



June 13, 2024

OPINION

OF

Opinion No. 2024-07

RAÚL TORREZ

Attorney General

By: James Grayson
Chief Deputy Attorney General

To: Wayne Propst, Cabinet Secretary
Department of Finance and Administration

Re: Opinion Request – Changes to Sick and Annual Leave for Judicial Branch Employees

Question: May the Department of Finance and Administration (DFA) implement amendments to the New Mexico Judicial Branch Personnel Rules that change rules for accruing sick and annual leave consistent with its statutory responsibility for the state’s uniform accounting system and with state laws governing payouts to employees for unused leave?

Answer: No. The judiciary’s new policies, particularly the payouts authorized thereunder, cannot be reconciled with the public policy determinations and explicit payout restrictions imposed by the Legislature with respect to payouts to all state employees for unused leave. Accordingly, DFA may not permissibly implement the judiciary’s new policies under existing law.

Background

In 2023, the New Mexico Supreme Court issued an order adopting changes recommended by the Administrative Office of the Courts (AOC) to provisions of the New Mexico Judicial Branch Personnel (NMJBP) Rules governing the accrual of annual and sick leave. *See In re Approval of Amendments to the N.M. Jud. Branch Pers. Rules Part I for Emps. & Part II for At Will Emps.*, No. 23-8500-005 (Mar. 10, 2023) (available at www.nmcourts.gov). The new rules provide that, effective May 13, 2023, judicial employees’ sick leave and annual leave are combined “into one leave type called paid time off or PTO.” NMJBP Rule, Part I (for classified employees), § 5.14; NMJBP Rule, Part II (for at-will employees), § 19.14.

Accrued PTO “may be used for personal or medical reasons.” NMJBP Rule, Part I, Glossary of Terms. The rules allow employees to buy back accrued unused PTO in excess of 600 hours and require that employees who retire be compensated for accrued unused PTO hours based on time worked in the judicial branch. NMJBP Rule, Part I, § 5.14(T), (U); NMJBP Rule, Part II, § 19.14(T), (U).

DFA raises several concerns about whether NMJBP Rules for PTO are consistent with DFA’s statutory responsibilities to maintain a uniform statewide accounting system network and to oversee financial accounting by all state departments and agencies. DFA additionally contends that the NMJBP Rules for paying out accumulated PTO may be contrary to Financial Control Division (FCD) rules governing the payment of wages and salaries, as well as state statutes providing explicit restrictions on payouts to state employees for accumulated unused sick leave. *See* NMSA 1978, §§ 10-7-10 (1984), 10-7-11 (1983).

Analysis

The judiciary may, as a general matter, adopt personnel rules for its employees. *See Mowrer v. Rusk*, 1980-NMSC-113, ¶¶ 31–32, 95 N.M. 48 (concluding that “the judiciary must, as a matter of constitutional law, directly control court personnel”); *Aguilar v. City Comm’n of City of Hobbs*, 1997-NMCA-045, ¶ 8, 123 N.M. 333 (explaining that controlling personnel and administrative matters are among the judiciary’s inherent powers). However, the judiciary’s authority in this realm is not without limits. As with all branches of government, the actions of the judiciary cannot unduly interfere with or encroach on the authority of another branch of government. *See* N.M. Const. art. III, § 1 (dividing the powers of state government into the legislative, executive, and judicial branches and precluding one branch from “exercis[ing] any powers properly belonging to either of the others”).

Based on our review of applicable law, it is the Department of Justice’s opinion that the judiciary’s PTO policies, particularly the payouts authorized thereunder, conflict with public policy determinations and financial restrictions imposed by the Legislature. Because such matters are within the province of the Legislature, we conclude that the judiciary’s PTO policies lack authorization under existing law.

