

A Review of Sick and Vacation Leave Policies in New Jersey Municipalities

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I. Introduction

In 2007, and again in 2010, in an effort to reduce property taxes, the Legislature enacted laws that placed limits on when and how much local government employees may be paid for unused sick leave. The Legislature also limited how long and how much vacation leave employees may accumulate. The laws apply to New Jersey's 565 municipalities, 600 school districts, and 21 counties, as well as hundreds of other local entities like water, sewer, and parking authorities.

The 2007 law applies to senior employees, such as municipal managers and department heads. The 2010 law extends the limitations imposed by the 2007 law to any employee hired after May 21, 2010, regardless of title or position. Senior employees who had already accrued leave worth more than \$15,000 when the 2007 law was enacted may retain it, but other employees covered by the two laws may not receive more than \$15,000 for accrued sick leave and may receive that payment only at retirement – not annually and not when they switch jobs. The laws also prohibit employees from carrying over more than one year's worth of vacation leave.

Notably, the laws do not apply to most employees hired prior to May 21, 2010. As a result, even after enactment of the 2007 and 2010 laws, many municipalities may still make substantial *lawful* payments to those employees of potentially hundreds of thousands of dollars per employee. Those costly ongoing payments show what the 2007 and 2010 laws are intended to prevent over time.

In consideration of the exorbitant costs taxpayers are paying, as well as indications in the news and prior reports that these supplemental payments to employees continue to be a significant cost for local governments, the Office of the State Comptroller (OSC) initiated a review of 60 municipalities to determine whether they have implemented the cost-saving measures required by the 2007 and 2010 laws.

OSC's review found that, to a startling degree, the laws have been ignored, sidestepped, and undermined in *almost all of the municipalities reviewed*. OSC determined that 57 of the 60 municipalities failed to fully comply with the laws, leading to both actual waste and abuse of public funds, as well as substantial future liabilities for these municipalities. A majority of municipalities have already wasted public funds on payments that violate the 2007 and 2010 laws. In addition, almost all municipalities have, through their policies and contracts, agreed to make payments in the future that will violate the 2007 and 2010 laws. And, as a result of their non-compliance, many municipalities will have to expend public resources to undo the costly damage they have done.

The findings identified in this report lead OSC to the conclusion that municipal officials are either unaware of the 2007 and 2010 reforms or are consciously disregarding them. Two laws that were intended to result in widespread systemic reform have largely failed to result in meaningful change in the 60 municipalities OSC surveyed. Moreover, the sheer number of problems among the 60 municipalities OSC reviewed suggests many other local governments may be violating the 2007 and 2010 laws.

OSC makes recommendations to the municipalities reviewed here and to all local governments to better ensure compliance with the 2007 and 2010 laws and limit costly future liabilities. OSC further recommends that the Legislature amend and supplement the 2007 and 2010 laws to more effectively prevent excessive supplemental payments to local government employees as a way to reduce the burden of property taxes.

II. Background

A. Recommendations for Legislative Reforms to Employee Leave Benefits

In 2005-2006, a task force created by executive order, an investigatory body, and a joint legislative committee all independently gathered facts, reviewed relevant policies and made recommendations regarding the rising costs of employee benefits paid by local and state governments. The three entities issued similar recommendations regarding changes to sick and vacation leave policies, all with the goal of reducing how much taxpayers pay for public employee benefits.

The Benefits Review Task Force (the “Task Force”), created by an executive order issued by Governor Richard Codey in 2005, conducted a comprehensive review of employee benefits for public employees.¹ In its final report issued in December 2005, the Task Force recommended, among other things, that policies be instituted to end “sick day manipulation,” and that “[t]he State’s cap on sick day payouts of \$15,000 must be implemented at all government levels. This applies to the lifetime amount of unused sick days.”²

Similarly, in 2006, the State Commission of Investigation (SCI), an independent fact-finding agency charged with investigating waste, fraud, and abuse in government, issued a report focused on compensation and benefits received by public school administrators.³ Among other concerns, the report found “inflated and questionable compensation” resulting from payments for unused leave by districts annually and at retirement. It further found that even when caps on such payments were in effect, administrators circumvented them with other contract provisions, making them meaningless. SCI issued recommendations to standardize sick and vacation leave policies so that school districts could not provide more generous benefits than are provided by law for state employees.

In 2006, the Legislature formed the Joint Legislative Committee on Public Employee Benefits Reform to identify proposals that would address abuses of the pension systems and control the costs of providing public employee retirement, healthcare, and other benefits.⁴ The committee found that “[s]ick leave is not part of a general compensation plan” and that “[m]any school districts and municipal governments throughout the State grant and allow employees to accumulate significant amounts of sick, vacation, and other forms of paid leave and receive cash compensation for unused leave annually during employment and retirement.”⁵

To address its concerns, the committee recommended legislation be enacted to limit sick leave compensation and the carryover of vacation time in a way that would standardize supplemental compensation for accumulated sick leave for all public employees at different levels of government in the state. It would also allow local governments to control such benefit costs, which, in turn, would reduce property taxes.⁶

These three reports collectively suggest that there was a developing consensus within the executive and legislative branches of government in 2005-2006 that the then-existing policies were wasteful and abusive and that substantial and meaningful change was needed to protect New Jersey residents.

B. 2007 Reforms to Municipal Employee Leave Benefits

In 2007, as part of its response to the work of the Joint Committee, the Legislature considered a bill that would “implement[] certain of the December 1, 2006 recommendations of the Joint Legislative Committee on Public Employee Benefits Reform.”⁷ The bill was enacted on June 8, 2007, and as described below, addressed both sick and vacation leave reforms.⁸

1. 2007 Sick Leave Reforms

The 2007 law included three statutes that mandated changes to sick leave policies for senior employees of civil service municipalities, *N.J.S.A. 11A:6-19.1*; non-civil service municipalities, *N.J.S.A. 40A:9-10.2*; and school districts, *N.J.S.A. 18A:30-3.5*.⁹ Those statutes limit payments for accumulated unused sick leave to \$15,000, or the amount accrued as of the effective date of the law if more than \$15,000.

They also prohibit officers and employees covered by the law (which this report refers to as “senior employees”) from receiving annual sick leave payments, stating that such supplemental compensation shall be payable only at the time of retirement. If, as of the effective date of the law, a senior employee had accumulated sick leave worth more than \$15,000, the employee was allowed to retain that greater amount, but was prohibited from accumulating more than that amount. The three statutes specifically apply to senior employees but exempt those who were hired in the “normal course of employment” and “approved in a general or routine manner.”¹⁰ The 2007 law also specifically exempts “a person who holds a professional license or certificate to perform and is performing as a certified health officer, tax assessor, tax collector, municipal planner, chief financial officer, registered municipal clerk, construction code official, licensed uniform subcode inspector, qualified purchasing agent, or certified public works manager.”¹¹

The intent of the Legislature in enacting these reforms was to align local sick leave policy for senior employees with state employee sick leave policy and to reduce the expenses that taxpayers must pay for employee benefits.¹²

2. 2007 Vacation Leave Reforms

The Legislature also adopted two statutes imposing limitations on the accrual of vacation leave for non-civil service municipalities, *N.J.S.A. 40A:9-10.3*, and school districts, *N.J.S.A. 18A:30-9*. For civil service municipalities, an existing law already imposed the same limitations on the accrual of vacation leave as the 2007 vacation leave reforms.¹³ The Legislature sought to align vacation policies for senior employees with policies for state employees.

