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MEMORANDUM 033-18HR

TO: Agency Administrators

FROM: Carolyn Horwich, Esq., Director of Human Resources

THROUGH: Rip Colvin, Executive Director

SUBJECT: Waiting Periods - Leave Payouts

DATE: December 3, 2018

The Department of Management Services' Division of Human Resource Management (DMS HRM) has revised the Policy Guideline on *Waiting Period for the Payment or Transfer of Accrued Leave and Verification of Eligibility for Subsequent Payments for Separating Career Service, Selected Exempt Service, and Senior Management Service Employees*. The changes appear to be stylistic and minimal.

Although the offices under Justice Administration are not part of the State Personnel System, the Guideline does provide insight into how People First views leave payouts.

For your convenience, language added from the last Guideline issued by DMS HRM on the subject is highlighted in yellow. The only language deleted from the earlier Guideline is the following:

Note: Nothing in this rule interpretation precludes an agency outside the State Personnel System from choosing to credit the employee with all or a portion of the forfeited leave balance. Consequently, upon request from the receiving employer, agencies may provide certification regarding the number of hours transferred, the number of hours paid, and the number of hours forfeited. The purpose of this interpretation is to clarify what should be occurring with State Personnel System agencies.

Thank you.



DEPARTMENT OF MANAGEMENT SERVICES
DIVISION OF HUMAN RESOURCE MANAGEMENT
POLICY GUIDELINE

STATE PERSONNEL SYSTEM

SUBJECT:

Waiting Period for the Payment or Transfer of Accrued Leave and Verification of Eligibility for Subsequent Payments for Separating Career Service, Selected Exempt Service, and Senior Management Service Employees

POLICY GUIDELINE: HRM #2018-015

EFFECTIVE DATE: November 28, 2018

SUPERSEDES: *Rule Interpretation 60L-34-2008-#003: Waiting Period for the Payment or Transfer of Accrued Leave and Verification of Eligibility for Subsequent Payments for Separating Career Service, SES and SMS Employees*

STATUTES/RULES/REGULATIONS/LAWS:

*Section 110.122, Florida Statutes (F.S.), Terminal payment for accumulated sick leave
Section 121.091, F.S., Benefits payable under the system
Rule 60L-34.0041, Florida Administrative Code (F.A.C.), Annual Leave
Rule 60L-34.0042, F.A.C., Sick Leave*

FORMS: N/A

ADDITIONAL REFERENCE MATERIALS: N/A

QUESTION AND ANSWER:

Question 1:

Is there a period of time that agencies should wait before processing payment of annual leave when an employee leaves the agency?

Answer:

Yes. Inasmuch as Rule 60L-34.0041(5)(b), F.A.C., requires that the receiving agency credit the employee's unused annual leave when an employee is hired within 31 days of separating from another State Personnel System (SPS) agency, it is sound fiscal practice for agencies to wait 31 days before processing payments for unused annual leave to ensure that the employee has not transferred to another SPS agency in the interim.

Even when employees indicate that they are terminating from state government, if they are permitted to receive a terminal payment for their annual leave before 31 days has elapsed, such employees will have potentially received an overpayment if reemployment takes place within those 31 days. The former employing agency would then need to take steps to have such employees repay the money that was received in error from the terminal payment.

The SPS policy of waiting 31 (calendar) days relieves the agency from the administrative burden

of collecting overpayments and protects the employee from financial hardships that could arise from being required to repay any monies received in error. In addition, should the employee wish to tax shelter part of the payment under the Deferred Compensation Program, this waiting period may be useful for ensuring the appropriate paperwork has been processed beforehand.

Question 2:

Before processing an annual leave payment, does the agency need to verify whether or not the employee previously received an annual leave payment?

Answer:

Yes. With the inception of Service First legislation in 2001, a lifetime cap was placed on annual leave payments made to Career Service employees separating on or after January 1, 2002. In addition, it has come to our attention that the 31-day waiting period for payment of annual leave to an SPS employee (whether Career Service, Selected Exempt Service [SES] or Senior Management Service [SMS]) may not have been consistently observed following the January 1, 2002 re-issuance of the attendance and leave rule. Consequently, before processing an annual leave payment for an employee entering Deferred Retirement Option Program (DROP) or separating from employment, the agency should verify whether the employee received an annual leave payment (on or after January 1, 2002) from an SPS agency for leave credits that should have transferred to another SPS agency instead. The date of separation and the date of subsequent hire within the SPS should not be within the same 31 calendar days. If it is discovered that the employee was rehired prior to the 31-day termination requirement, the agency must reduce the current leave payout by the number of hours for which the employee was erroneously paid. For example:

- An SES employee terminates from SPS Agency A on 1/21/2002. 420 hours of annual leave and 192 hours of sick leave are processed and paid on 1/31/2002.
- This same SES employee is hired by SPS Agency B on 2/18/2002.

