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**RULE PROPOSALS**

**COMMUNITY AFFAIRS  
DIVISION OF LOCAL GOVERNMENT SERVICES  
LOCAL FINANCE BOARD**

49 N.J.R. 2622(a)

**Proposed Amendment: N.J.A.C. 5:30-15.4**

[Click here to view Interested Persons Statement](#)

**Authorization for Compensated Absence Payments**

Authorized By: Local Finance Board, Timothy J. Cunningham, Chair.

Authority: N.J.S.A. 52:27BB-10 and 52:27BB-28.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2017-190.

Please submit written comments on the proposal by October 20, 2017, via e-mail to [dlgs@dca.nj.gov](mailto:dlgs@dca.nj.gov) or by regular mail to:

Patricia Parkin McNamara, Executive Secretary  
Local Finance Board  
Department of Community Affairs  
PO Box 803  
Trenton, NJ 08625-0803

For comments submitted via e-mail, please name the subject heading " NJAC 5:30-15.4: Authorization for Compensated Absence Payments."

The agency proposal follows:

### **Summary**

The Local Finance Board is proposing to amend N.J.A.C. 5:30-15.4 to craft reasonable and fiscally sustainable default limitations on local government payouts for accumulated absence liability, often colloquially known as "sick leave payouts." N.J.A.C. 5:30-15.4 permits municipalities, counties, and local government entities subject to the Local Authorities Fiscal Control Law, N.J.S.A. 40A:5A-1 et seq., to make payment to employees for the value of accumulated compensable absences that are authorized by collective negotiations (that is, labor) agreement, local ordinance, enabling resolution, and/or an individual employment agreement where payouts for accumulated absences are authorized by local ordinance or enabling resolution. The proposed amendment to N.J.A.C. 5:30-15.4(b) would require that, unless a labor agreement, local ordinance, enabling resolution, and/or an individual employment agreement authorized by local ordinance or enabling resolution expressly states otherwise, any absence time accumulated starting the effective date of this rule (or starting after expiration of an agreement in effect on the effective date of this rule) shall be compensable at no more than the base salary of the employee during the time the absence was accumulated. For example, if an employee accumulated 10 sick days in Year 1 during which his or her base salary was \$ 75,000, and maintained those days into Year 10 when the employee's base salary was \$ 125,000, the value of those 10 sick days would be calculated based on the lower \$ 75,000 amount unless expressly stated otherwise. Chief financial officers would be responsible for ensuring documentation of the employee's base salary at the time in which the absence time was accumulated.

Further, unless a lawful agreement or local policy expressly states otherwise, absence time accumulated after the effective date of this rule (or after expiration of an agreement in effect on the effective date of this amendment) that is utilized during employment shall be utilized in the order of highest dollar value to lowest dollar value. To use another example, if an employee earned a base salary of \$ 50,000 in Year 1, \$ 60,000 in Year 2 and accumulated 10 sick leave days in each of those two years, the employee would utilize the Year 2 sick days first given their higher dollar value. If a local unit places a cap on the total dollar amount of compensable absence, compensable absence shall be exhausted before non-compensable absence is utilized. Non-compensable absence time would begin to be utilized only once all compensable absence time has been utilized.

Generally, N.J.A.C. 5:30-15.4 requires the chief financial officer to certify to the local unit's governing body that sufficient documentation of the amount of the accumulated absence has been provided. Sufficient documentation shall include a copy of, or reference to, the agreement authorizing compensation, documentation of the amount of accumulated absence time, and the total value of the compensation due based on the agreement and accumulated absence time. However, even in the absence of sufficient documentation, subsection (c) provides two scenarios through which local units can nevertheless pay employees for compensable accumulated absences. The first scenario involves the employee providing the governing body with a certification that includes an annual itemization of each type of accumulated absence, records maintained by the employee or employer to substantiate the absence, and an explanation as to the reasons that sufficient documentation is unavailable; where appropriate, the governing body is expected to supplement the employee's records if possible.

Alternatively, paragraph (c)2 allows the local unit to make payment even if the employee is unable to produce all of the necessary documentation referenced above. The governing body may, by resolution, approve payment for compensated absence based upon the employee's ability to provide partial documentation, and upon finding that there is good and reasonable cause to warrant payment in the absence of full documentation. Such good and reasonable cause may be in connection with the loss of relevant information due to technological changes in recordkeeping; the loss of data caused by fire, natural disaster and the like; the loss of dated information; or other reasonable explanation by the employee as to why sufficient documentation is not available. The Local Finance Board is proposing to limit the application of the "partial documentation" option set forth in paragraph (c)2 to absence time accumulated before the effective date of this amendment or before the expiration of an agreement in effect as of the effective date of this amendment. The Board finds that continuing to allow compensation for accumulated absences that are supported by

incomplete documentation creates an undue risk of waste, fraud, and abuse. Merely requiring a governing body finding of "good and reasonable cause" in the face of a "reasonable explanation by the employee as to the unavailability of sufficient documentation" provides insufficient protection to taxpayers. Employees should be required to bear the burden of creating and maintaining thorough backup documentation of accumulated compensable absence time, so in the event that the local unit does not possess sufficient supporting documentation, the employee [page=2623] can utilize the procedure in paragraph (c)1 to receive the full payment for which they may be entitled.

