

**Recommendations from the Office of State Examiner**

Chief Don Chauvin has advised our office that the employees in the class of Firefighter/Operator have been working a twenty-four (24) hour work shift since December 4, 2016. He has provided our office with a copy of revisions to the civil service board rules on annual and sick leave that he would like the board to consider adopting and requested that we review such. We agree that the board rules must be revised to reflect that the employees are now working 24-hour shifts. However, we suggest that the civil service board verify that the governing authority has approved an increase in annual and sick leave benefits before adopting such revisions.

We took this opportunity to review your current leave rules and make recommendations for other revisions to bring your rules up-to-date.

Therefore, this is a copy of your board's current Rule XII, Section 1. We have edited, with our explanation in the text box, your board rules in order to provide the revisions requested by Chief Chauvin and our recommendations. Your current rules which we feel your board should consider posting to delete are struck through (~~example~~). We have inserted in italic red font (*example*) those rules that we recommend your board consider adopting.

**RULE XII****LEAVES OF ABSENCE****B. Annual Leave**

1. Each member of the classified fire service shall be entitled to annual leave with full pay after having served ~~one (1) year~~ *six (6) months* with the Carencro Fire Department in accordance with Table 1. *Service must be continuous with the Carencro Fire Department.*
2. Each member of the classified police service shall be entitled to annual leave with full pay after having served six (6) months with the Carencro Police Department in accordance with Table 2. *Service must be continuous with the Carencro Police Department.*
- 3 & 4. No proposed revisions

<del>ANNUAL LEAVE</del>		
<del>TABLE 1 - FIRE DEPARTMENT EMPLOYEES</del>		
<del>Continuous Service Time Completed</del>	<del>Hours accrued per year</del>	
	<del>9 hour Shift Employees</del>	<del>10 hour Shift Employees</del>
<del>6 months to less than 1 year</del>	<del>24 hours</del>	<del>30 hours</del>
<del>1 year to less than 2 years</del>	<del>40 hours</del>	<del>50 hours</del>
<del>2 years to 9 years</del>	<del>80 hours</del>	<del>100 hours</del>
<del>10 years to 19 years</del>	<del>120 hours</del>	<del>150 hours</del>
<del>20 years or more</del>	<del>160 hours</del>	<del>200 hours</del>

<del>TABLE 1 - FIRE DEPARTMENT EMPLOYEES</del>	
<del>ANNUAL LEAVE</del>	
<del>24-HOUR SHIFT EMPLOYEES</del>	
<del>Continuous Service Time Completed</del>	<del>Hours Accrued Per Year</del>
<del>6 months to less than 1 year</del>	<del>72 hours</del>
<del>1 year to less than 2 years</del>	<del>120 hours</del>
<del>2 years to 9 years</del>	<del>240 hours</del>
<del>10 years to 19 years</del>	<del>360 hours</del>
<del>20 years or more</del>	<del>480 hours</del>

Fire Department Annual Leave - our proposed revisions in Table 1 are based on Chief Chauvin's proposed revisions. We advise that if the governing authority has approved providing employees with this increase in leave, your board should post to consider adopting such.

We advise, however, that although the employees have been working 24-hour shifts and possibly accruing the additional annual leave since December 4, 2016, there are no provisions in civil service law that gives your board the authority to adopt rules with a retroactive effective date. Therefore, the revisions to the rules become effective the date the board holds proper public hearing and adopts such revisions.

<b>TABLE 2 - POLICE DEPARTMENT EMPLOYEES</b>			
<b>ANNUAL LEAVE</b>			
<del>TABLE 2 - POLICE DEPARTMENT EMPLOYEES</del>			
<b>Continuous Service Time Completed</b>	<b>Hours accrued per year</b>		
	<b>8 hour Shift Employees</b>	<b>10 hour Shift Employees</b>	<b>12 Hour Shift Employees</b>
6 months to less than 1 year	24 hours	30 hours	36 hours
1 year to less than 2 years	40 hours	50 hours	60 hours
2 years to 9 years	80 hours	100 hours	120 hours
10 years to 19 years	120 hours	150 hours	180 hours
20 years or more	160 hours	200 hours	240 hours

C. Sick leave

1. Each member of the classified fire service shall be entitled to and given, with full pay, sick leave not less than fifty-two (52) weeks for any sickness or injury or incapacity not brought about by the employee's own negligence or culpable indiscretion.
2. In addition to sick leave provided in Number 1, each member of the classified fire service, after having served one (1) year with the Carencro Fire Department, shall accrue sick leave as provided in Table ~~1~~ 3.

<b>Table <del>1</del> 3 - Fire Department Sick Leave</b>
<b>24-HOUR SHIFT EMPLOYEES</b>
<del>10 - Hour Shift Employees</del>
<b>Accrual Per Month</b>
<del>10</del> 24 hours

Fire Department Sick Leave - our proposed revisions in Table 3 are based on Chief Chauvin's proposed revisions. We advise that if the governing authority has approved providing the fire department employees with such increase in leave, your board should post to consider adopting such.

