

# Sick Leave Payout Study Session



## What will be covered

- Sick Leave Payout Defined
- Who is eligible?
- Historical Practice
- How did we get here?
- Policy Interpretation & History
- Legal or not?
- Employee or not?
- Solutions & Board Direction

# Sick Leave Payout Defined

- ▶ **Personnel Rule 6101** – Upon retirement from the California Public Employees Retirement System (CalPERS), Social Security, or upon the death of an employee, an employee (or employee's estate) may be eligible to receive a cash payout of their remaining sick leave balance pursuant to the applicable MOU.
- ▶ **All MOU's Payout Language**
- ▶ - ***Employees with less than 15 continuous years of County service*** – sick leave balance is reduced by 176 hours and then the employee is entitled to 50% of the value of the remaining, if any.
- ▶ - ***Employees with 15 or more continuous years of County service*** – employee is entitled to 50% of the value of their sick leave balance.
- ▶ **Contract Language** – Same language/benefit as MOU's

# Who is Eligible?

- ▶ Joint Council
- ▶ LEMA
- ▶ POA
- ▶ Management
- ▶ Contracts
- ▶ **Elected Officials**

# Historical Practice for Department Heads

## **Department Heads (Elected)**

- ▶ When a “Regular Employee” transitioned to become an Elected Official:
  1. Sick leave balance was frozen.
  2. Once the Elected Official Retired, sick leave pay-out occurred.

## **Department Heads (Appointed)**

- ▶ Similar to Elected Officials, appointed contract employees no longer accrue sick leave. Instead, they earn PTO and retain their sick leave balance earned from previous MOU to be paid out upon retirement.

# How Did We Get Here?

- ▶ Letters were sent to current Elected Officials & Recently-Retired Elected Officials:
  - ▶ Letter stated sick leave balances should have been abolished when transitioning from “Regular Employee” to Elected Official.
  - ▶ Current Elected Officials would not receive sick leave payout when they retire.
    - ▶ Sick Leave Balances would be wiped out.
  - ▶ Retired Elected Officials were asked to pay back sick leave payouts.
  - ▶ The letter also stated sick leave has “no cash value”
    - ▶ MOU and contract language gives it value

# Policy Interpretation & History

- ▶ All notified Elected Officials that were paid out their sick leave upon retirement were members of a bargaining unit prior to taking office.
  - ▶ There is no language in the MOU's discussing what happens to a "regular employee's" leave banks should they transition to an Elected Official position. Moreover, there is no language that indicates this leave should be abolished upon transitioning to an Elected Official.
- ▶ There is evidence as far back as **1978** (46 years) that Elected Officials maintained their sick leave balances and were paid out upon retirement.
  - ▶ There is long standing practice of freezing leave banks and paying them out at retirement as stated in the MOU's in which the leave was originally earned.
  - ▶ Thus, absent readily available written policy or MOU language specific to Elected Officials, there was an apparent policy interpretation that determined the sick leave pay out entitlement continued when transitioning to an Elected Official position.

# Legal or not?

## Is it legal to have a sick leave pay-out policy for elected officials?

- As stated in the letters that went to Elected Officials “California state law does not require employers to cash out sick leave upon an employee’s separation, unless there is a provision within the employer’s policies which specifically allows it.”
  - It does not say that it “CAN’T” be paid out.

## Is it legal for elected officials to have sick leave balances?

- Elected Officials do not accrue leave...there is no need, but the County is not legally prohibited to maintain a balance for later payout.

## Is it legal to continue sick leave pay-outs for elected officials?

- **46 years** of sick leave payout history for Elected Officials.
  - Policy has been interpreted to include Elected Officials.
  - Long-standing practice of that policy interpretation.



# Employee or Not?



## ***According to Personnel Rules...***

### ***Health Insurance – Personnel Rule § 5101***

Applicable to – “all regular employees”

### ***Pension Plan – Personnel Rule §5301***

Applicable to “all regular employees” and JC employees that work 20 hours of more

### ***Deferred Compensation – Personnel Rule §5303***

Applicable to – “all employees”, excluding Extra Help

# Employee or Not?

## ***Who is a “Regular Employee”?***

- “Regular employee” has been interpreted to include Elected Officials and Contract employees since both types of employees receive Health Insurance, participate in the Pension Plan, and receive Deferred Compensation.
- Furthermore, Personnel Rule §6101 for Sick Leave, includes all “regular employees”, except Elected Officials and Contract employees...this appears that both types of employees would “generally” be considered “regular employees”, since language is necessary to exclude the them.

# Possible Solutions & Board Direction

## Leave “as is”

- Leave letters in place requesting payback and abolishing sick leave balance for current Elected Officials
  - Risk of not getting current Assistants and qualified employees to fill vacancies for outgoing Elected Officials
  - Potential lawsuits

# Possible Solutions & Board Direction

## ***Rescind letters & revise Personnel Rules and/or County Code to reflect historical interpretation and past practice***

- Modify definition of “regular employees” in Personnel Rules to include elected officials; or:
  - Modify Personnel Rules related to benefits (health insurance, pension, and deferred comp) to include Elected Officials; or
  - Modify Personnel Rule related to Sick Leave – could be modified to be applicable to Elected Officials & Contract employees for only the section related to “Sick Leave Upon Retirement”
- Modify Elected Officials Salary Ordinance to include all benefits (health insurance, pension, and deferred comp) and sick leave payouts.
- Modify MOU’s to preserve sick leave balances earned and pay-out at retirement, even if employee later becomes elected official.

# Questions

