

M E M O



TO: County Commissioners
 FROM: Robert W. Wilson
 DATE: February 4, 2022
 SUBJECT: Human Service Zone Annual Leave Accrual

County Administrator

Robert W. Wilson
 701-241-5770
wilsonro@casscountynynd.gov

Cass County Human Service Zone employee Marlys Joramo has submitted a request to be credited additional Annual Leave hours from 2015 forward due to her prior employment in Ramsey County, ND. Ms. Joramo began her employment with Cass County Social Services in August 2015 and has worked here since that time.

Ms. Joramo worked for Ramsey County for 18.5 years, from January 1997 to July 2015 prior to employment with Cass County. Through her North Dakota United representative, Ms. Joramo claims she was entitled to start accruing 16 hours of annual leave per month when she started in Cass County in 2015. Ms. Joramo accrued 8 hours per month annual leave for the first five years of employment with Cass County/Cass Human Service Zone and 12 hours per month when she began her sixth year.

Cass County Human Resources and Administration - working with the State's Attorney's Office - have taken a different position regarding the amount of annual leave Ms. Joramo has accrued and should be credited for.

Cass County's Annual Leave policy states that under special circumstances, for positions that are difficult to fill, a Department Head may request additional annual leave for an employee with approval from the County Administrator. That was not done with Ms. Joramo's hiring, presumably because Ms. Joramo did not fit within our policy. Ms. Joramo's hiring letter made no mention of a higher accrual rate. Mr. Burdick has followed up with the former Cass County Social Services Director who recalls no discussion of a higher rate.

Our Human Resources department has no documentation of a higher annual leave accrual rate. Ms. Joramo is raising this claim 5-1/2 years after starting with Cass County. Clearly, she had no expectation of a higher rate when hired or she would have raised it back in 2015. Her representative hasn't suggested she had such an expectation when hired.

In following up with Mr. Burdick, this matter appears to be more complicated than simply what was – and was not – communicated to and presumably understood by an employee at the time of hiring. Mr. Burdick will address the legally significant points.

This matter needs resolution. If the County grants Ms. Joramo's request she would be owed additional Annual Leave hours with a total value of up to \$16,898.52 depending on how the omitted leave was

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calculated. Cass County has been notified that Ms. Joramo intends to retire in the near future, so it is likely most of this amount will be claimed as an owed lump sum payment in addition to Annual Leave and Sick Leave benefits that are not in dispute.

Additionally, the Board should be aware there is one other current Cass Human Service Zone employees who previously worked in other County Human Service Offices/Human Service Zones (post January 1, 2020) that could be impacted by this decision. Lisa White would be owed a total value up to \$11,906.33 if the same rationale is applied to her situation.

It is the recommendation of the Administration/Human Resources Office that if the Commission elects to settle this matter with an award of additional Annual Leave hours, the value of those hours should be paid as monetary payments rather than adding to the employee's Annual Leave banks.

Moving forward, Cass County has confirmed that all current Cass Human Service Zone staff are now accruing Annual Leave at the appropriate rates and this will not be an issue in the future. In the event the Commission credits these two current employees with additional leave, the action should reflect that this applies to current employees only. Similar payments to former employees who may have had a similar claim prior to leaving their positions will not be considered.

SUGGESTED MOTION: Move to authorize Cass County to credit Cass Human Service Zone employees Marlys Joramo and Lisa White with additional Annual Leave hours valued up to \$16,898.52 and \$11,906.33 respectively and provide the respective payments to Ms. Joramo and Ms. White.



MEMORANDUM

TO: Robert Wilson
Cass County Administrator

FROM: Birch P. Burdick
Cass County State's Attorney

DATE: February 4, 2022

RE: Human Service Zone Leave Accrual

State's Attorney

Birch P. Burdick

At your request, here is a summary of what my office determined, from a legal perspective, on Marlys Joramo's request to be credited with additional annual leave hours related to her current employment with the Cass County Human Service Zone, and recognizing her past social services-related employment in Ramsey County, ND.

In reviewing the following policies regarding annual leave: Cass County Policy 303 (Exhibit 1), the Human Service Zone HR Policy/Administrative Procedure (Exhibit 2), and ND Admin Code §4-07-12-12 and §4-07-12-13 (Exhibit 3). In so doing, I noticed a few things:

- In calculating the rate of accrual, the policies start and end in the same place, but they differ in the middle.
- Exhibit 2 states that a HSZ employee who leaves employment and restarts with the same HSZ within 3 years must be credited with their previous years of continuous service for the purpose of deciding the accrual rate. However, this policy is silent as to the situation when the employee is hired into a different HSZ.
- Exhibit 3 discusses crediting an employee with previous years of service when "rehired" within 3 years. §4-07-12-12. The word "rehire" would seem to imply by the same agency. It does not expressly address when an employee is hired by a different HSZ (or social service agency, b/c this policy does not discuss "zones").

