

LAW OFFICES OF
MATUSZEWICH & KELLY, LLP

101 N. Virginia St., Suite 150
Crystal Lake, Illinois 60014
(815) 459-3120 Telephone
(815) 459-3123 Facsimile

April 11, 2017

Mr. Robert J. Miller
Highway Commissioner
Algonquin Township Road District
3702 U.S. Highway 14
Crystal Lake, Illinois 60014

RE: Compensation for Accrued Sick Leave

Dear Mr. Miller:

You requested an opinion as to whether the Road District was required to pay accrued sick leave upon the separation, retirement, or termination of an employee. Based upon our discussion it was the policy of Algonquin Township Road District to allow employees to accrue sick leave in a sick leave bank. The employee could use the sick leave if sick, or be paid for the sick leave upon retirement or termination. In addition an employee could buy up to two years of IMRF credit with their banked sick leave. In 1995 the Road District Policy changed and eliminated the accrual/banking of sick leave going forward.

Currently, you and three other Road District employees have banked sick leave which was earned prior to the 1995 change to the Road District Personnel Policy. As of April 5, 1993 when you stopped banking sick days, you had accrued 253 sick days. You were notified by the Township Supervisor in April of 1993 that you could use your sick leave to purchase IMRF credit. You decided to keep these sick days banked, as allowed by the Road District personnel policy then in effect, rather than credit this time to your retirement plan. The sick leave accrued by you, and the other Road District employees, was accrued before you became highway commissioner or the policy change.

Based upon my review of the law, and the Road District personnel policy in effect in 1993, I believe that you and the other employees who accrued sick leave can be paid for their sick leave upon leaving the employment of the Road District.

Background

Algonquin Township Road District had a personnel policy in effect during the period you were a Road District employee and until the time you took office in on April 5, 1993. Exhibit A. This policy was known as the "Algonquin Township Road District Personnel Policies and Procedures". On April 9, 1993, four days after taking office as Highway Commissioner you adopted, verbatim, the Policy which was in place at the time you took office (hereinafter both the

pre April 9, 1993 personnel policy and April 9, 1993 personnel policy will be referred to as the "Policy"). Exhibit B. The Policy establishes policies and procedures for Road District employees, to include compensation, benefits, and work rules. It specifically allows employees to accrue and bank of "Sick Leave" as well as establishes the policy for compensating employees for their unused "Sick Leave" at the time of retirement or termination from the Road District. The Policy states in relevant parts as follows:

VI. SICK LEAVE

1. The Road District provides **compensation** for its full-time employees against loss of income because of illness. It is a self-insurance program provided by the Road District and **earned** by the employee. Eligible employees earn one (1) sick day for each month worked. . . (Bold Added)

The Policy further states at Article XIV:

XIV. Termination

1. RETIREMENT

All benefits due the employee at the time of retirement will be paid at the employee's current rate of pay and will be paid in the employee's last pay period.

It should be noted that the Policy specifically and unequivocally states in Article VI.1 that the Road District is providing sick leave as "compensation".

After taking office as Highway Commissioner on April 5, 1993 the Township Supervisor offered you the opportunity to use your sick leave to purchase credit in your retirement plan (IMRF). The Supervisor made this offer to you several times over the next couple of years. You declined the offer to apply your sick leave to credit in the IMRF. In addition several other employees who accrued sick leave received, and declined, the offer to use their banked sick leave to purchase credit in IMRF.

In 1995 a new personnel policy was adopted by the Road District which eliminated the accrual of sick leave. After the personnel policy changed in 1995, employees who had banked sick leave, prior to the change in the policy, were allowed to keep their banked sick leave until separation from the Road District and then be paid for the their sick leave. This action by the Road District was in fulfillment with the contractual obligations to the Road District employees to pay for the "compensation" they earned.

Analysis

The Illinois Wage Payment and Collection Act ("Act") in general controls the payment of employees wages and benefits. Unfortunately, the Act does not specifically address the issue of

sick leave. Therefore a more thorough review of the Act is required. The Act defines wages as follows:

“wages” shall be defined as any **compensation owed** an employee by an employer pursuant to an employment contract or **agreement** between the 2 parties, whether the amount is determined on a time, task, piece, or any other basis of calculation. Payments to separated employees shall be termed “final compensation” and shall be defined as wages, salaries, earned commissions, earned bonuses, and the monetary equivalent of earned vacation and earned holidays, and any other compensation owed the employee by the employer pursuant to an employment contract or agreement between the 2 parties. Where an employer is legally committed through a collective bargaining agreement or otherwise to make contributions to an employee benefit, trust or fund on the basis of a certain amount per hour, day, week or other period of time, the amount due from the employer to such employee benefit, trust, or fund shall be defined as “wage supplements”, subject to the wage collection provisions of this Act. 820 ILCS 115/2 (Bold Added)

The Act’s definition of “wages” is critical in this analysis as it clearly states that that “wages” includes any “compensation owed” to an employee pursuant to a contract or agreement. In the case of Algonquin Township Road District Policy and Procedures clearly stated in Article VI that sick leave was “compensation” and that it was “earned by the employees.” Sick leave is therefore considered wages for the purpose of the Act.

The Act however does not provide an independent right to payment of wages and benefits, but rather it only enforces the terms of an existing contract or agreement.¹ In this case the issue then is whether the Policy is the agreement purposes of the Act.