Creating law and establishing public policy are functions of the Legislature. *See State ex rel. Taylor v. Johnson*, 1998-NMSC-015, ¶ 21, 125 N.M. 343 (“We have said that only the legislative branch is constitutionally established to create substantive law” and that “[i]t is the particular domain of the [L]egislature, as the voice of the people, to make public policy.”). The Legislature also has the “exclusive power of deciding how, when, and for what purpose the public funds shall be applied in carrying on the government.” *State ex rel. Schwartz v. Johnson*, 1995-NMSC-080, ¶ 14, 120 N.M. 820 (internal quotation marks and citations omitted); *see also Joseph E. Montoya & Assocs. v. State*, 1985-NMSC-074, ¶ 8, 103 N.M. 224 (“[T]he Legislature intended DFA to have significant control over the expenditure of public monies.”).

Relevant to the judiciary’s new PTO policies, the Legislature has imposed specific financial restrictions on payouts to all state employees for unused sick leave, limiting both the number of

hours and the rate at which employees may be compensated. Specifically, Section 10-7-10 provides:

An employee of the state who has accumulated six hundred hours of unused sick leave shall be entitled to be paid for additional unused sick leave at a rate equal to fifty percent of his hourly wage multiplied by the number of hours of unused sick leave over six hundred hours, not to exceed one hundred twenty hours of such sick leave in any one fiscal year.

In addition, pursuant to Section 10-7-11:

Immediately prior to retirement from state service, an employee of the state who has accumulated six hundred hours of unused sick leave shall be entitled to be paid for additional unused sick leave at a rate equal to fifty percent of his hourly wage multiplied by the number of hours of unused sick leave over six hundred hours, not to exceed four hundred hours of such sick leave.

The payouts permitted under the judiciary's PTO policies are substantially different than payouts authorized pursuant to the above-described statutory scheme. Although the PTO policies address payouts made under the same circumstances as payouts pursuant to the foregoing statutes, the payout structure of the judicial policies results in much higher payouts, exceeding both the maximum percentage of hourly wages and allowable hours that are statutorily authorized for sick leave payouts.

In departing from Section 10-7-10, the judiciary's policies permit judicial employees who have accumulated more than six hundred hours of unused PTO to "buy back" the unused leave in excess of six hundred hours at the employee's *full* hourly rate of pay. The maximum number of hours for which a judicial employee may receive compensation increases over the next several years, authorizing compensation for up to four hundred hours per annum of such leave by fiscal year 2027 and thereafter. *See* NMJBP Rule, Part I, § 5.14(T); NMJBP Rule, Part II, § 19.14(T).

Concerning retiring employees, the judicial policies permit employees to be compensated for unused PTO at the employee's full hourly rate of pay and provide compensation for unused leave based on time employed in the judiciary, up to a maximum of eight hundred hours. *See* NMJBP Rule, Part I, § 5.14(U); NMJBP Rule, Part II, § 19.14(U). Retiring employees are compensated for *all* unused PTO up to the service-based hourly caps, rather than receiving a payout for only leave in excess of six hundred hours as in Section 10-7-11.

Because the judiciary's PTO policy permits greater payouts than are authorized by statute, the payout structure established by the judiciary's PTO policy conflicts with Sections 10-7-10 and -11. These statutes reflect a legislative policy choice to restrict payouts to state employees for unused sick leave and a limitation on the use of public funds for payouts.

We also find no support for the position that the statutes addressing sick leave payouts can be disregarded merely because the leave offered by the judiciary is not called "sick leave." Instead, the sick leave payout restrictions are implicated here because use for medical reasons is an

expressly designated purpose of PTO and the Legislature has expressed an intent to limit payouts for such leave. Sick leave is not defined in Sections 10-7-10 or -11. Elsewhere in Chapter 10, however, sick leave is defined as “a leave of absence from employment for which a state agency or public school pays an eligible employee due to illness or injury or to receive care from a licensed or certified health professional.” NMSA 1978, § 10-16H-2(C) (2019). The Legislature has also described sick leave as leave that may be used for illness, injury, or medical care. *See* NMSA 1978, § 50-17-3(C) (2021). These definitions suggest that the Legislature considered “sick leave” within the meaning of Sections 10-7-10 and -11 to mean leave that can be taken for illness or other medical purposes.

