of absence but no such benefit is granted to temporary employees.

Very truly yours,

ROBERT L. WOODAHL  
Attorney General