

HOUSE BILL NO. 119
INTRODUCED BY R. LENHART
BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

A BILL FOR AN ACT ENTITLED: "AN ACT DESIGNATING THE PAY PERIOD THAT INCLUDES DECEMBER 31 AS THE ENDING PAY PERIOD FOR DETERMINING TOTAL ACCUMULATED ANNUAL VACATION LEAVE; PROVIDING THAT EXCESS VACATION TIME IS NOT FORFEITED IF TAKEN BY THE END OF THE PAY PERIOD THAT INCLUDES MARCH 31 FOLLOWING THE LAST DAY OF THE CALENDAR YEAR IN WHICH THE EXCESS WAS ACCRUED; AUTHORIZING AGENCIES TO NEGOTIATE WITH EXCLUSIVE REPRESENTATIVES FOR A REDUCTION IN HOLIDAYS, ANNUAL VACATION LEAVE CREDITS, OR SICK LEAVE CREDITS IN EXCHANGE FOR AN INCREASE IN COMPENSATION OR BENEFITS; AMENDING SECTIONS 2-18-603, 2-18-611, 2-18-612, 2-18-617, AND 2-18-618, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-18-603, MCA, is amended to read:

"2-18-603. Holidays -- observance when falling on employee's day off. (1) (a) ~~Except as provided in [section 6].~~ a full-time employee who is scheduled for a day off on a day that is observed as a legal holiday, except Sundays, is entitled to receive a day off with pay either on the day preceding the holiday or on another day following the holiday in the same pay period or as scheduled by the employee and the employee's supervisor, whichever allows a day off in addition to the employee's regularly scheduled days off, provided the employee is in a pay status on the employee's last regularly scheduled working day immediately before the holiday or on the employee's first regularly scheduled working day immediately after the holiday.

(b) Part-time employees receive pay for the holiday on a prorated basis according to rules adopted by the department of administration or appropriate administrative officer under 2-18-604.

(c) A short-term worker may not receive holiday pay.

(2) For purposes of this section, the term "employee" does not include nonteaching school district employees."

Section 2. Section 2-18-611, MCA, is amended to read:

"2-18-611. Annual vacation leave. (1) ~~Each~~ Except as provided in [section 6], each permanent full-time employee shall earn annual vacation leave credits from the first day of employment. Vacation leave credits earned must be credited at the end of each pay period. However, employees are not entitled to any vacation leave with pay until they have been continuously employed for a period of 6 calendar months.

(2) Seasonal employees earn vacation credits. However, seasonal employees must be employed for 6 qualifying months before they may use the vacation credits. In order to qualify, seasonal employees shall immediately report back for work when operations resume in order to avoid a break in service.

(3) Permanent part-time employees are entitled to prorated annual vacation benefits if they have worked the qualifying period.

(4) An employee may not accrue annual vacation leave credits while in a leave-without-pay status.

(5) Temporary employees earn vacation leave credits but may not use the credits until after working for 6 qualifying months.

(6) A short-term worker, as defined in 2-18-101, may not earn vacation leave credits, and time worked as a short-term worker does not apply toward the person's rate of earning vacation leave credits."

Section 3. Section 2-18-612, MCA, is amended to read:

"2-18-612. Rate earned. (1) ~~Vacation~~ Except as provided in [section 6], 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

(2) (a) For the purpose of determining years of employment under this section, an employee eligible to earn vacation credits under 2-18-611 must be credited with 1 year of employment for each period of:

(i) 2,080 hours of service following his date of employment; an employee must be credited with 80 hours of service for each biweekly pay period in which he is in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in the pay period; or

(ii) 12 calendar months in which he was in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in any one month. An employee of a school district, a school at a

state institution, or the university system must be credited with 1 year of service if he is employed for an entire academic year.

(b) State agencies, other than the university system and a school at a state institution, must use the method provided in subsection (2)(a)(i) to calculate years of service under this section."

Section 4. Section 2-18-617, MCA, is amended to read:

"2-18-617. Accumulation of leave -- cash for unused -- transfer. (1) (a) Except as provided in subsection (1)(b), annual vacation leave may be accumulated to a total not to exceed two times the maximum number of days earned annually as of the end of the ~~first pay period of the next calendar year~~ pay period that includes December 31. Excess vacation time is not forfeited if taken ~~within 90 calendar days from~~ by the end of the pay period that includes March 31 following the last day of the calendar year in which the excess was accrued.

(b) It is the responsibility of the head of an employing agency to provide reasonable opportunity for an employee to use rather than forfeit accumulated vacation leave. If an employee makes a reasonable written request to use excess vacation leave before the excess vacation leave must be forfeited under subsection (1)(a) and the employing agency denies the request, the excess vacation leave is not forfeited and the employing agency shall ensure that the employee may use the excess vacation leave before the end of the calendar year in which the leave would have been forfeited under subsection (1)(a).

(2) An employee who terminates employment for a reason not reflecting discredit on the employee is entitled upon the date of termination to cash compensation for unused vacation leave, assuming that the employee has worked the qualifying period set forth in 2-18-611.

(3) However, if an employee transfers between agencies of the same jurisdiction, cash compensation may not be paid for unused vacation leave. In a transfer, the receiving agency assumes the liability for the accrued vacation credits transferred with the employee.

(4) This section does not prohibit a school district from providing cash compensation for unused vacation leave in lieu of the accumulation of the leave, either through a collective bargaining agreement or, in the absence of a collective bargaining agreement, through a policy."

