

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

State Employees' Vacation & Sick Leave  
5 M.R.S.A. 16

JOSEPH E. BRENNAN  
ATTORNEY GENERAL



RICHARD S. COHEN  
JOHN M. R. PATERSON  
DONALD G. ALEXANDER  
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
AUGUSTA, MAINE 04333

July 5, 1977

Robert J. Stolt, Commissioner  
Department of Personnel  
State House  
Augusta, Maine

Re: Vacation and Sick Leave Accumulation: Unclassified Employees.

Dear Mr. Stolt:

This responds to your request for advice on two matters:

1. The extent to which the provisions of 5 M.R.S.A. § 16, as adopted by P. & S.L. 1975, c. 147, Part E, apply to unclassified employees, and
2. The extent to which the Department of Personnel has authority to promulgate regulations relating to vacation and sick leave policies for unclassified employees.

UNCLASSIFIED EMPLOYEES:

The provisions of 5 M.R.S.A. § 16-1 relating to vacation time and § 16-2 relating to sick leave are both stated in mandatory terms with regard to classified and unclassified employees:

"Classified and unclassified state employees shall. . . ."

As these terms are stated in mandatory fashion, it may be assumed that the Legislature intended these sections to apply to unclassified employees and that the Legislature intended that unclassified employees be permitted to accumulate vacation time and sick

leave at at least the rates specified in § 16. Thus, the legislation may be construed as specifying minimum amounts of vacation time and sick leave which are available to all classified and unclassified state employees and minimum amounts of time which may be permitted to be accumulated without lapsing.

As the law is stated in terms of minimums, however, the appointing authority retains the capacity to allow greater amounts of vacation time per month of employment and to permit unclassified employees to accumulate greater amounts of vacation and sick leave without that time lapsing.

The legislation is silent on such issues as vacation time for part-time, temporary or project employees and the capacity of appointing authorities to permit unclassified employees to take vacation time before it is actually earned. However, as the statute is stated in terms of minimum, these matters would appear to be matters within the discretion of the appointing authority as the appointing authority can permit greater amounts of vacation time and/or sick leave.

Thus, in sum, we conclude that the provisions of 5 M.R.S.A. § 16-1 and § 16-2 specify minimum levels of vacation time and sick leave which are to be provided to all unclassified employees, and minimum levels of accumulation which may be permitted without lapse. However, appointing authorities may permit amounts of vacation time and sick leave and rates of accumulation without lapse above this amount if within their discretion they deem such adjustments appropriate.

Another issue with regard to §§ 16-1 and 16-2 is the effect of its enactment on past departmental policies regarding vacation time and sick leave for unclassified employees. We believe that time accumulated pursuant to such past departmental policies should be retained by unclassified employees and carried over in computing amounts of accumulated vacation and sick time under the new law and policies published thereunder. There is no suggestion in 5 M.R.S.A. § 16 that past accumulated credits would terminate. Such a construction, depriving employees of benefits earned under prior policies where such policies had existed would raise potential constitutional problems.

DEPARTMENT OF PERSONNEL:

5 M.R.S.A. § 16-3 grants to the Department of Personnel authority to publish regulations assuring that the minimum levels of vacation time and sick leave set out in § 16 are complied with. Thus, the Department is given authority to publish regulations which assure that the minimums are met through keeping of adequate records and otherwise. The last sentence of sub-§ 3 makes it clear that this regulation publishing authority extends to both classified and unclassified employees.

As indicated above, with regard to unclassified employees, it is ultimately for the appointing authority to indicate what levels above the minimums are appropriate for each particular unclassified employee. However, by the provisions of sub-§ 3, the Department of Personnel may appropriately by regulation assure that the individual appointing authority policies with regard to vacation time and sick leave are reported to the Department of Personnel and that proper records are kept whether vacation time and sick leave is at minimums or at levels above minimums. It should be noted that the Department of Personnel, pursuant to the second sentence of sub-§ 3, may also, by regulation, raise the minimum levels specified in sub-§§ 1 and 2 and make that increase applicable to all classified or unclassified state employees as the second sentence of sub-§ 3 grants the Department authority to amend rules and regulations permitting accumulation of vacation leave and sick leave beyond the limits set forth ". . . for all classified or unclassified state employees."

Again, as indicated in the first sentence of sub-§ 3, any regulations published by the Department of Personnel would establish only minimum levels, at least for unclassified employees, which could be increased by the appointing authority of the unclassified employee.

ATTORNEY GENERAL DEPARTMENT POLICY:

In connection with policies relating to unclassified employees, you have inquired as to the current policies of the Department of the Attorney General with regard to vacation time and sick leave for its unclassified employees. As you are aware, the Department currently maintains and has maintained for several years an informal policy with regard to vacation and sick leave. Basically our policy is that for personnel who have been with the Department from 0 to 3 years we generally allow approximately 14 days vacation a year; for attorneys with 3 to 6 years we generally allow 16 days vacation a year; and for attorneys with more than 6 years' experience we generally allow 20 days vacation a year.

We also have assumed that sick leave accumulates at approximately one day per month.

Previous to enactment of legislation we have not accumulated sick leave so we have not become involved in questions of total number of days of sick leave and lapsing. We had an informal policy on vacation time accumulation which generally barred compensation for time accumulated above 15 days -- a level which was not often reached in the office because of turnover rates. We are now developing a system to keep records on sick leave and vacation time.

In advising on this policy, however, I should caution you that we are currently reviewing the whole structure of attorney compensation and incentives and that we hope within a month or two to make changes which would have greater specification in areas such as vacation, sick leave, pay rates, etc.

I hope this information is helpful.

Sincerely,



DONALD G. ALEXANDER  
Deputy Attorney General

DGA/ec

cc: Joseph Stephenson