With this information I contacted the DHS Human Resources Manager, and asked the following questions:

- Do you have other pertinent policies that address this situation? Answer: They did not provide any.
- Are there any guidance letters/opinions issued by DHS that would inform this topic? Answer: Their response is shown as highlighted on Exhibit 4. In particular, they referred to a prior letter written by an Assistant Attorney General in 2019 (in a different situation) saying that the annual leave accrual rates in Exhibit 3 apply to *all state and local government agencies* (this is language from

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Admin. Code §4-07-12-01, Exhibit 3). They acknowledged that to the extent the policies do not all match, they will fix that.

- Do you agree with Ms. Joramo's representative's assertion that she was entitled to a higher rate of annual leave accumulation when she was hired in Cass County? Answer: See Exhibit 4, which states that Cass should follow the administrative code rates of accrual.

I don't believe we are going to find any other *legal authorities* that address this particular topic. However, a question that may arise for some is about the delay in time between Ms. Joramo's hire and the advancement of her request. That delay potentially raises a legal concept referred to as "laches". It is an affirmative defense that could be pled by a defendant in a lawsuit. In general, the term means a plaintiff delayed advancing a legal claim that causes a disadvantage/prejudice to the other party because conditions changed during that delay. Put another way, it says a litigant unreasonably delayed raising a claim through failure to exercise due diligence. There are legal cases stating that the person who failed to act be actually, or presumptively, aware of their rights and failed to assert them against a defendant who in good faith changed their position and cannot be restored to its former state. The applicability of laches to the current situation is something that I can discuss in more detail with you or commissioners as may be deemed appropriate.

Not specifically as legal research, but as a few data points regarding practices elsewhere in ND, I contacted three state's attorneys about the practice in their jurisdictions. I understand their counties followed the state's annual leave protocols when hiring someone into social services who had related experience elsewhere.

I will be glad to answer any related questions as you deem appropriate.



303 Annual Leave
Effective Date: 12/06/2021

Annual leave is an all-purpose time off policy to enable you to maintain a better work-life balance and allow time to rest, rejuvenate, and come back to the workplace reinvigorated. It is meant to function as wage replacement for times that you choose to be away from work for personal reasons and is not considered to be compensation for work you have performed.

We provide an opportunity to regular full time and regular part time employees to accrue and use annual leave as described in this policy. Elected officials, temporary, per diem, and emergency employees are not eligible.

The amount of annual leave you receive each calendar year increases with the length of your employment as shown in the following schedule:

ANNUAL LEAVE ACCRUAL SCHEDULE

| Years of Eligible Service | Annual Leave Days Each Year | Annual Leave Hours Each Month |
|----------------------------------|------------------------------------|--------------------------------------|
| Years 0-5 | 12 Days | 8 Hours |
| Years 6-14 | 18 Days | 12 Hours |
| 15+ Years | 24 Days | 16 Hours |

The accrual schedule set forth in the table above is based on an employee working our regular full time schedule of at least 40 hours per week. If you are a regular part time employee (i.e., working less than 40 hours per week), your accruals will be pro-rated accordingly.

Under special circumstances, for positions that are difficult to fill, the Department Head may submit a request to the County Administrator to consider an exception. Typically, an exception would involve starting a new employee at the 6-14-year accrual level where they would remain until they have completed their 14th year of employment. This request must be approved by the County Administrator before offered to the potential employee.

Usage and Rollover

We will not "advance" you annual leave, which means that at no time may you use annual leave before it has accrued. Any time off taken in excess of your accrual balance will be considered unpaid time off and is generally discouraged.

Annual leave is paid at your base pay rate at the time of absence. It does not include overtime or any special forms of compensation such as incentives, commissions, or bonuses.

In the event that you do not use your available annual leave by the end of the calendar year, you may carry up to 240 hours of unused time forward into the next calendar year. Any unused time beyond 240 hours will be forfeited on January 15th of the following calendar year. Except in the event of extreme hardship or emergency, and with advance approval from the Department Head, and the County Commission, you may be allowed to carry over additional amounts, but any additional amount above 240 hours must be used within 90 days. In rare and extenuating

circumstances, with the approval of the Department Head and County Commission, an employee may be paid off for annual leave above 240 hours.

To schedule annual leave, you must request advance approval from your supervisor as soon as possible. All departments must be appropriately staffed to meet the needs of our customers and clients. This means that annual leave may not be granted in all circumstances, and such requests will be approved or denied solely at the discretion of your supervisor, based upon current workloads, staffing levels, and your disciplinary status.

When one or more employees in the same area request annual leave for the same time periods (for example, around popular vacation times such as summer or holidays), priority may be given to the employee whose request was submitted first.

End of Employment

If you transfer departments, you may transfer annual leave. Years of service credit will be for continuous years of employment with a break of less than one year.

When your employment with us terminates, you will be paid for unused annual leave that has been accrued through your last day of work.



