



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

September 6, 2022

C. Gaines Baker, Esq.
Attorney, Panola County Board of Supervisors
136 Public Square
C.G. Baker Building, Suite One
Batesville, Mississippi 38606

Re: Donation of Sick Leave

Dear Mr. Baker:

The Office of the Attorney General has received your request for an official opinion.

Background

According to your request, Panola County (the “County”) has a policy allowing county employees to donate sick and vacation leave to a fellow employee who suffers from a catastrophic injury or illness. You state that the County recently discovered that an employee received significant sick leave pay beyond his or her accumulated hours. Other County employees subsequently offered to donate their leave pursuant to the County’s policy to enable the employee to repay the salary he or she had erroneously received.

Question Presented

If an employee suffers a catastrophic illness or injury and is mistakenly granted more sick leave than he or she has accumulated, may the County allow that leave to be repaid using donated sick leave pursuant to the County’s leave donation policy?

Brief Response

If the County determines that due to an administrative error it erroneously granted an employee sick leave pay that the employee had not earned, the County may allow the employee to repay the County using donated sick leave in accordance with a lawful policy enacted prior to the employee’s catastrophic illness or injury. This would not be a retroactive salary increase nor extra compensation; thus, it would not be prohibited by Section 96 or 66 of the Mississippi Constitution.

Applicable Law and Discussion

As an initial matter, we note that official opinions of this office are issued on prospective questions of state law pursuant to Section 7-5-25 of the Mississippi Code. Official opinions neither validate nor invalidate past actions. Further, this office does not interpret local ordinances or policies. MS AG Op., *Hill* at *1 (Sept. 30, 2021). Thus, we offer no opinion on any action previously taken by the County or the validity of the County's specific employment policy referenced in your request. As of the date of this request, we understand that no donated leave has been applied to the repayment. We understand that the County had enacted a lawful leave donation policy prior to the employee's injury or illness, and we assume for the purposes of this request that the injury or illness suffered qualifies as catastrophic under the County's policy. We offer the following for prospective purposes.

This office has consistently opined that while retroactive salary increases are prohibited by Section 96 of the Mississippi Constitution, erroneous payments made because of an administrative error may be corrected. MS AG Op., *Mosley* at *1 (Feb. 22, 2014). This is true whether the employee in question was erroneously underpaid for a salary to which he or she was statutorily entitled or whether the employee was overpaid and thus owes its employer for the overpayment. Whether an adjustment to a previously paid salary is an impermissible retroactive change in salary or the correction of an administrative error is a factual determination to be made by the County and is subject to judicial review.

Additionally, in order to avoid a violation of either Section 66 or Section 96 of the Mississippi Constitution, any policy or regulation granting leave to employees must "operate prospectively only." MS AG Op., *Keith* at *2 (Apr. 3, 2015) (citing MS AG Op., *Cowgill* (May 19, 2006)). In *Cowgill*, we were asked about the adoption of an inclement weather policy that would grant leave with pay to municipal employees in the event of a weather emergency. MS AG Op., *Cowgill* at *1 (May 19, 2006). We stated that "any leave granted from and after the effective date of that policy would not be considered [an unlawful] donation, and would be considered part of the benefits afforded to municipal employees." *Id* at *2. Similarly, for an employee to receive donated leave for catastrophic illness or injury, the policy allowing for such donation must be in place prior to the employee's injury or illness.

Accordingly, if the County determines that due to an administrative error it erroneously granted an employee sick leave pay that the employee had not earned, and the County's leave donation policy was in place prior to the employee's catastrophic injury or illness, the County may allow the employee to repay the County using leave donated pursuant to its leave donation policy.

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If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: */s/ Beebe Garrard*

Beebe Garrard
Special Assistant Attorney General

OFFICIAL OPINION