

**VOLUME NO. 36**

**Opinion No. 105**

**HOLIDAYS—Public Employees; Sections 19-107, 19-108, 59-1009, 75-7406, Revised Codes of Montana 1947.**

**HELD: 1. Public employees, including nonteaching school district employees, who are covered by the vacation, sick leave, and holiday provisions of Title 59, Chapter 10, are entitled under section 59-1009 to days off on legal holidays.**

**2. For nonteaching school district employees, such holidays are the "school holidays" in section 75-7406 rather than the "legal holidays" in section 19-107.**

**3. All public employees entitled by section 59-1009 to legal holidays off are also entitled to pay for such days off.**

November 15, 1976

Mr. J. Fred Bourdeau  
Cascade County Attorney  
Courthouse  
Great Falls, MT 59401

Dear Mr. Bourdeau:

Your office has requested my opinion on the following questions:

1. In the absence of a policy, custom, or agreement, are nonteaching school district employees entitled to a day off on a holiday?
2. If so, are they entitled to days off on the legal holidays enumerated in section 19-107 or the school holidays in section 75-7406?
3. Are they entitled to pay for such days off?

1. My research fails to disclose the existence of any authority for the proposition that people generally are entitled to a day off on a holiday. Certainly there is no common law or constitutional right of this nature. It has been said that "[t]he modern spirit of holidays confers a privilege to refrain from labor, rather than a command to desist from work." **People v. Browning**, 22 P.2d 784, 788 (Calif. 1933). Cessation of work on holidays is therefore attributable to custom or, in some cases, to a labor contract.

But as far as state employees are concerned, I am persuaded that section 59-1009 in effect has created a statutory right to holidays off. It states:

Any employee of the state of Montana, or any county or city thereof, who is scheduled for a day off on a day which is observed as a legal holiday, except Sundays, **shall be entitled** to receive a day off either on the day preceding or the day following the holiday, whichever allows a day off in addition to the employee's regularly scheduled day off. (Emphasis added)

In Volume 34 Opinions of the Attorney General, Opinion No. 27 (1971), I interpreted this provision to mean that public (state) employees shall have off the Friday preceding a legal holiday falling on a Saturday, or the Monday following a legal holiday falling on a Sunday. My conclusion rested on the words "shall be entitled", which, under the rules of statutory construction, clearly are mandatory. If the legislature mandates a day off for state employees when a legal holiday happens to fall on a weekend, surely the same is true when a holiday falls during the week.

It is settled that "state employees", in its generic sense, includes nonteaching school district employees. **Teamsters v. Cascade County School District No. 1**, 162 Mont. 277, 511 P.2d 339 (1972).

Your first question must therefore be answered in the affirmative.

2. What holidays nonteaching school district employees are entitled to is another matter. Section 19-107 defines "legal holidays". Section 75-7406 defines "school holidays". A comparison reveals several legal holidays that are not

school holidays—Columbus Day, Veterans Day, Lincoln’s Birthday, Washington’s Birthday, and general election days (depending upon the effect of voting at a school used as a polling place).

Common sense dictates that nonteaching school district employees should observe the school holidays rather than the legal holidays.

Presumably the legislature intended section 75-7406 to apply to all school district employees because the services of nonteachers and teachers alike are required for schools to function. It is inconsistent with that intention to permit nonteachers to remain idle on the legal holidays that are not observed as school holidays, or to pay them additional compensation for what are contemplated to be regular working days.

Inasmuch as section 59-1009 mentions “legal holidays”, it has been urged that nonteaching school district employees are entitled to have off the holidays in in section 19-107. But to construe section 59-1009 so narrowly ignores section 19-108, which states:

Nothing contained in section 19-107 defining legal holidays shall be deemed to amend or change the provisions of sections 75-7406 and 75-7407 said sections being hereby expressly declared to define **legal holidays for school purposes only**. (Emphasis added)

Plainly, the legislature considers school holidays to be just a species of legal holidays. The reference to “legal holidays” in section 59-1009 can therefore encompass both. Such a construction will give optimum effect to all the statutes bearing on this problem, as well as prevent a chaotic division of the school district work force on holidays.

3. The question of pay is correlative to the basic principle regarding holidays. As there is no inherent right to days off on holidays, there is no inherent right to pay for those days off. Historically, people have received paid holidays off because of custom or contract. Again, however, section 59-1009 gives rise to a statutory right to paid holidays for state employees. While the statute does not in so many words command pay for holidays off, by virtue of its inclusion in the act relating to paid vacations and paid sick leave, the legislature must also have intended that holidays off be paid holidays.

#### THEREFORE, IT IS MY OPINION:

1. Public employees, including nonteaching school district employees, who are covered by the vacation, sick leave, and holiday provisions of Title 59, chapter 10, are entitled under section 59-1009 to days off on legal holidays.
2. For nonteaching school district employees, such holidays are the “school holidays” in section 75-7406 rather than the “legal holidays” in section 19-107.

3. All public employees entitled by section 59-1009 to legal holidays off are also entitled to pay for such days off.

Very truly yours,

ROBERT L. WOODAHL  
Attorney General