Chapter 6: Human Service Zone Team Member Leave

Annual Leave

Authority: NDAC 4-07-12
Search Keywords: PTO, Paid time off
Last Updated: 7/2020

Annual leave is earned by all Human Service Zone Team Members in a regular status position beginning on the first day of employment. Leave will be granted at the request of the Human Service Zone Team Member as long as workloads and deadlines permit. Absent emergency situations, annual leave requests must be made and approved in advance of the annual leave being taken.

Temporary Human Service Zone Team Members are not eligible for annual leave benefits. If a temporary Human Service Zone Team Member transfers to a classified position, credit is given for the Human Service Zone Team Member's prior length of service on a prorated basis to determine his or her annual leave accrual rate provided there was no break in service beyond one year (NDAC 4-07-12-11).

Earning Rate

Based on the standard 40-hour work schedule and the Human Service Zone Team Member's length of service, annual leave accrues as follows: (NDAC 4-07-12-03)

| Length of Service | Hours Earned Per Month | Days Earned Per Year |
|---|------------------------|----------------------|
| 0-3 complete years | 8 | 12 |
| Beginning of 4 th year to 7 complete years | 10 | 15 |
| Beginning of 8 th year to 12 complete years | 12 | 18 |
| Beginning of 13 th year to 18 complete years | 14 | 21 |
| Beginning of 19 th year and over | 16 | 24 |

Prorated hours of annual leave will be granted to regular and probationary Human Service Zone Team Members whose normal work week is less than the standard 40-hour work week. When calculating earned annual leave, work time includes holidays and used paid leave. Calculations for hourly Human Service Zone Team Members are made in the same manner as for Human Service Zone Team Members who work less than full-time and are calculated based on the number of hours worked in the month.

Annual leave is not earned for hours worked in excess of 40 hours per week or during leave without pay.

Human Service Zone Team Members will earn prorated leave for partial months on payroll such as starting work mid-month, separating mid-month and leave without pay. The following example illustrates how annual leave is computed for less than a full month. The formula is:

$$\frac{\text{Hours worked in the month}}{\text{Payroll hours in the month}} \times \text{Annual leave schedule} = \text{Annual leave earned for the month}$$

Example 1

A Human Service Zone Team Member has worked 6 days in the month and the month has 22 payroll days. Convert all days to hours. In this example, 6 days x 8 hours = 48 hours, 22 days x 8 hours = 176 hours.

$$\frac{48}{176} \times 8 = 2.18 \text{ hours earned for the month}$$

The following formula is used to compute annual leave for a part-time Human Service Zone Team Member. The formula is:

$$\text{Full time annual leave schedule} \times \text{FTE percentage} = \text{Annual leave earned for the month}$$

Example 2

Assume the Human Service Zone Team Member is 80% FTE and is on an 8 hours per month leave accrual schedule:

$$8 \times 80 = 6.4 \text{ hours earned for the month}$$

Year End Accumulation

No more than 240 hours of annual leave may be carried forward beyond April 30 or December 31 of each year, each Human Service Zone has a designed date for cutoff, please see the Human Services Zone addendum. Any hours in excess of the 240-hour limitation will be lost after April 30 or December 31 (NDAC 4-07-12-08); Human Service Zone Team Members must count annual leave hours earned in April or December when determining the number of leave hours, they will "use or lose" by April 30 or December 31.

Usage

Usage increments will be addressed in your Human Service Zone addendum. Annual leave may not be used before it is earned.

If a Human Service Zone Team Member forecasts that he or she will have more than 240 hours of annual leave hours following April 30th or December 31st, the Human Service Zone Team Member may request to use annual leave prior to using compensatory time.

If a Human Service Zone Team Member works extra hours in a week during which they used annual leave, the Human Service Zone Team Member's annual leave hours will be reduced accordingly. Hours worked plus leave taken should be equal to the number of hours allocated for the Human Service Zone Team Member's FTE.

Any flex time worked needs to be pre-approved by the Zone Director and must be within the same work week as leave was taken.

Accrual Rate Upon Rehire

A Human Service Zone Team Member who leaves his or her employment with a Human Service Zone, and who is rehired by the same Human Service Zone within three years, must be credited with the Human Service Zone Team Member's previous years of continuous service for the purpose of determining the Human Service Zone Team Member's annual leave accrual rate (NDAC 4-07-12-12).

Inter-Agency Transfers

When employing an individual from another Human Service Zone or State agency, the Zone Director has discretion to accept an authorized or negotiated amount of accrued annual leave hours provided there is no break in service. (NDAC 4-07-12-10)

Annual Leave Usage for Legislative Hearings

Human Service Zone Team Member attending legislative hearings on behalf of the Human Service Zone are not required to use annual leave. Human Service Zone Team Members wishing to attend a legislative hearing due to a personal interest in the matter must take annual leave to attend.