In the above scenario, the employee should not have been paid for accrued leave because 31 days had not elapsed. However, if such error is not found by either SPS agency until the employee experiences another event that qualifies for payment (e.g., the above employee requests to enter DROP in 2018 or decides to separate from service in 2018), then the only payment that the SES employee may receive from Agency B is the difference between the maximum payout (480 hours) and the actual payout made in error in 2002. At this point, if the combined amount of annual leave that was paid in error and paid upon DROP entry equals the maximum payment permissible when entering DROP, the employee would not be eligible for another payment upon separation from service (exiting DROP).

As sick leave is not payable upon entering DROP, verification of any sick leave payment would only need to occur upon the termination of an employee. When an employee terminates employment, any sick leave payout (up to the maximum of 25 percent of the total balance or 480 hours, whichever is less) would also need to be reduced by a previous payment if received in error. In our example above, 192 hours would not be eligible for payment and is to be reduced from any balance currently payable to the employee.

Note: As part of their due diligence with all new employees, agencies can verify if the last employer was an SPS agency and, if so, whether leave credits are being properly transferred.

This practice should eventually eliminate the need for retroactive verification at the time the employee is entering DROP or separating.

Question 3:

How does the agency verify if leave was paid to an employee?

Answer:

Annual leave payouts received by an employee after the implementation of the Service First rules that limited Career Service payouts to a lifetime maximum of 240 hours can be verified in the Bureau of State Payrolls payroll system (PYRL) using the Annual Leave Payment (AL) screen under the Employee Information (EI) menu. This PYRL screen will show the date and the amount of annual leave paid to an employee. The system, however, does not show any sick leave payments. Sick leave would have to be verified through a search of payroll registers for up to 90 days following the employee's termination.

Question 4:

Does the 31-day waiting period apply when processing payment for other forms of accrued leave (e.g., sick leave) when an employee leaves the agency?

Answer:

Yes. For consistency, the terminal payment of other forms of leave is handled in the same manner as annual leave, as indicated in Question 1 above. In addition, before processing payment of these other leave types, the agency should verify that any prior payments were not made prematurely, as indicated in Question 2.

Question 5:

Does the 31-day waiting period apply to employees who are retiring or who are entering or terminating from DROP?

Answer:

Yes. The 31-day waiting period applies equally to all employees to ensure full compliance and a uniform approach to the processing of terminal leave credits.

Question 6:

Does the 31-day waiting period apply to employees who are separating in order to accept Other Personal Services (OPS) employment?

Answer:

Yes. When the employee separates from the agency whether it is to accept OPS employment within the same or a different agency, the 31-day waiting period shall apply. This is to ensure full compliance and a uniform approach to the processing of terminal leave credits.

Question 7:

How should the payment or transfer of annual and sick leave credits be handled when an employee moves from an agency within the SPS to a state government position outside of the SPS within 31 days? **How are the annual and sick leave credits handled when a break in service over 31 days occurs?**

Answer:

Pursuant to the provisions of Rules 60L-34.0041(5)(c) and 60L-34.0042(7)(a), F.A.C., if the receiving employer (another state government employer) will accept all of the credits, then the credits shall be transferred. If the receiving employer will not accept the credits, then the leave is to be paid in accordance with Rule 60L-34.0041(6), F.A.C. and section 110.122(1) and (3), F.S.

If the receiving employer accepts only a portion of the leave balance, then the combination of the number of hours transferred and the number of hours paid cannot exceed the maximum number of hours payable for the pay plan. For annual leave, the combination of hours transferred and paid cannot exceed 240 hours for eligible Career Service employees and 480 hours for SES and SMS employees. **For sick leave, subtract the hours transferred to the receiving employer from 1,920 hours or the employee's balance, whichever is less, and pay one-fourth of the remaining sick leave to eligible employees.** Any hours in excess of the maximum number of annual or sick leave hours payable for the pay plan are forfeited.

