October 10, 2025

REF No. AG 25-0508

Mr. Edward M. Birn
Director
Certifying Officers
Department of Administration
ITC Building Suite 224
590 S Marine Corps Drive
Tamuning, Guam 96913

Subject: 5 GCA § 30107 AG Legal Opinion; GovGuam Leave Utilization

Hafa Adai Director Birn & Certifying Officers:

The Office of the Attorney General reviewed a number of provisions of Public Law No. 38-60. Section 32 addresses "**Excess Annual Leave for Nurses, Employees Working in Nursing Services, and Peace Officers**." We noted that the Department of Administration on August 8, 2007 issued DOA Circular No. 07-036 entitled "Accumulation of Annual Leave and Use of Excess Annual Leave." The circular was issued by then Director Lourdes M. Perez. At issue, is her advice to,

> ". . . Human Resources and Payroll Personnel . . . that the remainder of any excess annual leave beyond 420 hours (100 hours credited to sick leave) shall be carried over at the end of a fiscal year and shall not be lost, unless an employee retires or resigns prior to using any excess annual leave. The provision of § 4109(c) will apply."

This Office finds Dept. of Admin. Circular No. 07-036 in ERROR, and issues this legal opinion directing all Government officials <u>not</u> to follow it, but consider this legal opinion as the opinion for the Government of Guam pursuant to 5 GCA § 30107.

Separately, the matter of the applicability of 4 GCA § 4109.2(b)(3) to certain classes of Government of Guam ("GovGuam") employees is being called into question. Under this section of law, where a GovGuam employee uses annual leave donated from another GovGuam employee, the donated annual leave time is not counted as service time for purposes of retirement benefits. The concerns being raised focus on whether adequate notice of this limitation is being provided to the users of donated annual leave so that they may make informed choices as to all of their various leave options.

Question Presented

How many hours of annual leave may an employee of the Government of Guam carry over into a new fiscal year?

Summary

Generally, a GovGuam employee may carry over a maximum of 320 hours of annual leave into a new fiscal year. Said another way, GovGuam employees SHALL NOT begin a new fiscal year with an annual leave balance greater than 320 hours, with limited exceptions.

Discussion

Guam's law on annual leave is substantially set forth at 4 GCA § 4109. It provides as follows.

a) Employees with less than 5 years of service accrue 4 hours of annual leave each two-week pay period;

b) Employees with more than 5 years but less than 15 years of service accrue 6 hours of annual leave per two-week pay period; and,

c) Employees with more than 15 years of service accrue 8 hours of annual leave per two-week pay period.

4 GCA § 4109(a).

The rules of statutory construction direct interpretation of laws with regard to their terms and legislative intent. "*The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which the language is used, and the broader context of the statute as a whole*." *Sablan v. Guam Land Use Commission*, 2011 Guam 29 ¶ 14, *citing Tumon Partners LLC v. Shin*, 2008

Guam 15 ¶ 8 (internal citations and quotation marks omitted). "*Notwithstanding the deference due the plain-meaning of statutory language, . . . such language need not be followed where the result would lead to absurd or impractical consequences, untenable distinctions, or unreasonable results*." *See Bowlby v. Nelson,* Civ. No. 83–0096A, 1985 WL 56583, at *2 (D. Guam App. Div. Sept. 5, 1985). Absurdity may result when the legislature drafts a statute using language that is broader and more sweeping than that which the legislature intended. *Id.* In such cases, the court can interpret the broad language in a limited fashion in an effort to effectuate legislative intent. *Id.* Moreover, in determining legislative intent, a statute should be read as a whole, and therefore, courts should construe each section in conjunction with other sections. *See Kelly v. Robinson,* 479 U.S. 36, 43, 107 S.Ct. 353, 357–58, 93 L.Ed.2d 216 (1986), *overruled by statute on other grounds in* 217 B.R. 1008 (N.D.Ill.1998). As stated by the Supreme Court of the United States, "*words and people are known by their companions*." *Gutierrez v. Ada,* 528 U.S. 250, 255, 120 S.Ct. 740, 744, 145 L.Ed.2d 747 (2000). Accordingly, "[I]*n expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy*." *Kelly,* 479 U.S. at 43, 107 S.Ct. at 357–58 (citation omitted).

When it comes to carrying accrued annual leave into another fiscal year, Guam law requires that at the end of each fiscal year, any employee with an annual leave balance of more than 320 hours will have the first 100 hours of that excess annual leave transferred to their sick leave account. 4 GCA § 4109(c)(1). This subsection says employees may accumulate "**up to [320] hours**" of annual leave. *Id*. The limiting language as to the amount of permissible carryover annual leave plus the mechanism for transferring as much as 100 hours of excess annual leave into sick leave means that, at the end of any fiscal year, any accrued annual leave in excess of 420 hours is lost. *With limited exceptions, no GovGuam employee begins a fiscal year with an annual leave balance in excess of 320 hours*.

