

COUNTY OFFICERS AND EMPLOYEES - Vacation accrual rate for county employees under section 2-18-612, MCA;  
EMPLOYEES, PUBLIC - State and local government employees' vacation accrual rate;  
EMPLOYEES, PUBLIC - State employees' longevity allowance accrual rate;  
HOURS OF WORK - One year of service under sections 2-18-304 and 2-18-612, MCA, equals 2,080 hours;  
MONTANA CODE ANNOTATED - Sections 2-18-101(7), 2-18-303, 2-18-304, 2-18-306, 2-18-601(2), 2-18-611, 2-18-612, 2-18-617, 2-18-618;  
OPINIONS OF THE ATTORNEY GENERAL - 39 Op. Att'y Gen. No. 78 (1982).

- HELD: 1. Under section 2-18-304, MCA, a state employee must be in a pay status for 2,080 hours in order to be credited with a year of service for longevity accrual purposes.
2. Under section 2-18-612, MCA, a public employee must be in a pay status for 2,080 hours in order to be credited with a year of employment for vacation accrual purposes.

31 July 1984

Morris Brusett, Director  
Department of Administration  
Sam W. Mitchell Building  
Helena MT 59620

Dear Mr. Brusett:

You have requested my opinion concerning the following questions:

1. Whether a state employee, as defined in section 2-18-101(7), MCA, must be in a pay status for 2,080 hours to be credited with one year of service toward the longevity period under section 2-18-304, MCA?
2. Whether an employee, as defined in section 2-18-601(2), MCA, must be in a pay status for 2,080 hours to be credited with one year of employment toward the vacation accrual rate under section 2-18-612, MCA?

A longevity allowance is added to the salary of "each employee who has completed 5 years of uninterrupted state service." § 2-18-304, MCA. The term "year" is not defined in this section, nor is it defined in section 2-18-612, MCA, which provides:

Rate earned. Vacation leave credits are earned at a yearly rate calculated in accordance with the following schedule, which applies to the total years of an employee's employment with any agency whether the employment is continuous or not:

Years of employment	Working days credit
1 day through 10 years	15
10 years through 15 years	18
15 years through 20 years	21
20 years on	24

[Emphasis added.]

For purposes of administration of the longevity and vacation statutes, you wish to know whether a year of service is equivalent to 2,080 hours.

According to the principles of statutory construction, if the language of a statute is plain, unambiguous, and direct, the plain meaning of the words is to be followed. Dunphy v. Anaconda Co., 151 Mont. 76, 438 P.2d 660 (1968). In the construction of a statute, the legislative intent is to be pursued, if possible. § 1-2-102, MCA. Statutes must be read together and harmonized to give effect to the legislative intent. Gaffney v. Industrial Accident Board, 133 Mont. 448, 324 P.2d 1063 (1958).

Within Title 2, chapter 18, MCA, definitions of the word "year" appear in several other sections. In sections 2-18-306, 2-18-611, and 2-18-618, MCA, "year" is defined as 2,080 hours for calculation of hourly wages, vacation credits, and sick leave credits. On the other hand, the language of sections 2-18-303 and 2-18-617, MCA, refers specifically to "fiscal year" and "calendar year," respectively. The descriptive terms "fiscal" and "calendar" are omitted from the sections concerning longevity and vacation accrual. If the Legislature had intended calculations to be based upon a fiscal or calendar year, it would have expressly inserted one of these descriptive terms. In construing a statute, it is not my function to insert words which have been omitted.

In a previous opinion, I concluded that a normal work year consists of 2,080 hours of labor and that a "year of service" for purposes of deputy sheriffs' longevity therefore consists of 2,080 hours. 39 Op. Att'y Gen. No. 78 at 299 (1982). Similarly, in this situation, the statutes appear to express a general legislative intent that a year of service or employment is equivalent to 2,080 hours. Thus, I conclude that in calculating an employee's past employment for longevity or vacation accrual purposes, the agency or unit of local government should utilize an hourly basis. You have informed me that different practices may have existed in the agencies in the past, and that you intend to adopt new rules to implement a uniform practice. Under the recent decision of the Montana Supreme Court in Wage Appeal of Montana Highway Patrol Officers v. Board of Personnel Appeals, 41 St. Rptr. 154, 676 P.2d 194 (1984), it is permissible to change the method of computing benefits

in order to comply with the legislative intent, so long as the change is prospective in application.

THEREFORE, IT IS MY OPINION:

1. Under section 2-18-304, MCA, a state employee must be in a pay status for 2,080 hours in order to be credited with a year of service for longevity accrual purposes.
2. Under section 2-18-612, MCA, a public employee must be in a pay status for 2,080 hours in order to be credited with a year of employment for vacation accrual purposes.

Very truly yours,

MIKE GREELY  
Attorney General