

Opinion No. 58-46

March 5, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Robert F. Pyatt, Assistant Attorney General

TO: Mr. Leon H. Harms, Secretary-Manager, New Mexico State Fair, Albuquerque, New Mexico

QUESTION

QUESTIONS

1. Clarification regarding vacation time of State Fair employees.
2. Clarification regarding sick leave for State Fair employees.

CONCLUSIONS

1. Generally, 1 1/4 days for each complete calendar month of service.
2. Generally, 1 day for each calendar month of service.

OPINION

ANALYSIS

The answers to your inquiries are contained in State of New Mexico Personnel Regulations, effective January 1, 1956. The Personnel Director has assured us that these are the latest regulations on these two matters.

The regulation pertaining to your first question provides:

"Each permanent or probationary employee shall be **entitled to annual leave with full pay computed on the basis of one and one-fourth days for each complete calendar month of service**, except that annual leave shall not accrue to any employee while on a leave-without-pay status. Such annual leave shall be cumulative for not more than 30 days. Accumulated annual leave shall be granted upon written application of the employee, except in the case of an emergency, at such time or times as will least interfere with the efficient operation and shall be approved by the appointing authority or an authorized person prior to the date the leave begins. Employees absent without official leave may be subject to deductions from annual leave or salary, suspension without pay, or dismissal. **Saturdays, Sundays and holidays occurring within a period of annual leave shall not be charged as annual leave.** The minimum charge for annual leave shall be one-fourth day." (Emphasis ours)

It is our opinion that under the foregoing, an employee would be entitled to 15 days' paid vacation after a year's service. In other words, three weeks (or longer if a holiday occurs during the vacation), since Saturdays, Sundays or holidays during the vacation are not charged against annual leave. You have stated your policy in the past was to grant a week's vacation after a year's service and two weeks' vacation after two years of service. We do not believe this to be correct, as explained above.

Turning to your second question, the applicable regulation provides:

"Sick leave with pay shall be accumulated by each salaried employee at the rate of one day for each calendar month of service. Sick leave may be approved to cover absences necessitated by personal sickness, or injury, by required eye and dental care, by serious illness or death in the immediate family not to exceed three days, but not for slight illness or indisposition not incapacitating the employee for the performance of his regular duties. Notification of absence on account of sickness shall be given as soon as possible on the first day of absence. If such notification is not made in accordance with this policy such absence may be charged to annual leave or leave without pay. An employee shall be required to furnish a certificate from an attending doctor of medicine for all consecutive days of sick leave beyond three days. When circumstances seem to warrant such action, the appointing authority may cause to be made an investigation of any case of absence on account of sickness or for any other reason."

Sick leave will not be permitted to accumulate beyond 60 days."

The amount of sick leave depends upon prior service at the rate of one day for each calendar month of service, not to exceed sixty days. Depending upon accumulated service of the employee in question, he would be entitled to sick leave with pay for his illness of five and one-half days in October of 1957, and for his illness necessitating an 18 1/2 hours' absence from work in February, 1958, if the conditions of the above regulation are otherwise met.

You have asked us to formulate a general policy on these matters. This we cannot do, as policy making is not an authorized function of this office.