



GLENN A. CUNHA
INSPECTOR GENERAL

The Commonwealth of Massachusetts

Office of the Inspector General

JOHN W. McCORMACK
STATE OFFICE BUILDING
ONE ASHBURTON PLACE
ROOM 1311
BOSTON, MA 02108
TEL: (617) 727-9140
FAX: (617) 723-2334

October 26, 2017

The Honorable Jerald A. Parisella, Chairman
Joint Committee on Public Service
State House, Room 156
Boston, MA 02133

The Honorable Cindy F. Friedman, Chairwoman
Joint Committee on Public Service
State House, Room 413-D
Boston, MA 02133

Re: State Employees' Sick and Vacation Leave Policies

Dear Chairman Parisella and Chairwoman Friedman:

I write to urge the Committee to adopt strong measures to reduce the state's liability for accrued sick and vacation leave. The Commonwealth's liability for sick and vacation leave is staggering – estimated to exceed \$558 million.¹ As your Committee considers legislation addressing sick and vacation leave, I recommend that it incorporate the following provisions in order to reduce the Commonwealth's liability and protect public funds:

- Cap sick leave payouts at 200 hours while still allowing individuals to accrue more than 1,000 hours of sick time;
- Limit vacation time carryover to 75 hours;
- Eliminate the conversion of vacation and personal time into sick time; and
- Mandate accurate tracking of the use of all leave time.

Recently, my Office analyzed the state's financial liability for the leave balances of state employees with at least 1,000 hours (*i.e.*, 6 months or more) of accrued sick leave or at least 187.5 hours (*i.e.*, 5 weeks or more) of accrued vacation leave.² The Office found that 10,427

¹ Office of the Comptroller, *Comprehensive Annual Financial Report* 38 (2016).

² My Office analyzed data for 23,356 state employees with high sick and vacation leave balances. These employees represent a fraction of the Commonwealth's approximately 90,000-member workforce and include employees from executive agencies, constitutional offices, independent agencies, higher education institutions, the judiciary, sheriffs' departments and district attorneys' offices. The data does not include employees from the University of Massachusetts, the MBTA or independent authorities. The data is current as of November 12, 2016.

employees had sick leave balances of 1,000 hours or more. In total, these employees have accrued over 17 million hours of sick time. The Office conservatively estimates that the liability associated with these sick leave balances is more than \$117 million.³ Of these 10,427 employees, more than 650 have over 2,700 hours of sick time (*i.e.*, 365 days or more). Today, these employees would receive an estimated \$14 million in sick leave payouts upon their retirement.

The Office further found that 19,955 employees had vacation leave balances of 187.5 hours or more. In total, these employees have accrued over 6 million hours of vacation time. The Office conservatively estimates that the liability associated with these vacation leave balances is more than \$217 million. Of these employees, more than 5,900 had accrued well over 375 vacation hours (*i.e.*, at least 10 weeks). The estimated liability for these individuals is \$88 million.

As you can see, high leave balances expose the Commonwealth to significant financial liabilities when employees leave state service. This is not a distant risk. At the 2017 Agency Leadership Summit, the Comptroller announced that 30% of the state's workforce currently is eligible to retire and that over the next five to ten years approximately 45% of state employees will be eligible. It therefore is imperative that the Commonwealth take action now to mitigate the state's financial liability.

My Office has identified four major causes for the Commonwealth's current circumstances: the structure of sick-leave payouts, the ability to convert vacation and personal time into sick time, the absence of limits on carrying over vacation and other leave time from year to year, and poor recordkeeping.

Sick Leave Payouts

Currently, when state employees retire, they are paid 20% of their total accrued sick time.⁴ Further, the sick time must be paid out based on the retiring employee's current salary, not on the employee's salary when he accrued the time. While the state needs to manage its financial liabilities, sick leave is an important benefit for employees and they should have access to such leave as needed while serving the Commonwealth. Therefore, it would be prudent to amend the law to allow retiring employees to receive 20% of their sick leave balance up to a maximum 200 hours. Under this change, employees could still accrue more than 1,000 hours, but would not be paid out for more than 200 hours. This change would ensure that employees have access to their earned sick time when needed while also protecting the Commonwealth from large payouts.

³ The Public Employee Retirement Administration Commission reported that as of December 31, 2016, the average annual salary for state employees in the state retirement system is \$65,845. *Commonwealth Actuarial Valuation Report 17* (2017). For all estimates in this report, the Office calculated the potential liability for sick and vacation leave balances based on this annual rate.

⁴ M.G.L. c. 29, § 31A(d).

The proposed change would reduce the state's estimated liability for the 10,427 employees discussed above by at least \$46 million. To give a more specific example, a community college president retired earlier this year after more than 45 years of public service. Over the president's tenure, he accrued over 9,000 hours of sick time (*i.e.*, 1,200 days). As a result, the president received a sick leave payout of over \$266,000.⁵ Had the 200-hour cap been in place, the president's sick leave payout would have been less than \$30,000.

