

SENATE BILL NO. 168
INTRODUCED BY L. JENT
BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MANDATORY CASH PAYMENT FOR VACATION LEAVE UPON TERMINATION; CLARIFYING THE USE OF VACATION LEAVE PAYMENTS UPON TERMINATION AS PERMISSIBLE CONTRIBUTIONS FOR A VOLUNTARY EMPLOYEES' BENEFICIARY ASSOCIATION; AMENDING SECTIONS 2-18-601, 2-18-617, AND 2-18-1311, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 2-18-601, MCA, is amended to read:

"2-18-601. Definitions. For the purpose of this part, except 2-18-620, the following definitions apply:

(1) (a) "Agency" means any legally constituted department, board, or commission of state, county, or city government or any political subdivision of the state.

(b) The term does not mean the state compensation insurance fund.

(2) "Break in service" means a period of time in excess of 5 working days when the person is not employed and that severs continuous employment.

(3) "Common association" means an association of employees established pursuant to 2-18-1310 for the purposes of employer and employee participation in the plan.

~~(3)~~(4) "Continuous employment" means working within the same jurisdiction without a break in service of more than 5 working days or without a continuous absence without pay of more than 15 working days.

(5) "Contracting employer" means an employer who, pursuant to 2-18-1310, has contracted with the department of administration to participate in the plan.

~~(4)~~(6) "Employee" means any person employed by an agency except elected state, county, and city officials, schoolteachers, persons contracted as independent contractors or hired under personal services contracts, and student interns.

~~(5)~~(7) "Full-time employee" means an employee who normally works 40 hours a week.

~~(6)~~(8) "Holiday" means a scheduled day off with pay to observe a legal holiday, as specified in 1-1-216 or 20-1-305, except Sundays.

(9) "Member" means an employee who belongs to a voluntary employees' beneficiary association established under 2-18-1310.

~~(7)~~(10) "Part-time employee" means an employee who normally works less than 40 hours a week.

~~(8)~~(11) "Permanent employee" means a permanent employee as defined in 2-18-101.

(12) "Plan" means the employee welfare benefit plan established under Internal Revenue Code section 501(c)(9) pursuant to 2-18-1304.

~~(9)~~(13) "Seasonal employee" means a seasonal employee as defined in 2-18-101.

~~(10)~~(14) "Short-term worker" means:

(a) for the executive and judicial branches, a short-term worker as defined in 2-18-101; or

(b) for the legislative branch, an individual who:

(i) is hired by a legislative agency for an hourly wage established by the agency;

(ii) may not work for the agency for more than 6 months in a continuous 12-month period;

(iii) is not eligible for permanent status;

(iv) may not be hired into another position by the agency without a competitive selection process; and

(v) is not eligible to earn the leave and holiday benefits provided in this part or the group insurance benefits provided in part 7.

~~(14)~~(15) "Sick leave" means a leave of absence with pay for:

(a) a sickness suffered by an employee or a member of the employee's immediate family; or

(b) the time that an employee is unable to perform job duties because of:

(i) a physical or mental illness, injury, or disability;

(ii) maternity or pregnancy-related disability or treatment, including prenatal care, birth, or medical care for the employee or the employee's child;

(iii) parental leave for a permanent employee as provided in 2-18-606;

(iv) quarantine resulting from exposure to a contagious disease;

(v) examination or treatment by a licensed health care provider;

(vi) short-term attendance, in an agency's discretion, to care for a relative or household member not covered by subsection ~~(14)(a)~~ (15)(a) until other care can reasonably be obtained;

(vii) necessary care for a spouse, child, or parent with a serious health condition, as defined in the Family and Medical Leave Act of 1993; or

(viii) death or funeral attendance of an immediate family member or, at an agency's discretion, another person.

~~(12)~~(16) "Student intern" means a student intern as defined in 2-18-101.

~~(13)~~(17) "Temporary employee" means a temporary employee as defined in 2-18-101.

~~(14)~~(18) "Transfer" means a change of employment from one agency to another agency in the same jurisdiction without a break in service.

~~(15)~~(19) "Vacation leave" means a leave of absence with pay for the purpose of rest, relaxation, or personal business at the request of the employee and with the concurrence of the employer."

Section 2. 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. Excess vacation time is not forfeited if taken within 90 calendar days from 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 and who has worked the qualifying period set forth in 2-18-611 is entitled upon the date of termination to either:

(a) cash compensation for unused vacation leave; assuming that the employee has worked the qualifying period set forth in 2-18-611 IF THE EMPLOYEE IS NOT SUBJECT TO SUBSECTION (2)(B); or

(b) conversion of the employee's unused vacation leave balance to an employer contribution to an employee welfare benefit plan health care expense trust account established pursuant to 2-18-1304 if:

(i) the employee is a member who belongs to a voluntary employees' beneficiary association established under 2-18-1310; and

(ii) the contracting employer has entered into an agreement with members of the common association for an employer contribution based on unused vacation leave provided for 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 3. Section 2-18-1311, MCA, is amended to read:

"2-18-1311. Contributions of unused sick leave -- other contributions not prohibited. (1) In a manner prescribed by the department, a contracting employer shall provide for a plan member to annually designate how many hours, if any, of the member's sick leave will be automatically converted to an employer contribution to the member's account each pay period as provided for in this section.

(2) (a) Except as provided in subsection (2)(b), a member may annually convert only the sick leave hours in excess of 240 hours and no more than the maximum prescribed by the contracting employer.

(b) When the member's employment is terminated, the member's ~~entire~~ unused sick leave balance ~~must~~ may be automatically converted, in whole or in part, to an employer contribution to the member's account pursuant to this section, ~~and may not be paid as a lump-sum~~ For those amounts of sick leave not converted to employer contributions, the balance is allocated as required under 2-18-618(6).

(3) The amount of the employer contribution to a member's account for hours converted under this section must be equal to one-fourth of the pay attributed to the accumulated sick leave. The attributable pay must be computed on the basis of the employee's salary or wage at the time that the sick leave is converted. A member may not later receive as sick leave credit or as a lump-sum payment amounts contributed to the member's account pursuant to this section.

(4) This section does not prohibit an employer from entering into an agreement with a member for employer contributions to a member account in addition to the contributions provided for under this section."

NEW SECTION. **Section 4. Effective date.** [This act] is effective July 1, 2007.

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