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VIA EMAIL ONLY

MEMORANDUM

TO: M. Louise Doner
FROM: John H. Dorsey, Esq.
DATED: March 3, 2009

I am in receipt of your email of 2/26 relative to the above. The question which you raise, as I understand it, is that based upon your knowledge certain municipalities have agreed and/or are currently paying employees who have been disabled for more than one year. You raised the question because NJSA 40A:9-7 specifically states that a municipality may pay an injured employee his full salary or wages for "up to one calendar year" as provided for in 18A:30-2.1

We have determined that there is a similar statute that provides such a benefit to employees of Boards of Education, but we do not find any statute that would extend this benefit to MUAs or Housing Authorities

Municipalities and school boards are creatures of the legislature. They only have such power to make arrangements as to benefits as is specifically granted to them by statute.

NJSA 18A:30-2.1 permits a municipality the ability to supplement worker's compensation payments for a period of one year. As I read the statute, there is no provision in it for an extension **beyond** the one year period in which the municipality may provide full pay to the injured employee. The municipality does not have the authority to make those payments other than that provided for in the statute. I do not believe that a municipality, by way of a collective bargaining agreement, should agree to grant benefits which it is not permitted to grant under the statute.

Indeed, you advised that some municipalities have paid for periods longer than one year. I would assume that at some point their auditor would raise the issue as to what was the authority under which they were making such payments.

As far as I can determine the only authority to make that payment is the statute. The municipality has no authority beyond that which is granted in the statute. Therefore, I do not believe that the municipality has the authority to make those payments beyond the one year period or to agree to same in a collective bargaining agreement if the agreement is to provide provisions which are not consistent with the statute.

Please advise if you require anything further.

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N.J.S.A. 40A:9-7

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C**Effective:[See Text Amendments]**

New Jersey Statutes Annotated Currentness

Title 40A. Municipalities and Counties (Refs & Annos)

Chapter 9. Officers and Employees (Refs & Annos)

A. Counties and Municipalities

 → **40A:9-7. Leaves of absence with pay to certain officers and employees**

The board of chosen freeholders of any county, by resolution, or the governing body of any municipality, by ordinance, may provide for granting leaves of absence with pay not exceeding one year, to any of its officers or employees who shall be injured or disabled resulting from or arising out of his employment, provided that the examining physician appointed by the county or the municipality shall certify to such injury or disability.

CREDIT(S)

L.1971, c. 200, § 1, eff. July 1, 1971.

HISTORICAL AND STATUTORY NOTES

1993 Main Volume

Source:

R.S. 40:11-8.

Prior Laws:

L.1930, c. 165, §§ 1, 2, p. 593.

CROSS REFERENCES

Leaves of absence,

Members of legislature, see N.J.S.A. § 40A:9-7.2.

Military service, see N.J.S.A. § 40A:9-159.

Temporary, see N.J.S.A. § 40A:9-158.

LIBRARY REFERENCES

1993 Main Volume

County officers and agents; right to compensation in general, see Counties  69(1).Municipal officers in general; right to compensation, see Municipal Corporations  162(1).

County officers and agents; compensation in general, see C.J.S. Counties § 107.

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N.J.S.A. 18A:30-2.1

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C**Effective: [See Text Amendments]**

New Jersey Statutes Annotated Currentness

Title 18A. Education

Subtitle 6. Conduct of Schools

Part 1. Officers and Employees Performing Educational Functions

Chapter 30. Leaves of Absence (Refs & Annos)

Article 1. Sick Leave

→ 18A:30-2.1. Payment of sick leave for service connected disability

a. Whenever any employee, entitled to sick leave under this chapter, is absent from his post of duty as a result of a personal injury caused by an accident arising out of and in the course of his employment, his employer shall pay to such employee the full salary or wages for the period of such absence for up to one calendar year without having such absence charged to the annual sick leave or the accumulated sick leave provided in N.J.S.18A:30-2 and 18A:30-3. Salary or wage payments provided in this section shall be made for absence during the waiting period and during the period the employee received or was eligible to receive a temporary disability benefit under chapter 15 of Title 34, Labor and Workmen's Compensation, of the Revised Statutes. Any amount of salary or wages paid or payable to the employee pursuant to this section shall be reduced by the amount of any workmen's compensation award made for temporary disability.

b. Leave taken by an employee pursuant to subsection a. of this section shall constitute satisfactory service as provided pursuant to N.J.S.18A:29-14 and any other provision, statutory or contractual, relating to employment, adjustment or other increments and shall not constitute inefficiency or other good cause for the withholding of an employment or adjustment increment.

CREDIT(S)

L.1967, c. 271, § 18A:30-2.1, eff. Jan. 11, 1968. Amended by L.1997, c. 112, § 1, eff. June 5, 1997.

HISTORICAL AND STATUTORY NOTES

1999 Main Volume

Source:

C. 18:13-23.17 (L.1959, c. 175, amended by L.1967, c. 168).

NOTES OF DECISIONS

Accident 1**Jurisdiction 5****Overpayments 4****Period of absence 2****Workers' compensation 3**

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February 26, 2009

Memo to: John Dorsey

From: Mary Louise Doner

Subject: NJSA 40A:9-7

Attached you will find a copy of the above reference statute which deals with "Leaves of absence with pay to certain officers and employees."

We need your legal advice in interpreting this statute. The statute appears to indicate that if a municipality passes an ordinance it can give a leave of absence with pay not exceed one year for employees with work related injuries.

We have a number of workers' compensation claims where the towns may be paying employees full salary in excess of the one year period. We would like to talk to these towns about discontinuing full pay but we want to make sure that our interpretation of the statute is correct.

Also, what would be the prevailing interpretation if the municipality did not have an ordinance in place? Could they discontinue full salary at any time and only have the employee be entitled to temporary total disability under workers' compensation? Or in the absence of an ordinance would the employee be entitled to full salary for an open period beyond one year.

One last question, is there any similar statute for governmental agencies other than municipalities? How would public housing authorities be treated, utility authorities, school boards?

Thank you for your assistance in this matter.

Cc: Jim Kickham, PERMA