Finally, some may contend that a cap would result in healthy employees taking extended sick leaves shortly before retiring. However, every agency should already have policies in place prohibiting the use of sick time for reasons other than medical necessity. Further, many agencies require medical documentation from an employee upon return from sick leave after a certain period of time. Having such safeguards in place will ensure that sick leave is used appropriately.

Carryover Policies

Vacation time is also an important benefit to employees. Under the law, any employee retiring or leaving state service must be paid for all accrued but unused vacation time.⁶ Moreover, vacation must be paid out based on the exiting employee's current salary, rather than on the employee's salary when he earned the vacation time.

Local and state agencies can, however, limit how much vacation time employees carry over from year to year. For instance, the executive branch limits the vacation balances for its managers and other employees to 375 hours (*i.e.*, 10 weeks) at any time during an employee's term of employment.⁷ Other agencies, including my Office, limit the carryover of vacation time to 75 hours (*i.e.*, 2 weeks). Agencies that do not have or enforce carryover policies run the risk of making large payouts to employees upon separation from service. For some agencies, this can have a devastating impact on the agency's budget and, thus, its ability to serve the residents of the Commonwealth. Therefore, all state agencies should have and enforce strict carryover policies that prevent the excessive accumulation of vacation time.

I recommend that any legislation addressing leave balances include a cap on vacation carryover to 75 hours. Such a change would reduce the state's estimated liability for the 19,955 employees discussed above by at least \$166 million. To offer a specific example, one state employee in our review had accrued over 2,500 vacation hours, or the equivalent of approximately 340 days. The potential liability for this individual alone is over \$144,000.⁸

⁵ The president's total retirement payout, including vacation time, amounted to over \$330,000.

⁶ M.G.L. c. 29, § 31A (a).

⁷ The *Rules Governing Paid Leave and Other Benefits for Managers and Confidential Employees*, frequently referred to as the "Red Book," applies to employees and managers in the executive branch whose positions are classified by the personnel administrator in accordance with M.G.L. c. 30, § 45.

⁸ This employee's hourly rate is \$57.95.

Conversion of Accrued Leave Time

Currently, state agencies, authorities, cities and towns can permit the conversion of vacation time into sick time. For example, under this practice, an employee who has 100 hours of vacation leave at the end of the year, but whose agency limits carryover to 75 hours, would “convert” the remaining 25 hours into sick time at the end of the year. The retired college president discussed above accrued his 9,000 hours of sick time as the result of such a policy.⁹

While my Office is unaware of any state agency currently using this practice, we have recently encountered this practice on the municipal level. This practice plainly circumvents rules limiting vacation carryovers. It also thwarts the purpose of sick time. Sick time should be accrued and used only for medical needs, not as a method to increase a retirement payout. I recommend that any legislation addressing this issue include a prohibition on this conversion practice.

Inadequate Recordkeeping

It is also very important for state and local agencies to accurately track the use of sick and vacation time. Without proper recordkeeping, it is impossible for an agency to ensure it is paying its employees the appropriate amount for leave time upon separation from service. As an example, a manager at a municipal light department recently sought approximately \$500,000 for unused sick and vacation time when he left the light plant, based on a faulty reading of his contract and the department’s personnel policies. After my Office’s investigation, the agency paid only a fraction of that amount to the manager. Lax recordkeeping, however, hampered the light department’s ability to determine whether the manager had accurately accounted for his vacation and sick time over his 40-year tenure with the department. Accurate and timely recordkeeping helps ensure that leave is both used as it is intended and properly accounted for when it is taken. I recommend that any legislation addressing this issue include language mandating accurate tracking of sick and vacation time. Such tracking should include a requirement that employees and their supervisors affirm the accuracy of the leave time used each week.

Finally, my Office also examined the payouts the Commonwealth made to all state retirees between January 1, 2014 and November 12, 2016. During this two-year period, the Commonwealth paid over \$140 million to 9,114 retirees when they separated from state service. These payouts included sick, vacation, personal and compensatory time earned by the employees. Further, the Commonwealth paid over \$3.6 million to the 30 retirees with the highest balances. It is important to note that not all employees receive large payouts. The vast majority of public employees received modest payouts after many years of service. The average payout among the 9,114 retirees was \$15,000, and over 400 employees received no payout when

⁹ Prior to July 2016, under the Board of Higher Education’s Non-Unit Professionals (NUP) agreement, all NUP employees could convert unused vacation time, in excess of 64 days per year, into sick time. In July 2016, the Board of Higher Education adopted new policies eliminating the ability to convert vacation time into sick time. However, other state agencies, authorities, cities and towns may still allow this conversion.

Chairman Parisella and Chairwoman Friedman

October 26, 2017

Page 5 of 5

they retired from state service. It is critical, however, for the Commonwealth to pass legislation that limits high-end payouts and creates stringent oversight mechanisms. The measures outlined above achieve these two goals.

Ultimately, the accrual of sick time and vacation time are important benefits for employees. At the same time, we must address the Commonwealth's staggering financial liability for sick and vacation leave balances. I hope you seriously consider my recommendations as you contemplate legislation relative to this issue. If you have any questions on this important topic, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Glenn A. Cunha". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Glenn A. Cunha
Inspector General