1976 S.C. Op. Atty. Gen. 340 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4480, 1976 WL 23097

Office of the Attorney General

State of South Carolina
Opinion No. 4480
October 7, 1976

***1** According to the Public School Employees Sick Leave Act, once a covered employee uses all accrued sick leave, such employee would be on leave of absence since the sick employee still cannot be terminated during a continuing sick leave of 91 days. After a covered employee with long-term illness has been out for 91 days, this person could be terminated for breach of contract or unfitness for teaching, provided the requirements of the Teacher Dismissal Act are met. School districts may provide alternative sick leave programs, provided minimal benefits are included in the alternative programs or individual employees have the option of choosing and clearly indicate the waiver of the benefits provided under the Public School Employees Sick Leave Act without violating the legislative intent thereof.

TO: Francis Mood
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I.

QUESTION:

At what point in time, if at all, may an employee be involuntarily placed on leave of absence when that person has a long-term illness?

DISCUSSION:

Section 1, 1976 Act 724 (Public School Employees Sick Leave Act) provides that a full-time employee may accumulate up to 60 days of sick leave and further provides 'nor shall any such employee be terminated during a continuing sick leave of less than ninety-one days.' Since a covered employee can accumulate only sixty days of sick leave and yet cannot be terminated for ninety-one days, such employee is in fact on a leave of absence without pay for the difference between accrued leave and ninety-one days allowed before possible termination. For example, if an employee had accumulated twenty days leave and was absent sick for seventy days, this employee would be on leave of absence without pay for the difference of fifty days. (Since no opinion has been requested as to whether or not the school district may deduct substitute pay during the period of accrued leave, this issue is not addressed in this opinion.)

CONCLUSION:

A full-time public school employee with long-term illness automatically goes on leave without pay after accrued leave is used up and until a total of ninety-one days including accrued sick leave is passed, unless the district otherwise provides for additive leave of absence.

II.

QUESTION:

At what point in time, if at all, may a person on long-term illness be involuntarily terminated from employment?

DISCUSSION:

Section 1 of the Public School Employees Sick Leave Act specifically states that employees 'using sick leave as provided in this Act' cannot be terminated 'during a continuing sick leave of less than ninety-one days.' Where terms are clear and not ambiguous, they must be applied according to their literal meaning. Jones v. S. C. Highway Department, 146 S.E.2d 166, 247 S.C. 132 (1966). This statutes clearly provides that the earliest a covered employee may be involuntarily terminated would be after ninety-one days of continuous leave for sickness.

CONCLUSION:

***2** After ninety-one days of absence due to personal illness a public school employee covered by the Public School Employees Act may be terminated, assuming due process requirements of the Teacher Dismissal Act are followed.

III.

QUESTION:

May alternative sick leave programs be submitted to employees affected for vote by them?

DISCUSSION:

Section 1 of this Act clearly allows districts to provide more liberal sick leave policies: 'The provisions of this Act shall not apply to employees of a school district which provides more liberal sick leave benefits.' What would constitute a more liberal sick leave benefit or benefits would require individual analysis of each such program, making a general rule impossible. The only general rule that can be stated is that the intent of the legislative to provide a minimum sick leave policy for full-time public school employees should not be defeated. See State Department of Education in the Salary Adjustment Committee, New Jersey Supreme Court, A–8 September term, November 18, 1975, cited in Governmental Employees Relation Reports, No. 641, January 26, 1976, and Gainey v. Coker's Pedigreed Seed Company, 227 S.C. 200, 87 S.E.2d 486 (1955).

It is highly unlikely that an employee could be compelled to accept less than what is offered by the Public School Employees Sick Leave Act since such would defeat the legislative intent. As far as selecting alternative sick leave programs, it is equally unlikely that employees could be forced to vote in favor of one alternative to the exclusion of all others, since such a vote would not constitute a valid waiver of an individual's right to the benefit provided by the Public School Employees Sick Leave Act.

CONCLUSION:

School districts may provide alternative sick leave programs so long as each employee has the minimum benefits granted by the Public School Employees Sick Leave Act or waives these right without destroying the legislative intent in passing this legislative.

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