Annual Leave Usage for Financial Counseling (NDPERS only)

Human Service Zone Team Member can attend 1 financial planning session every 5 years, without having to utilize annual leave. If a Human Service Zone Team Member desires to attend more than 1 planning session, he or she must utilize annual leave to attend. Human Service Zone Team Members traveling for these meetings will be required to utilize annual leave for travel time and will not be reimbursed his or her expenses.

Sick Leave

Authority: NDAC 4-07-13; NDCC 54-06-14; 54-52.4-03
Search Keywords: PTO, paid time off, family sick leave
Last Updated: 7/2020

Sick leave is earned by all Human Service Zone Team Members in a regular status position beginning on the first day of employment. Temporary Human Service Zone Team Members are not eligible for sick leave benefits.

Earning Rate

All regular status Human Service Zone Team Members earn 8 hours of sick leave for each month of full-time employment with no maximum accumulation. Sick leave will be granted to regular status Human Service Zone Team Members whose normal work week is less than the standard 40-hour work week on a prorated basis. When calculating earned sick leave, work time includes holidays and used paid leave. Sick leave is not earned for hours worked in excess of 40 hours per week or during leave without pay.

Usage

Usage increments will be addressed in your Human Service Zone addendum. Sick leave may not be used before it is earned. Sick leave is not earned until the month worked is complete. Human Service Zone Team Members who need to use sick leave in excess of their accrued sick leave may be required to utilize annual leave before taking leave without pay, except in instances of FMLA where they may retain up to 40 hours of annual leave or sick leave.

If a Human Service Zone Team Member works extra hours in a week during which they used sick leave, the Human Service Zone Team Member's sick leave hours will be reduced accordingly. Hours worked plus leave taken should be equal to the number of hours allocated for the Human Service Zone Team Member's FTE.

Any flex time worked needs to be pre-approved by the Zone Director and must be within the same work week as leave was taken.

Sick leave may be used by a Human Service Zone Team Member for the following reasons:

ND ADMIN CODE

CHAPTER 4-07-12
ANNUAL LEAVE



| | |
|------------|--|
| Section | |
| 4-07-12-01 | Scope of Chapter |
| 4-07-12-02 | Definitions |
| 4-07-12-03 | Annual Leave Accrual |
| 4-07-12-04 | Annual Leave Accrual Schedule |
| 4-07-12-05 | Accrual for Employment for a Fraction of a Month |
| 4-07-12-06 | Annual Leave Taken in Fifteen-Minute Increments [Repealed] |
| 4-07-12-07 | Approval Required |
| 4-07-12-08 | Annual Leave Limit |
| 4-07-12-09 | Change of Cutoff Date [Repealed] |
| 4-07-12-10 | Pay During Employment |
| 4-07-12-11 | Credit for Temporary Service |
| 4-07-12-12 | Annual Leave and Reemployment |
| 4-07-12-13 | Assumption of Accrued Annual Leave |

4-07-12-01. Scope of chapter.

This chapter applies to all state and local government agencies, departments, institutions, and boards and commissions that employ individuals in positions classified by human resource management services.

History: Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-12-02. Definitions.

The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapters 54-06 and 54-44.3 and section 54-52-01, except:

1. "Annual leave" means an approved absence from work with pay.
2. "Regular employee" means a person who has completed the probationary period and who is in a position classified by human resource management services.

History: Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-12-03. Annual leave accrual.

Employees eligible for annual leave begin to accrue leave from the day of hire.

History: Effective September 1, 1992; amended effective November 1, 1996.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-12-04. Annual leave accrual schedule.

State agencies are advised that the following annual leave accrual schedule is required for use by each state agency subject to this chapter:

Years of Service

Hours Earned Per Month

| | |
|---------------------------|----------|
| Zero through three | Eight |
| Four through seven | Ten |
| Eight through twelve | Twelve |
| Thirteen through eighteen | Fourteen |
| Over eighteen | Sixteen |

A local government agency subject to the North Dakota merit system adopting or using a different accrual schedule shall promptly file a copy of that schedule with human resource management services.

History: Effective September 1, 1992; amended effective July 1, 2004; July 1, 2008.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-06-14, 54-44.3-12(1)

4-07-12-05. Accrual for employment for a fraction of a month.

An employee accrues leave for being employed for a fraction of a month. The number of annual leave hours earned by an employee for employment for a fraction of a month must be in proportion to the total number of straight time hours the employee actually worked compared to the total number of normal working hours in the month.

History: Effective September 1, 1992.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-12-06. Annual leave taken in fifteen-minute increments.

Repealed effective January 1, 1993.

4-07-12-07. Approval required.

Generally, a request to use annual leave must be approved before the employee is authorized to take the leave. A leave request may be denied if the employee's absence would unduly disrupt the operations or services of the agency.

History: Effective September 1, 1992.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-12-08. Annual leave limit.

