

*In the Matter of Kerri Armstrong and Laura Martin, Borough of Edgewater*  
CSC Docket Nos. 2012-2684 and 2012-2661  
**(Civil Service Commission, decided November 7, 2012)**

Kerri Armstrong, a part-time Violations Clerk, and Laura Martin, a part-time Municipal Director of Welfare with the Borough of Edgewater (Edgewater) appeal Edgewater's denial of their request for retroactive compensation for sick and vacation leave.

By way of background, Armstrong was provisionally appointed as a part-time Violations Clerk with Edgewater effective March 7, 2006 and was permanently appointed effective September 18, 2006. Martin was appointed as a part-time unclassified Municipal Director of Welfare with Edgewater effective September 17, 2002. In October 2011, Armstrong contacted the appointing authority and advised it that she was informed by a representative of this agency's Division of Classification and Personnel Management (CPM) that permanent, part-time employees are entitled to be credited with a proportionate amount of sick and vacation leave. In response, by letter dated December 14, 2011, the appointing authority advised the appellants that effective January 1, 2012, it had authorized part-time employees to earn proportionate sick and vacation time for hours worked. The appellants questioned the appointing authority if they would receive retroactive sick and vacation time, based on the effective dates of their appointments with Edgewater. In response, the appointing advised the appellants that it would not be providing retroactive sick and vacation leave and that these benefits were effective January 1, 2012.

On appeal, the appellants state that they should receive retroactive compensation for the sick and vacation time they would have accumulated had Edgewater complied with Civil Service law and rules regarding leave entitlement for part-time employees. The appellants maintain that since they were never properly informed of their entitlement to sick and vacation leave as part-time employees, they are entitled to retroactive compensation for such time they would have accrued since their initial appointments.

In response, the appointing authority presents that it will grant the appellants all proportionate sick time dating back to the commencement of their employment with Edgewater. Additionally, it states that it will grant the appellants proportionate vacation time to which they were entitled for the years of 2011 and 2012. As a further accommodation, the appointing indicated that it is willing to extend the time period in which they may use their 2011 vacation leave time until December 31, 2013. However, after 2013, it will apply the limitation set forth in *N.J.S.A. 11A:6-3(e)*, which requires that all vacation time must be taken by the end of the following year.

In reply, Armstrong questions why Edgewater is permitted to choose to follow *N.J.S.A.* 11A:6-3(e) by not permitting her to be credited with her accumulated vacation time when it simply ignored *N.J.S.A.* 11A:6-7, which requires proportionate leave time for part-time employees. In this regard, she states that a former part-time, and now full-time employee, Dolores Tarabola, advised her that she was not granted sick or vacation time for the five years she was a part-time employee. Further, Armstrong states that other part-time employees were furnished pay increases and she has not received one since 2009. Thus, she asserts that the issue of her not being credited with sick or vacation leave since the beginning of her employment was not just an oversight, but a means to save money at her expense. Armstrong maintains that the treatment of part-time employees by Edgewater differs drastically and that it should be required to comply with Civil Service law and rules.

Martin presents that she never had the opportunity to accumulate vacation leave since she began her employment with Edgewater, and thus, has no way of knowing if she would have taken all the allotted time to which she was entitled or if it would have to be taken in a succeeding year. Further, she asserts that the Edgewater personnel manual indicates that new employees during their first year of employment, and up through their fifth year of employment, are entitled to 10 working days of vacation; that at the 5<sup>th</sup> year of employment, 15 working days of vacation; and at the 10<sup>th</sup> year of employment, 20 working days of vacation. Martin notes that Edgewater's policy is different than what is required by *N.J.S.A.* 11A:6-3. For example, she states that she was advised that she would receive only 10 pro-rated vacation days, but has served with Edgewater for 10 years. Additionally, Martin contends that in the past, Edgewater has provided other part-time employees vacation and personal days. As such, she requests to be credited with vacation and personal days she would have earned. In support of her appeal, Martin provides a breakdown of the number of sick, vacation, and personal days for which she maintains she is entitled compensation.

### CONCLUSION

*N.J.S.A.* 11A:6-3 and *N.J.A.C.* 4A:6-1.2(b) provide that after the first year of employment, full-time local employees shall be entitled to vacation leave no less than as follows:

1. From the beginning of the first full calendar year of employment and up to 10 years of continuous service, 12 working days;
2. After 10 years of service and up to 20 years of continuous service, 15 working days; and
3. After 20 years of continuous service, 20 working days.