Because one of the expressly designated uses of PTO is absence from work for medical reasons, PTO may reasonably be categorized as sick leave under Sections 10-7-10 and -11. Additional characteristics of PTO, such as including leave previously designated as sick leave, designating some PTO hours as “sick leave” in the SHARE system, and converting up to six hundred hours of sick leave earned from employment in another branch of government to PTO for employees transferring into the judiciary, *see* NMJBP Rule, Part I, § 5.14; NMJBP Rule, Part II, § 19.14, provide additional support for the conclusion that PTO is bound by New Mexico law governing sick leave. PTO thus implicates the restrictions imposed by Sections 10-7-10 and -11. Further, even without regard to whether the PTO qualifies as sick leave under the statutes, Sections 10-7-10 and -11 indicate a legislative intent to limit employee buy back and retirement payouts to the circumstances and manner described in the statutes.

The “guiding principle” of statutory interpretation “is to give effect to the intent of the Legislature.” *Grisham v. Romero*, 2021-NMSC-009, ¶ 23. Based on the foregoing discussion, we believe the Legislature’s intent in enacting Sections 10-7-10 and -11 was to impose limitations on using public funds to pay state employees for unused leave that has been designated for use when such employees are sick or seek medical care. Because PTO may be used for medical reasons, the distinct, more expansive payouts permitted under the judiciary’s PTO policies frustrate the intent of the Legislature. The Legislature’s intent may not be circumvented merely by using a different designation; such interpretation would render Sections 10-7-10 and -11 meaningless in the context of leave within the judiciary. *Cf. City of Deming v. Deming Firefighters Loc. 4521*, 2007-NMCA-069, ¶ 23, 141 N.M. 686 (“We . . . do not give effect to legislative intent by reading a statute in a way that would render it meaningless.”).

Our analysis is buttressed by consideration of the significant financial impact presented by the judiciary’s PTO policies. Without question, the payouts permitted under the new policies will have a significant financial impact. As explained above, judicial employees are compensated for unused PTO in higher amounts and at a greater rate than what is permitted under Sections 10-7-10 and -11. As well, there are no limits to the number of PTO hours a judicial employee may carry forward annually or accrue overall. *See* NMJBP Rule, Part I, § 5.14(A), (F); NMJBP Rule, Part II, § 19.14(A), (F). The judicial branch has over two thousand employees throughout the state, and a PTO payout to even a single judicial employee can amount to a significant expenditure of public funds.¹

¹ For example, pursuant to Section 10-7-11, a retiring employee who makes \$30 an hour and has 800 hours of unused sick leave would be eligible to receive compensation for 200 of those hours,

As the branch possessing the “exclusive power of deciding how, when, and for what purpose the public funds shall be applied in carrying on the government[,]” *Schwartz*, 1995-NMSC-080, ¶ 14 (internal quotation marks and citations omitted), “[t]he Legislature . . . is certainly concerned with matters which would have a significant financial impact upon or require significant future appropriations of State funds,” *State ex rel. Segó v. Kirkpatrick*, 1974-NMSC-059, ¶ 1, 86 N.M. 359; *see also El Castillo Ret. Residences v. Martinez*, 2017-NMSC-026, ¶ 25 (explaining that “statute[s] must be interpreted and applied in harmony with constitutionally imposed limitations”).