No more than two hundred forty hours of accrued annual leave may be carried forward beyond April thirtieth of each year. If a political subdivision that employs individuals in positions classified by human resource management services uses a cutoff date other than April thirtieth, then the political subdivision may continue to do so as long as the same cutoff date is used for all of the agency's employees who occupy positions that are classified by human resource management services, and the two-hundred-forty-hour limit is observed.

History: Effective September 1, 1992; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-12-09. Change of cutoff date.

Repealed effective July 1, 2004.

4-07-12-10. Pay during employment.

An employee may not be paid for unused annual leave while the employee remains in the service of the agency, except for the following reasons:

1. The employee takes a long-term leave of absence;
2. The employee goes on educational leave;
3. The employee moves to temporary employment; or
4. Human resource management services approves a written request from an agency for an exception to this section for a business-related reason.

When an employee is transferring from one agency to another, the employee must be paid for the difference in hours between what the employee has accumulated and the number of hours the gaining agency will accept. When an employee is leaving the service of the agency, the employee must be paid for all accrued hours of annual leave.

History: Effective September 1, 1992; amended effective July 1, 1995; November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-12-11. Credit for temporary service.

A temporary employee who becomes regular must be given credit for the employee's length of service as a temporary employee for the purpose of determining the annual leave accrual rate provided there was no break in service beyond one year. An agency may not grant annual leave hours to a temporary employee.

History: Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-12-12. Annual leave and reemployment.

An employee who leaves the employee's employment and who is rehired within three years must be credited with the employee's previous years of continuous service for the purpose of determining the employee's annual leave accrual rate.

History: Effective September 1, 1992; amended effective July 1, 2008.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-12-13. Assumption of accrued annual leave.

A state agency appointing authority employing an individual from another state agency shall accept all or only a part of the employee's accrued annual leave hours the employee requests to transfer. State agencies covered by the North Dakota merit system shall accept all or a part of accrued annual leave hours the employee requests to transfer of a county social service employee in a position classified by human resource management services.

A county social service board may accept all or a part of accrued annual leave hours an employee requests to transfer from another county social service board or a state agency, if the employee occupies a position classified by human resource management services.

History: Effective November 1, 1996; amended effective July 1, 2004; July 1, 2008.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)



From: Baumann, Alicia M. <ambaumann@nd.gov>
Sent: Thursday, December 23, 2021 12:06 PM
To: Burdick, Birch <BurdickB@casscountynd.gov>; Wuitschick, Marcie D. <mwuitschick@nd.gov>; Stolt, Sara E. <sarastolt@nd.gov>; Erickson, Amy R. <arerickson@nd.gov>
Cc: Wilson, Robert <WilsonRo@casscountynd.gov>; Stoick, Cindy <StoickC@casscountynd.gov>; Peters, Tracy <PetersT@casscountynd.gov>; Alm, Jonathan E. <jealm@nd.gov>
Subject: RE: Rates of annual leave accrual

CAUTION: EXTERNAL EMAIL

Good afternoon,

Below is the response I received from Lynn Hart at HRMS in regard to the admin code question.

Based on the facts presented, my policy interpretation is that Marly Joramo should have received the higher annual leave accrual rate when she was first hired by Cass County Social Services.

In support, please see the excerpt below:

Based upon my review of the statute, it is my opinion Tricia's time at BCSS should count toward her annual and sick leave accumulation but not her years of service award. North Dakota Administrative Code (N.D.A.C.) 4-07-13-01 and 4-07-12-01, which relate to sick and annual leave accrual, specifically state the provisions of the chapter apply to all "state and local government agencies."

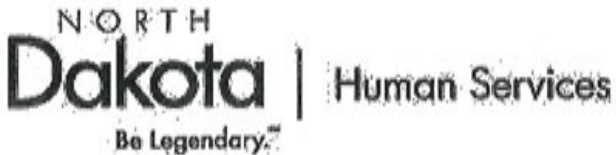
Excerpt from letter dated February 14, 2019 from Tara Brandner, Assistant Attorney General, in response to a question regarding a state agency employee who was previously employed

by Burleigh County Social Services.

Our opinion would be to follow admin code. I will also ensure that the Policy Manual reads appropriately and matches admin code

Thank you,

Alicia Baumann, SHRM-CP
Human Resource Manager



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From: Burdick, Birch <BurdickB@casscountynnd.gov>
Sent: Friday, December 10, 2021 5:38 PM
To: Wuitschick, Marcie D. <mwuitschick@nd.gov>; Stolt, Sara E. <sarastolt@nd.gov>; Baumann, Alicia M. <ambaumann@nd.gov>; Erickson, Amy R. <arerickson@nd.gov>
Cc: Wilson, Robert <wilsonro@casscountynnd.gov>; Stoick, Cindy <stoickc@casscountynnd.gov>; Peters, Tracy J. <peterst@casscountynnd.gov>
Subject: Rates of annual leave accrual

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Folks:

Robert Wilson (Cass County Administrator), Cindy Stoick (HR Director) and I have reviewed a request by an employee of our Zone to be credited for an increased vacation accrual rate starting from her Cass hire date in 2015 forward, due to her prior employment in another county's social service agency. I understand one or more of you may have considered this topic. We want to ensure we understand your thoughts, hence this email. To ensure we all have the same context, I provide some **background** below, and then will pose a few **questions**.