The 2007 vacation leave reforms provide that a senior employee of a local government who does not take vacation “in a given year because of business demands shall be granted that accrued leave only during the next succeeding year,” except when there has been a gubernatorially-declared emergency.¹⁴ Thus, at the most, a senior employee covered by the 2007 law is usually permitted to accrue two years’ worth of vacation.

The statutes further provide that a person who, as of or after the effective date of the law, is or becomes a senior employee “and has previously accrued vacation leave shall be eligible and shall be permitted to retain and use that accrued vacation leave.”

3. Interpretation of the 2007 Sick and Vacation Leave Reforms by the Local Finance Board

The Local Finance Board is an entity within the Division of Local Government Services within the Department of Community Affairs that is responsible for establishing rules and regulations related to the fiscal operations, reporting, and fiscal condition of all New Jersey municipalities, counties, local authorities, and special districts. The Local Finance Board was required to adopt guidelines or policies for local government units regarding the application of the 2007 law. The board issued Local Finance Notices (LFN) 2007-28¹⁵ and 2008-10.¹⁶

LFN 2007-28 states that “[t]he value of accrued sick leave as of July 1, 2007 or upon expiration of an employment contract in effect on July 1, 2007 that has a value in excess of \$15,000 can be received upon retirement, but the amount cannot increase.” The LFN notes that it does not apply to contracts then in effect but would apply “upon expiration of an employment contract in effect on July 1, 2007.” The LFN states that “[a]mendments to or extensions of any contract in effect on July 1, 2007 would likely be viewed as subverting the intention and letter of the law.” It also clarifies that the limitations apply to all covered employees, regardless of their pension system affiliation.

LFN 2008-10 states that the positions covered by the 2007 law generally include “positions that involve executive decision-making or are senior management of the organization whose hiring or appointment requires approval of a governing body.” It identifies the following positions as being covered by the 2007 law:

- The statutory-based, untenured chief administrative officer of the organization, such as: Business Administrator; County Administrator; or Municipal or County Manager; or Municipal or County Administrator appointed under the authority of a local ordinance; or similar positions.
- Positions with principal operating responsibility of a government function(s), commonly called “department heads” or similar title, that are filled by action of the governing body and who directly report to an elected official(s) or chief administrative officer.
- Legal counsel to the organization regardless of title, i.e. municipal attorney, counsel, director of law, corporation counsel, solicitor, county counsel, etc., (*N.J.S.A.* 40A:9-139, and 40A:9-43 or similar).
- Municipal or County Engineer (*N.J.S.A.* 40A:9-140, and 40A:9-43 or similar).
- Municipal Prosecutor (*N.J.S.A.* 2B:25-1 et seq.).

LFN 2007-28 also addresses the accrual of vacation leave, restating the statutory requirements that all vacation leave of covered employees must be used in the year it was earned, unless it was not used due to “business demands.” This leave can then be carried forward to the subsequent year. When this form of carry-forward leave is available, for accounting purposes, the old leave is used first. Vacation in a year that could not be taken because of a declared state emergency may accrue at the discretion of the employer until a plan is developed to decide if the leave is used or the employee is compensated for it.

4. Application of the 2007 Sick Leave Reforms

The principal elements of the 2007 law and LFNs 2007-28 and 2008-10 that municipalities must consider in order to evaluate whether their sick leave policies are valid and whether payments may be lawfully made to senior employees include:

- The process by which the employee received the position and to whom the employee reports – if the governing body held a vote to approve the employee and the employee reports to an elected official or the chief administrative officer, the employee may be subject to the 2007 law;
- What level of responsibility and decision-making authority the employee has – if the employee has “principal operating responsibility” involving “government function(s),” the employee may be subject to the 2007 law; and
- Whether the employee holds a professional license or certificate to perform and is performing one of ten specified roles that are specifically exempted from the terms of the statutes – if the employee holds a license or certificate and one of the designated positions, the employee is not subject to the 2007 law.

C. 2010 Reforms to Municipal Employee Leave Benefits

1. 2010 Sick Leave Reforms

In 2010, the Legislature enacted legislation to further implement the Joint Committee’s recommendations regarding sick and vacation leave and to extend the reforms from the 2007 law to a larger universe of public employees. As with the 2007 sick leave reforms, under the 2010 law, which went into effect on May 21, 2010, employees who are covered may be provided with one and only one form of sick leave payment: a payment of up to \$15,000 at retirement from a pension system. Annual payments to employees covered by the law are not permitted.

N.J.S.A. 11A:6-19.2, which applies to local governments that have elected to be in the civil service system, provides that those municipalities “shall not pay supplemental compensation to any officer or employee for accumulated unused sick leave in an amount in excess of \$15,000.” It further provides that any such supplemental compensation shall be payable only at the time of retirement, based on the leave credited on the date of retirement. This provision applies only to covered employees who commence their employment on or after the effective date of May 21, 2010. The provision does not impact the terms in any collective negotiations agreement (CNA) with a relevant provision in force on that effective date. Similar provisions were adopted

for municipalities, counties, and other non-state entities not involved in the civil service system, *N.J.S.A. 40A:9-10.4*, and school boards, *N.J.S.A. 18A:30-3.6*.¹⁷

As with the 2007 law, the intent of the Legislature in enacting the 2010 sick leave reforms was to align local sick leave policy for persons hired after May 21, 2010 with state sick leave policy. The statement accompanying the law noted that the law would implement the Joint Committee's recommendation regarding sick leave, stating that it would "bring supplemental compensation for accumulated unused sick leave in line with the current law and practice for State employees, thus standardizing this benefit for public employees serving at different levels of government in the State."¹⁸

2. 2010 Vacation Leave Reforms

The 2010 law also extends the one-year cap on carryover of vacation leave to all employees of non-civil service municipalities and school districts.¹⁹ Existing law, which remains in effect, subjects civil service municipalities to the same requirements for the accrual of vacation leave, except that it applies regardless of when the employee was hired.²⁰ The Legislature noted that the 2010 law would standardize vacation leave benefits with the current law and practice for state employees.²¹

3. Application of the 2010 Sick Leave Reforms

Unlike the 2007 law, no guidance was issued by the Local Finance Board interpreting the 2010 law for municipalities.²²

The principal elements of *N.J.S.A. 11A:6-19.2* and *N.J.S.A. 40A:9-10.4* that municipalities must consider in order to evaluate whether their sick leave policies are valid and whether payments may be lawfully made include:

- When the employee was hired – if after May 21, 2010, as discussed in Section 4 below, the 2010 statutes apply;
- When the employee can receive the sick leave payment – if the 2010 statutes apply, payments for accrued sick leave may not be made annually or upon resignation, but only at retirement; and
- How much can be paid to the employee – the two statutes limit the payment to \$15,000.

