

# Service Credit for Shared Leave Preliminary Report

LEOFF Plan 2 Retirement Board

September 23, 2009

# Definition

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- What is shared leave?
  - Shared leave is a process whereby one or more employees may donate their own accumulated leave for the benefit of another employee.

# Key Issues

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- Disparity between LEOFF employers and members regarding the pension treatment of shared leave.

# State “leave sharing program”

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- Who’s covered?
  - Employees of the state, including Legislature, institutions of higher education, school districts, and educational service districts.

# State “leave sharing program”

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- What’s covered?
  - Employees whose skills are needed in the event of a state of emergency being declared.
  - Employees who have been the victim of domestic violence, sexual assault, or stalking.
  - Employees who suffer from or have a relative or household member suffering from an illness, injury, impairment, or physical or mental condition which is of an extraordinary or severe nature.
  - Employees called to service in the uniformed services.

# State “leave sharing program”

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- How is leave treated?
  - Donated leave shall receive the same treatment in respect to salary, wages, and employee benefits as the employee would normally receive if using accrued annual or sick leave.

# Local Government Leave Sharing

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- Who's covered?
  - Varies by employer
- What's covered?
  - Varies by employer
- How is leave treated?
  - Shared leave is not considered “basic salary” and is not included in the calculation of final average salary (FAS) or service credit.

# Options

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- Option 1: Use same definition as state “shared leave” program and include it as earnable compensation.

# Options

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- Option 2: Use the local bargaining agreement to define “shared leave” and include it as earnable compensation.

# Options

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- Option 3: Allow members to purchase the lost service credit.

# Summary

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- Creates a disparity between LEOFF employers and members regarding the pension treatment of shared leave
  - State and higher education employees – shared leave is included.
  - Local government employees – shared leave is not included.
- Options
  - Same definition used in state program
  - Have bargaining agreement define program

# Service Credit for Shared Leave

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Questions?

# LAW ENFORCEMENT OFFICERS' AND FIRE FIGHTERS' PLAN 2 RETIREMENT BOARD

## Service Credit for Shared Leave Preliminary Report

September 23, 2009

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### 1. Issue

There is a disparity between LEOFF employers and members regarding the pension treatment of shared leave.

### 2. Staff

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### 3. Members Impacted

This would impact all members not working in either higher education or a state agency. According to the *2007 Actuarial Valuation Report* provided by the Office of the State Actuary, there are 16,099 active members as of June 30, 2007. Of those members, 208 members work for either a state agency or institution of higher education and 15,891 work for an employer other than a state agency or institution of higher education.

### 4. Current Situation

Many employers have “shared leave” programs which allow members to donate and receive sick leave or annual leave under certain conditions. The Department of Retirement Systems (DRS) has a long-standing policy that shared leave received from another employee is not considered “compensation earnable”, therefore the leave cannot be used for service credit or for computing final average salary (FAS).

However, when the state leave sharing program was created, the statute expressly provided for shared leave for state agency employees and employees of institutions of higher education to be treated the same for pension purposes as the employee’s own sick leave or annual leave. This allows those employees who work for employers covered by the state leave sharing program to have their shared leave used in the calculation of FAS and service credit.

## 5. Background Information and Policy Issues

Shared leave is a process whereby one or more employees may donate their own accumulated leave for the benefit of another employee.

The Washington State Legislature in 1989 recognized that “Employees historically have joined together to help their fellow employees who suffer from, or have relatives or household members suffering from, an extraordinary or severe illness, injury, impairment, or physical or mental condition which prevents the individual from working and causes great economic and emotional distress to the employee and his or her family”. In order to help mitigate those issues, the Legislature established a leave sharing program that covers employees working for state agencies, institutions of state government, the Legislature, institutions of higher education, school districts and educational service districts. Under the state leave sharing program, a member who is using shared leave “shall receive the same treatment in respect to salary, wages, and employee benefits as the employee would normally receive if using accrued annual leave or sick leave”. The program was intended to have no significant increased cost to the state. The specific statutes covering the state’s leave program can be found in RCWs 41.04.650 through 41.04.685 (see Appendix A).

In 1996 the Legislature mandated the Joint Legislative Audit and Review Committee (JLARC) to examine the state leave sharing program to determine whether or not the program was incurring significant cost to the state (see Appendix B for the complete report). The findings of that report did indicate there was a cost to the state for the plan, but the report did not look at the potential cost to the pension plans of including that leave in the service credit and final average salary calculations.

In addition to the state’s leave sharing program, many local governments have established some sort of “shared leave” program. These programs can be unique to each individual employer, so they can have a greater of variety of conditions qualifying as shared leave. For example, they may have a shared leave bank where leave is donated to a bank and not to an individual.

DRS has a long standing practice that shared leave is not “earned” by the member receiving the shared leave and as such it cannot be used as “basic salary” for the purpose of calculating FAS or service credit. This practice is supported in part by a 1991 Attorney General’s Office (AGO) a formal opinion AGO 1991, Number 29 (see Appendix B). Although a member may not have their shared leave used in calculating FAS or service credit, the member could potentially purchase any lost service credit through the authorized leave of absence statutes. The member can request a bill from DRS for the lost service credit provided the leave was considered authorized by the employer, the member returns to work for at least one day and pays the bill in full prior to retirement.

## **Policy Issue**

The disparity in LEOFF Plan 2 occurs because members who are employed by the state, such as the Department of Fish and Wildlife's Enforcement Officers, or higher education, such as police officers and firefighters employed at the University of Washington and Washington State University, will have their shared leave included in their FAS and service credit calculations while the majority of the members who work for local governments, fire districts or the port districts will not.

## **6. Options**

**Option 1: "Shared Leave", using the same definition as the state program, would be considered earnable compensation.**

Under this option the Board would propose legislation that would allow "shared leave" as defined in the state's Leave Sharing Program to be considered earnable compensation. This would ensure that if a member uses "shared leave" their retirement benefit calculation would not be adversely affected. "Shared leave" would be reported to DRS as salary with contributions withheld.

**Option 2: "Shared Leave" would be defined by the local bargaining agreement and would be considered earnable compensation.**

Under this option the Board would propose legislation that would allow "shared leave" to be defined at the employer level within the bargaining agreement and the "shared leave" would be considered earnable compensation. "Shared leave" would be reported to DRS as salary with contributions withheld.

**Option 3: Create a method by which members could buy the service credit.**

Under this option the Board would propose legislation that would allow members the option to purchase the service credit lost due to using shared leave. Under this proposal there would be no limit to the amount of service a member could purchase. The member could purchase the service at the time they return to work, but they would not need to return to work in order to qualify for the service credit. They could purchase it at the time of retirement.

## **7. Supporting Information**

**Appendix A – Leave Sharing Statutes**

**Appendix B – Leave Sharing WACs**

**Appendix C – Office of the Attorney General, Opinion AGO 1991, No. 29**

**Appendix D – Joint Legislative Audit and Review Committee: Leave Sharing Report 97-7**

## Appendix A – Leave Sharing Statutes

### RCW 41.04.650

#### Leave sharing program — Intent.

The legislature finds that: (1) State employees historically have joined together to help their fellow employees who suffer from, or have relatives or household members suffering from, an extraordinary or severe illness, injury, impairment, or physical or mental condition which prevents the individual from working and causes great economic and emotional distress to the employee and his or her family; and (2) these circumstances may be exacerbated because the affected employees use all their accrued sick leave and annual leave and are forced to take leave without pay or terminate their employment. Therefore, the legislature intends to provide for the establishment of a leave sharing program.

[1989 c 93 § 1.]

#### Notes:

**Severability -- 1989 c 93:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected."  
[1989 c 93 § 8.]

### RCW 41.04.655

#### Leave sharing program — Definitions. (Effective until October 1, 2008.)

Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW [41.04.650](#) through [41.04.670](#), [28A.400.380](#), and section 7, chapter 93, Laws of 1989.

(1) "Employee" means any employee of the state, including employees of school districts and educational service districts, who are entitled to accrue sick leave or annual leave and for whom accurate leave records are maintained.

(2) "Program" means the leave sharing program established in RCW [41.04.660](#).

(3) "Service in the uniformed services" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time national guard duty including state-ordered active duty, and a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty.

(4) "State agency" or "agency" means departments, offices, agencies, or institutions of state government, the legislature, institutions of higher education, school districts, and educational service districts.

(5) "Uniformed services" means the armed forces, the army national guard, and the air national guard of any state, territory, commonwealth, possession, or district when engaged in active duty for training, inactive duty training, full-time national guard duty, or state active duty, the commissioned corps of the public health service, the coast guard, and any other category of persons designated by the president of the United States in time of war or national emergency.

[2003 1st sp.s. c 12 § 1; 1990 c 33 § 569; 1989 c 93 § 2.]

## Notes:

**Effective date -- 2003 1st sp.s. c 12:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 20, 2003]." [2003 1st sp.s. c 12 § 4.]

**Purpose -- Statutory references -- Severability -- 1990 c 33:** See RCW [28A.900.100](#) through [28A.900.102](#).

**Severability -- 1989 c 93:** See note following RCW [41.04.650](#).

## RCW 41.04.655

### Leave sharing program — Definitions. (Effective October 1, 2008.)

Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW [41.04.650](#) through [41.04.670](#), [28A.400.380](#), and section 7, chapter 93, Laws of 1989.

(1) "Domestic violence" means: (a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault, between family or household members as defined in RCW [26.50.010](#); (b) sexual assault of one family or household member by another family or household member; or (c) stalking as defined in RCW [9A.46.110](#) of one family or household member by another family or household member.

(2) "Employee" means any employee of the state, including employees of school districts and educational service districts, who are entitled to accrue sick leave or annual leave and for whom accurate leave records are maintained.

(3) "Program" means the leave sharing program established in RCW [41.04.660](#).

(4) "Service in the uniformed services" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time national guard duty including state-ordered active duty, and a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty.

(5) "Sexual assault" has the same meaning as set forth in RCW [70.125.030](#).

(6) "Stalking" has the same meaning as set forth in RCW [9A.46.110](#).

(7) "State agency" or "agency" means departments, offices, agencies, or institutions of state government, the legislature, institutions of higher education, school districts, and educational service districts.

(8) "Uniformed services" means the armed forces, the army national guard, and the air national guard of any state, territory, commonwealth, possession, or district when engaged in active duty for training, inactive duty training, full-time national guard duty, or state active duty, the commissioned corps of the public health service, the coast guard, and any other category of persons designated by the president of the United States in time of war or national emergency.

(9) "Victim" means a person against whom domestic violence, sexual assault, or stalking has been committed as defined in this section.