Background:

- The employee's name is Marlys Joramo. She started with Cass County Social Services in August 2015 and has worked here since that time.
- Immediately prior to that she worked for the predecessor to the Mountain Lakes Human Service Zone.
- Ms. Joramo's ND United representative says Ms. Joramo had 18-1/2 years as a "classified employee" prior to employment with Cass County. The ND United representative cited NDAC §4-07-12-12 in support of his claim that Ms. Joramo was entitled to start accruing 16 hours of annual leave/month when she started in Cass County in 2015. (He said he understands DHS concurs with this claim.)
- Earlier in 2021, the Cass County Zone Director gave Ms. Joramo credit for this total number of years for the purposes of setting her current rate of annual leave accumulation, meaning Ms. Joramo is now accumulating leave at the rate of 16 hours/month. So the remaining issue is whether Ms. Joramo was entitled to that rate of accumulation between her start in Cass in 2015 and the point earlier this year when she was granted it looking forward.
- To further inform topic, the enclosure provides some reference materials which I discuss below:

- **Exhibit 1** is Cass County's Annual Leave policy. It has been revised since 2015, but in all pertinent respects it remains the same. It states that under special circumstances, for positions that are difficult to fill, a Department Head may request additional annual leave for an employee with approval from the County Administrator. That was not done with Ms. Joramo's hiring, presumably because Ms. Joramo did not fit within our policy. Ms. Joramo's hiring letter made no mention of a higher accrual rate. I spoke with the former Director who recalls no discussion of a higher rate. Our HR department has no documentation of starting at a higher rate. Ms. Joramo is raising this claim 5-1/2 years after starting with Cass County. Clearly she had no expectation of a higher rate when hired or she would have raised it back in 2015 when her annual leave accruals were not at that rate. Her representative hasn't suggested she had such an expectation when hired.
- **Exhibit 2** is the Human Service Zone's Annual Leave policy (I believe this is a DHS policy utilized across the Zones). It calculates annual leave at rates which are different than Cass County's, however both policies start at 8 hours/month and top out at 16 hours/month (with the Cass policy hitting that top number at 15 years and the Zone policy at 19 years). It states a human service zone employee who leaves employment and restarts with "the same Human Service Zone" within 3 years, must be credited with the employee's previous years of continuous service, and references NDAC §4-07-12-12 (the underlining is mine). It also addresses inter-agency transfers, and gives an employing Zone Director the discretion to accept a negotiated amount of annual leave hours (presumably in lieu of the other Zone paying out all those hours), and references NDAC §4-07-12-10. The policy is silent about the accrual rate of annual leave when an employee of one Zone is hired in another Zone. This policy would have been the place to address the topic. It did not. So it appears there is no statewide policy requiring a hiring Zone to credit an employee's previous years of service in another Zone in determining annual leave accrual rates.
- **Exhibit 3** is a copy of the ND Admin Code, Chapter 4-07-12. §4-07-12-12 addresses crediting an employee with their previous years of service, when calculating annual leave accrual rates, when "rehired" within 3 years. (I note this policy does not use the word "Zone".) §4-07-12-13 indicates a county social service board may accept all or a part of accrued annual leave hours transferring from another county social service board (which appears related to transferring already accrued hours to the new agency, not accrual rates). I don't see anything within this Admin Code chapter that addresses annual leave accrual rates for an employee who transfers between agencies, only to an employee who leaves "employment" and is "rehired". If you are being "rehired", then it has to mean by the same agency ... you cannot be "rehired" by an agency with which you did not previously work. §4-07-12-12. If the Admin Code intended to say it applied to transfers between agencies, it could have done so, similar to what it did in §4-07-12-13. (I also note §4-07-12-04 appears to accommodate local government agencies (subject to the merit system) using a different accrual schedule if they file that schedule with HRMS. I don't know if Cass formally filed that with HRMS. However, there have been numerous meetings/discussions, including legislative hearings in 2005, including representatives from Cass and HRMS, where a comparison of Cass and HRMS annual leave accruals were addressed.)

Questions:

- 1 - Are there pertinent policies that relate to this topic to which I have not referred above? If so, can you provide me references so I can review them? (If they are not publicly available with a Google search, perhaps you could send me a copy.)
- 2 - Are there guidance letters/opinions issued and stored ... somewhere ... that would inform the discussion above? If so, can you provide me copies of those?
- 3 - Do you agree with Ms. Joramo's representative that she was entitled to a higher accrual rate for that period between her hiring in 2015 and granting the higher leave accrual in 2021? If so, on what is your opinion based?

