

LEGAL AND REGULATORY NOTES, AUGUST 2012

Vermont Supreme Court: Paid Leave Does Not Accrue During Unpaid Leave

In a case with far reaching implications on municipal employment practices, the Vermont Supreme Court upheld a Washington County Superior Court ruling that an employee does not continue accruing paid leave during a period of unpaid maternity leave under the Vermont Parental and Family Leave Act (VPFLA). The case, *Vermont Human Rights Commission and Ursula Stanley v. State of Vermont, Agency of Transportation*, 2012 VT 45 is archived at <http://info.libraries.vermont.gov/supct/current/op2011-081.html>.

Employee leave for family and medical purposes is governed by both state (VPFLA) and federal (Family Medical Leave Act) law. The parental leave portion of the VPFLA applies to employees that employ 10 or more employees for an average of at least 30 hours per week during a year. An eligible employee is entitled to take up to 12 weeks of unpaid leave during the employee's pregnancy and following the birth of the employee's child, or within one year following the adoption of a child 16 years or younger. Parental leave entitlement applies equally to male and female employees.

Ursula Stanley went on unpaid parental leave while she was an employee of the State Agency of Transportation. When the State informed her that she would not accrue any paid vacation or sick time during this period, she filed a complaint with the Vermont Human Rights Commission (HRC). The HRC is a five-member state commission with jurisdiction to investigate and enforce complaints over allegations of unlawful discrimination in housing, state employment, and places of public accommodation. After determining there were reasonable grounds to find the VPFLA was violated, the HRC joined Ms. Stanley in filing suit against the State, claiming it owed her 29 hours of both annual vacation and sick time that had accrued during her leave. The State argued that paid time off and sick leave were not employee benefits and therefore did not continue when employees took unpaid leave.

The question before the Court was whether paid leave is a mandated benefit under the VPFLA. To answer this question, the Court had to figure out what the legislature meant by its use of the term "benefits." When interpreting statutory language, the Court's goal is to effectuate legislative intent by looking at its plain, ordinary meaning. Sometimes, however, the Court is faced with an undefined term. In those instances the Court will turn to the canons of construction for guidance. These are customary rules used in interpreting legal instruments to aid in its analysis. Here the Court turned to the canon of *noscitur a sociis* ("it is known by its associates"). As the Court describes, "we 'seek the meaning from the context, and by the light of what precedes or follows.'" Essentially, the Court sought to derive meaning and understanding of the word "benefits" from the words around it and the overall context in which it is used. For purposes of resolving this case, the Court focused on this passage of Vermont law:

*The employer shall continue employment **benefits** for the duration of the leave at the level and under the conditions coverage would be provided if the employee continued in employment continuously for the duration of the leave. The employer may require that the employee contribute to the cost of the **benefits** during the leave at the existing rate of employee contribution. (21 V.S.A. § 472(c)) [Emphasis added.]*

The Court found that the legislature's use of the word "coverage" in the first sentence and how it related to the work word "benefits" was revealing because that term is typically used in relation to inclusion in an insurance policy, not to paid leave. In examining the second sentence, he Court found that "benefits" in that context clearly referred to those requiring some sort of employee cost-sharing formula, such as a health plan, because employees do not "contribute" a "cost" to their paid leave. Finally, the Court expanded the scope of its analysis to other sections of 21 V.S.A. § 472 to further support its conclusion that the VPFLA does not require the accrual of paid time off to employees on unpaid parental leave. In particular, it looked to Section 472(a), which entitles employees to "take unpaid leave," and Section 472(b), which allows employees to "use accrued sick leave or vacation leave or any other accrued paid leave" during parental leave. Employers are required to provide unpaid parental leave only. If, as the plaintiffs argue, employees were entitled to the accrual of paid leave during this time, then the leave could no longer be classified as "unpaid." This reasoning, the Court determined, would lead to "a result not just inconsistent with, but contrary to, the employer's VPFLA obligation to provide unpaid parental leave only." If the legislature had intended otherwise, it would have entitled employees to paid leave.

Lest anyone get confused and start reading too much into this opinion by applying the Court's underlying analysis to his or her own personnel policy, which may provide more in the way of benefits than the minimal safeguards provided by Vermont law, allow me to clarify. All this case is saying is that employees do not accumulate paid vacation and sick time while on unpaid parental leave under the VPFLA. That's it. Remember, both federal and state laws set the floor, not the ceiling, for eligible employees' benefits. When there is a conflict between the two, the law that provides the most benefits to the employee will prevail. A town's personnel policy may always be more generous than either.

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