[2008 c 36 § 1; 2003 1st sp.s. c 12 § 1; 1990 c 33 § 569; 1989 c 93 § 2.]

## Notes:

**Effective date -- 2008 c 36:** "This act takes effect October 1, 2008." [2008 c 36 § 4.]

**Effective date -- 2003 1st sp.s. c 12:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 20, 2003]." [2003 1st sp.s. c 12 § 4.]

**Purpose -- Statutory references -- Severability -- 1990 c 33:** See RCW [28A.900.100](#) through [28A.900.102](#).

**Severability -- 1989 c 93:** See note following RCW [41.04.650](#).

## **RCW 41.04.660**

### **Leave sharing program — Created. (Effective until October 1, 2008.)**

The Washington state leave sharing program is hereby created. The purpose of the program is to permit state employees, at no significantly increased cost to the state of providing annual leave, sick leave, or personal holidays, to come to the aid of a fellow state employee who is suffering from or has a relative or household member suffering from an extraordinary or severe illness, injury, impairment, or physical or mental condition, or who has been called to service in the uniformed services, which has caused or is likely to cause the employee to take leave without pay or terminate his or her employment.

[2003 1st sp.s. c 12 § 2; 1996 c 176 § 2; 1990 c 23 § 1; 1989 c 93 § 3.]

#### **Notes:**

**Effective date -- 2003 1st sp.s. c 12:** See note following RCW [41.04.655](#).

**Severability -- 1989 c 93:** See note following RCW [41.04.650](#).

## **RCW 41.04.660**

### **Leave sharing program — Created. (Effective October 1, 2008.)**

The Washington state leave sharing program is hereby created. The purpose of the program is to permit state employees, at no significantly increased cost to the state of providing annual leave, sick leave, or personal holidays, to come to the aid of a fellow state employee who is suffering from or has a relative or household member suffering from an extraordinary or severe illness, injury, impairment, or physical or mental condition; a fellow state employee who is a victim of domestic violence, sexual assault, or stalking; or a fellow state employee who has been called to service in the uniformed services, which has caused or is likely to cause the employee to take leave without pay or terminate his or her employment.

[2008 c 36 § 2; 2003 1st sp.s. c 12 § 2; 1996 c 176 § 2; 1990 c 23 § 1; 1989 c 93 § 3.]

#### **Notes:**

**Effective date -- 2008 c 36:** See note following RCW [41.04.655](#).

**Effective date -- 2003 1st sp.s. c 12:** See note following RCW [41.04.655](#).

**Severability -- 1989 c 93:** See note following RCW [41.04.650](#).

## RCW 41.04.665

### **Leave sharing program — When employee may receive leave — When employee may transfer accrued leave — Transfer of leave between employees of different agencies. (Effective until October 1, 2008.)**

(1) An agency head may permit an employee to receive leave under this section if:

(a)(i) The employee suffers from, or has a relative or household member suffering from, an illness, injury, impairment, or physical or mental condition which is of an extraordinary or severe nature;

(ii) The employee has been called to service in the uniformed services; or

(iii) A state of emergency has been declared anywhere within the United States by the federal or any state government and the employee has needed skills to assist in responding to the emergency or its aftermath and volunteers his or her services to either a governmental agency or to a nonprofit organization engaged in humanitarian relief in the devastated area, and the governmental agency or nonprofit organization accepts the employee's offer of volunteer services;

(b) The illness, injury, impairment, condition, call to service, or emergency volunteer service has caused, or is likely to cause, the employee to:

(i) Go on leave without pay status; or

(ii) Terminate state employment;

(c) The employee's absence and the use of shared leave are justified;

(d) The employee has depleted or will shortly deplete his or her:

(i) Annual leave and sick leave reserves if he or she qualifies under (a)(i) of this subsection;

(ii) Annual leave and paid military leave allowed under RCW [38.40.060](#) if he or she qualifies under (a)(ii) of this subsection; or

(iii) Annual leave if he or she qualifies under (a)(iii) of this subsection;

(e) The employee has abided by agency rules regarding:

(i) Sick leave use if he or she qualifies under (a)(i) of this subsection; or

(ii) Military leave if he or she qualifies under (a)(ii) of this subsection; and

(f) The employee has diligently pursued and been found to be ineligible for benefits under chapter [51.32](#) RCW if he or she qualifies under (a)(i) of this subsection.

(2) The agency head shall determine the amount of leave, if any, which an employee may receive under this section. However, an employee shall not receive a total of more than two hundred sixty-one days of leave, except that shared leave received under the uniformed service shared leave pool in RCW [41.04.685](#) is not included in this total.

(3) An employee may transfer annual leave, sick leave, and his or her personal holiday, as follows:

(a) An employee who has an accrued annual leave balance of more than ten days may request that the head of

the agency for which the employee works transfer a specified amount of annual leave to another employee authorized to receive leave under subsection (1) of this section. In no event may the employee request a transfer of an amount of leave that would result in his or her annual leave account going below ten days. For purposes of this subsection (3)(a), annual leave does not accrue if the employee receives compensation in lieu of accumulating a balance of annual leave.

(b) An employee may transfer a specified amount of sick leave to an employee requesting shared leave only when the donating employee retains a minimum of one hundred seventy-six hours of sick leave after the transfer.

(c) An employee may transfer, under the provisions of this section relating to the transfer of leave, all or part of his or her personal holiday, as that term is defined under RCW [1.16.050](#), or as such holidays are provided to employees by agreement with a school district's board of directors if the leave transferred under this subsection does not exceed the amount of time provided for personal holidays under RCW [1.16.050](#).

(4) An employee of an institution of higher education under RCW [28B.10.016](#), school district, or educational service district who does not accrue annual leave but does accrue sick leave and who has an accrued sick leave balance of more than twenty-two days may request that the head of the agency for which the employee works transfer a specified amount of sick leave to another employee authorized to receive leave under subsection (1) of this section. In no event may such an employee request a transfer that would result in his or her sick leave account going below twenty-two days. Transfers of sick leave under this subsection are limited to transfers from employees who do not accrue annual leave. Under this subsection, "sick leave" also includes leave accrued pursuant to RCW [28A.400.300](#)(2) or [28A.310.240](#) (1) with compensation for illness, injury, and emergencies.

(5) Transfers of leave made by an agency head under subsections (3) and (4) of this section shall not exceed the requested amount.

(6) Leave transferred under this section may be transferred from employees of one agency to an employee of the same agency or, with the approval of the heads of both agencies, to an employee of another state agency. However, leave transferred to or from employees of school districts or educational service districts is limited to transfers to or from employees within the same employing district.

(7) While an employee is on leave transferred under this section, he or she shall continue to be classified as a state employee and shall receive the same treatment in respect to salary, wages, and employee benefits as the employee would normally receive if using accrued annual leave or sick leave.

(a) All salary and wage payments made to employees while on leave transferred under this section shall be made by the agency employing the person receiving the leave. The value of leave transferred shall be based upon the leave value of the person receiving the leave.

(b) In the case of leave transferred by an employee of one agency to an employee of another agency, the agencies involved shall arrange for the transfer of funds and credit for the appropriate value of leave.

(i) Pursuant to rules adopted by the office of financial management, funds shall not be transferred under this section if the transfer would violate any constitutional or statutory restrictions on the funds being transferred.

(ii) The office of financial management may adjust the appropriation authority of an agency receiving funds under this section only if and to the extent that the agency's existing appropriation authority would prevent it from expending the funds received.

(iii) Where any questions arise in the transfer of funds or the adjustment of appropriation authority, the director of financial management shall determine the appropriate transfer or adjustment.

(8) Leave transferred under this section shall not be used in any calculation to determine an agency's allocation of full time equivalent staff positions.

(9) The value of any leave transferred under this section which remains unused shall be returned at its original value to the employee or employees who transferred the leave when the agency head finds that the leave is no longer needed or will not be needed at a future time in connection with the illness or injury for which the leave was transferred or for any other qualifying condition. Before the agency head makes a determination to return unused leave in connection with an illness or injury, or any other qualifying condition, he or she must receive from the

affected employee a statement from the employee's doctor verifying that the illness or injury is resolved. To the extent administratively feasible, the value of unused leave which was transferred by more than one employee shall be returned on a pro rata basis.

(10) An employee who uses leave that is transferred to him or her under this section may not be required to repay the value of the leave that he or she used.

[2007 c 454 § 1; 2007 c 25 § 2; 2003 1st sp.s. c 12 § 3; 1999 c 25 § 1; 1996 c 176 § 1; 1990 c 23 § 2; 1989 c 93 § 4.]

## Notes:

**Reviser's note:** This section was amended by 2007 c 25 § 2 and by 2007 c 454 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW [1.12.025\(2\)](#). For rule of construction, see RCW [1.12.025\(1\)](#).

**Severability -- Effective date -- 2007 c 25:** See notes following RCW [41.04.685](#).

**Effective date -- 2003 1st sp.s. c 12:** See note following RCW [41.04.655](#).

**Severability -- 1989 c 93:** See note following RCW [41.04.650](#).

## RCW 41.04.665

### **Leave sharing program — When employee may receive leave — When employee may transfer accrued leave — Transfer of leave between employees of different agencies. (Effective October 1, 2008.)**

(1) An agency head may permit an employee to receive leave under this section if:

(a)(i) The employee suffers from, or has a relative or household member suffering from, an illness, injury, impairment, or physical or mental condition which is of an extraordinary or severe nature;

(ii) The employee has been called to service in the uniformed services;

(iii) A state of emergency has been declared anywhere within the United States by the federal or any state government and the employee has needed skills to assist in responding to the emergency or its aftermath and volunteers his or her services to either a governmental agency or to a nonprofit organization engaged in humanitarian relief in the devastated area, and the governmental agency or nonprofit organization accepts the employee's offer of volunteer services; or

(iv) The employee is a victim of domestic violence, sexual assault, or stalking;

(b) The illness, injury, impairment, condition, call to service, emergency volunteer service, or consequence of domestic violence, sexual assault, or stalking has caused, or is likely to cause, the employee to:

(i) Go on leave without pay status; or

(ii) Terminate state employment;

(c) The employee's absence and the use of shared leave are justified;

(d) The employee has depleted or will shortly deplete his or her:

(i) Annual leave and sick leave reserves if he or she qualifies under (a)(i) of this subsection;

(ii) Annual leave and paid military leave allowed under RCW [38.40.060](#) if he or she qualifies under (a)(ii) of this subsection; or

(iii) Annual leave if he or she qualifies under (a)(iii) or (iv) of this subsection;

(e) The employee has abided by agency rules regarding:

(i) Sick leave use if he or she qualifies under (a)(i) or (iv) of this subsection; or

(ii) Military leave if he or she qualifies under (a)(ii) of this subsection; and

(f) The employee has diligently pursued and been found to be ineligible for benefits under chapter [51.32](#) RCW if he or she qualifies under (a)(i) of this subsection.