Thank you for any input you can provide on this topic.

Birch P. Burdick



Great Public Education

Great Public Service

February 1, 2022

Board of County Commissioners
Cass County Government
211 9th Street South
Fargo, ND 58103

Dear Commissioners--

My name is Ryan Nagle and I am the Assistant Executive Director of North Dakota United. We would like to address an issue on behalf of one of our members, Marlys Joramo.

Marlys is a kind, caring, and dedicated employee who has been patiently waiting for 8 months for her concern surrounding annual leave accrual to be resolved by Cass County. Based on the straightforward language of the North Dakota Administrative Code discussed below, it is our request, and one shared by the North Dakota Department of Human Services, that Marlys' concern be resolved favorably.

Here are the facts of Ms. Joramo's case:

- Ms. Joramo started at Cass County on 8/3/2015 and began incorrectly accruing annual leave at 8 hours per month.
- Prior to starting at Cass County, Ms. Joramo was employed by Ramsey County Social Services as a classified employee, as defined by North Dakota Administrative Code, from 1/10/1997 thru 7/31/2015 (18 years, 6 months, and 22 days of experience)
- Chapter 4-07-12 of the North Dakota Administrative Code "... applies to all state and local government agencies, departments, institutions, and boards and commissions that employ individuals in positions classified by human resource management services." Furthermore, 4-07-12-12 clearly defines the terms for annual leave accrual upon re-employment:

"An employee who leaves the employee's employment and who is rehired within three years must be credited with the employee's previous years of continuous service for the purpose of determining the employee's annual leave accrual rate."

- As her re-employment by Cass County was within 3 years, according to North Dakota Administrative Code 4-07-12-12, Ms. Joramo should have started accruing annual leave at 16 hours per pay period on the date of her hire of 8/3/2015.

Given these facts, it is our request that the Cass County Commission take the necessary action today to authorize the appropriate payment to Ms. Joramo for the accrued leave she is owed, according to the provisions of the Administrative Code referenced above. It is Ms. Joramo's preference that the payment be made to her deferred compensation account.

Sincerely,

Ryan Nagle

CHAPTER 4-07-12 ANNUAL LEAVE

Section

| | |
|------------|--|
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| 4-07-12-12 | Annual Leave and Reemployment |
| 4-07-12-13 | Assumption of Accrued Annual Leave |

4-07-12-01. Scope of chapter.

This chapter applies to all state and local government agencies, departments, institutions, and boards and commissions that employ individuals in positions classified by human resource management services.

History: Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-12-02. Definitions.

The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapters 54-06 and 54-44.3 and section 54-52-01, except:

1. "Annual leave" means an approved absence from work with pay.
2. "Regular employee" means a person who has completed the probationary period and who is in a position classified by human resource management services.

History: Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-12-03. Annual leave accrual.

Employees eligible for annual leave begin to accrue leave from the day of hire.

History: Effective September 1, 1992; amended effective November 1, 1996.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-12-04. Annual leave accrual schedule.

State agencies are advised that the following annual leave accrual schedule is required for use by each state agency subject to this chapter:

Years of Service

Hours Earned Per Month

| | |
|---------------------------|----------|
| Zero through three | Eight |
| Four through seven | Ten |
| Eight through twelve | Twelve |
| Thirteen through eighteen | Fourteen |
| Over eighteen | Sixteen |

A local government agency subject to the North Dakota merit system adopting or using a different accrual schedule shall promptly file a copy of that schedule with human resource management services.

History: Effective September 1, 1992; amended effective July 1, 2004; July 1, 2008.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-06-14, 54-44.3-12(1)

4-07-12-05. Accrual for employment for a fraction of a month.

An employee accrues leave for being employed for a fraction of a month. The number of annual leave hours earned by an employee for employment for a fraction of a month must be in proportion to the total number of straight time hours the employee actually worked compared to the total number of normal working hours in the month.

History: Effective September 1, 1992.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-12-06. Annual leave taken in fifteen-minute increments.

Repealed effective January 1, 1993.

4-07-12-07. Approval required.

Generally, a request to use annual leave must be approved before the employee is authorized to take the leave. A leave request may be denied if the employee's absence would unduly disrupt the operations or services of the agency.

History: Effective September 1, 1992.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-12-08. Annual leave limit.

No more than two hundred forty hours of accrued annual leave may be carried forward beyond April thirtieth of each year. If a political subdivision that employs individuals in positions classified by human resource management services uses a cutoff date other than April thirtieth, then the political subdivision may continue to do so as long as the same cutoff date is used for all of the agency's employees who occupy positions that are classified by human resource management services, and the two-hundred-forty-hour limit is observed.

History: Effective September 1, 1992; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-12-09. Change of cutoff date.

Repealed effective July 1, 2004.

4-07-12-10. Pay during employment.