When applied appropriately, these factors lead to the Legislature's goal of cost savings being achieved for employees hired after May 21, 2010 because the municipalities' financial exposure for unused sick leave for any employee hired in the past 12 years is a maximum of \$15,000. Also, a municipality that complies with the law will pay nothing to an employee whose employment ends at any time other than retirement from a pension system.

4. Effect of Existing Employment Contracts on the Effective Date of Benefit Reforms

The sick leave statutes state that they “shall not be construed to affect the terms in any collective negotiations agreement with a relevant provision in force on that effective date.” The Public Employment Relations Commission (PERC), which addresses labor relations issues involving public employers, public employees, and unions, including the scope of negotiations, interpreted this provision in In re City of Atlantic City, P.E.R.C. NO. 2015-63, 41 N.J.P.E.R. ¶137, 2015 N.J. PERC LEXIS 23 (2015). PERC held that the 2010 law’s provisions on sick leave apply to all employees hired after May 21, 2010, and the proposed contract provision for allowance of terminal leave for employees hired prior to December 31, 2012 was preempted by statute. In 2017, that position was reversed by the Superior Court, Appellate Division in an unpublished, non-precedential decision.²³ The court found that “because the CNA in force on May 21, 2010 did not expire until December 31, 2012, the exclusion of employees who commenced service during the interim period . . . was sanctioned by *N.J.S.A. 11A:6-19.2*.”

Nevertheless, PERC has continued to interpret the statute to reflect the May 21, 2010 effective date, and, in several cases after 2017, has found that the statute preempts the terms of the contract for employees hired after May 21, 2010.²⁴

For the purposes of this review, OSC requested that municipalities provide information concerning sick leave policies and contracts that were in effect from 2017 through 2021.²⁵ OSC’s findings are based on an effective date for the 2010 law of May 21, 2010.

5. Interaction between the 2007 and 2010 laws

The 2010 sick leave reforms extend the same general sick leave policies included in the 2007 law to all other employees of municipalities and other political subdivisions who were hired after the May 21, 2010 effective date of the law. Municipalities must, however, evaluate whether employees are subject to either or both the 2007 and 2010 laws because the Legislature intended for *both* statutes to be implemented. The 2010 law did not supplant the 2007 law, although the two laws may overlap.²⁶

Both laws must be considered before allowing sick leave payments because an individual employee’s eligibility for sick leave payments may be different under the two statutes and could change if the employee’s position changes. For example, an employee who commenced service prior to May 21, 2010 and is therefore exempt from the 2010 law and lawfully receiving annual sick leave payments, would become subject to the 2007 law and be barred from receiving those payments if he or she was promoted to a covered senior position.

The 2007 and 2010 laws affect employees’ rights and expectations. In order to ensure compliance with the laws *and* ensure that employees do not improperly rely on policies or contract provisions that are unlawful, municipalities should reflect the terms of the 2007 and 2010 laws in their ordinances, employee handbooks, personnel policies, and contracts.

III. Methodology

OSC conducted this review pursuant to its authority under *N.J.S.A. 52:15C* and *N.J.S.A. 52:15B*. The review principally focused on policies in effect from 2017 to 2021. OSC initiated this review by selecting a judgmental sample of 60 municipalities with resident populations of greater than 10,000.

OSC sent the selected municipalities a survey that requested information related to sick and vacation leave benefits. Among other things, the survey asked municipalities to provide any relevant documentation, i.e. policies and procedures, employee handbooks, contracts.

To evaluate whether municipalities have adopted policies that comply with the 2007 and 2010 laws, OSC examined hundreds of collective bargaining agreements, individual employment contracts, employment policy handbooks, and municipal ordinances. In addition to documents received in response to the survey and otherwise requested directly from municipalities, OSC obtained documents that were available from other public sources, including the [online database](#) of employment contracts maintained by PERC.

The collective findings from this review are reported in Section IV of this report. Specific findings regarding whether each of the 60 municipalities complies with the 2007 and 2010 laws are included in Appendix A of this report.

It should be noted that OSC's review relied substantially on survey responses, as well as municipalities' policies, ordinances, and contracts. It did not involve an in-depth review of the financial records of the 60 municipalities to determine what payments were actually made. The review also did not include a full calculation of potential future financial liabilities—that is, how much in improperly accrued sick leave each municipality may be responsible for in the future if its policies are not amended. Finally, it should be noted that OSC relied on the municipalities to provide all of their individual employment contracts, but in some cases, may not have received any or all of them. As a result, there may be additional contracts that do not comply with the 2007 and 2010 laws that are not identified herein.

The municipalities referenced in this report were provided with summaries of this report, including findings specific to each municipality, for their review and comment. OSC considered the responses from the municipalities and amended the findings in this report as appropriate.

IV. Findings

A. At least 41 of 60 municipalities permit sick leave payments to senior employees that are unlawful under the 2007 law.

OSC's review revealed that 41 of the 60 municipalities, or 68 percent, have policies and contracts that permit payments to senior employees that would violate the prohibitions on sick leave payments contained in the 2007 law. OSC found that for senior employees covered by the 2007 law:

- 13 municipalities permit sick leave payments annually, instead of just at retirement;
- 22 municipalities have not imposed the \$15,000 cap on sick leave payments;
- 29 municipalities allow for accrued sick leave payments at a time other than retirement (i.e., at resignation or death); and
- 20 municipalities have policies and contracts that disregard the 2007 law in multiple ways.

The chart in Appendix B summarizes the findings involving these 41 municipalities.

OSC found that in most cases, the municipalities' contracts and policies that are inconsistent with the 2007 law are not specific to senior employees, but generally applicable to all municipal employees. Municipalities failed to distinguish between employees who are subject and are not subject to the 2007 law.

None of the municipalities reviewed by OSC designated in an ordinance or employee handbook provision which senior employees or titles are subject to the sick leave provisions of the 2007 law. Likewise, no municipality incorporated the guidance provided in LFNs 2007-28 and 2008-10 in an ordinance or employee handbook.²⁷

As a result, the limitations imposed by the 2007 law have been ignored, missed, or intentionally avoided by these municipalities, and municipalities continue to be liable for exorbitant leave payments—the cost of which has been well-documented.²⁸ The failure of the municipalities to acknowledge the 2007 law leads senior employees, who are likely already paid the most, to continue to be eligible to receive payments that the Legislature intended to ban.

This review shows widespread non-compliance with the 2007 sick leave reforms. Over two-thirds of the municipalities OSC reviewed have entered into contracts and maintained policies that allow for payments to senior employees that violate the 2007 law. As a result, municipalities are assuming unlawful and wasteful financial obligations currently and into the future. Based on these findings, it is likely that hundreds of other New Jersey municipalities have made or have committed to make unlawful payments that will cost New Jersey's taxpayers for years to come.