As the Board has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

### **Social Impact**

The proposed amendments offer taxpayers additional transparency and accountability with respect to a local unit's liability to its employees for accumulated compensable absence time. For compensable absence time accumulated starting the effective date of this amendment, or starting upon the expiration of a contract in effect as of the effective date of this amendment, the proposed amendment to subsection (b) would help control costs by linking compensable time to no more than the employee's base salary when the absence time was first accumulated, rather than all accumulated time being compensated at the employee's base salary upon separation. Compensating accumulated time above said rate would require specific language to be placed in a local ordinance, enabling resolution, collective negotiated (that is, labor) agreement, or an individual employment agreement. Further, requiring complete sufficient documentation before a local unit can pay an employee for compensable absence time accumulated starting the effective date of this amendment, or upon the expiration of a contract in effect as of the effective date of this amendment, will create a much stronger barrier to improper and unwarranted payments.

### **Economic Impact**

The Board anticipates that the proposed amendments will permit local units to achieve, and taxpayers to experience, monetary savings with respect to compensated absence payments to employees. Requiring a local policy or agreement to affirmatively go above the threshold of the employee's base salary when the absence time was accumulated could result in reducing the amount paid for a separating employee's compensable absence time. Any increases beyond such an amount would have to be negotiated into, rather than out of, a labor agreement or individual employment agreement to the extent that the agreement is silent as to the level of compensation for accumulated absence time. Creating a default rule that the highest dollar of compensable absence time is deemed utilized first by an employee during their employment would likely result in a further reduction in payments for accumulated absence. Further, strengthening documentation requirements for payouts on compensable absence time would better ensure that payout levels are not improperly inflated.

### **Federal Standards Statement**

No Federal standards analysis is required because the proposed amendments are not being proposed in order to implement, comply with, or participate in any program established under Federal law or under a State law that incorporates or refers to Federal law, standards, or requirements.

### **Jobs Impact**

The Board does not anticipate that any jobs will be created or lost as a result of the proposed amendments, as they pertain to local unit payouts for compensable employee absence time.

### **Agriculture Industry Impact**

The Board does not anticipate that the proposed amendments would have an impact on the agriculture industry, as

they pertain to local unit payouts for compensable employee absence time.

### **Regulatory Flexibility Statement**

The proposed amendments would affect any local unit that pays separating employees for accumulated absence time. The proposed amendments would not impose any reporting, recordkeeping, or compliance requirements on "small businesses," as defined by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

### **Housing Affordability Impact Analysis**

There is an extreme unlikelihood that the proposed amendments would evoke a change in the average costs associated with housing, nor would they have any impact on the affordability of housing, as they pertain to local unit payouts for compensable employee absence time.

### **Smart Growth Development Impact Analysis**

There is an extreme unlikelihood that the proposed amendments would evoke a change in the housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan, as they pertain to local unit payouts for compensable employee absence time.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

## SUBCHAPTER 15. ACCUMULATED ABSENCE MANAGEMENT AND FINANCING

### 5:30-15.4 Authorization for compensated absence payments

(a) (No change.)

(b) Payment for compensated absence shall be made upon certification by the chief financial officer of the local unit that sufficient documentation of the amount of the accumulated absence has been provided, and that funds are available to pay for the amount of compensated absence due. Sufficient documentation shall include:

1.-2. (No change.)

3. The total value of the compensation due based on the agreement and accumulated absence time.

**i. Unless expressly stated otherwise by a duly negotiated and approved labor agreement, local ordinance, enabling resolution, and/or individual employment agreement where payouts for accumulated absences are authorized by local ordinance or enabling resolution:**

**(1) Payment for compensated absence based on absence time accumulated starting (the effective date of this amendment), or starting upon the expiration of an agreement in effect as of (the effective date of this amendment), shall be calculated utilizing no more than the employee's base salary at the time in which the absence was accumulated. The chief financial officer shall ensure documentation of the employee's base salary at the time in which the absence time was accumulated; and**

**(2) Absence time accumulated starting (the effective date of this amendment), or upon the expiration of an agreement in effect on (the effective date of this amendment), that is utilized during employment shall be utilized in the order of highest dollar value to lowest dollar value. If a local unit places a cap on the total dollar amount of compensable absence, compensable absence shall be exhausted before non-compensable absence is utilized.**

**ii. Nothing in this paragraph shall be interpreted to bar policies and/or agreement terms that place greater restrictions on an employee's ability to be compensated for accumulated absence time.**

(c) In the absence of sufficient documentation, payment for compensated absence may be awarded by resolution of the governing body, subject to the following:

1. (No change.)

2. If the employee is unable to produce all of the documentation required in (c)1 above, the governing body may, by resolution, approve payment for compensated absence **accumulated up until (the effective date of this amendment), or prior to the expiration of an agreement in effect as of (the effective date of this amendment)**, based upon the employee's ability to provide partial documentation, and upon finding that there is good and reasonable cause to warrant payment in the absence of full documentation. Such good and reasonable cause may be in connection with the loss of relevant information due to technological changes in recordkeeping; the loss of data caused by fire, natural disaster and the like; the loss of dated information; or other reasonable explanation by the employee as to why sufficient documentation is not available. **No partial documentation shall be accepted to approve payment for compensated absence accumulated starting (the effective date of this amendment), or after the expiration of an agreement in effect as of (the effective date of this amendment).**

3.-4. (No change.)