

1984 WL 249827 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 14, 1984

*1 Judith L. Finuf
General Counsel
Medical University of South Carolina
171 Ashley Avenue
Charleston, South Carolina 29425

Dear Ms. Finuf:

This is in reply to your letter of December 9, 1983, in which you request the opinion of this office concerning whether a state employee who is adopting an infant may use her accrued sick leave 'for maternity purposes.' As you correctly note in your letter, I had previously orally advised you that the State Personnel Division was of the view that sick leave could not be used in the circumstances you posited. This office is in agreement with the view of the State Personnel Division on this matter.

Sick leave for state employees is authorized by statute. See Act No. 186 of 1977, 60 STAT. 486, codified as [Sections 8-11-40 and 8-11-41, Code of Laws of South Carolina](#) (Cum.Supp. 1983). [Section 8-11-40, id.](#), provides:

All permanent full-time state employees are entitled to fifteen days sick leave per year with pay. Sick leave is earned by permanent full-time state employees at the rate of one and one-fourth days per month and may be accumulated, but no more than one hundred eighty days may be carried over from one calendar year to another. The department or agency head is authorized to grant additional sick leave in extenuating circumstances upon approval of the State Budget and Control Board. All permanent part-time and hourly employees are entitled to sick leave prorated on the basis of fifteen days per year subject to the same carry-over specified herein. In the event an employee transfers from one state agency to another, his sick leave balance also is transferred. The State Budget and Control Board, through the Division of Personnel, may promulgate such regulations in accordance with law as may be necessary to administer the provisions of this section, including the power to define the use of sick leave. (emphasis added.)

[Section 8-11-41, id.](#), states, in pertinent part: 'The provisions of [§ 8-11-40](#) shall apply to all state agencies, departments and institutions and shall be administered by each such agency, department and institution pursuant to rules and regulations adopted by the State Budget and Control Board.' Clearly these statutory provisions do not themselves answer the question you have posed. The Personnel Division of the State Budget and Control Board, however, has issued regulations pursuant to authority conferred by the statute which do shed light on this question. Regulation 19-703.09 G.2. enumerates the circumstances under which sick leave may be used as follows:

- a. Personal illness or injury incapacitating the employee to perform duties of the position.
- b. Exposure to a contagious disease such that presence on duty could endanger the health of fellow employees when certified by a licensed physician.
- c. Appointment for medical or dental examination or treatment when such appointment cannot reasonably be scheduled during non-working hours. * * *

*2 d. Sickness during pregnancy or other temporary disabilities. To the extent permissible, the date on which sick leave for disability is to begin shall be at the request of the employee based on the determination and advice of a doctor. In no event shall such date be prescribed unilaterally by an appointing authority except on the basis of professional medical opinion that the

employee is physically incapable of performing normal duties or that continuing to perform normal duties would be hazardous to the health of the employee.

e. Treatment of alcoholism—sick leave may be charged by an employee for the purpose of participating in public and/or private treatment and rehabilitation programs for alcoholics which have been approved by the South Carolina Department of Mental Health.

It is apparent that none of the enumerated permissible uses of sick leave expressly sanction the use of sick leave by an adopting parent for maternity or maternal bonding purposes. Indeed, there is no provision in either the statute or the regulations promulgated by the Personnel Division authorizing the use of sick leave for maternal bonding for either adoptive or natural mothers. To be sure, an employee who gives birth is entitled to sick leave during the period of time that she is disabled because of her pregnancy and childbirth; she is not, however, entitled to sick leave for maternal bonding with her infant even though she is afforded the opportunity to be with her infant during such time as she is disabled because of childbirth.

Furthermore, the Personnel Division has consistently construed the statute and its own regulation as authorizing sick leave to be used only when an employee himself or herself is ill, injured, or disabled or when his or her presence at work would expose others to the risk of illness or disease. More specifically, the Personnel Division has construed the statute and its regulations as not permitting an adopting mother to use sick leave for maternity purposes. This interpretation by the agency charged with the responsibility for administering the statute is entitled to great deference and ought not to be disturbed in the absence of the most compelling reasons. [Faile v. South Carolina Employment Security Commission](#), 267 S.C. 536, 540, 230 S.E.2d 219 (1976). Not only is the Personnel Division's construction of the statute and its own regulations not inconsistent with the sick leave statute, it is supported by a prior opinion of this office which, in construing the statutory predecessor to the current sick leave statute—similar in all material respects to the current statute—held ‘that sick leave may be used only for sickness or illness of the employee and may not be used where there is illness or death in the family.’ 1968 Ops. Atty. Gen. 252, 254 (construing Act No. 1173 of 1968, 55 STAT. 2691).

In conclusion, it is the opinion of this office that, under the statute and implementing regulations, sick leave may be used only when an employee is ill, injured or disabled or when her presence at work would expose others to the risk of illness or disease. It is only because she is temporarily disabled due to pregnancy and childbirth that a natural mother is entitled to use whatever sick leave she may have accrued. Since an adopting mother is not disabled by pregnancy or childbirth, she is not entitled to sick leave for purposes of being with her infant.^{a1}

Sincerely,

*3 Vance J. Bettis
Assistant Attorney General

Footnotes

a1 It is, of course, not the function of this office to agree or disagree with the law as enacted by the legislature; rather, our function is simply to interpret statutes and regulations to the best of our ability. Our opinion is based on the statute and implementing regulations as they currently stand. Appeals for a change in the sick leave policy must be directed to the General Assembly and to the State Personnel Division.

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