B. 56 of 60 municipalities have policies or contracts that undermine the cost-saving intent of the 2010 law.

OSC found that 56 municipalities—*almost all the municipalities surveyed*—failed to comply fully with, or undermined the purposes of, the 2010 law. These failures expose municipalities and taxpayers to substantial costs for decades to come.²⁹ Terminal leave provisions and other bonuses and incentives also add to municipalities' costs. On top of that, impermissible annual sick leave payments cost municipalities thousands of dollars per employee, year after year. While the 2007 and 2010 laws do not eliminate all significant payments at retirement, proper implementation of the laws would substantially reduce how much municipalities are required to pay.³⁰

The chart in Appendix C summarizes OSC's findings with regard to those 56 municipalities.

1. 36 of 60 municipalities permit payments that exceed the \$15,000 sick leave cap.

Of the 60 municipalities OSC reviewed, 36, or 60 percent, have policies that allow for sick leave payments that exceed the cap of \$15,000 for employees hired after May 21, 2010.

Eight municipalities have contracts that on their face authorize sick leave payments that exceed the \$15,000 cap. For example, some explicitly have limits of \$18,000 or \$20,000 instead of \$15,000. The higher contract limits apply even when the employees were hired after May 21, 2010. Payments made at those amounts to employees hired after that date would violate the 2010 law.

Another eleven municipalities' policies and contracts allow for payments that could potentially exceed the \$15,000 cap. In those municipalities, the limits for sick leave payments are based on a number of days and not a specific dollar amount. For example, one municipality has union contracts that allow employees to be paid for 50 percent of accrued sick leave, up to 180 or 260 days. In those cases, because the value of the sick leave payment is based on the number of days at the employee's salary level, the sick leave payment could exceed \$15,000. Again, the policies and contract provisions do not consider whether the employee was hired after May 21, 2010 and is thus subject to the \$15,000 cap.

Six municipalities have contracts that allow payments for accrued sick leave without imposing any limitation on the amount of the payment permitted. For example, one municipality's contract allows for payment of 33.3 percent of all accumulated leave, as long as the employee has ten years of service to the municipality. Another municipality allows for a payment for all accrued sick leave at the time of retirement or death at 50 percent value. Another contract does not limit payment for accrued sick leave, but only allows payments for 50 percent of the days accrued. As above, these contract provisions do not account for when the employee was hired and could easily exceed the \$15,000 limitation.

Five municipalities place a cap on sick leave payments but then provide for additional payments or allowances that enable the total compensation to exceed the cap. For example, one municipality caps payment for accrued sick leave at \$13,000, but then also allows for early leave of up to 150 days. Another municipality caps payment of accrued sick leave at \$10,000 but allows 50 percent of the remaining accrued time to be used as terminal leave.³¹ Others allow for terminal leave of two to six months, in addition to a payment at retirement for accrued sick leave. In these municipalities, the payment-plus-additional-benefits policies skirt the 2010 reforms.

Many of these policies and provisions may have been incorporated into union contracts prior to 2010. The policies remain because municipalities did not update the terms of those contracts to reflect the limitations imposed by the 2010 law. Although the 2010 law does not explicitly require that statutory terms be incorporated into union contracts, failure to do so can result in both unlawful payments to employees and increased litigation risk due to erroneous expectations.

All employees hired after May 21, 2010 are limited to a maximum \$15,000 payment at retirement only. The risk of waste and abuse throughout New Jersey is especially high in this area because municipalities may be subjecting themselves to the payment of potentially hundreds of thousands of dollars for sick leave *for a single employee* that will accrue over decades of employment.

2. 48 of 60 municipalities permit payments for sick leave at times other than retirement.

As explained above, sick leave payments may be paid “only at the time of retirement from a State-administered or locally-administered retirement system based on the leave credited on the date of retirement.” PERC enforces these provisions by strictly permitting sick leave payments to only be made at retirement for employees hired after May 21, 2010.

OSC found that 48 municipalities, or 80 percent of respondents, have policies or contracts that allow payments of accrued sick leave upon resignation, death, or termination in violation of *N.J.S.A. 11A:6-19.2* and *N.J.S.A. 40A:9-10.4*. Of the 48 municipalities, 15 explicitly allow payment for accrued sick leave at retirement or death of the employee, but not resignation. According to the 2010 laws, for employees hired after May 21, 2010, the only time municipalities may make a payment for accrued sick leave is at retirement—not resignation, not layoff, not death.

3. 14 of 60 municipalities have sick leave caps that take effect after May 21, 2010.

OSC found that fourteen municipalities have caps in place taking effect after the May 21, 2010 date³²—in one case, as much as 5 years after the effective date of the law. For example, one municipality caps accrued sick leave payments at \$7,500 for employees across multiple contracts but two contracts only apply the cap to employees hired after January 1, 2013 and another applies only to those hired after January 31, 2014. Another municipality ends annual

payments for sick leave to employees hired after January 1, 2012. Yet another municipality has a contract that caps accrued sick leave payments for employees hired after February 23, 2015.

Although these municipalities limited payments for accrued sick leave in their contracts, they did not comply with the terms of the 2010 law because they delayed in imposing the required restrictions.

4. 29 of 60 municipalities improperly allow for annual sick leave payments.

OSC found that 29 municipalities, or 48 percent of survey respondents, have contracts or ordinances that allow employees to receive improper sick leave payments annually, without regard for whether the employees were hired prior to May 21, 2010. At least twenty provided documentation that the annual payments were actually being made. After May 21, 2010, such annual payments were prohibited for all new employees.

Municipalities allow such payments without regard to the date of hire based on the following terms:

- Nine municipalities have contracts with no pre-conditions, except a maximum number of days, for the purchase of annual unused sick leave.
- Ten municipalities require that employees either have a number of years of service or a number of sick days accrued in order to receive an annual sick leave payment.
- Six municipalities allow the conversion of unused annual sick leave to another form of leave.³³
- Four municipalities offer incentives for employees who use less than a set number of sick leave days annually—either increasing the number of unused days or the value the unused days for which they can be paid.
- Three municipalities have allowed the payment of annual sick leave to help fund other benefit accounts, such as healthcare benefits. Thus, those municipalities undermine the requirements of *N.J.S.A. 11A:6-19.2* and *N.J.S.A. 40A:9-10.4*, and simultaneously may undermine *N.J.S.A. 40A:10-21.1*, which requires public employees to contribute to their health insurance.

The requirement in *N.J.S.A. 11A:6-19.2* and *N.J.S.A. 40A:9-10.4* related to sick leave payments being made at retirement and at no other time is clear. The 29 municipalities that use taxpayer funds to provide annual payments to employees hired since May 21, 2010, sometimes directly and other times through inappropriate conversions and credits, are violating the 2010 sick leave reforms and wasting taxpayer money.

5. 17 of 60 municipalities allow for terminal leave or early leave, providing unlawful supplemental compensation for retiring employees.

Seventeen municipalities, or 28 percent, provide payments before retirement for accrued sick leave through regular payroll while the employee remains employed (*i.e.* terminal leave or early leave) without regard to when the employee was hired, in violation of *N.J.S.A. 11A:6-19.2* and

N.J.S.A. 40A:9-10.4. Pursuant to the 2010 law, such payments may not be made to employees who commenced service after May 21, 2010.

