

VOLUME NO. 33

Opinion No. 4

**VACATIONS, PUBLIC EMPLOYEES - Annual Leave - ANNUAL VACATION LEAVE - Continuous Employment and Service — Section 59-1001, Revised Codes of Montana, 1947. Chapter 350, Laws of 1969.**

- HELD:**
- 1. Employees are entitled to and shall be granted annual vacation leave according to the schedule in section 59-1001, R.C.M., 1947, as amended by Chapter 350, Laws of 1969, after they have completed one year's continuous employment from the date of their latest employment with a state, county or city governmental unit.**
  - 2. Employees are entitled to accrue annual leave according to the schedule in Section 59-1001, R.C.M., 1947, as amended by Chapter 350, Laws of 1969, whether or not they have been employed continuously by the same government unit and whether or not they have worked continuously for the state, county or city for a period in excess of ten years.**

June 18, 1969

Mr. Howard H. Lord, Chairman  
Board of Equalization  
State Capitol Building  
Helena, Montana 59601

Dear Mr. Lord:

You have requested my opinion on an interpretation of Chapter 350, Laws of 1969, concerning vacation benefits for public employees.

Specifically, you have asked the following questions about three existing factual situations:

1. An employee has an employment history with the state, county, and municipality totaling in excess of ten years employment and service. This employment does not include an uninterrupted ten year period with any one state department, county or municipality. Can this employee accrue annual leave after July 1, 1969, in excess of one and one-quarter working days for each month of service?
2. An employee has an employment history with various departments and agencies of the state totaling in excess of ten years employment and service. This employment does not include an uninterrupted ten year period with any one state department or agency. Can this employee accrue annual leave after July 1, 1969, in excess of one and one-quarter working days for each month of service?
3. An employee has an employment history with your department totaling in excess of ten years employment and service. This employment does not include ten years of continuous service with your department. Can this employee accrue annual leave after July 1, 1969, in excess of one and one-quarter working days for each month of service?

For the purpose of this opinion, these three questions can be answered together.

Section 59-1001, Revised Codes of Montana, 1947, was originally enacted in 1949 and amended in 1951. Since 1951 it has remained the same until the enactment of Chapter 350, Laws of 1969. Before the 1969 amendment Section 59-1001, *supra*, read as follows:

“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 at the rate of one and one-quarter (1¼) working days for each month of service.”

These words were interpreted in Opinions No. 22 and No. 39, Volume 27, Opinions of the Attorney General. Opinion No. 39 states, in part:

“... 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.”

Thus, continuous employment . . . for a period of one (1) year from the date of employment” is necessary before public employees are eligible as a matter of right to receive accrued annual leave.

Chapter 350, Laws of 1969, has amended Section 59-1001, *supra*, by including a scheduled rate of accrued working days based on the number of years in state, county or city employment. This schedule of accrued annual vacation leave is not affected by a transfer from one department of the state, county or city to another. See Opinion No. 30, Volume 26, Opinions of the Attorney General. Likewise, this schedule rate applies to total years of employment with the state, county or city regardless of whether this employment were continuous. This is apparent from the language of the amendment in Section 59-1001 (1) (a) through (d) which says “years of employment” not “continuous years of employment.”

The legislature clearly intended to reward public employees for experience in government and to encourage career government service. In the civilian service of the federal government prior federal service is recognized and the returning employee receives credit for prior service for accelerated leave accumulation purposes. The benefits to the employer served by this federal policy are not essentially different from those that Montana’s governmental entities seek. There is nothing contained in the language of Section 59-1001, *supra*, as amended by Chapter 350, from which the inference can be made that “employment” means “continuous employment” or “continuous employment with the employer” or “employment with the same employer”

Therefore, it is my opinion that public employees are entitled to and shall be granted annual vacation leave according to the schedule in Section 59-1001, *supra*, as amended by Chapter 350. After they have accumulated ten years of employment with the state, county or city, these employees will accrue annual leave according to the accelerated schedule. This is true regardless of whether they worked for more than one agency or department of the state, county or city government and whether their employment with the agency or department was continuous for the ten year period. However, before these employees are eligible for this computation, as a matter of right, they must have been in continuous employment for a period of one (1) year from the date of their latest employment with the state, county or city.

If an employee, who had previously been employed by the state, county or city, re-enters employment with any of these entities, he must work a continuous period of one year before being entitled to annual vacation leave as a matter of right. After having re-entered employment for a continuous period of one year, he would be entitled to accrue annual leave according to the accelerated schedule if his total years of employment are in excess of ten years.

This schedule of annual vacation leave is effective on July 1, 1969.

Very truly yours,

ROBERT L. WOODAHL  
Attorney General

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