Section 5. Section 2-18-618, MCA, is amended to read:

"2-18-618. (Temporary) Sick leave. (1) ~~Except as provided in [section 6],~~ a permanent full-time employee earns sick leave credits from the first day of employment. For calculating sick leave credits, 2,080 hours

(52 weeks x 40 hours) equals 1 year. Sick leave credits must be credited at the end of each pay period. Sick leave credits are earned at the rate of 12 working days for each year of service without restriction as to the number of working days that may be accumulated. Employees are not entitled to be paid sick leave until they have been continuously employed 90 days.

(2) An employee may not accrue sick leave credits while in a leave-without-pay status.

(3) Permanent part-time employees are entitled to prorated leave benefits if they have worked the qualifying period.

(4) Full-time temporary and seasonal employees are entitled to sick leave benefits provided they work the qualifying period.

(5) A short-term worker may not earn sick leave credits.

(6) An employee who terminates employment with the agency is entitled to a lump-sum payment equal to one-fourth of the pay attributed to the accumulated sick leave. The pay attributed to the accumulated sick leave must be computed on the basis of the employee's salary or wage at the time the employee terminates employment with the state, county, or city. Accrual of sick leave credits for calculating the lump-sum payment provided for in this subsection begins July 1, 1971. The payment is the responsibility of the agency in which the sick leave accrues. However, an employee does not forfeit any sick leave rights or benefits accrued prior to July 1, 1971. However, when an employee transfers between agencies within the same jurisdiction, the employee is not entitled to a lump-sum payment. In a transfer between agencies, the receiving agency shall assume the liability for the accrued sick leave credits earned after July 1, 1971, and transferred with the employee.

(7) An employee who receives a lump-sum payment pursuant to this section and who is again employed by any agency may not be credited with sick leave for which the employee has previously been compensated.

(8) Abuse of sick leave is cause for dismissal and forfeiture of the lump-sum payments provided for in this section.

(9) An employee may contribute any portion of the employee's accumulated sick leave to a nonrefundable sick leave fund for state employees and becomes eligible to draw upon the fund if an extensive illness or accident exhausts the employee's accumulated sick leave. The department of administration shall, in consultation with the state employee group benefits advisory council, provided for in 2-15-1016, administer the sick leave fund and adopt rules to implement this subsection.

(10) A local government may establish and administer through local rule a sick leave fund into which its employees may contribute a portion of their accumulated sick leave.

2-18-618. (Effective on occurrence of contingency) Sick leave. (1) ~~A~~ Except as provided in [section

6]. a permanent full-time employee earns sick leave credits from the first day of employment. For calculating sick leave credits, 2,080 hours (52 weeks x 40 hours) equals 1 year. Sick leave credits must be credited at the end of each pay period. Sick leave credits are earned at the rate of 12 working days for each year of service without restriction as to the number of working days that may be accumulated. Employees are not entitled to be paid sick leave until they have been continuously employed 90 days.

(2) An employee may not accrue sick leave credits while in a leave-without-pay status.

(3) Permanent part-time employees are entitled to prorated leave benefits if they have worked the qualifying period.

(4) Full-time temporary and seasonal employees are entitled to sick leave benefits provided they work the qualifying period.

(5) A short-term worker may not earn sick leave credits.

(6) Except as otherwise provided in 2-18-1311, an employee who terminates employment with the agency is entitled to a lump-sum payment equal to one-fourth of the pay attributed to the accumulated sick leave. The pay attributed to the accumulated sick leave must be computed on the basis of the employee's salary or wage at the time the employee terminates employment with the state, county, or city. Accrual of sick leave credits for calculating the lump-sum payment provided for in this subsection begins July 1, 1971. The payment is the responsibility of the agency in which the sick leave accrues. However, an employee does not forfeit any sick leave rights or benefits accrued prior to July 1, 1971. However, when an employee transfers between agencies within the same jurisdiction, the employee is not entitled to a lump-sum payment. In a transfer between agencies, the receiving agency shall assume the liability for the accrued sick leave credits earned after July 1, 1971, and transferred with the employee.

(7) An employee who receives a lump-sum payment pursuant to this section or who, pursuant to 2-18-1311, converts unused sick leave to employer contributions to a health care expense trust account and who is again employed by any agency may not be credited with sick leave for which the employee has previously been compensated or for which the employee has received an employer contribution to the health care expense trust account.

(8) Abuse of sick leave is cause for dismissal and forfeiture of the lump-sum payments provided for in this section.

(9) An employee of a state agency may contribute any portion of the employee's accumulated sick leave to a nonrefundable sick leave fund for state employees and becomes eligible to draw upon the fund if an extensive illness or accident exhausts the employee's accumulated sick leave, irrespective of the employee's

membership or nonmembership in the employee welfare benefit plan established pursuant to 2-18-1304. The department of administration shall, in consultation with the state employee group benefits advisory council, provided for in 2-15-1016, administer the sick leave fund and adopt rules to implement this subsection.

(10) A local government may establish and administer through local rule a sick leave fund into which its employees may contribute a portion of their accumulated sick leave."

NEW SECTION. **Section 6. Reduction of holidays, annual vacation leave credits, or sick leave credits -- collective bargaining.** An agency may negotiate a written agreement with an exclusive representative, as defined in 39-31-103, that reduces the number of paid holidays, annual vacation leave credits, or sick leave credits provided in this part in exchange for an increase in compensation or benefits.

NEW SECTION. **Section 7. Codification instruction.** [Section 6] is intended to be codified as an integral part of Title 2, chapter 18, part 6, and the provisions of Title 2, chapter 18, part 6, apply to [section 6].

NEW SECTION. **Section 8. Effective date.** [This act] is effective July 1, 2003.

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