One municipality's employee handbook allows terminal leave for its union and non-union employees, of up to two months or six months, depending on the employee's union status and the specific union, as well as an additional \$15,000 accrued sick leave payment. Another municipality's contracts permit one day for every five accrued days, capped at 240 days, to be used for early retirement. Yet another allows for the payment of accrued sick leave as a lump sum or as terminal leave without regard to the hire date of the employee.

In another municipality, certain union employees that resign or retire are entitled to receive a percentage of accumulated sick leave to be taken as early leave with pay (up to 150 days) and entitled to receive a percentage of the balance as a cash payment (up to \$13,000). Similarly, one municipality provides payment at retirement for 50 percent of all accumulated sick leave capped at \$10,000 but allows 50 percent of the remaining value be used a terminal leave.

Several other municipalities have contracts that provide employees with a certain number of years of service, *i.e.* 20 or 25 years, to take a specified number of days as terminal leave prior to retirement.

Such terminal leave or early retirement is prohibited by the 2010 law for employees hired after May 21, 2010. Under the 2010 law, payment for accrued leave must be made at retirement only, capped at \$15,000, and should not be paid as sick leave disguised as regular income.

6. 17 municipalities provide for bonuses and incentives to compensate employees for unused sick leave.

No court or other adjudicative entity has ruled on whether something less than a financial payment, such as receiving extra vacation days, constitutes supplemental compensation that would violate *N.J.S.A. 11A:6-19.2* and *N.J.S.A. 40A:9-10.4*. However, the Legislature made clear that one of the goals of the laws they adopted was to standardize state and local benefits so that employees of municipalities and school districts received the sick leave payments on the same terms as state employees. No policies or regulations that apply to state employees permit bonuses and incentives tied to sick leave. At the state level, sick leave must either be used or can be credited toward a single capped payment at retirement. This suggests that the Legislature did not intend to allow bonuses and incentives tied to sick leave and that such compensation is inconsistent with the reforms.

OSC identified 17 municipalities, or 28 percent of the municipalities reviewed, that use bonuses and incentive programs to compensate employees for not using sick leave. Some are minor bonuses, such as an additional personal or compensatory day, or a lottery to win a nominal amount. However, some municipalities provide more significant bonuses, providing up to \$2,000 annually, or up to an extra five vacation days based on the number of sick days taken during the year.

In the absence of definitive guidance regarding bonuses and incentives used to compensate employees for unused sick leave, OSC did not analyze whether specific bonuses and incentives paid by these municipalities were lawful. OSC, however, contends that such payments constitute “supplemental compensation” that is prohibited by law.

C. Almost one-third of the municipalities have not implemented the 2007 and 2010 vacation accrual limitations.

As noted above, the 2007 and 2010 laws limit the accrual of sick leave to senior employees and to all employees who commenced service with a municipality after May 21, 2010. For civil service municipalities, the same law governing vacation accrual has been in force since 2001.³⁴ These laws generally limit the accrual of vacation leave to the succeeding year only. Thus, at the most, an employee is usually permitted to accrue two years’ worth of vacation. Vacation earned in 2021 must be used in 2022 or it will be lost.

OSC’s review revealed that sixteen, or 27 percent of the municipalities reviewed, have policies or contracts that allow for accrual of more than one year of vacation time, contrary to the limitations of the preexisting statute, *N.J.S.A. 11A:6-3(e)*, for civil service municipalities, and contrary to the 2010 reforms for employees hired after the effective date.

Six of the sixteen municipalities include a specific number of days or hours of vacation leave that can accrue, which may be more than one year’s worth of vacation leave. For example, one municipality allows its firefighters to accrue 240 hours (approximately 30 eight-hour days) of vacation leave year to year. For an employee with less than nine years of service, that amount represents more than one year’s worth of leave. Another municipality’s contract for highway employees with 20 years of service allows for the accrual of 90 vacation days to be used for early retirement or “hardships.”

Four municipalities allow the accrual beyond the following year based on business necessity. In one, the municipality allows union members to accrue beyond one year if the officer is unable to take vacation or prevented from taking vacation that would be due as a result of municipal business or working conditions. Another allows for unlimited accrual due to workload as long as it is approved by the governing body.

Three municipalities allow conversion of vacation leave to a different form of leave that can accrue beyond one year, which circumvents the limitations on accrual of vacation leave. One municipality allows its police officers the option to include unused vacation time in their sick time bank. Similarly, another municipality’s contract allows an employee with 20 years of service to convert a total of four vacation days to sick days. And one allows its officers to convert unused vacation time to paid time off, which may be banked without limit.

Five municipalities simply allow accrual for a term of years beyond one year. For example, in one municipality’s union contract it allows the accrual of two years’ vacation leave in addition to

the current year. The same municipality has another union contract which allows accrual of vacation leave indefinitely, but limits payment upon retirement to two years of accrued vacation leave. Other municipalities reviewed allow for two or three years of accrued leave to carry over into the following year.

D. The goals of the 2007 and 2010 laws may be undermined by conversion of and payments for annual vacation leave.

The Legislature through the 2010 laws sought to standardize vacation leave accrual so that local government employees and state employees faced the same limitations. Due to the ways in which the 2010 law has been implemented and interpreted by municipalities, the standardization the Legislature sought has not been accomplished. State employees lose vacation that they do not use, while some local governments make annual payments for unused vacation leave and convert unused vacation leave to other kinds of leave that may impose financial burdens on local governments and taxpayers.

Specifically, of the sixty municipalities OSC reviewed, three municipalities allow for conversion of vacation time to other leave that can accrue for more than one year. Four others provide payment for unused vacation leave. For example, one contract allows for union employees to cash out up to five vacation days per year. Others allow for the payment of rollover vacation time under certain conditions, for example, if not used by July 1 of the following year.

PERC is the primary entity that has interpreted the vacation leave provisions of the 2010 law. PERC, following longstanding precedent regarding interpretation of laws,³⁵ has concluded that the vacation leave statutes do not bar the conversion of vacation leave into other forms of leave and do not bar financial compensation for unused vacation. PERC has held that the conversion of vacation leave to another form of leave that does not expire and may be carried indefinitely is not prohibited by *N.J.S.A. 11A:6-3(e)*, nor the 2007 or 2010 laws, and as a result, is subject to negotiation between municipalities and unions.³⁶ PERC has also interpreted Civil Service Commission regulations as permitting annual vacation leave payments, stating that the regulations “do not expressly and specifically prohibit an employer from agreeing to give an employee the option of a cash payment for unused but still available vacation days instead.”³⁷

OSC nevertheless highlights that the practice of converting unused vacation time or allowing payment for unused time may contravene the intent of the Legislature in enacting the vacation leave reforms. OSC’s recent audit of a municipality that awarded 55 days of vacation to a police chief, and then paid him annual compensation for unused vacation, shows the danger of allowing annual vacation leave payments.³⁸ Permitting these practices undermines the Legislature’s goal of standardizing vacation leave benefits at different levels of government. Clarification by the Legislature regarding these issues may be appropriate. The risks to taxpayers may be substantial because it is possible that local governments will be responsible for large supplemental payments by allowing vacation leave conversion and payments.