Indeed, the Legislature recognizes that some personnel policies may have significant financial impacts and require legislative approval. *See* NMSA 1978, § 10-9-7 (1984) (prohibiting the state personnel office from “promulgating or filing . . . rules, policies or plans which have significant financial impact”). As well, New Mexico courts have been reluctant to interpret legislative provisions in a manner that contradicts legislatively-imposed financial restrictions. *See, e.g., Butkus v. Pub. Emps. Ret. Ass’n*, 2024-NMCA-041, ¶ 19 (declining to interpret a statute in a manner that would significantly increase retirement benefits because it was contrary to the Legislature’s intent), *cert. denied* (S-1-SC-40288, Apr. 22, 2024); *Mieras v. Dyncorp*, 1996-NMCA-095, ¶ 34, 122 N.M. 401 (discussing a legislative limit on attorney fees in workers’ compensation cases and explaining that, “under the limitation imposed by the state constitutional separation of powers, courts may not inquire into the wisdom of statutory policy or substitute their views regarding the design of workers’ compensation legislation”).

The corollary to this significant financial impact for a single branch of government is that the judiciary’s PTO policy creates vast inequity in state employee benefits. By having a leave system that differs from the annual leave and sick leave structure used by all other state agencies and by allowing for potentially far greater payouts than those of other agencies, the PTO policy essentially establishes two classes of state employees. Judicial employees have greater flexibility in their leave and potentially greater compensation for leave benefits than other state employees. Sections 10-7-10 and -11, however, apply broadly to an “employee of the state.” These provisions thus establish a uniform payout scheme that signals a legislative intent to adopt a fair system of leave payouts by treating all state employees equally. *See also* NMSA 1978, § 6-5-2.1(F) (2003) (instructing FCD to “prescribe, develop, operate and maintain a uniform statewide accounting system network”); NMSA 1978, § 6-5-1(H) (2003) (defining “statewide accounting system network” to mean the “central accounting system, the central payroll system, the central treasury system and all other financial accounting systems operated by state agencies as one system through manual or automated interfaces”). The PTO policy injects inequity into leave payouts and thereby frustrates this legislative intent.

Although “the absolute separation of governmental functions is neither desirable nor realistic[,]” one branch of government may not “unduly interfere[] with or encroach[] on the authority or within the province of a coordinate branch of government.” *State ex rel. Candelaria v. Grisham*, 2023-NMSC-031, ¶ 14 (internal quotation marks and citations omitted). For the reasons addressed

at half their hourly rate, for a payout of \$3,000. Under the judiciary's policies, a retiring employee who has 20 years of service, makes \$30 an hour, and has 800 hours of unused PTO would receive compensation for all of those hours, at their full hourly rate, for a payout of \$24,000.

herein, it is our opinion that the judiciary’s PTO policies, and particularly the payouts authorized under the policies, cannot be reconciled with the public policy and explicit payout restrictions imposed by the Legislature in Sections 10-7-10 and -11. *Cf. Taylor*, 1998-NMSC-015, ¶ 48 (“The New Mexico Constitution requires that the Legislature first have the opportunity to debate and vote on core policy changes[.]”); *State ex rel. Clark v. Johnson*, 1995-NMSC-048, ¶ 33, 120 N.M. 562 (explaining that the actions of another branch of government cannot “conflict with or infringe upon what is the essence of legislative authority—the making of law”). Absent a statutory change, we are of the opinion that New Mexico law precludes implementation of the judiciary’s PTO policies as currently written.

Beyond potential legal obstacles, DFA has identified numerous administrative, financial, and regulatory complications arising from implementation of the judiciary’s PTO policies. Such programmatic concerns arising from DFA’s implementation of the judiciary’s new rules implicate policy matters that are beyond the scope of this opinion. *See* NMSA 1978, § 8-5-2(D) (1975) (explaining that attorney general opinions address questions of law).

Conclusion

It is the opinion of the New Mexico Department of Justice that DFA may not permissibly implement the judiciary’s PTO policies under existing law.

You have requested an opinion on this question presented to our office. The request and the opinion provided herein will be published on our website and made available to the general public. Please note that this opinion is a public document and is not protected by the attorney-client privilege.

RAÚL TORREZ
ATTORNEY GENERAL

/s/ James Grayson
James Grayson
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