(2) The agency head shall determine the amount of leave, if any, which an employee may receive under this section. However, an employee shall not receive a total of more than two hundred sixty-one days of leave, except that shared leave received under the uniformed service shared leave pool in RCW [41.04.685](#) is not included in this total.

(3) An employee may transfer annual leave, sick leave, and his or her personal holiday, as follows:

(a) An employee who has an accrued annual leave balance of more than ten days may request that the head of the agency for which the employee works transfer a specified amount of annual leave to another employee authorized to receive leave under subsection (1) of this section. In no event may the employee request a transfer of an amount of leave that would result in his or her annual leave account going below ten days. For purposes of this subsection (3)(a), annual leave does not accrue if the employee receives compensation in lieu of accumulating a balance of annual leave.

(b) An employee may transfer a specified amount of sick leave to an employee requesting shared leave only when the donating employee retains a minimum of one hundred seventy-six hours of sick leave after the transfer.

(c) An employee may transfer, under the provisions of this section relating to the transfer of leave, all or part of his or her personal holiday, as that term is defined under RCW [1.16.050](#), or as such holidays are provided to employees by agreement with a school district's board of directors if the leave transferred under this subsection does not exceed the amount of time provided for personal holidays under RCW [1.16.050](#).

(4) An employee of an institution of higher education under RCW [28B.10.016](#), school district, or educational service district who does not accrue annual leave but does accrue sick leave and who has an accrued sick leave balance of more than twenty-two days may request that the head of the agency for which the employee works transfer a specified amount of sick leave to another employee authorized to receive leave under subsection (1) of this section. In no event may such an employee request a transfer that would result in his or her sick leave account going below twenty-two days. Transfers of sick leave under this subsection are limited to transfers from employees who do not accrue annual leave. Under this subsection, "sick leave" also includes leave accrued pursuant to RCW [28A.400.300](#)(2) or [28A.310.240](#) (1) with compensation for illness, injury, and emergencies.

(5) Transfers of leave made by an agency head under subsections (3) and (4) of this section shall not exceed the requested amount.

(6) Leave transferred under this section may be transferred from employees of one agency to an employee of the same agency or, with the approval of the heads of both agencies, to an employee of another state agency. However, leave transferred to or from employees of school districts or educational service districts is limited to transfers to or from employees within the same employing district.

(7) While an employee is on leave transferred under this section, he or she shall continue to be classified as a state employee and shall receive the same treatment in respect to salary, wages, and employee benefits as the employee would normally receive if using accrued annual leave or sick leave.

(a) All salary and wage payments made to employees while on leave transferred under this section shall be made by the agency employing the person receiving the leave. The value of leave transferred shall be based upon the leave value of the person receiving the leave.

(b) In the case of leave transferred by an employee of one agency to an employee of another agency, the agencies involved shall arrange for the transfer of funds and credit for the appropriate value of leave.

(i) Pursuant to rules adopted by the office of financial management, funds shall not be transferred under this section if the transfer would violate any constitutional or statutory restrictions on the funds being transferred.

(ii) The office of financial management may adjust the appropriation authority of an agency receiving funds under this section only if and to the extent that the agency's existing appropriation authority would prevent it from expending the funds received.

(iii) Where any questions arise in the transfer of funds or the adjustment of appropriation authority, the director of financial management shall determine the appropriate transfer or adjustment.

(8) Leave transferred under this section shall not be used in any calculation to determine an agency's allocation of full time equivalent staff positions.

(9) The value of any leave transferred under this section which remains unused shall be returned at its original value to the employee or employees who transferred the leave when the agency head finds that the leave is no longer needed or will not be needed at a future time in connection with the illness or injury for which the leave was transferred or for any other qualifying condition. Before the agency head makes a determination to return unused leave in connection with an illness or injury, or any other qualifying condition, he or she must receive from the affected employee a statement from the employee's doctor verifying that the illness or injury is resolved. To the extent administratively feasible, the value of unused leave which was transferred by more than one employee shall be returned on a pro rata basis.

(10) An employee who uses leave that is transferred to him or her under this section may not be required to repay the value of the leave that he or she used.

[2008 c 36 § 3. Prior: 2007 c 454 § 1; 2007 c 25 § 2; 2003 1st sp.s. c 12 § 3; 1999 c 25 § 1; 1996 c 176 § 1; 1990 c 23 § 2; 1989 c 93 § 4.]

## Notes:

**Effective date -- 2008 c 36:** See note following RCW [41.04.655](#).

**Severability -- Effective date -- 2007 c 25:** See notes following RCW [41.04.685](#).

**Effective date -- 2003 1st sp.s. c 12:** See note following RCW [41.04.655](#).

**Severability -- 1989 c 93:** See note following RCW [41.04.650](#).

## RCW 41.04.670

### Leave sharing program — Adoption of rules.

The Washington personnel resources board and other personnel authorities shall each adopt rules applicable to employees under their respective jurisdictions: (1) Establishing appropriate parameters for the program which are consistent with the provisions of RCW [41.04.650](#) through [41.04.665](#); (2) providing for equivalent treatment of employees between their respective jurisdictions and allowing transfers of leave in accordance with RCW [41.04.665](#)(5); (3) establishing procedures to ensure that the program does not significantly increase the cost of providing leave; and (4) providing for the administration of the program and providing for maintenance and collection of sufficient information on the program to allow a thorough legislative review.

[1993 c 281 § 18; 1990 c 23 § 3; 1989 c 93 § 5.]

## Notes:

**Effective date -- 1993 c 281:** See note following RCW [41.06.022](#).

**Temporary policies -- 1989 c 93:** "School districts, the department of personnel, the higher education personnel board, and other personnel authorities may adopt temporary emergency policies and procedures to implement the program on April 20, 1989, so that donated leave may be used in lieu of leave without pay taken after April 20, 1989." [1989 c 93 § 7.]

**Severability -- 1989 c 93:** See note following RCW [41.04.650](#).

## APPENDIX B – Leave Sharing WACs

### WAC 357-31-380

Agency filings affecting this section

#### **What is the purpose of the state leave sharing program?**

The purpose of the state leave sharing program is to permit state employees, at no significantly increased cost to the state for providing leave, to come to the aid of another state employee who is likely to take leave without pay or terminate his or her employment because:

- (1) The employee has been called to service in the uniformed services;
- (2) The employee is volunteering with a governmental agency or a nonprofit organization when a state of emergency has been declared within the United States;
- (3) The employee or a relative or household member is suffering from an extraordinary or severe illness, injury, impairment, or physical or mental condition; or
- (4) The employee is a victim of domestic violence, sexual assault, or stalking as defined in RCW 41.04.655.

[Statutory Authority: Chapter 41.06 RCW. 08-15-043, § 357-31-380, filed 7/11/08, effective 10/1/08; 08-07-063, § 357-31-380, filed 3/17/08, effective 4/18/08; 05-08-139, § 357-31-380, filed 4/6/05, effective 7/1/05.]

### WAC 357-31-390

Agency filings affecting this section

#### **What criteria does an employee have to meet to be eligible to receive shared leave?**

An employee may be eligible to receive shared leave if the agency head or higher education institution president has determined the employee meets the following criteria:

- (1) The employee:
  - (a) Suffers from, or has a relative or household member suffering from, an illness, injury, impairment, or physical or mental condition which is of an extraordinary or severe nature;
  - (b) The employee has been called to service in the uniformed services;
  - (c) A state of emergency has been declared anywhere within the United States by the federal or any state government and the employee has the needed skills to assist in responding to the emergency or its aftermath and volunteers his/her services to either a governmental agency or to a nonprofit organization engaged in humanitarian relief in the devastated area, and the governmental agency or nonprofit organization accepts the employee's offer of volunteer services; or
  - (d) The employee is a victim of domestic violence, sexual assault, or stalking as defined in RCW 41.04.655.
- (2) The illness, injury, impairment, condition, call to service, or emergency volunteer service, or consequence of domestic violence, sexual assault, or stalking has caused, or is likely to cause, the employee to:
  - (a) Go on leave without pay status; or
  - (b) Terminate state employment.
- (3) The employee's absence and the use of shared leave are justified.
- (4) The employee has depleted or will shortly deplete his or her:

(a) Compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, accrued vacation leave, and accrued sick leave if the employee qualifies under subsection (1)(a) of this section; or

(b) Compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, accrued vacation leave, and paid military leave allowed under RCW 38.40.060 if the employee qualifies under subsection (1)(b) of this section; or

(c) Compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, and accrued vacation leave if the employee qualifies under (1)(c) or (d) of this section.

(5) The employee has abided by employer rules regarding:

(a) Sick leave use if the employee qualifies under subsection (1)(a) of this section; or

(b) Military leave if the employee qualifies under subsection (1)(b) of this section.

(6) If the illness or injury is work-related and the employee has diligently pursued and been found to be ineligible for benefits under chapter 51.32 RCW if the employee qualifies under subsection (1)(a) of this section.

[Statutory Authority: Chapter 41.06 RCW. 08-15-043, § 357-31-390, filed 7/11/08, effective 10/1/08; 08-07-063, § 357-31-390, filed 3/17/08, effective 4/18/08; 07-17-126, § 357-31-390, filed 8/20/07, effective 9/20/07; 05-08-139, § 357-31-390, filed 4/6/05, effective 7/1/05.]

## **WAC 357-31-395**

[Agency filings affecting this section](#)

### **What definitions apply to shared leave?**

(1) "Employee" means any employee who is entitled to accrue sick leave or vacation leave and for whom accurate leave records are maintained.

(2) "Employee's relative" normally must be limited to the employee's spouse, child, grandchild, grandparent, or parent.

(3) "Severe" or "extraordinary" condition is defined as serious or extreme and/or life threatening.

(4) "Service in the uniformed services" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time national guard duty including state-ordered active duty, and a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty.

(5) "Uniformed services" means the armed forces, the army national guard, and the air national guard of any state, territory, commonwealth, possession, or district when engaged in active duty for training, inactive duty training, full-time national guard duty, or state active duty, the commissioned corps of the public health service, the coast guard, and any other category of persons designated by the President of the United States in time of war or national emergency.

[Statutory Authority: Chapter 41.06 RCW. 05-08-139, § 357-31-395, filed 4/6/05, effective 7/1/05.]

## **WAC 357-31-400**

[Agency filings affecting this section](#)

### **How much shared leave may an employee receive?**

The employer determines the amount of leave, if any, which an employee may receive under these rules. However, an employee must not receive more than two hundred sixty-one days of shared leave during total state employment and a nonpermanent employee who is eligible to use accrued leave or personal holiday may not use shared leave beyond the expected end date of the appointment. Leave used under the sick leave pool program, as described in WAC 357-31-570, is included in the two hundred sixty-one day limit.

