



State of New Jersey

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Governor

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Lt. Governor

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KEVIN D. WALSH
Acting State Comptroller

September 28, 2023

Via Electronic Mail and U.S. Mail

The Honorable Philip D. Murphy
Governor of New Jersey

The Honorable Nicholas P. Scutari
President of the Senate

The Honorable Craig J. Coughlin
Speaker of the Assembly

Dear Governor Murphy, Senate President Scutari, and Assembly Speaker Coughlin:

Pursuant to N.J.S.A. 52:15C-11(b), the Office of the State Comptroller (OSC) is submitting this letter to report that certain local government units have refused to cooperate in the development of a corrective action plan. Through this letter, OSC provides the statutorily required notice and advises you and the municipalities addressed in this letter that, in 30 days, OSC may request that the State withhold the expenditure of state funds that may be due to be paid to the following nine municipalities for their failure to cooperate in the development of a corrective action plan by evaluating and addressing deficiencies in their sick and vacation leave policies:

1. Bridgewater Township
2. Hamilton Township (Mercer)
3. Pennsville Township
4. Piscataway Township
5. Red Bank Borough
6. Rutherford Borough
7. Sparta Township
8. Wantage Township
9. Town of West New York

As permitted by law, OSC may further request that the Director of the Division of Local Government Services in the Department of Community Affairs and the staff of the Local Finance Board require approval by OSC prior to the municipalities entering into contracts or expending funds.

I. Background

On July 7, 2022, OSC issued *A Review of Sick and Vacation Leave Policies in New Jersey Municipalities*, which examined the policies, ordinances, and contracts of 60 municipalities to determine if they implemented the cost-savings measures required by P.L. 2007, c. 92 (the “2007 law”) and P.L. 2010, c. 3 (“the 2010 law”).

The 2007 law mandated changes to sick leave policies for senior employees of municipalities and school districts, limiting payment for accumulated unused sick leave at \$15,000. The law also prohibited officers and employees covered by the law from receiving annual sick leave payments, stating that such supplemental compensation shall be payable only at the time of retirement. The 2007 law also limited accrual of vacation leave to two years’ worth of vacation leave for senior employees of non-civil service municipalities and school districts. Civil service municipalities had been limited to two years’ accrual since 1986. See P.L. 1986, c. 112.

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. 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.

OSC’s July 7, 2022 review of 60 municipalities generally found that the laws have been ignored, sidestepped, or undermined, with 57 of the 60 municipalities failing to fully comply with the laws. More specifically:

- 41 of the 60 municipalities, or 68 percent, had policies and contracts that permitted payments to senior employees that would violate the prohibitions on sick leave payments contained in the 2007 law;
- 36 out of 60 municipalities permitted payments that exceed the \$15,000 sick leave cap;
- 48 of 60 municipalities permitted payments for sick leave at times other than retirement;
- 29 of 60 municipalities improperly allow for annual sick leave payments;
- 17 of 60 allow for early leave; and
- 16 of 60 have policies or contracts that allow for accrual of more than one year of vacation time.

As a result of the municipalities’ significant failure to conform policies and practices to existing state law, OSC required that 57 municipalities provide a corrective action plan (CAP) to address those failures. Each municipality was to provide the specific course of action – whether to change the policy manual, to amend an ordinance, or to remove the provision from various employment contracts. The municipalities as part of the CAP were also to provide a timeframe in which such changes were to be completed. In addition to addressing the specific findings, OSC asked that the CAP include the following:

1. A legal review: An attorney to review the findings in the 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.

2. Independent fiscal assessment: An independent auditor or accountant to assess municipalities' 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.
3. Evaluate and change 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.
4. Approval of the CAP by the municipality's governing body: Given that council-approved contracts, ordinances, and policies may include unlawful provisions, the CAP should be approved by a vote of the governing body.

To date, OSC has evaluated the CAPs provided to ensure that they are responsive to OSC's findings, recommendations, and CAP requirements. Generally, most municipalities have begun the process of making corrections to sick and vacation leave policies. The areas in which the municipalities have control—adjustments to policy manuals, non-contract employee benefits, or drafting ordinances—are the most likely areas in which municipalities have implemented the changes. Given the nature of collective bargaining agreements, municipalities have taken different steps to address the issues: they have sought and entered into side-agreements; are in the process of negotiating new contracts; or have sent correspondence to the union explaining the unenforceability of the provisions that do not comply with the 2007 or 2010 laws.