The Guam Legislature provided three (3) exceptions to the rule limiting carryover annual leave. The first is for the unique group of GovGuam employees who had *already* accumulated more than 320 hours of annual leave prior to February 28, 2003. They are permitted to carry over the excess hours they accumulated as of that date from year to year regardless of the total number of excess hours. 4 GCA § 4109(c)(2). These excess hours are available to this class of employees for purposes of leave, **but are not compensable at the time of retirement or termination of service**. *Id.* The Guam Legislature made clear that the maximum number of annual leave hours to be paid out at retirement or termination of any employee is 320. *Id.*

The second exception is for registered nurses employed by Guam Memorial Hospital Authority or the Department of Public Health and Social Services who accrued in excess of 580 hours of annual leave. By law, once such a nurse exceeds 580 hours their employer shall attempt to provide the individual with an opportunity to use enough leave to bring them under the 580-hour mark. 4 GCA § 4109.1. If the employer is unable to provide enough leave opportunities to bring the nurse's annual leave balance to under the 580-hour mark within the allotted time, then the employer is to provide cash compensation to the nurse for all annual leave hours in excess of 580. *Id*.

The third exception is for "employees working in nursing services at Guam Memorial Hospital Authority, nurses 1 employed at the Department of Public Health and Social Services and Peace Officers.[1]" Public Law No. 38-60, Ch. 12 Sec. 32 (2025). This third group of employees may carry over more than 320 hours from fiscal year to fiscal year. However, when this third group reaches retirement or seeks to move on to an employer other than GovGuam the process set forth in 4 GCA § 4109(c)(1) applies. That means the first 100 hours in excess of 320 hours is converted into sick leave, 320 hours of annual leave is paid out and anything over 420 hours of annual leave is lost. The Legislature has again emphasized that it does not intend to provide financial compensation to employees who leave government service with more than 320 hours of annual leave. *Id*.

Government Officials, especially certifying officers, who violate the provisions of Government of Guam leave policy are subject to criminal prosecution as set forth under Article 1, Chapter 14 of the Guam Code Annotated. Note also other management employees criminal liability, under criminal acts constituting official misconduct. *See* 9 GCA § 49.90 (Official Misconduct; defined and punished). Civil liability likewise exists under other statutes.

The GovGuam workforce includes a significant percentage of employees with more than 15 years of service who are, therefore, accumulating a great deal of annual leave. One mechanism available to employees to make use of excess annual leave is to donate it to other employees pursuant to GovGuam's Leave Sharing Program. 4 GCA § 4109.2. As part of good government, we recommend that a form be developed to ensure clear understanding by the donor & recipient of this transaction to avoid proof practical problems and misunderstandings. *Infra*.

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[1] The leave statute references the definition of Peace Officers found at 17 GCA § 5101(b). Included in this definition, among others, are all sworn officers of the Guam Police Department, Airport Police, Port Authority Police and the Customs and Quarantine Authority. All uniformed members of the Department of Corrections, Park Patrol Officers, Marshalls and Probation Officers of the Judiciary. Also included are fire fighters engaged in code enforcement and arson investigations as well as investigators designated by the Attorney General of Guam.

We recommend that the recipient of donated leave execute a document that memorializes their understanding of the following prior to utilizing the donated leave:

A. The recipient's own sick, compensatory and annual leave accounts will be exhausted before donated leave is available.

B. Donated annual leave will be paid at the lower of either the recipient's or donor's hourly rate.

C. The recipient is not in the chain of command with the donor.

D. The recipient has not provided any consideration of any kind to any annual leave donor.

E. The recipient understands that donated annual leave hours do not count towards their own time in service requirements for retirement nor does it create additional annual leave (no leave on leave).

F. Donated annual leave may <u>not</u> be cashed out.

G. Continued use of donated annual leave for medical reasons requires periodic certification from the donor's physician that the donor is unable to return to work.

We recommend that a donor of annual leave execute a document that memorializes their understanding of the following concurrent with their donation:

A. The donation is voluntary.

B. The donor is not in the chain of command of recipient.

C. The donor has not received any consideration for their donation.

D. By donating annual leave hours, the donor is foregoing the opportunity to convert leave hours into cash compensation at the time the donor terminates employment or retires from GovGuam.

These understandings are all set forth within 4 GCA § 4109.2. The Department of Administration should develop a donated leave form for all agencies. Each agency that has adopted its own personnel rules should adopt and utilize a similar form. Donors and recipients should each execute such a form and the form should be maintained in each employee's personnel file.