Note: A list of "state government" employers is provided in the Policy Guideline on *Defining "Continuous Service", "State Government Creditable Service", and "Creditable State Employment" for purposes of administering Rule 60L-34, Florida Administrative Code.*

When an employee moves from an agency within the SPS to a state government position outside of the SPS **after** 31 days, a separation has occurred and the employee should receive a terminal payment, if eligible. Leave can no longer be transferred after 31 days.

Note: The Program Guidelines for the *Senior Management Service (SMS) & Selected Exempt Service (SES) Pro-ration/Payment Instructions for Annual Leave*, contain specific instructions regarding the proration of annual leave for SES and SMS employees.

APPLICABLE STATUTORY AND RULE CITATIONS:

Section 110.122, F.S., Terminal payment for accumulated sick leave

(1) All state branches, departments, and agencies which have the authority to establish or approve personnel policies for employees and to employ personnel and establish the conditions of their employment shall establish policies to provide terminal "incentive" pay for accumulated and unused sick leave to each employee upon normal or regular retirement for reason other than disability or upon termination of employment, or to the employee's beneficiary if service is terminated by death, provided such retirement, termination, or death occurs after 10 years of creditable state employment.

(3) The payments authorized by this section shall be determined by using the rate of pay received by the employee at the time of retirement, termination, or death, applied to the sick leave time for

which the employee is qualified to receive terminal “incentive” pay under the rules adopted by the department pursuant to the provisions of this section. Rules and policies adopted pursuant to this section shall permit terminal pay for sick leave equal to one-eighth of all unused sick leave credit accumulated prior to October 1, 1973, plus one-fourth of all unused sick leave accumulated on or after October 1, 1973. However, terminal pay allowable for unused sick leave accumulated on or after October 1, 1973, shall not exceed a maximum of 480 hours of actual payment. Employees shall be required to use all sick leave accumulated prior to October 1, 1973, before using sick leave accumulated on or after October 1, 1973.

Section 121.091(13)(c.), F.S., Benefits payable under DROP

2. Each employee who elects to participate in DROP may elect to receive a lump-sum payment for accrued annual leave earned in accordance with agency policy upon beginning participation in DROP. The accumulated leave payment certified to the division upon commencement of DROP shall be included in the calculation of the member's average final compensation. The employee electing the lump-sum payment is not eligible to receive a second lump-sum payment upon termination, except to the extent the employee has earned additional annual leave which, combined with the original payment, does not exceed the maximum lump-sum payment allowed by the employing agency's policy or rules. An early lump-sum payment shall be based on the hourly wage of the employee at the time he or she begins participation in DROP. If the member elects to wait and receive a lump-sum payment upon termination of DROP and termination of employment with the employer, any accumulated leave payment made at that time may not be included in the member's retirement benefit, which was determined and fixed by law when the employee elected to participate in DROP.

Rule 60L-34.0041, F.A.C., Annual Leave

(5)(b) If an employee moves from one position in the State Personnel System to another position in the State Personnel System in a different agency within thirty-one days, the receiving agency shall credit the employee's unused annual leave.

(5)(c) If an employee moves from a position in the State Personnel System to a position outside the State Personnel System, the agency shall either transfer unused annual leave credits to the system into which the employee is transferring, or, if the new system will not accept the credits, pay for the credits subject to subsection 60L-34.0041(6), F.A.C. For either transfer or payment, current year credits shall be prorated.

(6)(a) A career service employee who separates from state government with twelve continuous months of service shall be paid for unused annual leave, up to a lifetime maximum of 240 hours. With respect to leave payments received at the time of separation, agencies shall only include payments for separations occurring after December 31, 2001 in the calculation of the lifetime maximum. In case of death of an employee, the 240-hour limit shall not apply and all unused annual leave at the time of death shall be paid to the employee's beneficiary, estate, or as provided by law.

(6)(b) A senior management service or selected exempt service employee who separates from state government shall be paid for unused annual leave up to a maximum of 480 hours, with the current year's accrual prorated. In case of death of an employee, the 480-hour limit shall not apply and all unused annual leave at the time of death shall be paid to the employee's beneficiary, estate, or as provided by law.

Rule 60L-34.0042, F.A.C., Sick Leave

(7) The following provisions govern the retention and transfer of sick leave credits.

(a) Credits shall be transferred within the State Personnel System, and may be transferred to another state government employer, depending upon whether the receiving plan accepts the employee's leave credits. If the receiving employer does not accept the credits, the employee shall be paid for the credits if eligible under Section 110.122(1), F. S.; otherwise, the credits shall expire.

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