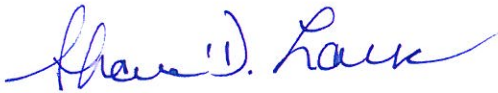




RULE INTERPRETATION

STATUTE/RULE REFERENCE NUMBER: <i>Section 110.219(5)(f), Florida Statutes (F.S.), Attendance and leave; general policies</i> <i>Section 110.1055, F.S., Rules and rulemaking authority</i> <i>Rule 60L-34.0042(5), Florida Administrative Code (F.A.C.), Sick Leave</i> <i>Rule 60L-34.001, F.A.C., Scope and Purpose</i>	TRACKING NUMBER: <i>60L-34-2006-#004</i>
SUBJECT: <i>Provisions Governing the State Personnel System's Sick Leave Transfer (Donation) Plan</i>	
APPROVAL SIGNATURE: Sharon D. Larson, Director 	EFFECTIVE DATE: <i>October 4, 2006;</i> <i>Revised May 10, 2010;</i> Revised: October 31, 2013

One of the State Personnel System's goals in establishing the sick leave transfer program was to provide an avenue by which employees who do not meet the criteria for sick leave pool membership (e.g., without sufficient employment time) or whose agency does not sponsor a sick leave pool, could avail themselves of sick leave credits. Participation in a sick leave transfer program is up to each agency's discretion; however, if the agency has made the decision to participate by establishing a plan, then use of donated sick leave applies to current Career Service, Selected Exempt Service and Senior Management Service employees.

Question 1:

Is there any length of service requirement that must be met before employees can receive donated sick leave?

Interpretation:

No. Provided the employee meets the eligibility requirements stipulated in Rule 60L-34.0042(5)(e), F.A.C., the rule does not require a minimum period of employment in order for an employee to receive donated sick leave. It was contemplated that new employees would be a logical category of persons for whom such donations would fill a need.

Question 2:

May an employee donate leave upon separation?

Interpretation:

Yes. However, this rule was not structured around donations from separating employees. Consequently, the conditions under which these donations can be accommodated are limited.

Question 3:

Under what conditions may an employee who is separating from their employment donate sick leave to an employee who has been approved to receive donated hours?

Interpretation:

To ensure consistent and prudent fiscal management:

- The separating employee must maintain 80 hours in their sick leave balance (regardless of eligibility status for a sick leave payout) pursuant to Rule 60L-34.0042(5)(d).
- A recipient must use donated hours from a separating employee by the end of the pay period in which the donor is separating. Leave credits of a separating employee have no value once the separation occurs, and as a result, cannot be carried forward for any purpose post-separation.
- If the donor is eligible for a terminal sick leave payment, the donated hours are to be deducted first and the remaining balance is to be used for purposes of calculating the payable hours.

Question 4:

What type of disability leave would disqualify an employee from receiving donated leave?

Interpretation:

In the context of this rule, disability leave is any period of absence during which the employee is receiving state-funded disability benefits intended to replace all or a portion of the employee's income. Specifically, paid or unpaid disability leave under Workers' Compensation and any period of unpaid leave while collecting benefits under the Disability Income Insurance (DII) plan for SES/SMS employees disqualify an employee from sick leave donations.

The restriction against using donated sick leave credits in the above circumstances is in recognition of the state already incurring the liability for income protection while employees are unable to work. By design, most disability income insurance programs are structured to replace a portion (but not necessarily the entire salary) in order to strike a balance between meeting the employee's financial needs and creating an incentive to return to work.

In contrast, employees who collect disability benefits from plans which they have purchased on their own (under state group supplemental insurance coverage, an agency sponsored program, or outside of their employment) may use donated sick leave if they otherwise meet all the rule criteria. This policy promotes the practice of employees taking their own measures to protect income; without penalizing them for doing so.

Question 5:

Does the State Personnel System (SPS) allow reciprocal sick leave transfers (donations) outside of the SPS?

