

DATE: February 24, 2004

PERSL 1377

TO: Agency Heads
HR Directors/Designees



FROM: Paul Larson, Deputy Commissioner
Labor Relations and Total Compensation Division

PHONE: (651) 296-8274

RE: Salary Savings Leave

The purpose of this memo is to provide clarification regarding salary savings leaves. This memo will supersede any previous correspondence sent out by DOER in prior years regarding voluntary unpaid leaves, including memos dated December 21, 1982, February 26, 1991, May 8, 1991, August 8, 1985 and April 24, 2003.

Questions have recently been raised about the number of hours allowed for salary savings leaves and the appropriateness of such leaves when another type of leave of absence is applicable.

The concern regarding the number of hours allowed for salary savings leaves stems from the fact that there is a session law regarding "Voluntary Unpaid Leaves of Absence" that provides for up to 1040 hours to be used for such leaves during the current biennium. 2003 session law, Chapter 1, Article 1, Section 128 and 130. It is DOER's opinion that limit in this session law does not restrict state agencies' ability to allow salary savings leaves or voluntary reduction in hours of a longer duration when the applicable collective bargaining agreement/plan allows such leaves.

However, agencies must keep in mind that allowing employees to take salary savings leave beyond the session law limit could affect the employee's retirement service credit, just as it would with any other unpaid leave of absence. It is our understanding from the Minnesota State Retirement System that this would only be the case if the employee reduced his/her hours below 80 hours in a month, after reaching the session law limit, but it may be wise for you or any affected employee to consult with MSRS regarding the impact salary savings leave may have on the employees pension calculation. Additionally, we want to caution agencies to abide

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by the criteria contained in the bargaining agreements and to avoid any appearance of abuse, such as allowing an employee to have so many unpaid hours that the person appears to be a part-time employee with full-time benefits. Agencies are advised to keep track of the number of salary savings leave hours used by each employee. We understand that you can obtain a report of hours by going to the IA warehouse and reporting off the labor distribution table.

One other major issue of concern involves the appropriateness of salary savings leaves when another type of leave is applicable. Some collective bargaining agreements allow a voluntary reduction in hours only if other unpaid leaves of absence are not applicable to the situation, and we are advising agencies to apply this principle in all cases.

A list of commonly asked questions and answers regarding salary savings leaves are included with this memorandum and will be posted on DOER's webpage. Additional questions should be directed to your Labor Relations Representative.

cc: DOER Labor Relations
Exclusive Representatives

Questions and Answers Regarding Salary Savings Leaves

Department of Employee Relations

February 2004

1. What conditions must an agency meet to offer salary savings leave?

Salary savings leave may be used by an Appointing Authority if the following conditions are met:

- a. existing or projected budget problems exist;
- b. salary savings leave would help alleviate the projected budget problem and/or help mitigate layoffs;
- c. staffing needs can continue to be met; and,
- d. other unpaid leaves are not applicable to the situation.

2. What if an employee's contract/plan has no SSL provision?

Such employees could take a voluntary unpaid leave, as specified in 2003 session law, Chapter 1, Article 1, Sections 128 and 130.

3. Must an Appointing Authority grant an employee's request for salary savings leave?

No, the leave is completely discretionary on the part of the Appointing Authority. The Appointing Authority must abide by the criteria contained in the applicable bargaining agreement or compensation plan. For those bargaining agreements which do not provide for salary savings leaves of absence, an agency may grant leave consistent with the law which includes a provision that leave is discretionary. In addition, care must be taken to avoid inappropriate applications of this leave. The purpose of this leave is not to allow employees to choose salary savings leave over more appropriate leaves in order to receive greater benefits.

4. What if the agency receives more requests for leave than it can approve?

The AFSCME collective bargaining agreement provides specific language regarding scheduling conflicts. For other bargaining agreements and plans, conflicts in scheduling salary savings leaves are resolved in the same manner as conflicts for other unpaid leaves.

5. What if the agency receives competing requests for use of vacation, compensatory time and salary savings leave?

Consult the applicable collective bargaining agreement. Some of the agreements have provisions regarding the priority of vacation requests over other types of leave requests. Most are silent with respect to conflict. In those cases where no language exists, the Appointing Authority may decide.

In addition, session law states that the appointing authority shall attempt to grant requests based on the business needs for their organization.

6. Is previously scheduled time off affected?

No, previously authorized vacation, comp time, sick leave and other paid and unpaid leaves of absence are unaffected. However, an agency can approve an employee's request to voluntarily substitute salary savings leave for previously

approved vacation or comp time use. An Appointing Authority should not approve a request to substitute salary savings leave for an unpaid leave of absence. The intent of salary savings leave is to produce savings. Replacing unpaid leave with salary savings leave actually results in higher costs because employees receive greater benefits.

7. Should salary savings leave be considered as paid time when calculating the threshold of hours when an employee is eligible for overtime?

