

Opinion No. 2012-095

October 1, 2012

The Honorable Jimmy Jeffress
State Senator
Post Office Box 904
Crossett, Arkansas 71635-0904

Dear Senator Jeffress:

This is my opinion on your questions about sick leave for municipal firefighters. You state these facts:

One of my constituents has questions on Arkansas Code § 14-53-108. A firefighter for the City of Crossett was unable to work from September 9, 2011, until approximately April/May 2012 because of a non-job related injury. He used his accumulated sick and vacation leave during the time span he was unable to work. On March 20, 2012, he had his 9-year anniversary and received 10 vacation days, but he did not receive his 20 sick days. He worked on the job for 6 months prior to his absence and has been back at work for approximately four weeks. The firefighter believes ACA § 14-53-108 allows him to receive the 20 days of sick leave on his anniversary date.

I understand that Crossett is a city of the first class. *See* A.C.A. § 14-37-103(a)(1) (Repl. 1998).

Your questions are:

1. Under state law, when is a firefighter entitled to receive their sick leave?
2. Can a firefighter accrue leave when they are not working or unable to work?

3. What laws, rules or regulations would effect if and when a firefighter can receive their sick leave?

RESPONSE

In my opinion, state law does not specify when a municipal firefighter is entitled to receive accumulated sick leave. A firefighter accrues sick leave as long as he is employed, regardless of whether he is working or able to work. The statute you cite and any applicable city ordinance constitute the relevant law.¹

Question 1 – Under state law, when is a firefighter entitled to receive their sick leave?

As your question implies, matters of municipal employees' leave and other fringe benefits are generally governed by state law. Each municipality is empowered to "exercise full legislative power in any and all matters . . . pertaining to its *municipal affairs*," but the "[h]ours and vacations, holidays, and other fringe benefits of [municipal] employees" are "*state affairs* and subject to the general laws of the State. . . ." A.C.A. § 14-43-601(a)(1) (Supp. 2011) (emphases added).

A state statute provides that

all firefighters employed by cities of the first class and cities of the second class shall accumulate sick leave in accordance with a municipal ordinance at the rate of not less than ten (10) working days nor more than twenty (20) working days per year, beginning one (1) year after the date of employment.

A.C.A. § 14-53-108(a)(1)(A) (Supp. 2011).²

¹ The resolution of any controversy about a particular firefighter's sick leave will depend on all the relevant facts, which I do not possess.

² This subsection and your request both refer to 20 days of sick leave. Another subsection permits 24-hour sick-leave days, but it refers to 15 and 12 sick-leave days, not 20. *See* A.C.A. § 14-53-108(d). I accordingly assume that the subsection quoted above applies to the firefighter in question.

This law establishes when sick-leave accumulation begins, and the rate at which the accumulation proceeds. But it does not state when a firefighter is to receive – be credited with – accumulated sick leave.

The statute expressly contemplates a city ordinance addressing sick leave and setting the accumulation rate within the permitted range. *See id.* State law provides generally that “[a] municipality may legislate upon . . . state affairs . . . if not in conflict with state law.” A.C.A. § 14-43-601(a)(2)(B). Because an ordinance establishing the time at which sick leave is credited would not – at least in that particular – conflict with state law, it is my view that state law leaves this timing decision to the city. *Cf.* Op. Att’y Gen. 2003-239, 99-172 (municipal officials have discretion under A.C.A. § 14-52-106 (Repl. 1998) to determine timing of vacation-leave accumulation for police department employees).

Question 2 – Can a firefighter accrue leave when they are not working or unable to work?

The statute requires sick leave for all firefighters “employed” by a city. A.C.A. § 14-53-108(a)(1)(A). Statutes are construed just as they read, giving the words their ordinary and usually accepted meanings, and legislative intent is gathered from the plain meaning of the language used. *E.g., Magness v. State*, 2012 Ark. 16, *3-*4, ___ S.W. 3d ___, 2012 WL 149765. In my opinion, the plain meaning here is that sick leave accumulates for any firefighter who has an employment relationship with a city, regardless of whether he is working or able to work.

I considered a similar question concerning sick leave for municipal law enforcement officers. *See* Op. Att’y Gen. 2008-094. Sick leave for law enforcement officers is governed by a statute that has its origins in the same act of the General Assembly as the statute governing firefighters’ sick leave. *See* notes on history of A.C.A. §§ 14-52-107 (Repl. 1998), 14-53-108 (both sections originating in Act 393 of 1969; both sections previously codified at A.S.A. §§ 19-1718 to -1720).

I concluded in that opinion that as long as the officer at issue “is still ‘employed’ [by] . . . the police department, he is entitled to the continued accrual of . . . sick leave under” the sick-leave statute applicable to law enforcement officers,

The Honorable Jimmy Jeffress
State Senator
Opinion No. 2012-095
Page 4

notwithstanding that the officer was unable to work for several months. Op. Att’y Gen. 2008-094. My conclusion there was based on the plain meaning of the word “employed” and on a predecessor’s opinion that the statute renders a city powerless to suspend the accrual of a law enforcement officer’s sick leave for months in which the officer does not work some specified minimum number of days. *See id.* (discussing Op. Att’y Gen. 99-125). Both opinions were correct, in my view, and they dictate the same result here.

Question 3 – What laws, rules or regulations would effect if and when a firefighter can receive their sick leave?

As my answers above imply, the sick-leave statute, A.C.A. § 14-53-108, governs whether a firefighter accrues sick leave, and a municipal ordinance may specify when sick leave is credited.

Assistant Attorney General J. M. Barker prepared this opinion, which I approve.

Sincerely,

DUSTIN McDANIEL
Attorney General

DM:JMB/cyh