Illinois Courts have held that an employment policy statement or policy creates an enforceable contract, with respect to sick time, if the policy: 1) contains a promise clear enough that an employee would reasonably believe that an offer had been made, 2) is disseminated to the employees in such a manner that the employee is aware of its contents’ and reasonably believe it to be an offer; and (3) the employee must accept the offer by commencing or continuing to work after learning of the policy or statement.¹¹

The Algonquin Township Road District Policy clearly meets all three prongs of this test. The Policy contains a clear promise that sick leave was “earned” “compensation” and that the employee would be paid for the sick leave upon retirement or termination. The clarity of the Policy is evident from its plain reading. Further, Road District employees who accrued and banked sick leave prior to 1995 clearly believed this offer and took advantage of the offer by 1) accruing their sick leave and 2) periodically using or being paid for their accrued sick leave. In addition, after the change in the Policy which allowed for the accrual of sick leave, employees exercised their rights under the original policy and used their banked sick leave or were paid for banked sick leave. The Policy was disseminated to the employees and the employees not only knew of the Policy but relied upon the policy concerning sick leave. Finally, the employees clearly accepted the offer of accrued sick leave and that they would be paid for accrued sick

leave upon separation from the Road District. Employees continued to perform under this agreement for over 20 years, even after the Policy changed. It should be further noted that the Policy does not contain any language notifying or advising the employees that the Policy was not an agreement binding on the employer and employee, or that the employees were employed at will. Road District employees could reasonably believe that the Road District had agreed to provide sick leave as **compensation**, that they had earned this compensation, that accrued sick leave could be used by the employee if he was unable to work, and they would be paid for accrued sick leave upon leaving the employment of the Road District.

Based upon the language in the Policy and my review of the law and facts, I am of the opinion that the Policy was an agreement between the Road District and its employees concerning the banking of sick leave and payment for sick leave upon separation from the Road District.

Although 25 years have passed since you banked 253 days of sick leave, it is clear that you and the other employees who banked sick leave relied on the Policy and expected to be paid for your banked sick leave. The Township in fact recognized that it was obligated to compensate employees for sick leave when the Supervisor offered you, and other employees, the opportunity to purchase credit in IMRF in exchange for your accrued sick leave. You and the other employees rejected this offer relying on the Policy that upon termination or retirement you would be paid for your sick leave. Additionally, you and the other employees relied on the practice that the Road District paid employees for their accrued sick leave well after the policy changed in 1995. Not only was there a written agreement stating that sick leave was earned compensation but the written agreement also provided that employees would be paid for accrued sick leave upon termination or retirement. You and the other Road District employees have reasonably relied on the Road District's promise to pay for banked sick leave not only upon the Road District's written policy but upon the Road District's practice of paying employees for accrued sick leave.

It should also be noted that the Act provides that:

Every employer shall pay the final compensation of separated employees in full, at the time of separation, if possible, but in no case later than the next regularly scheduled payday for such employee. Where such employee requests in writing that his final compensation be paid by check and mailed to him, the employer shall comply with this request . . .

820 ILCS 115/5. As noted in 820 ILCS 115/2 the provides that:

termed "final compensation" and shall be defined as wages, salaries, earned commissions, earned bonuses, and the monetary equivalent of earned vacation and earned holidays, and **any other compensation** owed the employee by the employer pursuant to an employment contract or agreement...

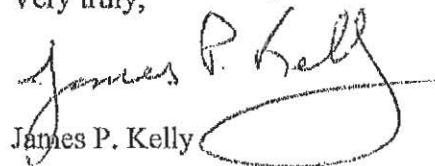
As sick leave is compensation owed by the Road District to the employee pursuant to the Act, you and other employees who are owed sick leave must be paid for your sick leave upon separation from the township.

Conclusion

The Road District's policy prior to 1995 provided for the accumulation of sick leave by its employees and promised to compensate the employee for this sick leave when the employee was terminated or retired. This policy was an agreement between the Road District and its employees to pay for accrued sick leave at the rate the employee was earning at the time of separation. This "agreement" is subject to the provisions of the Wage Collection and Payments Act which requires an employer to pay final compensation to employees upon terminated or retirement. You and the other employees are entitled to compensation for your banked sick leave. Although 25 years have passed since you, and 23 years have passed for other employees, banked sick leave, you remain entitled to compensation for your accrued sick leave. Further, the Road District has ratified the pre 1995 agreement with its employees by continuing to pay its employees for accrued sick leave as recently as 2002. The unequivocal fact is that your banked sick leave was earned wages for which you have never been paid.

I am of the opinion that you can be paid for your banked sick leave upon retirement. Further, the employees of the Road District who have banked sick leave and remain working can either use their sick leave, purchase credit with IMRF with their sick leave, or upon separation receive payment for their sick leave. If the Road District or the Township refuse to pay you or other Road District employees for the banked sick leave, you will have a wage claim against the Road District under to the Wage Payment and Collection Act. Further, if the Township or Road District refuse to make a final payment upon the departure of an employee, the Township will be responsible for the employees costs and attorney's fees of any lawsuit to collect the final payment. The Act further provides criminal sanctions for the willful failure to pay final compensation.

Very truly,


James P. Kelly

ⁱ Wharton v. Comcast Corp., 912 F. Supp. 2d 655 (N.D. Ill. 2012)

ⁱⁱ Dow v. Columbus-Cabrini Med. Ctr., 274 Ill. App. 3d 653, 656, 655 N.E.2d 1, 3 (1995), as modified (Aug. 30, 1995)