An employee may not be paid for unused annual leave while the employee remains in the service of the agency, except for the following reasons:

1. The employee takes a long-term leave of absence;
2. The employee goes on educational leave;
3. The employee moves to temporary employment; or
4. Human resource management services approves a written request from an agency for an exception to this section for a business-related reason.

When an employee is transferring from one agency to another, the employee must be paid for the difference in hours between what the employee has accumulated and the number of hours the gaining agency will accept. When an employee is leaving the service of the agency, the employee must be paid for all accrued hours of annual leave.

History: Effective September 1, 1992; amended effective July 1, 1995; November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-12-11. Credit for temporary service.

A temporary employee who becomes regular must be given credit for the employee's length of service as a temporary employee for the purpose of determining the annual leave accrual rate provided there was no break in service beyond one year. An agency may not grant annual leave hours to a temporary employee.

History: Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-12-12. Annual leave and reemployment.

An employee who leaves the employee's employment and who is rehired within three years must be credited with the employee's previous years of continuous service for the purpose of determining the employee's annual leave accrual rate.

History: Effective September 1, 1992; amended effective July 1, 2008.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

4-07-12-13. Assumption of accrued annual leave.

A state agency appointing authority employing an individual from another state agency shall accept all or only a part of the employee's accrued annual leave hours the employee requests to transfer. State agencies covered by the North Dakota merit system shall accept all or a part of accrued annual leave hours the employee requests to transfer of a county social service employee in a position classified by human resource management services.

A county social service board may accept all or a part of accrued annual leave hours an employee requests to transfer from another county social service board or a state agency, if the employee occupies a position classified by human resource management services.

History: Effective November 1, 1996; amended effective July 1, 2004; July 1, 2008.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1)

| | | | | State | | | | | | |
|--------|-----------------|-------------------|--------------|----------|-------|---------|--|-----------------------------------|-------------|------------------|
| Marlys | | | | Accrual | CC AL | State | Option 1 Payout for hours not given at | Option 2 Payout for hours not | | |
| Joramo | State Hire Date | State AL Accruals | CC Hire Date | Pay Rate | Year | figured | pay rate in year not given | given at pay rate in current year | | |
| | 1/10/1997 | 16 hr/mo | 8/3/2015 | | | accrual | | | | |
| | | | | 26.2570 | 2015 | 40.00 | 70.00 | \$ 787.71 | \$ 1,009.87 | |
| | | | | 27.7630 | 2016 | 96.00 | 192.00 | \$ 2,665.25 | \$ 3,231.59 | |
| | | | | 28.9450 | 2017 | 96.00 | 192.00 | \$ 2,778.72 | \$ 3,231.59 | |
| | | | | 30.4390 | 2018 | 96.00 | 192.00 | \$ 2,922.14 | \$ 3,231.59 | |
| | | | | 31.8861 | 2019 | 96.00 | 192.00 | \$ 3,061.07 | \$ 3,231.59 | |
| | | | | 31.8861 | 2020 | 112.00 | 192.00 | \$ 2,550.89 | \$ 2,692.99 | |
| | | | | 32.6832 | 2021 | 184.00 | 192.00 | \$ 261.47 | \$ 269.30 | |
| | | | | 33.6624 | 2022 | | | | | |
| | | | | | | | \$ | 15,027.24 | \$ | 16,898.52 |

When Marlys came to Cass County she would have been earning 14 hours/month until January 1 2016.

| | | | | State | | | | | | |
|------------|-----------------|-------------------|--------------|----------|--------------|----------------|-----------------|---|---|--|
| Lisa White | State Hire Date | State AL Accruals | CC Hire Date | Pay Rate | Accrual Year | CC AL Accruals | figured accrual | Option 1 Payout for hours not given at pay rate in year not given | Option 2 Payout for hours not given at pay rate in current year | |
| | 5/1/1994 | 16 hr/mo | 10/16/2015 | 18.6270 | 2015 | 20.00 | 40.00 | \$ 372.54 | \$ 480.09 | |
| | | | | 19.7260 | 2016 | 96.00 | 192.00 | \$ 1,893.70 | \$ 2,304.45 | |
| | | | | 20.5890 | 2017 | 96.00 | 192.00 | \$ 1,976.54 | \$ 2,304.45 | |
| | | | | 21.6840 | 2018 | 96.00 | 192.00 | \$ 2,081.66 | \$ 2,304.45 | |
| | | | | 22.7380 | 2019 | 96.00 | 192.00 | \$ 2,182.85 | \$ 2,304.45 | |
| | | | | 22.7380 | 2020 | 108.00 | 192.00 | \$ 1,909.99 | \$ 2,016.39 | |
| | | | | 23.3064 | 2021 | 184.00 | 192.00 | \$ 186.45 | \$ 192.04 | |
| | | | | 24.0047 | 2022 | | | | | |
| | | | | | | | | \$ 10,603.74 | \$ 11,906.33 | |