V. Conclusion

OSC's report and analysis make clear that municipalities are wasting, and committing to waste, public funds on sick leave payments that either currently violate or will violate the 2007 and 2010 laws. In enacting the 2007 and 2010 laws, the Legislature sought to protect taxpayers from wasteful and abusive sick leave payments that municipalities and taxpayers struggled to pay. That goal has not been achieved in the large majority of municipalities OSC reviewed.

As noted above, OSC has found 57 of 60 municipalities failed to fully comply with the 2007 and 2010 laws. This is leading or will lead to waste and abuse by the non-compliant municipalities in three principal ways.

First, a majority of the surveyed municipalities have already made payments that violate the 2007 and 2010 laws. Unlawful payments made for costly employee benefits are a waste of taxpayer money. Twenty-nine municipalities have policies that permit annual sick leave payments, and based on the limited information provided to OSC, most, if not all 29, are making these payments. Employees who receive annual sick leave payments can earn hundreds of thousands of dollars more during their career than the one-time \$15,000 payment permitted by law. Other municipalities provided documentation that showed actual unlawful payments made at resignation, termination, or departure. These short-term employees who are far from retirement, and thus should have received nothing, receive payments of thousands of dollars when they resign or are discontinued after a few years of working with a municipality.

Second, almost all the municipalities OSC reviewed have agreed to make future payments that would violate the 2007 and 2010 laws. These municipalities permit unlimited sick leave payments at retirement or have imposed caps higher than \$15,000. Payments in violation of the laws are less likely to have occurred already because insufficient time has passed under the 2010 law for employees to be eligible for retirement. Local governments that have failed to impose a cap on sick leave payments may be expected by public employees to pay hundreds of thousands of dollars as provided for by their contracts and employment policies. Sick leave that accrued in 2010 for an employee who was earning \$50,000 may be paid day-for-day in 25 years based on a \$200,000 salary. Violations of the requirements to cap payments at \$15,000 expose municipalities and taxpayers to substantial one-time payments of hundreds of thousands of dollars decades into the future.

Third, municipalities must now expend public resources undoing the damage they have done. In order to prevent future improper payments, municipalities that failed to comply with the 2007 and 2010 laws have a duty to correct their leave records to prevent unlawful payments from actually happening. They may face litigation costs if they seek to recoup improper payments and if public employees who were unlawfully promised sick leave payments seek to enforce those promises. Taxpayers assume the costs of actual unlawful payments, of efforts to prevent unlawful payments, and of any resulting litigation. These costs could have all been prevented if municipalities adopted policies that comply with the 2007 and 2010 laws.

VI. Corrective Action Plan

The 57 municipalities that are identified in Appendix A of this report as having policies that violate the 2007 or 2010 laws are hereby directed to develop a corrective action plan that details the steps the municipality has taken and will take to comply with the following recommendations. The corrective action plan should be forwarded to OSC for review by September 30, 2022. In view of the nature of the violations, in which council-approved contracts, ordinances, and policies include unlawful provisions, the plan should be approved through by a vote of the governing body.

Pursuant to *N.J.S.A. 52:15C-11(a)*, OSC is required to monitor the implementation of its recommendations and report promptly to the Governor, the President of the Senate, and the Speaker of the General Assembly if a local government refuses to cooperate in the development of a corrective or remediation plan or to comply with a plan.

VII. Recommendations

The 2007 and 2010 laws were adopted to save taxpayers from costly leave benefits payments to public workers that go far beyond their normal wages. This report has demonstrated that the Legislature's efforts at comprehensively reforming the sick leave practices of local governments have substantially failed in most of the municipalities reviewed. A majority of the municipalities reviewed comply fully with the vacation leave requirements of the 2007 and 2010 laws, but many still do not. OSC makes the following recommendations (1) to the municipalities whose policies and contracts that were found to be deficient; (2) to other local governments; and (3) to the Legislature.

A. Recommendations to municipalities with policies and contracts that violate the 2007 and 2010 laws

This report identified 57 municipalities with policies and contracts that violate the sick leave provisions of the 2007 and 2010 laws and 17 municipalities with policies and contracts that violate the vacation leave provisions of the 2007 and 2010 laws. OSC recommends those municipalities proceed as follows:

- 1. Request a legal review and amend contracts, personnel policies, and ordinances.** The mayor and governing bodies of the municipalities should engage legal counsel to review the findings in this report and the municipality's employment contracts, personnel policies, and ordinances. The attorney should propose a plan to the governing body to bring the municipality into compliance with the 2007 and 2010 laws, which should include the amendment of any non-compliant policies, contracts, or ordinances. The attorney should also evaluate whether recoupment of any improperly spent funds or adjustment to employee leave balances is warranted and appropriate. Municipalities should ensure that the attorney conducting the review was not involved in drafting or negotiating prior unlawful policies and is not eligible for payment under the policy. The scope of the attorney's review should include all employment contracts in effect from 2007 to current, including individual employment contracts, whether provided to OSC or not.
- 2. Provide transparency and prevent improper payments through an independent assessment.** The mayor and governing bodies of the 57 municipalities should engage an independent auditor or accountant to assess their sick leave and vacation accrual systems and controls. The assessment should (1) calculate improperly paid or accrued leave balances, if any; (2) recommend adjustments to leave records to eliminate improperly accrued leave time; (3) identify improper leave payments for potential recovery; and (4) recommend improvements to internal policies, procedures, and controls to prevent unlawful payments, improper accruals, and increase transparency of future payments. Any such assessment reports should be made public.
- 3. Internal controls.** Municipalities should develop an effective system of internal controls for all supplemental payments that establish the criteria and processes for awarding, reviewing, and approving the payments. Those controls should include (1) verification of hiring dates of

employees prior to issuing any annual sick leave payments; (2) determination of whether employee is subject to LFN-2007-28 and 2008-10; (3) a requirement that a Certification of Service and Final Salary form through the EPIC (Employer Pensions and Benefits Information Connection) system be completed or other appropriate documentation of retirement from locally-administered pension system, before issued prior to any payment; (4) documentation of the review of each payment by CFO or municipal administrator; and (5) a requirement that the governing body approve supplemental payments.

B. Recommendations to other local governments

Based on the clear evidence OSC collected from 60 municipalities, it is very likely that the policies of hundreds of other local governments in New Jersey are in violation of the sick and vacation leave provisions of the 2007 and 2010 laws. OSC recommends that all municipalities, school districts, authorities, commissions, counties, etc. conduct an initial assessment to determine whether their policies are unlawful. If it appears that the 2007 and 2010 laws have been violated through annual or excess payments, an attorney and an independent auditor or accountant should be engaged to report on the extent of violations and to prepare a corrective action plan, including amendment to existing leave records that were prepared under unlawful policies. The steps provided above for the municipalities whose contracts and policies have been found to be deficient should be followed by local governments that identify unlawful components in their policies and contracts or weaknesses in their internal controls.