Of the CAPs received, 24 of 57 (42 percent) were satisfactory. Fifteen (26 percent) were initially deficient but corrected. Nine (16 percent) are in the process of correcting any deficiencies. Finally, despite the passage of several months, nine municipalities (16 percent) have not responded to OSC's request to correct deficiencies.

Further, the Local Finance Board has recently promulgated regulations as part as its update to N.J.A.C. 5:30 that requires counties and municipalities to comply with the 2007 and 2010 laws. See N.J.A.C. 5:30-15.

II. Municipalities Failing to Cooperate in Development of a Corrective or Remediation Plan

As noted, nine municipalities have failed to respond to OSC's correspondence requesting that they correct the deficiencies in the CAP.

Within weeks of the publication of the report, on July 26, 2022, OSC submitted a copy of the report, as well as a letter detailing the requirements needed for the CAP to the 57 municipalities. The deadline for submission of the CAP was September 30, 2022. For those municipalities that missed the deadline, OSC informed them again on October 7, 2022 of the requirement to complete the CAP and extended the deadline to October 21, 2022.

OSC extensively reviewed the submitted CAPs to determine whether the municipality met all requirements. In March and April 2023, OSC notified the municipalities whether the CAPs were accepted or required changes. That correspondence detailed the specific requirements that were lacking in the municipality's plan. A detailed history and the inadequacies of the CAP for each municipality is attached to this letter as Appendix A.

For the nine municipalities that have failed to respond, the CAPs are deficient in various ways. Some have failed to detail an evaluation of their internal controls, and others have failed to address the requirement to obtain governing body approval. The most common failure is the lack of obtaining an independent evaluation to identify potential improper payments. One municipality had reviewed prior payments, but OSC requested that the review be verified by an independent auditor, recommending that the municipality's current auditor perform the review as part of its annual audit. Six of the municipalities failed to address the requirement of an independent evaluation at all in the CAP.

Given that there is evidence that the majority of the 57 municipalities already made improper payments, OSC directed the municipalities to determine whether improper payments were made and to make that information public. The purpose for requiring an independent evaluation was three-fold – to assist in evaluating and strengthening internal controls in making such payments; to prevent self-dealing in the event that management also received improper payments or accruals; and, finally, to obtain information and evidence if the municipality determined, after obtaining legal advice, to recoup improper payments.

Six of the municipalities that failed to respond have not obtained governing body approval of the CAP. The intent for such approval was to provide transparency and notice to taxpayers and the governing body that there were improper terms and conditions in contracts and policies. Public examination of the CAP would enable taxpayers and the governing body to question the municipality on its management and operations. It would also allow the governing body to question the municipality on whether changes to contracts and policies made in the future are in compliance with the law.

The failure of the nine municipalities to prepare a CAP, as directed by OSC, creates risks that taxpayer funds will be wasted and that unlawful policies will remain in effect.

III. Request to Withhold Expenditure of State Funds and to Require Approval of Certain Municipal Contracts and Expenditures

The State Comptroller is authorized by law to request that the Governor withhold the expenditure of state funds that may be due to be paid to that unit of local government. N.J.S.A. 52:15C-11(d)(1). The State Comptroller is further authorized by N.J.S.A. 52:15C-11(d)(2) to request that the Division of Local Government Services impose a corrective or remedial action plan upon municipalities that includes the prior approval by the State Comptroller of the municipality's contracts and expenditures related to approval, accrual, and payment of all unused sick leave and accrual of vacation leave.

At this time, OSC does not request either of these actions to be taken, but it provides notice that, if municipalities remain in non-compliance upon the expiration of 30 days, OSC may request these actions be taken.

Thank you for your attention to this matter.

Sincerely,



Kevin D. Walsh
Acting State Comptroller

Enclosure: Appendix A – Municipalities with Inadequate Corrective Action Plans

- c: Jacquelyn A. Suárez, NJ Department of Community Affairs, Acting Commissioner
- Michael Pappas, Township Administrator (Bridgewater Township)
- Kathryn Monzo, Business Administrator (Hamilton Township – Mercer)
- Jack Lynch, Township Administrator (Pennsville Township)
- Timothy J. Dacey, Business Administrator (Piscataway Township)
- Darren McConnell, Interim Business Administrator (Red Bank Borough)
- Robert J. Kakoleski, Borough Administrator (Rutherford Borough)
- Grant Rome, Acting Township Manager (Sparta Township)
- Michael L Restel, Administrator (Wantage Township)
- Luis Baez, Municipal Administrator (Town of West New York)