*N.J.S.A.* 11A:6-3(e) states that vacation days not taken in a given year shall accumulate and be granted during the next succeeding year only.

*N.J.S.A.* 11A:6-5 states that full-time State and political subdivision employees shall receive a sick leave credit of no less than one working day for each completed month of service during the remainder of the first calendar year of service and 15 working days in every year thereafter. Unused sick leave shall accumulate without limit.

*N.J.S.A.* 11A:6-7 provides that part-time employees shall receive proportionate vacation, sick and administrative leave. Further, *N.J.A.C.* 4A:1-1.3 provides that part-time employee means an employee whose regular hours of duty are less than the regular and normal workweek for that job title or agency.

Initially, since Martin is serving in a title that is allocated to the unclassified service, she is not entitled to either vacation or sick leave pursuant to Civil Service law and rule. Specifically, *N.J.S.A.* 11A:3-5 provides that “the political subdivision unclassified service shall not be subject to the provisions of this title unless otherwise specified.” The provisions of Civil Service law and rule governing the allotment and use of sick and vacation leave are not specifically extended to unclassified employees. *See In the Matter of Joyce Ann Herbert* (MSB, decided April 6, 2005). Thus, as an unclassified employee, Martin is not **entitled** to any sick or vacation leave. However, a local appointing authority is within its discretion to grant unclassified employees sick or vacation leave.

Edgewater has advised the appellants that, in compliance with *N.J.S.A.* 11A:6-5, it will grant them all proportionate accumulated sick time dating back to the commencement of their employment. As noted above, as an unclassified employee, Martin is not entitled to sick leave and thus, Edgewater is under no obligation to grant her such leave. However, as a career service employee, Armstrong is entitled to sick leave.

With respect to Armstrong’s vacation leave, because Civil Service law and rules establish the minimum vacation entitlement of local employees, the Commission has jurisdiction over that matter. As noted by Armstrong and confirmed by the December 14, 2011 letters sent to the appellants, it appears that Edgewater only provides its full-time employees 10 vacation days until their 5<sup>th</sup> year of employment. This is inconsistent with the statutory minimums established by *N.J.S.A.* 11A:6-3. Accordingly, Armstrong, as well as all full-time and part-time career service employees of Edgewater, are entitled to at least the minimum amount of vacation leave mandated by *N.J.S.A.* 11A:6-3 for their first five years of employment.

Armstrong began employment with Edgewater on March 7, 2006. Therefore, she currently has between one and 10 years of continuous service. In accordance with *N.J.S.A.* 11A:6-3(b), Armstrong would have been entitled to 12 pro-rated vacation days through her fifth year of employment, after which, Edgewater's policy is not in violation of *N.J.S.A.* 11A:6-3. After January 1, 2011, per Edgewater's policy, she would have been entitled to 15 pro-rated vacation days. With respect to Martin, as explained earlier, since she serves in an unclassified title, she is not entitled to any vacation leave under Civil Service law and rules but may be afforded such leave at Edgewater's discretion.

The Commission emphasizes that *N.J.S.A.* 11A:6-3(e) specifically states that vacation days not taken in a given year shall accumulate and be granted during the next succeeding year only. Although the appellants argue that Edgewater should have known that it was required to provide part-time employees with proportionate vacation leave, and that other part-time employees may have received such leave, the accumulation of vacation leave is statutory. Therefore, the Commission can offer no remedy for Armstrong prior to 2011. *See In the Matter of Dolly Keys* (MSB, decided October 20, 2004) (Individual not granted vacation days in prior years cannot be granted additional vacation leave on a current basis). However, the appointing authority is directed, if it has not already done so, to credit any other part-time employee in the career service with the appropriate amount of pro-rated sick and vacation leave. Additionally, while it is understandable that the appointing authority is willing to extend the time period for which Armstrong can use her accrued 2011 vacation time to December 31, 2013, the Commission cannot permit this given the statutory prohibitions of *N.J.S.A.* 11A:6-3(e). As such, if Armstrong does not utilize her accrued 2011 vacation leave by December 31, 2012, it will not carry over to 2013. Finally, there is no statutory provision that requires the provision of personal leave for political subdivision employees. Thus, since the matter of personal leave is strictly under the purview of local appointing authorities, the Commission is unable to review any concerns involving personal leave.

### **ORDER**

Therefore, it is ordered that that the appeal of Kerri Armstrong be granted in part and the appeal of Laura Martin be denied. Edgewater is to provide Kerri Armstrong, as well as all of its career service employees, with vacation leave entitlements consistent with the minimum provisions of *N.J.A.C.* 11A:6-3.