Employers are encouraged to consider other methods of accommodating the employee's needs such as modified

duty, modified hours, flex-time, or special assignments in place of shared leave.

[Statutory Authority: Chapter 41.06 RCW. 07-11-095, § 357-31-400, filed 5/16/07, effective 7/1/07; 05-08-139, § 357-31-400, filed 4/6/05, effective 7/1/05.]

## **WAC 357-31-405**

Agency filings affecting this section

### **What documentation may an employee seeking shared leave be required to submit?**

(1) For employees seeking shared leave under WAC 357-31-390 (1)(a), the employer may require the employee to submit a medical certificate from a licensed physician or health care practitioner verifying the severe or extraordinary nature and expected duration of the condition before the employer approves or disapproves the request.

(2) For employees seeking shared leave under WAC 357-31-390 (1)(b), the employer may require the employee to submit a copy of the military orders verifying the employee's required absence before the employer approves or disapproves the request.

(3) For employees seeking shared leave under WAC 357-31-390 (1)(c), proof of acceptance of an employee's offer to volunteer for either a governmental agency or a nonprofit organization during a declared state of emergency.

(4) For employees seeking shared leave under WAC 357-31-390 (1)(d), the employer may require that the request be supported by documentation. An employee may satisfy the verification requirement by providing the employer with one or more of the following:

(a) A police report indicating that the employee was a victim of domestic violence, sexual assault, or stalking;

(b) A court order protecting or separating the employee from the perpetrator of the act of domestic violence, sexual assault, or stalking;

(c) Evidence from the court or prosecuting attorney that the employee appeared or is scheduled to appear in court in connection with an incident of domestic violence, sexual assault, or stalking;

(d) An employee's written statement that the employee is a victim of domestic violence, sexual assault, or stalking; or

(e) Documentation that the employee is a victim of domestic violence, sexual assault, or stalking, from any of the following persons from whom the employee or employee's family member sought assistance in addressing the domestic violence, sexual assault, or stalking: An advocate for victims of domestic violence, sexual assault, or stalking; an attorney; a member of the clergy; or a medical or other professional.

[Statutory Authority: Chapter 41.06 RCW. 08-15-043, § 357-31-405, filed 7/11/08, effective 10/1/08; 07-17-126, § 357-31-405, filed 8/20/07, effective 9/20/07; 05-08-139, § 357-31-405, filed 4/6/05, effective 7/1/05.]

## **WAC 357-31-410**

Agency filings affecting this section

### **May employees donate leave to employees in other agencies, institutions of higher education, or related higher education boards?**

Leave donated under the civil service rules and shared leave statutes may be transferred from employees of one employer to an employee of the same employer or, with the approval of the heads of both employers, to an employee of another state employer.

[Statutory Authority: Chapter 41.06 RCW. 05-08-139, § 357-31-410, filed 4/6/05, effective 7/1/05.]

## **WAC 357-31-415**

[Agency filings affecting this section](#)

### **Can donated leave be used for any purpose?**

Vacation leave, sick leave, or all or part of a personal holiday transferred from a donating employee under these rules must be used solely for the purpose stated in WAC [357-31-380](#).

[Statutory Authority: Chapter [41.06](#) RCW. 05-08-139, § 357-31-415, filed 4/6/05, effective 7/1/05.]

## **WAC 357-31-420**

[Agency filings affecting this section](#)

### **What rate of pay is the employee receiving shared leave paid?**

The receiving employee is paid his/her regular rate of pay. Therefore, the value of one hour of shared leave may cover more or less than one hour of the recipient's salary.

[Statutory Authority: Chapter [41.06](#) RCW. 05-08-139, § 357-31-420, filed 4/6/05, effective 7/1/05.]

## **WAC 357-31-425**

[Agency filings affecting this section](#)

### **What types of leave can an employee donate for the purposes of the state leave sharing program?**

An employee may donate vacation leave, sick leave, or all or part of a personal holiday to another employee for purposes of the state leave sharing program under the following conditions:

(1) Vacation leave: The donating employee's employer approves the employee's request to donate a specified amount of vacation leave to an employee authorized to receive shared leave and the full-time employee's request to donate leave will not cause his/her vacation leave balance to fall below eighty hours after the transfer. For part-time employees, requirements for vacation leave balances are prorated.

(2) Sick leave: The donating employee's employer approves the employee's request to donate a specified amount of sick leave to an employee authorized to receive shared leave and the employee's request to donate leave will not cause his/her sick leave balance to fall below one hundred seventy-six hours after the transfer.

(3) Personal holiday: The donating employee's employer approves the employee's request to donate all or part of his or her personal holiday to an employee authorized to receive shared leave.

Any portion of a personal holiday that is accrued, donated as shared leave, and then returned during the same calendar year to the donating employee, may be taken by the donating employee.

[Statutory Authority: Chapter [41.06](#) RCW. 05-08-139, § 357-31-425, filed 4/6/05, effective 7/1/05.]

## **WAC 357-31-430**

[Agency filings affecting this section](#)

### **How will shared leave be administered?**

The calculation of the recipient's leave value must be in accordance with applicable office of financial management policies, regulations, and procedures. The dollar value of the leave is converted from the donor to the recipient. The leave received is coded as shared leave and is maintained separately from all other leave balances.

[Statutory Authority: Chapter [41.06](#) RCW. 05-08-139, § 357-31-430, filed 4/6/05, effective 7/1/05.]

## WAC 357-31-435

### **Must employees use their own leave before using shared leave?**

Employees who qualify for shared leave under WAC 357-31-390 (1)(a) must first use all compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, sick leave, and vacation leave that they have accrued before using shared leave. Employees who qualify under WAC 357-31-390 (1)(b) must first use all of their compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, accrued vacation leave, and paid military leave allowed under RCW 38.40.060 before using shared leave. Employees who qualify under WAC 357-31-390 (1)(c) and (d) must first use all compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, and vacation leave that they have accrued before using shared leave.

[Statutory Authority: Chapter 41.06 RCW. 08-15-043, § 357-31-435, filed 7/11/08, effective 10/1/08; 08-07-063, § 357-31-435, filed 3/17/08, effective 4/18/08; 05-08-139, § 357-31-435, filed 4/6/05, effective 7/1/05.]

## WAC 357-31-440

Agency filings affecting this section

### **How must employees who are receiving shared leave be treated during their absence?**

An employee using shared leave under these rules continues to be classified as a state employee and receives the same treatment in respect to salary, wages, and employee benefits as the employee would normally receive if using accrued vacation leave or sick leave.

Employees who, during their probationary period or trial service period, go on shared leave must have their probationary period or trial service period extended by the number of calendar days they are on shared leave.

[Statutory Authority: Chapter 41.06 RCW. 05-08-139, § 357-31-440, filed 4/6/05, effective 7/1/05.]

## WAC 357-31-445

Agency filings affecting this section

### **What happens to leave that was donated under the state leave sharing program and was not used by the recipient?**

(1) Any shared leave not used by the recipient during each incident/occurrence as determined by the employer must be returned to the donor(s).

If shared leave has been granted under WAC 357-31-390 (1)(a), before the employer makes a determination to return the unused leave to the donor(s) the employer must receive from the affected employee's licensed physician or health care practitioner a statement verifying that the employee is released to return to work.

The remaining shared leave must be returned to the donors and reinstated to the respective donors' appropriate leave balances based on each employee's current salary rate at the time of the reversion. The shared leave returned must be returned in accordance with office of financial management policies.

(2) Unused shared leave may not be cashed out by a recipient.

[Statutory Authority: Chapter 41.06 RCW. 07-17-126, § 357-31-445, filed 8/20/07, effective 9/20/07; 05-08-139, § 357-31-445, filed 4/6/05, effective 7/1/05.]

**WAC 357-31-450**

Agency filings affecting this section

**Must an employee who receives shared leave repay the value of the leave that he or she used?**

An employee who uses leave that is donated under the state leave sharing program is not required to repay the value of the leave that he or she used.

[Statutory Authority: Chapter 41.06 RCW. 05-08-139, § 357-31-450, filed 4/6/05, effective 7/1/05.]

**WAC 357-31-455**

Agency filings affecting this section

**What records must an employer maintain pertaining to the state leave sharing program?**

Agencies must maintain records which contain sufficient information to provide for any state review.

[Statutory Authority: Chapter 41.06 RCW. 05-08-139, § 357-31-455, filed 4/6/05, effective 7/1/05.]

**Appendix C – Office of the Attorney General, Opinion AGO 1991, No. 29  
AGO 1991 No. 29 - September 23, 1991**



**Ken Eikenberry** | 1981-1992 | Attorney General of Washington

**PUBLIC FUNDS -- ANNUAL LEAVE -- SICK LEAVE -- COUNTIES -- PUBLIC EMPLOYEES RETIREMENT SYSTEM -- Applicability of Gift of Public Funds Prohibition and Contribution Requirements for Public Employees Retirement System to County Sick Leave Bank.**

1. There is a proposal by a county to establish a sick leave bank. Under the proposal employees who have accrued vacation leave or sick leave may donate the leave to the sick leave bank. In the event of catastrophic illness or injury, employees who have exhausted their vacation leave and sick leave may apply to the sick leave bank for additional leave. Article 8, section 7 of the Washington Constitution prohibits gifts of public funds. The proposal is not a gift by the county. There is consideration to the county since the donating employees performed service in order to accrue the donated leave. There is donative intent on the part of the donating employee, not the county.
2. Under RCW 41.40.010(8)(a), (b), vacation leave and sick leave donated to the sick leave bank are not compensation earnable of the employee making the donation. Although the employee accrues the leave, he or she is never paid for it.
3. Under RCW 41.40.010(8)(a), (b), leave paid from the sick leave bank is not compensation earnable. Although the employee receives payments from the sick leave bank, the payments are not made in return for services to the county by the receiving employee. The leave was accrued as a result of services performed by the donating employee.

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September 23, 1991

Honorable John W. Ladenburg  
Pierce County Prosecuting Attorney  
930 Tacoma Avenue South, Room 946  
Tacoma, Washington 98402-2171

Cite as: AGO 1991 No. 29

Dear Mr. Ladenburg:

By letter previously acknowledged, you requested our opinion regarding a proposal by Pierce County to establish a Humanitarian [[Orig. Op. Page 2]] Catastrophic Sick Leave Bank. Under the proposal, county employees may donate accrued vacation or sick leave to the sick leave

bank. Under certain circumstances, the county will pay the donated leave to other county employees. We paraphrase your questions:

1. Does the county's payment to some employees of leave donated to the sick leave bank by other employees violate article 8, section 7 of the Washington Constitution, which prohibits gifts of public funds?

