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State of Louisiana
DEPARTMENT OF JUSTICE
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OPINION 13-0130

Mr. Dominic Vidrine, Fire Chief
St. Landry Fire District No. 3
887 Highway 749
Opelousas, Louisiana 70570

90-A-1 PUBLIC FUNDS & CONTRACTS
La. R.S. 33:1996

The policy adopted by St. Landry Fire District No. 3 which allows any employee who resigns, retires, or is terminated to receive vacation time for the part of the calendar year worked in which the separation from service occurs on a pro-rata basis, with the exception that vacation leave cannot be awarded on a pro-rata basis during the first year of employment, is consistent with La. R.S. 33:1996.

Dear Chief Vidrine:

Your request for an Attorney General's Opinion regarding compensation for unused vacation time upon separation of employment has been assigned to me for research and reply.

According to your request, the St. Landry Fire District No. 3 (the "District") adopted a new vacation policy on January 1, 2013. The policy states that any employee who resigns, retires, or is terminated will receive vacation time for the part of the calendar year worked in which the separation from service occurs on a pro-rata basis. Upon separation from service, a firefighter may be compensated for his unused vacation leave. Prior policy on vacation time allowed vacation days to be awarded only after a firefighter completed a full calendar year of work. Based on this information, you have asked whether the new policy described above violates state law regulating vacation leave for firefighters.

La. R.S. 33:1996 governs annual vacation leave for firefighters and provides:

Firemen in municipalities, parishes and fire protection districts to which this Subpart applies, *after having served one year, shall be entitled to an annual vacation of eighteen days with full pay.* This vacation period shall be increased one day for each year of service over ten years, up to a maximum vacation period of thirty days, all of which shall be with full pay. The vacation privileges herein provided for shall not be forfeited by any member of the department for any cause. Firemen employed on January 6, 1969 shall have their present longevity considered as a factor in the computation of their vacation benefits as provided herein.

(Emphasis added). The plain language of the statute is clear that no vacation leave may be awarded until "after having served one year." A recent opinion of this office has also reflected the interpretation that no vacation leave may be earned until after the first year of employment has been completed. La. Atty. Gen. Op. No. 08-0274 concluded that "after completion of the first year of employment, the firemen . . . are entitled to . . . 216 hours of annual vacation time under La. R.S. 33:1996." Therefore, it is our opinion that pursuant to La. R.S. 33:1996, vacation leave cannot be awarded on a pro-rata basis during the first year of employment.

However, the statute is silent as to whether vacation leave must be awarded on a pro-rata basis or at the end of each calendar year for any year after the first full year of employment. Because the statute is silent on the issue, a fire district can choose to implement La. R.S. 33:1996 by policy as long as, at a minimum, a firefighter is awarded eighteen days of annual vacation after the completion of each year of work. The vacation period is increased one day for each year of service over ten years, up to a maximum vacation period of thirty days with full pay. La. R.S. 33:1996.

La. R.S. 33:1996 also states that:

The provisions of this section shall in no way be construed to affect in any manner any presently existing system of computing vacation periods under which greater vacation benefits are granted than those provided for herein and the same shall continue in full force and effect.

The new policy does not restrict a firefighter's right to earn vacation leave. Rather, it provides a more generous benefit; for example, if a firefighter retired in July, he would be entitled to half of his vacation leave earned over a one year period rather than having to forfeit that leave because he did not work an entire year.

In *New Orleans Firefighters Local 632, et al. v. City of New Orleans, et al.*, 2003-1281 (La. App. 4 Cir. 5/26/04), 876 So. 2d 211, firefighters sued for back pay and annual leave allegedly owed by the City, stating that the "City's implementation of the "use it or lost it" policy violated La. R.S. 33:1996," which provides that vacation privileges set forth in La. R.S. 33:1996 cannot be forfeited by any reason. *Id.* at 15. The Court concluded that "La. R.S. 33:1996 does not either grant or deny firemen the right to carry forward earned vacation days from year to year" and therefore, determined that La. R.S. 33:1996 "is mandatory in that the governing authority must provide at least the benefits stated in the statute." *Id.* at 230. This case is instructive in response to your question because, as in *Firefighters*, La. R.S. 33:1996 is also silent as to how vacation leave is earned and only provides that a certain number of vacation days are owed to a firefighters per each year of work completed.

Because La. R.S. 33:1996 does not provide the rate at which vacation leave is earned by a firefighter, it is our opinion that the District has the authority to implement a policy

which allows any employee who resigns, retires, or is terminated to receive vacation time for the part of the calendar year worked in which the separation from service occurs on a pro-rata basis, with the exception that vacation leave cannot be awarded on a pro-rata basis during the first year of employment.

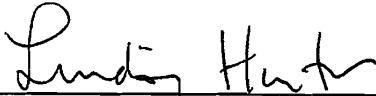
Your request also states that prior to the new policy taking effect, a retired firefighter requested that he be given pro-rata vacation credit for the time he worked from January through November of 2012. You ask whether the District is responsible for retroactive vacation pay to any employee who retired prior to the change in policy and, if so, how far back you must calculate and award the vacation days for former employees. Because the fire district did not have a pro-rata policy prior to the retired employee's request, but rather operated under a policy which allowed vacation days to be awarded only after a firefighter completed a full calendar year of work, the fire district is under no obligation to grant his request. In accord is La. Atty. Gen. Op. No. 11-0273, which addressed whether the City of Leesville could pay insurance premiums and accumulated vacation and sick leave in a manner which differed from the City's policy. The opinion concluded that "the City cannot pay retiring employees their accumulated vacation and sick leave in violation of its own Policy. By doing so, the City made a purely gratuitous expenditure of public funds in violation of La. Const. art. VII, Sec. 14(A)." La. Atty. Gen. Op. No. 11-0273.

Based on the foregoing, it is the opinion of this office that the policy adopted by the District which allows any employee who resigns, retires, or is terminated to receive vacation time for the part of the calendar year worked in which the separation from service occurs on a pro-rata basis, with the exception that vacation leave cannot be awarded on a pro-rata basis during the first year of employment, is not inconsistent with La. R.S. 33:1996. The District should not award vacation time on a pro-rata basis to those employees who resigned, retired, or were terminated during the time when a different policy was in effect.

We trust this adequately responds to your request. However, if our office can be of further assistance, please do not hesitate to contact us.

Yours very truly,

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JDC/LKH/chb