In the event there are local governments that decline to comply with the 2007 and 2010 laws, public employees and members of the public are urged to report the non-compliance to OSC confidentially at comptrollertips@osc.nj.gov, on the hotline at 1-855-OSC-TIPS (672-8477), or through the [online form](#).

C. Recommendations to the Legislature

Based on the 60 municipalities OSC reviewed, the goals of the 2007 and 2010 laws involving especially sick leave have not been meaningfully implemented. Taxpayers have not been protected in the way intended by the Legislature. OSC therefore recommends that the Legislature consider amending and supplementing the 2007 and 2010 laws to ensure that local governments comply with them. A comprehensive review of senior employees who are exempted from the 2007 law is appropriate after 15 years of experience with statutes that allow a substantial number of senior employees hired before May 21, 2010 to receive annual and uncapped sick leave payments. The Legislature should further take into account that many employees of local governments hired before May 21, 2010 continue to receive exorbitant sick leave payments, on top of vacation and terminal leave payments, that far surpass benefits available to state employees. Also, incentives and bonuses threaten to impose substantial supplemental cost on taxpayers for sick leave. The original goal of subjecting local and state employees to the same policies at retirement has not been achieved.

OSC further recommends that the Legislature impose accountability measures. There are currently no accountability measures in place to ensure compliance, such as a requirement that

a business administrator or municipal finance officer, certify that the requirements of the 2007 and 2010 laws are enforced. The Legislature could require multiple levels of written approval within the local government, including by the municipal financial officer, municipal manager, and attorney.

Requirements involving transparency would also help protect taxpayers. The Legislature could require supplemental payment policies to be posted online and require supplemental payments to be publicly noticed for 30 days and then approved by resolution of the council, with justifications and relevant documentation made available to the public. This would avoid what amounts to substantial bonuses being awarded without any notice to the public.

The Legislature should also consider directing one or more state agencies to adopt regulations under the Administrative Procedures Act (APA), *N.J.S.A.* 52:14B-1 to 52:14B-31, that interpret and implement the 2007 and 2010 laws. The adoption of rules under the APA provides for transparency, creates a public record, and enables the public, including local governments and public employees, to participate. Rulemaking also provides an opportunity for the Legislature to review and veto how legislation is being interpreted under the Legislative Review Clause of the New Jersey Constitution.³⁹ Rules are required to be revisited at least every seven years and can take into account actual experience with the implementation of the laws.

¹ See N.J. Executive Order No. 39 (Governor Richard Codey, 2005), <https://nj.gov/infobank/circular/eoc39.htm>.

² STATE OF NEW JERSEY BENEFITS REVIEW TASK FORCE, THE REPORT OF THE BENEFITS REVIEW TASK FORCE TO ACTING GOVERNOR RICHARD J. CODEY, at 19-20 (2005), https://www.state.nj.us/benefitsreview/final_report.pdf (hereinafter the “Task Force Report”).

³ STATE OF NEW JERSEY COMMISSION OF INVESTIGATION, TAXPAYERS BEWARE WHAT YOU DON’T KNOW CAN COST YOU: AN INQUIRY INTO QUESTIONABLE AND HIDDEN COMPENSATION FOR PUBLIC SCHOOL ADMINISTRATORS (2006), <https://www.state.nj.us/sci/pdf/SCIHigherEdReport.pdf> (hereinafter the “SCI Report”).

⁴ Assemb. Con. Res. 3, 212th Leg. (N.J. 2006), https://www.njleg.state.nj.us/2006/Bills/ACR/3_I1.PDF

⁵ STATE OF NEW JERSEY 2006 SPECIAL SESSION JOINT LEGISLATIVE COMMITTEE, PUBLIC EMPLOYEE BENEFITS REFORM FINAL REPORT, at 53 (2006),

⁶ *Id.* at 143.

⁷ S. 17, 212th Leg. (N.J. 2007), https://pub.njleg.state.nj.us/Bills/2006/S0500/17_I1.PDF.

⁸ P.L. 2007, c. 92.

⁹ Civil Service jurisdictions are those that have adopted the provisions of Title 11A (Civil Service). N.J.S.A. 11A:9-1. Non-civil service municipalities are those that have not adopted the provisions of Title 11A.

¹⁰ A covered officer or employee is a person appointed by an elected public official or elected governing body of a political subdivision of the State, with the specific consent or approval of the elected governing body of the political subdivision that is substantially similar in nature to the advice and consent of the Senate for appointments by the Governor of the State as that similarity is determined by the elected governing body and set forth in an adopted ordinance or resolution, pursuant to guidelines or policy that shall be established by the Local Finance Board in the Department of Community Affairs. *See* N.J.S.A. 11A:6-19.1; N.J.S.A. 40A:9-10.2.

¹¹ *Ibid.*

¹² S. 17, 212th Leg. (N.J. 2007), https://pub.njleg.state.nj.us/Bills/2006/S0500/17_I1.PDF.

¹³ N.J.S.A. 11A:6-3.

¹⁴ N.J.S.A. 40A:9-10.3; N.J.S.A. 18A:30-9.

¹⁵ NJ DIVISION OF LOCAL GOVERNMENT SERVICES, IMPLEMENTING CHAPTER 92 OF 2007 – THE IMPACT ON LOCAL UNITS, LFN 2007-28 (2007), <https://www.nj.gov/dca/divisions/dlgs/lfns/07/2007-28.doc>. Although some other provisions of P.L. 2007, c. 92 permit an employee under certain circumstances to avoid application of modified pension eligibility requirements, such exceptions do not impact the sick and vacation leave requirements. LFN 2007-28 states that the sick and vacation leave “limits apply to all such covered employees, regardless of their pension system affiliation.” NJ DIVISION OF LOCAL GOVERNMENT SERVICES, GUIDANCE CONCERNING THE “SUBSTANTIALLY SIMILAR REQUIREMENT OF THE DEFINED CONTRIBUTION RETIREMENT PROGRAM (N.J.S.A. 43:15C-2), LFN 2008-10 (2008), <https://www.nj.gov/dca/divisions/dlgs/lfns/08/2008-10.doc>.

¹⁶ NJ DIVISION OF LOCAL GOVERNMENT SERVICES, *supra* n.16, LFN 2008-10 (2008).

¹⁷ These statutes have been interpreted in multiple court decisions. See, e.g., Barila v. Bd. of Educ. of Cliffside Park, 241 N.J. 595, 602 & n.1 (2020); New Jersey Ass'n of Sch. Adm'rs v. Schundler, 211 N.J. 535, 556 & 559 (2012) ("The legislative history for N.J.S.A. 18A:30-3.6 reveals that the Senate and Assembly meant to expand the sick leave cap in N.J.S.A. 18A:30-3.5 to cover a greater number of employees."); In re City of Atlantic City, No. A-3817-14T2, 2017 N.J. Super. Unpub. LEXIS 2366 (App. Div. Sep. 20, 2017) (interpreting N.J.S.A. 11A:6-19.2); In re Howell Twp. Bd. of Educ., P.E.R.C. No. 2015-58, 41 N.J.P.E.R. ¶131, 2015 N.J. PERC LEXIS 35 (2015) (interpreting N.J.S.A. 18A:30-3.6); In re Twp. of Little Falls, P.E.R.C. No. 2016-42, 42 N.J.P.E.R. ¶87, 2015 NJ PERC LEXIS 126 (2015) (interpreting N.J.S.A. 40A:9-10.4).