2. Is leave that is donated to the sick leave bank by a county employee compensation earnable under RCW 41.40.010(8) of the employee donating the leave?

3. Is leave paid from the sick leave bank to a county employee compensation earnable under RCW 41.40.010(8) of the employee receiving the leave?

We answer each of your questions no.

### BACKGROUND

According to your letter, the county is concerned that some employees exhaust leave benefits when faced with catastrophic illness or injury. To deal with this problem the county is considering the establishment of a Humanitarian Catastrophic Sick Leave Bank.

Under the proposal, county employees may donate accrued vacation leave or sick leave to the sick leave bank.<sup>1/</sup>

County employees accrue vacation and sick leave benefits as provided in the county ordinance. See Pierce County Ordinance chapters 3.72 and 3.68.

Under the proposal, employees who donate leave to the sick leave bank waive all rights to the donated leave. If the county discontinues the program, unused leave donations are forfeited. Donations and use of leave are on an hour-for-hour basis, without any conversion for differentials between rates of pay received by the donors and the recipients.

Any county employee eligible to accrue and use sick leave benefits may apply for leave donated to the bank. However, there [[Orig. Op. Page 3]] is no right to withdraw leave donated to the bank. A special committee must approve applications to use donated leave. Payments from the sick leave bank are made only in the event of catastrophic illness or injury. To qualify, the employee also must exhaust his or her available sick leave and vacation leave.

Vacation and sick leave hours donated to the sick leave bank provide the source of funds for the program. Use of the sick leave bank is limited to the available pool of hours donated by other employees. Leave awarded from the sick leave bank is on a first come, first serve basis to the extent of the available donated hours. If the employee's application is approved, the employee is paid, subject to availability of donated leave, according to the employee's regular rate of pay. However, if the employee's injury or illness qualifies for state workers' compensation, the employee receives

donated sick leave only for the difference between the employee's regular pay and the amount paid under state workers' compensation benefits.

## ANALYSIS

### Question 1:

Does the county's payment to some employees of leave donated to the sick leave bank by other employees violate article 8, section 7 of the Washington Constitution, which prohibits gifts of public funds?

Article 8, section 7 prohibits local governments from making gifts of public funds.

Article 8, section 7 of the Washington Constitution, provides:

No county, city, town or other municipal corporation shall hereafter give any money, or property, or loan its money, or credit to or in aid of any individual, association, company or corporation, except for the necessary support of the poor and infirm, or become directly or indirectly the owner of any stock in or bonds of any association, company or corporation.

In Citizens for Clean Air v. Spokane, 114 Wn.2d 20, 785 P.2d 447 (1990), the court set out a two-prong test by which to judge whether a public expenditure violates article 8, section 7. First, when funds are expended by the government in carrying out its fundamental purposes, no gift occurs. 114 Wn.2d at 39.

[[Orig. Op. Page 4]]

Second, if the expenditure is not for a fundamental governmental purpose, two factors must be considered to determine whether a gift has been made: consideration and donative intent. 114 Wn.2d at 39. If the expenditure is made without consideration and with donative intent, it is an impermissible gift. Moreover, these two factors are related. The court looks for donative intent to determine how closely to scrutinize sufficiency of the consideration. Unless there is proof of donative intent or grossly inadequate return, courts do not inquire into the adequacy of consideration.

In our opinion, the program about which you inquire would not constitute a gift of public funds. The services provided to the county by the employees who donate the leave is consideration for the program. The source of funds for the sick leave bank is the hours of vacation and sick leave donated by county employees. The donating employees accrue these hours of leave that may be transferred to the sick leave bank for use by qualifying employees. Additionally, there is no donative intent on the part of the county.<sup>2/</sup>

The court long has held that payments to employees for services rendered do not constitute a gift. In Luders v. Spokane, 57 Wn.2d 162, 356 P.2d 331 (1960) the court considered an increase

in the pension of retired policemen. The court ruled that the payment of the increase was not a gift of public funds. The court said:

Art. VIII, § 7, of the state constitution prohibits gratuities. We held in Bakenhus v. Seattle, 48 Wn. (2d) 695, 296 P. (2d) 536, that a pension granted to a public employee is not a gratuity, but is [[Orig. Op. Page 5]] deferred compensation. That renders Art. VIII, § 7, inapplicable. Here there is a compensation increase which may apply as well to deferred compensation as compensation paid during active service.

57 Wn.2d at 165. See also Marysville v. State, 101 Wn.2d 50, 57-8, 676 P.2d 989 (1984) and Bellevue Sch. Dist. v. Bentley, 38 Wn. App. 152, 159, 684 P.2d 793 (1984), which recognize that payments for services rendered by employees are not prohibited by article 8, section 7.

That employees choose to donate leave instead of taking it, does not change the fact that the leave has been accrued or that the county has received consideration for its payment. Nor does the fact that employees choose to give the leave to the sick leave bank establish donative intent on the part of the county. If an employee elects to donate leave, there is obviously donative intent. But the donative intent is on the part of the employee, not the county. The proposal accompanying your letter plainly states that donation of leave is voluntary. Nothing in article 8, section 7 prohibits an employee from making such a donation. Since payments from the sick leave bank consist of leave donated by the employees who have accrued the leave, there is no gift of public funds. And since there is no donative intent on the part of the county, there is no basis for questioning the adequacy of consideration the county receives for payment of the leave. Tacoma v. Taxpayers of Tacoma, 108 Wn.2d 679, 703, 743 P.2d 793 (1987).

Since there is consideration and no donative intent on the part of the county, we conclude that the proposed sick leave bank does not violate article 8, section 7.

#### Question 2:

Is leave that is donated to the sick leave bank by a county employee compensation earnable under RCW 41.40.010(8) of the employee donating the leave?

This question relates to the treatment of leave donated to the sick leave bank under the Washington Public Employees' Retirement System (PERS)<sup>3/</sup>

established in chapter 41.40 RCW. [[Orig. Op. Page 6]] RCW 41.40.410 provides that employees of political subdivisions of the state may become members of the state retirement system by approval of the local legislative authority.

A number of the provisions in PERS turn on the concept of "compensation earnable". A PERS covered employee must make contributions toward retirement benefits based on a percentage of the employee's "total compensation earnable". RCW 41.40.330. Additionally, pension benefits are a function of years of covered service and the employee's "average final compensation," which is defined as average compensation earnable during the appropriate measuring period. RCW

41.40.010(15)(a), (b); RCW 41.40.185, [41.40].188, [41.40].190. "Compensation earnable" includes "salaries or wages earned during a payroll period for personal services." RCW 41.40.010(8)(a), (b).

Your second question asks whether leave accrued by a county employee and donated to the sick leave bank constitutes "compensation earnable" of the donating employee. If donated leave is "compensation earnable" of the employee making the donation, then the donating employee should make contributions to PERS based on the value of the hours, the donating employee may be entitled to include the value of the leave in the employee's pension base, and the donating employee may be entitled to service credit for the period when the leave is accrued, if he or she would otherwise not be entitled to such credit.

In our opinion, accrued leave donated to the sick leave bank is not "compensation earnable" to the donating employee because it does not constitute salary or wages under RCW 41.40.010(8). In AGO 1976 No. 1 we considered the meaning of the phrase "salary and wages." The question was whether the payment of terminal leave or severance pay for vacation or sick leave constituted "compensation earnable" under RCW 41.40.010(8)(a). We concluded that such payments constituted "compensation earnable" and in doing so said:

"The word 'salary' is defined in Webster's Third New International Dictionary (1963 ed.) as:

"a fixed payment at regular intervals for services.'

"Black's Law Dictionary, quoted with approval in Maes v. City of New Orleans, (La.) 97 So. (2d) 856 (1957), defines 'salary' simply as:

"A reward or recompense for services performed.'

....

[[Orig. Op. Page 7]]

This general view of the scope of "salaries and wages" is likewise supported by numerous cases from other jurisdictions. Thus, a sick leave allowance has been held to be encompassed within the term "wages" in Barrett v. California Unemployment Insurance Appeals Board, 12 Cal. Rptr. 356, 190 C.A. 2d 854 (1961) and Temple v. Pennsylvania Department of Highways, 445 Pa. 539, 285 A. 2d 137 (1971). Vacation pay has similarly been held to be encompassed by the term "wages" in Geremia v. Administrator, Unemployment Compensation Act, 146 Conn. 264, 150 A. 2d 203 (1959); Carter v. Board of Review Under Oklahoma Employment Security Act, 323 P. 2d 362 (1958); and Textile Workers Union of America, CIO v. Williams Port Textile Corp., 136 F. Supp. 407 (D.C. Pa. M.D. 1955).

AGO 1976 No. 1 at 9 (quoting AGO 63-64 No. 61 at 5). See also AGO 1982 No. 6 at 3; AGLO 1980 No. 11 at 2-3.

Under these opinions the payment of vacation and sick leave constitutes salary or wages. However, AGO 1976 No. 1 only dealt with the payment of vacation or sick leave. The opinion did not deal with accrued leave that is not paid. AGO 1976 No. 1 at 7 n. 7. Just because leave is accrued does not mean it will be paid. For example, under county ordinance vacation leave in excess of 30 days cannot be transferred from one calendar year to another and must be forfeited. Pierce County Ordinance 3.72.040. Similarly, upon retirement the payment of sick leave is limited to 200 days. Any additional days of sick leave are lost. Pierce County Ordinance 3.68.050.

In our opinion, accrued vacation and sick leave donated to the leave bank do not constitute salary or wages to the donating employee. There is no payment to that employee. Unpaid vacation and sick leave therefore do not meet the definition of salary and wages. Unpaid leave is not a fixed payment at regular intervals for services. The donating employee accrues the leave but is never paid for it. Indeed, under the proposal, the donating employee must relinquish all claim to the donated leave. Since the donating employee receives no payment for the donated leave, we conclude that the leave is not compensation earnable by the donating employee under RCW 41.40.010(8). As a result, the [[Orig. Op. Page 8]] donating employee need not make contributions based on the donated leave, will not receive service credit based on the donated leave, and cannot determine average final compensation based on the donated leave.<sup>4/</sup>

### Question 3:

Is leave paid from the sick leave bank to a county employee compensation earnable under RCW 41.40.010(8) of the employee receiving the leave?

Your third question asks about the retirement impact of the sick leave bank on an employee receiving payments. As previously noted, "compensation earnable" consists of salary and wages earned by a member. We conclude that payments from the sick leave bank are not "compensation earnable" of the employee receiving them because the employee receiving the payments does not earn the payments.