Interpretation:

No. Rule 60L-34.0042(5), F.A.C., establishes an optional sick leave transfer (donation) plan which, pursuant to Rule 60L-34.001, F.A.C., applies "to employees in the State Personnel System, excluding volunteers and Other Personal Services employees". The following entities are not included in the State Personnel System: the State Court System, the Justice Administration System (Justice Administrative Commission, State Attorneys, Public Defenders, Capital Collateral Regional Counsel, Criminal Conflict and Civil Regional Counsel, and the Statewide Guardian ad Litem Program), the Legislature, the Florida Lottery, state universities, state colleges, community colleges, cities, and counties. Furthermore, the rule was specifically designed to be uniformly applied on the basis of the particular leave accrual and usage policies of the SPS. The SPS cannot enforce leave policies outside of its system nor prevent these other entities from changing eligibility requirements and applying different standards to their sick leave transfer plans.

Note: Transfer of sick leave (donations) should not be confused with transfer of accrued sick leave to entities outside of the SPS upon separation from service. Please see Rule Interpretation 60L-34-2008-#003 for information regarding these permissible leave balance transfers.

Statute Citation:**Section 110.219, F.S., Attendance and leave; general policies.**

(5) Rules shall be adopted by the department in cooperation and consultation with the agencies to implement the provisions of this section; however, such rules must be approved by the Administration Commission prior to their adoption. Such rules must provide for, but need not be limited to:

(f) Sick leave provisions.

Section 110.1055, F.S., Rules and rulemaking authority.

The Department of Management Services shall have authority to adopt rules as necessary to effectuate the provisions of this chapter.

Rule Citation:

Rule 60L-34.0042, F.A.C., Sick Leave.

(5) An agency may establish a formal sick leave transfer plan, which allows an employee to donate personal sick leave credits to another employee.

(a) The plan may limit the transfer of sick leave credits within the agency only, or allow for inter-agency transfers, provided that inter-agency transfers shall allow for both the receipt of and donation of sick leave credits. The same plan provisions and restrictions shall apply to transfers within the agency and inter-agency transfers.

(b) A plan that allows inter-agency transfers shall ensure that all requests to donate from within the agency are identified and processed before donations from other agencies are considered, except for transfer by the receiving employee's spouse and the parents, grandparents, brothers, sisters, children, and grandchildren of both the employee and the spouse.

(c) Participation in the plan shall at all times be voluntary on the part of the donating employee and the receiving employee.

(d) An employee may participate in the plan by voluntarily transferring sick leave credits, provided that a minimum of eighty hours of sick leave credits remain in the employee's account following execution of the sick leave credit transfer. The minimum transfer amount for each transaction shall be eight hours. The employee cannot cancel the donation once the agency completes the transfer.

(e) To be eligible to receive sick leave credits under the plan, an employee must meet the following conditions:

1. The employee has used all accrued sick and annual leave and all types of earned compensatory leave.

2. The employee has suffered a documented illness, accident or injury, and requires, as certified by the treating physician, absence from the workplace for a minimum of five consecutive workdays. Unless waived by the employing agency, transferred sick leave credits shall be used for absences associated with such documented conditions beginning with the sixth missed workday or partial workday or on the first day the employee has exhausted all leave credits, whichever is later. Donated leave may be used consecutively, intermittently or in increments of a quarter hour, as needed.

3. The employee is not eligible for disability leave.

4. The employee has not used more than 1040 hours of transferred sick leave credits in the preceding twelve-month period.

RULE INTERPRETATION		TRACKING NUMBER: 60L-34-2006-#004
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Rule 60L-34.001, F.A.C., Scope and Purpose.

This chapter sets forth the rules governing attendance and leave policies that apply to employees in the State Personnel System, excluding volunteers and Other Personal Services employees. Rule 60L-34.0051, F.A.C., also applies to Florida Lottery employees.

Preparer's Initials: JDA/ABG

File name & Path: S:\Workforce\HRM\Rule Interpretations\Final

Date: Oct. 31, 2013

File Code: ATT.SLD