No, some agreements and plans allow the calculation of paid time off in determining when an employee is eligible for overtime. The provisions are specific in listing what type of paid time is considered. Salary savings leave is not listed.

8. Can an employee on another type of unpaid leave use salary savings leaves for a few hours during a payroll period to maintain insurance?

No, as discussed above, the intent is to generate savings and doing this would increase costs.

9. Can an employee use a salary savings leave to avoid or delay a seasonal or permanent layoff?

No.

10. Will time on salary savings leaves count toward seniority and length of service requirements for changes in vacation accrual rates?

Yes.

11. Will time on salary savings leave change vacation accruals?

Yes, for unclassified employees only. Unclassified employees who use salary savings leave must be allowed to accrue a vacation leave balance up to at least 300 hours through June 30, 2005. The 300 hour limit should be treated the same as their contract or plan language reads now under the vacation accumulation section (except for the accumulation amount).

Unclassified employees who use voluntary unpaid leave of absence during the biennium ending June 30, 2005, must be allowed to accrue up to 300 hours of vacation. Vacation leave may be accumulated to any amount provided that once during each fiscal year of the biennium, the employee's balance must be reduced to 300 hours or less. If this is not accomplished on or before the last day of each fiscal year in the biennium, the employee's balance shall be reduced to 300 hours at the end of the each fiscal year of the biennium.

The employee's vacation accumulation maximum returns to the amount listed in the appropriate contract or plan after June 30, 2005.

Upon separation the liquidation of hours remains as stated in appropriate contracts or plans.

12. May an employee use salary savings leave on a day before or a day after a holiday without losing the holiday pay?

Yes, employees are eligible for paid holidays as if the employees had actually worked the hours of salary savings leave. If a holiday occurs in a pay period when all other hours are taken as a salary savings leave, payment for the holiday is included on the first paycheck after the employee returns to work.

13. Will use of salary savings leave affect the completion of a probationary period?

This depends on the bargaining agreement/plan. Time on salary savings leave is treated the same as any other unpaid leave during a probationary period. It may also be affected by the scheduling of leave. For example, some contracts deduct absences of more than 10 consecutive days. If the employee used leave continuously for three weeks, the probationary end date would change. If the employee instead used the same amount of leave but scheduled several hours per week, the probationary period is not affected. Refer to the applicable bargaining agreement/plan.

14. What impact will a salary savings leave have on progression or anniversary date increases?

It does not affect the employee's anniversary date or eligibility for a step progression increase.

15. Does a salary savings leave change the employee's insurance eligibility or employer contribution?

No, the employee's insurance eligibility and the employer contribution continue as if the employee actually worked the leave hours.

16. What happens to employees' insurance and other deductions during a payroll period in which they receive little or no pay, but are on a salary savings leave?

The payroll system takes deductions from net pay in a specified order. If the net pay is not sufficient to cover a particular deduction, the payroll system will not take a partial deduction for any purpose. In the case of insurance premium deductions, deductions will be taken in the following pay period. SEGIP will query the system when payroll is run and if a Salary Savings ERN code is found and no insurance deductions are taken, the employee and the agency will be charged retroactively for coverage.

17. The State Retirement System bases the amount of a retiree's annuity on the average earnings over the highest five successive years of employment. Will a voluntary unpaid leave affect the employee's pension?

It may, if the leave occurs during the employee's "high 5." As with any other unpaid leave of absence, the employee's earnings are reduced which results in a reduction in the annuity unless the employee makes the regular employee

contribution and the employer contributes what would have been made if the employee were actively working. Session law requires the employer to make the contribution if the employee makes the contribution. The employer may, at its discretion, pay the employee contribution as well. Employees should consult the retirement counselors in their retirement agency if they have further questions.

18. Will salary savings leave impact an employee's retirement service credit?

Not unless the employee uses salary savings leave beyond the number of hours referred to in the session law. In such cases, the employee should contact their retirement system for further information.

18. Is an employee on salary savings leave eligible to collect unemployment compensation?

No.

19. Once an employee has started a salary savings leave, may the employee be recalled to work early?

Yes, if the bargaining agreement or compensation plan allows the Appointing Authority to cancel discretionary leaves of absence.

20. May an employee who has begun a salary savings leave terminate the leave before the planned leave end date?

Yes, if the Appointing Authority approves.

21. Where can I find the language on salary savings leaves in the collective bargaining agreements and compensation plans?

The references are listed below:

- _ AFSCME - Article 15, Section 8
- _ Commissioner's Plan - Chapter 6
- _ Law Enforcement - No language
- _ Managerial Plan - Chapter 6
- _ MAPE - Article 29
- _ MGEC - Article 21
- _ MMA - Article 25
- _ MNA - Article 13, Section 4
- _ MnSCU Plans/Contracts - No language
- _ SRSEA - Article 33