A payment is earned if it is accredited to one as remuneration for work done or services rendered. See Webster's Third International Dictionary (1966) at 714. Although the employee receiving the leave payments has provided services to the county, the payment of donated sick leave is not made in return for those services. The services are not quid pro quo for the leave payment. Instead, the employee may apply to the sick leave bank and receive payments only in the event of catastrophic illness or injury and only if the employee has exhausted his or her own accrued vacation and sick leave. It is the donating employee, not the recipient, who earned the leave in return for services rendered.

In addition, payments are based solely on donation. They are not earned by the receiving employee. The receiving employee is not entitled to the payments--the receiving employee has no right to payments from the sick leave bank as he or she would have if they were earned for service to the county. The employee must apply to participate in the program. Even if the application is approved, no payments are made if the sick leave bank is empty.

[[Orig. Op. Page 9]]

Since payments from the sick leave bank are not "compensation earnable" of the receiving employee, that employee need not make contributions based on the payments from the bank, will not receive service credit based on the payments from the bank, and cannot determine average final compensation based on payments from the bank.

We trust that the foregoing will be of assistance to you.

Very truly yours,

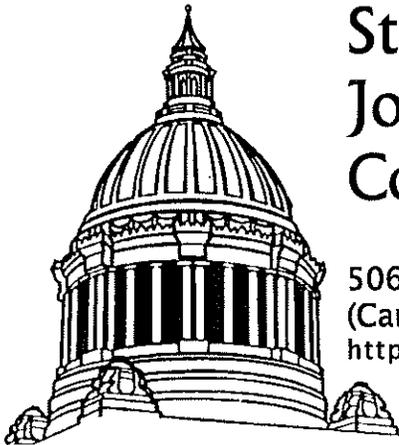
KENNETH O. EIKENBERRY  
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WILLIAM B. COLLINS  
Assistant Attorney General

**Appendix D – Joint Legislative Audit and Review Committee: Leave Sharing Report 97-7**

**See Attached Report: Leave Sharing Program Report 97-7**



State of Washington  
Joint Legislative Audit and Review  
Committee

506 16th Ave. S.E., Olympia, WA 98501-2323  
(Campus Mail: PO Box 40910), Phone: (360) 786-5171  
<http://www.leg.wa.gov/www/lbc/>

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# Leave Sharing Program

## Report 97-7

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December 1, 1997

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# LEAVE SHARING PROGRAM

## Summary

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**T**his study of the Leave Sharing Program is the result of a legislative mandate to conduct a limited examination of the program and the costs involved in its implementation. This program was created to permit state employees, at no significant increased cost to the state of providing leave, to come to the aid of fellow state employees through a leave sharing process.

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## Overview

Major findings of this study include:

- ✓ The Leave Sharing Program is being used by state employees in almost every agency in the state. In FY96, 683 state employees availed themselves of the program. In comparison, during FY97, 835 state employees received shared leave under the expanded program. Although the number of program recipients has increased from FY96 to FY97, the number of individuals on leave without pay has remained relatively constant.
- ✓ Direct program expenditures for FY96 were \$1.8 million. This amount increased 76 percent to \$3.2 million in FY97. When adjustments are made to reflect offsetting reductions in agency costs, the comparative results are similar: approximately \$1.7 million in FY96 versus \$2.9 million in FY97—an increase of 66 percent. This increase in program costs appears to be largely attributable to the expansion of the program in 1996 to make sick leave available for donation in FY97.
- ✓ State agencies have taken steps to meet the legislative intent that the Leave Sharing Program does not significantly increase the cost of leave to the state

## BACKGROUND

### Creation/Expansion of Program--Legislative Study Mandate

The "Leave Sharing Program" was created by the legislature in 1989 "to permit state employees, at no significant increased cost to the state of providing annual leave, to come to the aid of a fellow state employee . . ." through a leave sharing process.

In 1996, the legislature expanded the Leave Sharing Program to include transfer of sick leave and the personal holiday, in addition to annual leave. The legislature also mandated that the Joint Legislative Audit and Review Committee (JLARC)<sup>1</sup> conduct a study of leave sharing and report its findings to the legislature by December 1, 1997.

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### Legislature mandated study on use and cost of program

### Study Approach

The study addresses specific legislative questions about the potential increased use and cost of the expanded Leave Sharing Program.<sup>2</sup> In order to address the study objectives, this study utilizes data from the Office of Financial Management (OFM) and the Department of Personnel (DOP) for a comparison of the FY96 to FY97 use, cost, and impact of the program.

## FINDINGS

### Leave Sharing Program Utilized in Almost All State Agencies

During FY96, 683 state employees<sup>3</sup> received leave under the Leave Sharing Program. In comparison, during FY97, 835 state employees received shared leave under the expanded program. Over 4,000 employees donated leave to their fellow employees during this

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<sup>1</sup> At that time, the committee was called the Legislative Budget Committee.

<sup>2</sup> JLARC was not asked to conduct a sunset type review of this program which would have required a recommendation on the program's continuation.

<sup>3</sup> This number excludes employees of institutions of higher education.

same year. On a statewide basis, 64 state agencies employing 99 percent of all state employees participated in the program during FY97.

### Cost of the Program Increased after Expansion

State agency Leave Sharing Program expenditures were \$1,804,924 for FY96 and increased 76 percent to \$3,184,978 for FY97. This increase in cost appears to be mainly attributable to the cost of the sick leave transferred, which was \$1,360,471 for FY97.

The *net* cost of the Leave Sharing Program to the state would be somewhat less than the figures cited above. When annual leave is donated, it becomes unavailable for subsequent cashout upon termination of employment or retirement. When sick leave is donated, it cannot be used as part of the annual one-for-four sick leave buyout option, or upon retirement. Additionally, in those situations where a person would have to be replaced if they used the vacation or were on sick leave themselves (e.g., post staffing at prisons), there is a savings to the state by donation of the leave to another individual (i.e., no cost to backfill the position). If these factors are taken into account, costs<sup>4</sup> of the program would be roughly \$1.7 million for FY96 and \$2.9 million for FY97, which represents a 66 percent increase.

### Leave Without Pay Increased in Spite of Program Expansion

We attempted to measure the effect of the 1996 expansion of the Leave Sharing Program by looking at changes in the number of individuals who exhausted all leave during the first year of the expanded program compared to the previous year. We found that the number of individuals who were on leave without pay status due to extraordinary illness or injury increased in FY97 over FY96 by 8 percent. This increase took place within the context of an even larger percentage increase in the number of shared leave donors and recipients.

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<sup>4</sup> These dollar amounts are net present values reflecting some savings that will occur in the future.

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**Cost of  
Leave  
Sharing  
Program  
increased  
76 percent**

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## Program in compliance with intent

### Compliance with Legislative Intent

State agencies are taking measures to meet legislative expectations that the Leave Sharing Program “not significantly increase the cost of providing annual leave, sick leave, or personal holidays.” OFM, as a matter of practice, does not permit state agencies to budget for potential Leave Sharing Program expenditures, and DOP rules do not allow individuals to donate leave to avoid its lapsing. Review of relevant leave sharing reports produced by DOP indicated general compliance with this directive as well as the fact that rules are in place to ensure that employees maintain minimum leave balances before contributing leave. Additionally, consistent with legislative direction, OFM and DOP have enhanced the state’s budgetary, accounting and personnel databases in order to better track shared leave expenditures and utilization.

### Leave Sharing Practices in Other States

Under a variety of rules, 17 states have sick leave pools to assist employees who have exhausted all their personal sick leave. Eight other states permit annual leave to be donated to individual employees to use for sick leave. Washington appears to be the only state that allows sharing of three types of leave—sick, annual, and the personal holiday—on an individual-to-individual basis. The state of Massachusetts allows transfer of these same categories of leave on a sick leave pool basis.

## AGENCY RESPONSE

We shared the report with the Department of Personnel and the Office of Financial Management and provided them an opportunity to comment. No written comments were submitted by those agencies.

## ACKNOWLEDGEMENTS

We wish to acknowledge the assistance provided by the Office of the State Actuary, the Office of Financial Management, the Department

of Personnel and the personnel offices of the state agencies who participated and contributed information to this study. We would also like to thank the representatives of the Washington Federation of State Employees who were very helpful in providing background information on the program.

This study was conducted by Gerry McLaughlin of the JLARC staff, and supervised by Bob Thomas.

Cheryle A. Broom  
Legislative Auditor

On December 1, 1997, this report was approved by the Joint Legislative Audit and Review Committee and its distribution authorized.

Representative Cathy McMorris  
Chair

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# LEGISLATIVE ISSUES AND STUDY APPROACH

## Chapter One

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**T**he Leave Sharing Program was created by the legislature in 1989.<sup>1</sup> In this chapter we discuss the program's purpose, legislative history and the study approach we used to address legislative concerns regarding the use, cost and effectiveness of the program. We also discuss data availability and reliability issues.

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### Overview

#### Legislative Intent

The Leave Sharing Program's enabling legislation stated that the purpose of the program was "to permit state employees, at no significantly increased cost to the state of providing annual leave,<sup>2</sup> to come to the aid of a fellow state employee who is suffering from or has a relative or household member suffering from an extraordinary or severe illness, injury, impairment, or physical or mental condition which has caused or is likely to cause the employee to take leave without pay or terminate his or her employment."

#### Expansion of Program and JLARC Study Mandate

In 1996, with the passage of 3SHB 1381, the legislature expanded the state's Leave Sharing Program to include transfer of sick leave and the personal holiday (in addition to annual leave) from one

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<sup>1</sup> ESSB 5933, Chapter 93, Laws of 1989, Codified under RCW 41.04.650 through RCW 41.04.670 and RCW 28A.400.380.

<sup>2</sup> The enabling legislation for the Leave Sharing Program in 1989, ESSB 5933, used the term "annual leave" to refer to what was called "vacation leave" in pre-existing state statute. In this report we use the terms interchangeably. It should be noted, however, that state law dealing with school districts uses the term "annual leave," which is by definition sick leave to be used for illness and injury (see RCW 28A.310.240).

state employee to another. That act also mandated that JLARC conduct a study of the program and report its findings to the legislature by December 1, 1997.

## Legislative Issues-Study Approach

The study addresses legislative questions about the potential increased use and cost<sup>3</sup> of the expanded Leave Sharing Program. In order to address the study objectives,<sup>4</sup> we obtained data from OFM and DOP for a comparison of the FY96 to FY97 use, cost, and impact of the program. Also, as a measure of program effectiveness, we attempted to ascertain the number of state employees who have exhausted all leave due to extraordinary illness or injury under the previous program in comparison to the expanded program. Finally, we reviewed available OFM and DOP policies and management information to assess measures taken to carry out legislative intent in establishing the Leave Sharing Program.