As a practical consideration and to provide evidentiary support, as to the value of donated leave, employees receiving or giving donated annual leave should be required to sign an acknowledgement as explained above. *Supra*. Any use of annual leave represents a financial transaction, with financial implications to all parties. When the contemplated transaction is a donation of annual leave, we recommend that the

Department of Administration and all other agencies with their own personnel rules have donors and recipients of annual leave sign a form acknowledging their various rights and responsibilities in the donation transaction. By memorializing each party's understandings in a donation transaction, the Government will avoid future litigation that might arise when one party or the other didn't fully understand what they were getting or giving up in a donated leave transaction.

Conclusion

GovGuam has been exercising a policy that violates the plain meaning of the before identified statutes, when it permits an employee to start a new fiscal year with more than the permitted amount of leave time. The Guam Legislature enacted laws to control the amount of leave an employee may carry over from one fiscal year to the next as a matter of fiscal control for Guam's taxpayers.

The maximum number of annual leave hours that may be carried over into a new fiscal year is 320, with limited exceptions as set forth above. Employees who end a fiscal year with more than 320 hours of annual leave will see the next 100 hours converted into sick leave. Any hours in excess of 420 hours of accrued annual leave will be lost. The Guam Legislature has provided modified annual leave accrual policies for three classes of employees. The most relevant of these special classes of employees are nurses and peace officers. The Legislature provided one accrual program for registered nurses in the Government's employ and another program for all other nurses. Peace officers likewise are entitled to accrue and carry over annual leave hours in excess of 320 so long as they use them before employment termination or retirement. In all cases the Guam Legislature has made it clear that the ***maximum number of annual leave hours for which an employee may receive cash compensation is 320***.

Sincerely,

Douglas B. Moylan
Attorney General of Guam

Attachments (2)
cc: Legislative Secretary
Compiler of Laws
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AUG 8 2007

Lourdes M. Perez
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DEPARTMENT OF ADMINISTRATION ORGANIZATIONAL CIRCULAR NO.: 07-036

To: All Non-Autonomous Agency and Department Heads

From: Director, Department of Administration

Subject: Accumulation of Annual Leave and Use of Excess Annual Leave

Buenas yan Hafa Adai! This circular is to provide guidance to Human Resources and Payroll Personnel in the application of annual leave. In 2004 and 2005, Public Laws 27-106 and 28-68 were enacted affecting the accrual of annual leave. Please note the following changes:

Public Law 28-68, Chapter IV Miscellaneous Provisions, Section 112, §4109(a) Title 4 GCA is hereby amended by amending Item (2) and adding a new Item (3), to read:

(1) One-half day (4 hours) for each full bi-weekly pay period in the case of employees with less than five (5) years of service;
(2) Three-fourths day (6 hours) for each full bi-weekly pay period in the case of employees with five (5) years of service but less than fifteen (15) years of service;
(3) One (1) day (8 hours) for each full bi-weekly pay period in the case of employees with fifteen (15) years or more service.

Public Law 27-106, Chapter VI Miscellaneous Provisions, Section 19, §4109(c) of Title 4 GCA is hereby amended to read:

(c) Employees entitled to annual leave hereunder may accumulate up to three hundred twenty (320) hours. Any annual leave earned by eligible employees in excess of three hundred twenty (320) hours shall be credited to such employee's accumulated sick leave, provided, that *no more than* one hundred (100) hours shall be credited to sick leave at the end of each fiscal year. The determination of accumulation of annual leave, and crediting of excess hours to sick leave, shall be done at the end of each fiscal year.

Notwithstanding the provision of this Section, employees who have accumulated annual leave in excess of three hundred twenty (320) hours as of February 28, 2003, may carry over their excess and shall use the excess amount leave, *prior* to retirement or termination from service. At

the time of retirement or termination of service, that portion permitted to be credited to sick leave shall be credited and the remainder of the excess leave, if any, shall be lost. Nothing herein shall allow lump sum compensation or retirement credit for annual leave in excess of three hundred twenty (320) hours.

Human Resources & Payroll Personnel are advised that the remainder of any excess annual leave beyond 420 hours (100 hours credited to sick leave) shall be carried over at the end of a fiscal year and shall not be lost, unless an employee retires or resigns prior to using any excess annual leave. The provision of §4109(c) will apply.

We highly recommend that managers/supervisors develop annual leave plans for employees with excess annual leave to ensure employees' leave are not forfeited. These plans will assist management in preventing the accumulation of annual leave in excess of 320 hours and the possible loss of any excess annual leave upon separation or retirement from government of Guam service. Please be guided accordingly.

Should you have any questions, please contact our Human Resources Division at 475-1249 or 475-1288.
Si Yu'os Ma'ase.

Lourdes M Perez
LOURDES M. PEREZ