

VOLUME NO. 36

Opinion No. 14

PUBLIC EMPLOYEES—Vacation. Section 59-1001(1), Revised Codes of Montana, 1947.

HELD: State, city and county full-time employees are entitled to annual vacation leave with pay pursuant to section 59-1001(1), Revised Codes of Montana, 1947, provided they have been “continuously employed for a period of six (6) calendar months” computed from the date of employment rather than July 1, 1975, the effective date of Chapter 62, Montana Session Laws of 1975.

August 20, 1975

Mr. Tony Softich, Administrator
Department of Labor and Industry
Labor Standards Division
1331 Helena Avenue
Helena, Montana 59601

Dear Mr. Softich:

You have requested my opinion as to the specific date after which a full-time state, city or county employee may take annual vacation leave with pay under the provisions of Chapter 62, Montana Session Laws of 1975, and have presented the following set of facts:

A state, county or city full-time employee commenced employment on March 15, 1975. Should leave time for this employee be computed from March 15, 1975, or should his leave be computed from the date of passage and approval of this act?

Section 1 of Chapter 62, *supra*, amends section 59-1001, Revised Codes of Montana 1947, to provide in pertinent part:

Annual vacation leave. (1) Full-time employee of the state or any county or city thereof is entitled to and shall earn annual vacation leave credits from the first full pay period of employment... However, employees are not entitled to any vacation leave with pay until they have been continuously employed for a period of six (6) calendar months... .

Prior to this amendment, section 59-1001(1), R.C.M. 1947, required employees to have been continuously employed for a period of one year before being entitled to annual leave with pay.

Section 59-1001(1), R.C.M. 1947, has been interpreted by previous Attorneys General for the state of Montana as entitling public employees to eligibility as a matter of right to receive accrued annual leave after the employee has been "continuously employed for" the period directed under the statute. Under present section 59-1001(1), R.C.M. 1947, that period is six calendar months. See Opinion No. 4, Volume 33, Opinions of the Attorney General; Opinions No. 22 and No. 39, Volume 27, Opinions of the Attorney General. These opinions were written when section 59-1001(1), R.C.M. 1947 directed that the eligibility period for entitlement to annual vacation leave with pay commenced from "the date of employment". Section 59-1001(1), R.C.M. 1947, presently does not state that this eligibility period similarly commences from the date of employment. Rather, it states that employees,

are not entitled to any vacation leave with pay until they have been continuously employed for a period of six (6) calendar months... .

Nonetheless, it is apparent from the terms of section 59-1001(1), R.C.M. 1947, that this language refers to continuous employment computed "from the first full pay period of employment". Any other construction would ignore the

plain language of the statute and render meaningless its directive that employment be continuous "from the first full pay period of employment". Therefore, the eligibility period for entitlement to annual vacation leave with pay commences from the date of employment.

The only objection that could be raised to the use of the date of employment would come from section 12-201, R.C.M. 1947, which states:

No law contained in any of the codes or other statutes of Montana is retroactive unless expressly so declared.

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. 92 A.L.R. 794; **Earle v. Froedtert Grain and Malting Co.** (Wash.) 85 P.2d 264. This rule is particularly applicable where, as here, the language in terms applies to one who at the time of the enactment occupied a particular status which was defined by certain facts existent at the time of the law's effective date. See **Cox v. Hart**, *supra*, 260 U.S. 427, 435.

In response to the particular problem which you pose, a state, county or city full-time employee who commenced employment on March 15, 1975, must be allowed annual leave with pay after being continuously employed for six calendar months computed from March 15, 1975, or the date of his employment with the state, county or city.

THEREFORE, IT IS MY OPINION:

State, city and county full-time employees are entitled to annual vacation leave with pay pursuant to section 59-1001 (1), Revised Codes of Montana, 1947, provided they have been "continuously employed for a period of six (6) calendar months" computed from the date of employment rather than July 1, 1975, the effective date of Chapter 62, Montana Session Laws of 1975.

Very truly yours,

ROBERT L. WOODAHL
Attorney General