## Leave Accrual Process and Leave Sharing Parameters

State employees accrue anywhere from one day to 1.7 days a month annual (vacation) leave,<sup>5</sup> and one day a month sick leave. They also accrue one additional day a year as a personal holiday.<sup>6</sup> Under the Leave Sharing Program, state employees may transfer any amount of annual leave to other state employees who are in need, provided that they maintain a minimum balance of 80 hours.<sup>7</sup> They may also transfer up to six days a year of sick leave, provided that they maintain a minimum balance of 480 hours.<sup>8</sup>

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<sup>3</sup> When the initial Leave Sharing Program was created in 1989, the fiscal notes on the enabling legislation estimated that only minimal administrative costs would be incurred as a result of passage of the act.

<sup>4</sup> See Appendix 1.

<sup>5</sup> The specific statutory provisions covering annual (vacation) leave are set out in RCW 43.01.40 through RCW 43.01.045, and the authority to establish sick leave policy is delegated to the Washington Personnel Resources Board under Chapter 41.06 RCW.

<sup>6</sup> The personal holiday must be used by end of the calendar year.

<sup>7</sup> RCW 41.04.665 does state however, "an employee shall not receive a total of more than two hundred sixty-one days of leave."

<sup>8</sup> DOP practices require donated sick leave to be deducted only from the current calendar year balance, not from any previous years balances.

## Data Availability and Reliability

For purposes of our analyses, we were limited to two years worth of expenditure and leave data.<sup>9</sup> This enabled us to compare only the last year (FY96) of the Leave Sharing Program's operations under the old law to the first year (FY97) under the expanded program. Additionally, very limited program data were available from the Higher Education System. Throughout the report, program expenditure information from OFM includes data from higher education institutions. On the other hand, program participation and utilization information from DOP does not include higher education data.

During the course of this study we encountered inconsistencies between the expenditure data for shared leave reported by OFM and the related leave tracking data in the DOP centralized personnel payroll system. We were told by the agencies involved that these anomalies in the data were caused by initial implementation problems, i.e., using manual data collection procedures and data reconciliation and input problems within state agencies.

These data issues were not significant enough to preclude us from addressing the study's scope and objectives and making relevant findings based on that data. The major weakness of the data is that total program utilization rates may be understated. However, the degree of understatement appears approximately the same for each fiscal year.

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**Only two  
years of  
data  
available**

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<sup>9</sup> The agency financial reporting system (AFRS) did not separately track agency expenditures incurred as a result of shared leave until FY96. Additionally DOP did not have discrete tracking of the transfer of sick leave and personal holiday leave hours until late FY97, and had to collect FY96 data through manual tabulation by state agencies of shared leave from personnel files.

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# PARTICIPATION/EXPENDITURES FOR LEAVE SHARING PROGRAM

## Chapter Two

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**T**he Shared Leave Program has been the subject of some legislative interest because no detailed comprehensive estimates of potential program utilization and costs were available during legislative deliberations on enactment of the program in 1989, nor upon its expansion in 1996. In this chapter, we compare utilization and costs for the program between FY96 and FY97—the years before and after its expansion. We also attempt to estimate any offsetting savings that might accrue from any future reduced cashout of leave and from lower staff backfill costs in certain institutions.

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### Overview

#### Participation in Program by State Employees and State Agencies

During FY96, 683 state employees<sup>1</sup> received leave under the Leave Sharing Program. In comparison, during FY97, 835 state employees received shared leave under the expanded program. Over 4,000 employees donated leave to their fellow employees during this same year. On a statewide basis, 64 state agencies employing 99 percent of all state employees participated in the program during FY97.

#### Cost of Leave Sharing Program

#### Fiscal Estimates Provided to Legislature

The legislative history of the Leave Sharing Program reveals that there was an expectation that the program would have little or no

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<sup>1</sup> This number excludes employees of institutions of higher education.

**Future costs of program were not known**

impact on state agency expenditures. The fiscal note prepared by OFM in 1989 on the enabling legislation for the Leave Sharing Program (SSB 5933) indicated the following: "The primary cost to the state for the Washington State leave sharing program would be the administrative costs." However a dollar amount was not projected nor have these costs been tracked by state agencies.<sup>2</sup> Fiscal notes developed by DOP and the Higher Education Personnel Board (HEPB) were similar. The cost estimates submitted on 3SHB 1381 in 1996, which expanded the scope of the program, also indicated no determinate impact. Additionally, there was very little information in the original legislative history that quantified the need for the program, e.g., an estimate of the number of persons who would request shared leave.

**State Expenditures for Leave Sharing Program<sup>3</sup>**

Based on data obtained from OFM, statewide expenditures for the Leave Sharing Program for the last two fiscal years are shown below in Exhibit 1. These expenditures include those for institutions of higher education.

**Exhibit 1**

**State Expenditures for Leave Sharing Program  
FY96 Compared to FY97**

Year	Annual Leave	Sick Leave	Personal Holiday	Total
FY96	\$1,804,758	\$166	\$0	\$1,804,924
FY97	\$1,743,708	\$1,360,471	\$80,799	\$3,184,978
Change From FY96	(\$61,050)	\$1,360,305	\$80,799	\$1,380,054

As shown above, expenditures for the Leave Sharing Program for state agencies were \$1,804,924 for FY96 and \$3,184,978 for FY97, which represents a 76 percent increase. This increase in cost appears to be mainly attributable to the cost of the sick leave transferred, which was \$1,360,471 for FY97.

<sup>2</sup> In response to our survey, agency personnel directors and officers indicated to us that the administrative costs for the Leave Sharing Program are significant, but are not tracked.

<sup>3</sup> The scope of this study did not include school districts since 3SHB 1381 did not significantly impact school districts' leave sharing practices.

## Net Cost of Leave Sharing Program

The net cost to the state of the Leave Sharing Program would be somewhat less than the figures cited above for a number of reasons. The reasons most readily quantified are as follows.<sup>4</sup>

When either annual leave or sick leave is donated, it becomes unavailable for subsequent cashout upon termination of employment or retirement.

Each year state employees with a balance of over 60 days of sick leave may elect to receive compensation for 25 percent of all sick days accrued in the previous year (less leave taken). Also, upon retirement or death, employees or their survivors are compensated for 25 percent of all sick leave. State employees are also compensated for all unused annual leave upon termination of employment.

Additionally, in those situations where a person would have to be replaced if they used the vacation leave themselves, there is a savings to the state by donation of the leave to another individual. An example would be a correctional officer in a state prison who staffs a post in a guard tower or a housing unit. Whenever such an officer is unavailable due to absence on leave, that officer must be replaced from a relief pool of full-time staff, by an on-call (part-time) officer, or through the use of overtime. Since relief needs within the Department of Corrections (DOC) are projected and budgeted based on historical leave use, it can be expected that lower use of leave due to the Leave Sharing Program would eventually be translated into actual savings to the state.

A calculation of the types of offsetting savings described here must rely on a number of assumptions, many of which rely on estimates that may be inexact. As an example, the present value of savings related to sick leave buy out depends on whether leave balances are cashed out in the following year or upon retirement. Additionally, actuarial data and assumptions must be used to project what percentage of donors would lose their accrued sick leave because they terminate state employment before being eligible for retirement payments.

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<sup>4</sup> There are other types of offsetting benefits that might also be considered, such as increased employee productivity, and decreasing the need for state employees to seek welfare assistance. We did not have data that would have allowed us to attempt to quantify such benefits.

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**Donation of  
leave may  
result in  
future  
savings to  
state**

Based on calculations of the upper and lower limits for some values (such as sick leave buyout), and on assumptions provided by the State Actuary and individual agencies, we estimate the net present value cost of the Leave Sharing Program to be roughly \$1.7 million for FY96 and \$2.9 million for FY97. The difference between the two years represents an increase of 66 percent.

### Joint Participation by the State and Employees as Donors

In most cases, when employees donate leave they are either giving up time off or are giving up compensation (either dollar-for-dollar in the case of annual leave, or 25 cents on the dollar for sick leave). The main exception would be the cases in which individuals donate sick leave they would never have used and for which they would never have been compensated.

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## State pays twice for benefits associated with shared leave

The state's contribution occurs in two ways. First, it incurs an expense when leave is transferred and paid out (and there is not an offsetting expense reduction on the part of the employee who is a donor). Second, it incurs all of the costs of donated benefits. When leave is donated, the recipient receives all associated benefits related to each day on leave, including the accrual of sick leave, vacation, and holidays.<sup>5</sup> However, since the donor, by continuing to work, does not give up any of these benefits, this remains a cost for the state. This direct donation of benefits by the state accounts for approximately 29 percent of the net cost of the program.<sup>6</sup>

### Effect of Change in Leave Sharing Program on Sick Leave Buyout Program

Theoretically, the ability of state employees to donate sick leave could reduce the magnitude of the sick leave buyout program since the criteria for participation in both programs is the same (sick leave balance of 480 hours), and donation of sick leave would reduce the amount available for the annual buyout (and subsequently the

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<sup>5</sup> The entitlement to all associated benefits while receiving shared leave is specifically authorized by the legislature in RCW 41.04.665(7)

<sup>6</sup> For each dollar in salary, there is an additional 40 cents in benefits (26 cents for health insurance, retirement, social security, etc., and 14 cents for accrued holiday, vacation, and sick leave). Forty cents is approximately 29 percent of \$1.40.

cash out of sick leave upon retirement). As shown below, expenditures within the program were stable from FY93–FY95, and then experienced a large increase in FY96 and have remained at that level.

**Exhibit 2**

**Annual Expenditures for Sick Leave Buy Out Program  
FY93 through FY97**

	FY93	FY94	FY95	FY96	FY97
Expenditures	\$6,970,034	\$6,987,901	\$7,134,686	\$8,040,543	\$8,072,230
Percent Change Year to Year		0.3%	2.0%	12.7%	0.4%

This trend in payments to state employees before and during the implementation of the expanded Shared Leave Program (to include sick leave) shows what appears to be somewhat of a decrease in the rate of growth of the sick leave buyout program in FY97. However, with just one year of data under the expanded Shared Leave Program, we cannot state that the apparent change in the trend in FY97 is the result of employees donating sick leave rather than cashing it in at the end of the calendar year.

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# EFFECT OF 1996 PROGRAM EXPANSION

## Chapter Three

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**S**ince the purpose of the program was to mitigate the impact of extraordinary illness or injury to employees, we asked a sample of the larger agencies (representing over 47,000 FTEs, but excluding institutions of higher education) how many employees exhausted all leave and ended up on authorized leave without pay status,<sup>1</sup> or terminated employment? In this chapter, we discuss the results of our survey.