¹⁸ S. 4, 214th Leg. (N.J. 2010), https://www.njleg.state.nj.us/2010/Bills/AL10/3_.HTM.

¹⁹ See P.L. 2010, c. 3, §§ 4-5; N.J.S.A. 40A:9-10.5; N.J.S.A. 18A:30-9.1.

²⁰ N.J.S.A. 11A:6-3.

²¹ S. 4, 214th Leg. (N.J. 2010), https://www.njleg.state.nj.us/2010/Bills/AL10/3_.HTM.

²² For school districts, however, current Department of Education regulations recognize the 2010 law in stating that "[c]ontractual provisions regarding accumulation of sick leave and supplemental compensation for accumulated sick leave shall be consistent with N.J.S.A. 18A:30-3.5 and 18A:30-3.6. Supplemental payment for accumulated sick leave shall be payable only at the time of retirement and shall not be paid to the individual's estate or beneficiaries in the event of the individual's death prior to retirement." N.J.A.C. 6A:23A-3.1.

²³ See In re City of Atlantic City, No. A-3817-14T2, 2017 N.J. Super. Unpub. LEXIS 2366 (App. Div. Sep. 20, 2017) (slip. op. at 5). The opinion was unpublished and is thus non-precedential.

²⁴ See In re Town of Hammonton, P.E.R.C. No. 2021-53, 48 N.J.P.E.R. ¶8, 2021 NJ PERC LEXIS 71 (2021) (finding payment of accrued sick leave not permitted upon resignation or transfer for employee hired after May 21, 2010); In re Twp. of Southampton, P.E.R.C. No. 2018-57, 45 N.J.P.E.R. ¶8, 2018 NJ PERC LEXIS 59 (2018) (finding sick leave buyback provisions of contract are preempted by statute for employees hired after May 21, 2010); Little Falls, P.E.R.C. No. 2016-42, 2015 NJ PERC LEXIS at 126 (finding the statute preempts the contract terms for those hired after May 21, 2010).

²⁵ In instances in which the municipal policies or union contracts limit payments after May 21, 2010, OSC has not evaluated whether those effective dates are based on contracts that were in effect at the time the law was enacted. In certain instances those municipalities that were in the middle of negotiations and signed agreements after the statute was enacted, but were retroactive to the law's effective date, those extended policies may not be valid.

²⁶ The New Jersey Supreme Court has ruled, in the context of litigation involving boards of education, that the Legislature's enactment of the 2010 law did not repeal the already-existing 2007 law and that, therefore, the terms of the two statutes addressing sick leave are enforceable. See New Jersey Ass'n of Sch. Adm'rs, 211 N.J. at 556 (harmonizing statutes under 2007 and 2010 laws and giving effect to both).

²⁷ Some municipalities incorporated LFN 2008-10's guidance related to eligibility for pensions as required by the LFN. NJ DIVISION OF LOCAL GOVERNMENT SERVICES, *supra* n.16, LFN 2008-10 (2008).

²⁸ See STATE OF N.J. COMMISSION OF INVESTIGATION, THE BEAT GOES ON - WASTE AND ABUSE IN LOCAL PUBLIC EMPLOYEE COMPENSATION AND BENEFITS (Feb. 2020), <https://www.state.nj.us/sci/pdf/THE%20BEAT%20GOES%20ON%20AND%20ON.pdf>.

²⁹ *Ibid.*

³⁰ OSC's report involving the Borough of Palisades Park noted that the business administrator under his contract was due to receive \$360,000 for "all accrued and accumulated sick, personal, severance and vacation time" as of the end of 2019. That amount included \$160,000 in pay for sick and vacation leave that was improper because the business administrator should not have been able to receive more than \$15,000 in sick leave payment and should not have been permitted to carry over more than one year of vacation. If the 2007 and 2010 laws had been enforced, the business administrator would receive approximately 30 percent less. See STATE OF N.J. OFFICE OF THE STATE COMPTROLLER, INVESTIGATIVE REPORT: AN INVESTIGATION INTO THE FISCAL OPERATION OF THE BOROUGH OF PALISADES PARK, 28-29 (Mar. 2021), https://www.nj.gov/comptroller/news/docs/palisades_park_final_report.pdf.

³¹ In this report, terminal leave, or "early leave," is where an employee received payroll checks prior to retirement, without attending work. Some municipalities refer to the payment of accrued sick leave at retirement as terminal leave; that meaning is not reflected in OSC's examination of terminal leave payments.

³² As noted in Section II(C)(4), in OSC's specific findings for municipalities, on which the findings in this report are based, OSC used the May 21, 2010 date as the date when the statute became effective and issued findings based on that date.

³³ OSC treats the conversion of sick leave to another form of leave as supplemental compensation, and that the payment for such is processed through payroll when used, or paid out under policies for the different form of leave.

³⁴ N.J.S.A. 11A:6-3(e) was last substantively amended in 2001. See P.L. 2001, c. 270.

³⁵ Where a statute or regulation is alleged to preempt an otherwise negotiable term or condition of employment, it must do so expressly, specifically and comprehensively. Council of N.J. State Coll. Locals v. State Bd. of Higher Educ., 91 N.J. 18, 30 (1982); Bethlehem Twp. Bd. of Educ. v. Bethlehem Twp. Educ. Ass'n, 91 N.J. 38, 44-5 (1982). Because the vacation accrual provisions of the 2010 law, and the prior civil service statute, are not comprehensive or explicit as to vacation leave conversion, or annual payment, such conversion or payment has been found to be negotiable. See In re Newark, P.E.R.C. No. 2021-02, 47 N.J.P.E.R. ¶25, 2020 NJ PERC LEXIS 114 at 10 (2020); In re City of Atlantic City, P.E.R.C. No. 15-63, 41 N.J.P.E.R. ¶137, 2015 N.J. PERC LEXIS 23, 20-21 (2015).

³⁶ Atlantic City, P.E.R.C. No. 15-63, 2015 N.J. PERC LEXIS at 20-1 (2015).

³⁷ In re Twp. of Mount Holly, P.E.R.C. No. 2011-41, 36 N.J.P.E.R. ¶164, 2010 PERC LEXIS 295 (2010); see also Newark, P.E.R.C. No. 2021-02, 2020 NJ PERC LEXIS 114 at 10.

³⁸ See STATE OF N.J. OFFICE OF THE STATE COMPTROLLER, A PERFORMANCE AUDIT OF SELECTED FISCAL AND OPERATING PRACTICES OF THE BOROUGH OF KEANSBURG (May 2021), https://www.nj.gov/comptroller/news/docs/keansburg_audit_report.pdf.

³⁹ N.J. Const. art. V, § 4, ¶ 6.