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### Overview

#### Impact of Program Expansion

As shown in Exhibit 3 below, state agencies in the sample reported that 314 state employees were on leave without pay (LWOP) status or terminated employment due to extraordinary illness or injury in FY96 compared to 339 in FY97. This represents an increase of 8 percent.<sup>2</sup>

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<sup>1</sup> WAC 356-18-140 (5) states that "employees returning from authorized leave without pay shall be employed in the same position, or in another similar position in the same class and in the same geographical area, provided that such return to employment is not in conflict with rules relating to reduction in force."

<sup>2</sup> This number only includes those who were on LWOP or terminated employment due to conditions which would have qualified them to participate in the Shared Leave Program.

**Exhibit 3**  
**Comparison of Donors, Recipients, and Those on Leave**  
**Without Pay (LWOP) FY96 vs. FY97**

Fiscal Year	FY96	FY97	Percent Change
<i># Individual Donors</i>			
Annual Leave	3516	2530	
Sick Leave	119	1454	
Personal Holiday	19	389	
<b>Total</b>	<b>3654</b>	<b>4373</b>	<b>20%</b>
<i># Individual Recipients</i>			
	683	835	22%
<i># Individuals on LWOP</i>			
	314	339	8%

Also as shown in Exhibit 3, using DOP information, the number of people donating shared leave increased by 20 percent in FY97 over FY96, and the number of recipients increased by 22 percent. Since the data is extracted from two different sources, but is based on the same population, the percentage changes are the relevant comparisons rather than the numbers themselves. We found no explanation for the increase in those on LWOP status given the additional shared leave resources made available by the 1996 program expansion.

Two of the larger agencies reported that a number of their employees, who viewed shared leave as "charity," did not ask their agency to solicit shared leave for them, and chose to go on LWOP. Also, some individuals are not very successful in attracting shared leave donations.

Also, the data in this exhibit confirmed the OFM expenditure data trends, discussed in Chapter 2, showing a relative decrease in the number of individuals donating annual leave, and a commensurate increase in the number of individuals donating sick leave.

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**Some state employees choose not to participate**

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# COMPLIANCE WITH LEGISLATIVE INTENT

## Chapter Four

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**T**he Leave Sharing Program's enabling legislation emphasized that the state personnel authorities<sup>1</sup> shall adopt rules and establish procedures to "ensure that the program does not significantly increase the cost of providing leave."<sup>2</sup> In this chapter, we assess the degree that state agencies have adopted policies, collected management information, and taken other steps to fulfill legislative expectations in this regard.

### OFM Budget Development Practices

In response to legislative intent, OFM, as a matter of practice, has not allowed state agencies to budget for potential Leave Sharing Program expenditures, and this was the case for the 1995-97 Biennium. This practice is also in effect for the 1997-99 Biennium. State agencies are expected to pay for shared leave expenditures out of existing appropriations. State law does allow OFM to adjust the appropriation of an agency receiving funds under the program if the existing appropriation authority would prevent the agency from expending the funds received.

### DOP Rules Adopted

The DOP likewise has responded to legislative intent by adopting rules<sup>3</sup> that prohibit individuals from donating annual leave to avoid

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## Overview

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**State agencies not allowed to budget for shared leave expenditures**

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<sup>1</sup> State Personnel Board and Higher Education Personnel Board are now combined as the Washington Personnel Resources Board.

<sup>2</sup> See RCW 41.04.670(3).

<sup>3</sup> See WAC 356-18-112.

that leave lapsing under the provisions of RCW 43.01.040.<sup>4</sup> WAC's require that annual leave not be donated to avoid lapsing. DOP states that agencies are responsible for enforcement of this provision. We asked DOP to provide us with specific management reports on donations of annual leave for FY97 to see if this criterion was being met. A review of the data did not indicate any obvious patterns that annual leave was being donated just to avoid its lapsing. However, our analyses was limited since we only reviewed this report.

### **Annual Leave Lost Due to Reaching Statutory Leave Accrual Limitations**

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**Almost  
100,000  
hours of  
annual  
leave lapsed  
during FY97**

As a follow-up to the previous discussion, we obtained a listing of the number of individuals by agency and the number of hours of annual leave that were "automatically extinguished" during FY97. In that year 3,898 individuals lost a total of 99,255 hours of leave. Review of this list indicated that this provision of state law is enforced by DOP.

### **Use of Shared Leave on One-Day-a-Month Basis**

One of the questions raised during the course of the study was the degree that state employees can use leave that has been donated to them, on a one-day-a-month basis, to maintain their medical benefits. In cases where this is done, the employees leverage one day of shared leave to acquire \$317 worth of state paid medical and dental benefits. Data provided by DOP indicates that during FY97, the number of Leave Sharing Program participants using this option ranged from a low of 25 (August '96) to a high of 39 (November '96) per month. The highest monthly number at 39 represented 5 percent of the total number of recipients of shared leave for FY97.

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<sup>4</sup> RCW 43.01.040 states that unused vacation leave may be accrued "not to exceed 30 working days." Excess leave is automatically adjusted back to the 30-day maximum on each individual's anniversary date, unless the employing agency has previously denied a leave request which would have reduced the leave balance to 30 days.

## Enhancement of OFM and DOP Databases

As noted in Chapter 1, the state financial accounting system (AFRS) did not separately track agency expenditures incurred as a result of shared leave until FY96. Additionally, DOP did not track the transfer of sick leave and personal holiday leave hours until late FY97, and had to collect FY96 data through manual tabulation by state agencies of shared leave from personnel files.

Consistent with legislative direction<sup>6</sup> and the 1996 legislative changes to the Leave Sharing Program, OFM and DOP have enhanced the state's budgetary, accounting and personnel databases in order to better track shared leave expenditures and utilization.

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<sup>6</sup> See RCW 41.04.670

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# LEAVE SHARING PRACTICES IN OTHER STATES

## Chapter Five

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**T**his state's Leave Sharing Program is somewhat unique in comparison to models used in other states. It does not include use of a sick leave pool as others do, and it permits sharing of all types of leave: sick, annual, and personal holiday. In this chapter, based on data collected by Workplace Economics Inc.,<sup>1</sup> we provide some information on leave sharing practices in the other 49 states.

### Overview of Leave Sharing Practices for State Government Employees in Other States

Leave sharing programs are fairly common across the country. Twenty-nine states have some sort of shared leave program for their employees. Many states appear to favor a "Sick Leave Pool" shared leave system, in contrast to the individual-to-individual system we have in the state of Washington.

The following 17 states have a sick leave pool: Alabama, Arkansas, Connecticut, Florida, Illinois, Maryland, Massachusetts, Missouri, Montana, Nevada, New Jersey, Ohio, South Carolina, Tennessee, Texas, Utah, and Vermont. Eight other states permit annual leave to be donated to individual employees to use for sick leave.

Washington appears to be the only state that allows sharing of three types of leave—sick, annual, and the personal holiday—on an individual-to-individual basis. The state of Massachusetts allows transfer of these same categories of leave on a sick leave pool basis.

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### Overview

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**Twenty-nine  
state have  
shared  
leave  
programs**

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<sup>1</sup> Source: 1997 State Employee Benefits Survey, Workplace Economics, Inc., Washington, D.C.

The following exhibit (extracted from Workplace Economics Inc. Survey) summarizes the various shared leave programs in the United States with an emphasis on those with sick leave pools. The notes following the exhibit provide additional detail on other shared leave practices among the states. We have no additional information on the other states' shared leave programs beyond that contained in the Exhibit.

#### Exhibit 4

#### Leave Sharing Programs in Other States

State	Sick Leave Pool	State	Sick Leave Pool
Alabama	Yes	Montana	Yes(9)
Alaska	No(1)	Nebraska	No
Arizona	No(1)	Nevada	Yes
Arkansas	Yes	New Hampshire	No
California	No(1)	New Jersey	Yes
Colorado	No(1)	New Mexico	No(1)
Connecticut	Yes(2)	New York	No(1)
Delaware	No	North Carolina	No
Florida	Yes(3)	North Dakota	No(10)
Georgia	No	Ohio	Yes
Hawaii	No	Oklahoma	No
Idaho	No	Oregon	No
Illinois	Yes	Pennsylvania	No
Indiana	No	Rhode Island	No
Iowa	---	South Carolina	Yes
Kansas	No(4)	South Dakota	No
Kentucky	No(5)	Tennessee	Yes
Louisiana	No	Texas	Yes
Maine	No	Utah	Yes(11)
Maryland	Yes(6)	Vermont	Yes
Massachusetts	Yes(7)	Virginia	No(1)
Michigan	No	Washington	No
Minnesota	No	West Virginia	No
Mississippi	No	Wisconsin	No
Missouri	Yes(8)	Wyoming	No(1)

Source: 1997 State Employee Benefits Survey, Workplace Economics, Inc., Washington, D.C.

**Notes to Exhibit 4  
Leave Sharing Programs in Other States**

- (1) Alaska, Arizona, California, Colorado, New Mexico, New York, Virginia, Wyoming: Annual leave may be donated by individual employees, subject to specific limitations, to individual employees to use for sick leave.
- (2) Connecticut: For some employee groups.
- (3) Florida: Each agency has discretion to establish sick leave pools.
- (4) Kansas: Accrued sick leave in excess of 480 hours and accrued annual leave in excess of 80 hours may be donated, subject to specific limitations, to individual employees to use for sick leave.
- (5) Kentucky: Sick leave sharing program available, but no sick leave pool.
- (6) Maryland: Leave bank option available to employees that have donated one day of leave.
- (7) Massachusetts: Sick leave pool is donated annual, personal and sick leave.
- (8) Missouri: Employees donate their vacation time in increments of one hour to "Shareleave Pool" to provide additional paid leave for employees who have experienced a personal illness or injury which is life threatening.
- (9) Montana: Employees must donate eight hours to join sick leave pool. Leave may be voluntarily donated by individual employees to employees who have not joined the bank.
- (10) North Dakota: Accrued sick leave may be donated by individual employees, subject to specific limitations, to individual employees to use for sick leave.
- (11) Utah: Sick leave pools established at agency discretion, but only annual leave may be donated.

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# SCOPE AND OBJECTIVES

## Appendix 1

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### *SCOPE*

The scope of this study shall include a comparison of Fiscal Year 1996 to Fiscal Year 1997 of the use, costs, and impact of the Leave Sharing Program.

### *OBJECTIVES*

To determine the impact of the expansion of the Leave Sharing Program on:

- The extent of use of the program.
- The costs incurred by agencies and the state for the program.
- The degree the program mitigates the need for state employees to go on unpaid leave status due to extraordinary illness or injury.