We advise, however, that although the employees have been working 24-hour shifts and possibly accruing the additional sick leave since December 4, 2016, there are no provisions in civil service law that gives your board the authority to adopt rules with a retroactive effective date. Therefore, the revisions to the rules become effective the date the board holds proper public hearing and adopts such revisions.

3. Each member of the classified police service, after having served one (1) year with the Carencro Police Department, shall accrue sick leave as provided in Table 2 4.

<b>Table 2 4 - Police Department Sick Leave</b>		
<b>8 - Hour Shift Employees</b>	<b>10 - Hour Shift Employees</b>	<b>12 - Hour Shift Employees</b>
<b>Accrual Per Month</b>	<b>Accrual Per Month</b>	<b>Accrual Per Month</b>
8 hours	10 hours	12 hours

- 4 - 6. No proposed revisions

7. ~~Sick leave is applicable to maternity claims. Maternity leave commences when a doctor certifies that the employee cannot perform the duties of the position as assigned by the appointing authority.~~

*Sick leave, as provided in Numbers 1, 2 and 3, shall be applicable to maternity claims. Maternity sick leave due to the employee's pregnancy, the employee giving birth to a child, and related medical conditions commences when a doctor certifies that the employee cannot perform the duties of the position as assigned by the appointing authority.*

Number 7 - revisions we now recommend in order to clarify that sick leave is to be used when the employee is sick and is not to be used as "paternity leave."

D. Bereavement Leave

1 - 4. No proposed revisions

5. Calendar day shall be defined as a continuous 24-hour period of time from midnight to midnight upon which a work shift may fall.

*Work shift shall be defined as a continuous period of duty which may cover parts of two (2) calendar days.*

Subsection D, Number 5 - revision needed for clarification.

F. Civil Leave

Each member of the classified service shall be granted leave of absence with pay when ordered to jury duty. If an employee is subpoenaed as a witness in any court proceeding, civil service hearing, or in proceedings of other duly authorized public body, or when summoned to appear before a court, public body, board, or commission, such classified employee shall be granted leave of absence with pay for any period of time his/~~hers~~ *her* presence and availability is demanded. If an employee is subpoenaed for departmental business while on duty, the employee shall be allowed time away from his/~~hers~~ *her* assigned duties in accordance with departmental policies. Civil leave shall not be used for absences incurred because of court attendance relating to personal affairs. *When an employee is required to be in attendance in court on personal affairs, the employee shall be granted annual or compensatory leave with pay. If the employee has no unused annual or compensatory leave, the employee shall be granted leave without pay in accordance with Rule XII, Section 1, Subsection J of the board's rules.* Civil

leave of absence with pay may be granted in order to participate in emergency or civilian duty in connection with national defense or homeland security.

Subsection F - your current rule provides that an employee may not use civil leave for court attendance relating to personal affairs. We have recommended additional language in order to provide that the employee shall be granted annual or compensatory leave with pay when the employee has not been subpoenaed but is required to be in attendance in court on personal affairs. If the employee has no leave with pay then the employee shall be granted leave without pay in accordance with Rule XII, Section 1, Subsection J of your rules.

J. Personal Leave *without Pay*

~~Each member of the classified service may apply to the chief of the department for personal time off when such time off will not exceed two (2) days and no accumulated annual leave has been accrued. This leave is classified as "leave of absence without pay."~~

~~Any employee taking personal time off without applying for same shall be considered as "absent without leave or pay."~~

*Each member of the classified service may be granted personal leave without pay which shall not exceed ten (10) calendar days in any calendar year when such member has no accumulated annual leave.*

Subsection J - revisions we feel are needed in order to provide more than two (2) days of leave without pay.

K. Special Leave ~~—Seniority~~

~~Special leave of absence, with or without pay, may be granted to any member of the classified service by the appointing authority for a period not to exceed one (1) calendar year where such leave is determined to be in the departmental interest. Notification of the board shall not be required for special leave with pay for a period not to exceed thirty (30) consecutive days. Where special leave of absence may be granted with or without pay for a period greater than thirty (30)~~

~~consecutive days, the board shall be notified in writing of the complete reasons therefor at least thirty (30) days prior to the effective date of the leave of absence. In the event that special leave of absence without pay may be granted for more than thirty (30) consecutive days, the board shall determine whether departmental seniority is to be interrupted or continued.~~

~~Before beginning special leave, the employee shall be required to first exhaust all accumulated annual and compensatory leave. Such leave shall not be granted in lieu of military leave or other leave of absence, as otherwise provided in these rules. However, special leave of absence may be applied in emergency situations in which employees may be called to serve in a non-military capacity in relation to national defense and homeland security. Under no circumstances shall such special leave be granted for the purpose of engaging in other employment.~~

*Each member of the classified service may be granted special leave of absence, with or without pay, and without loss of seniority, for a period not to exceed one (1) calendar year where such leave is determined to be in the departmental interest.*

*Before beginning special leave, the employee may be required to first exhaust all accumulated annual and compensatory leave. Such leave shall not be granted in lieu of military leave or other leave of absence, as otherwise provided in these rules. However, special leave of absence may be applied in emergency situations in which employees may be called to serve in a non-military capacity in relation to national defense and homeland security.*

*Under no circumstances shall such special leave be granted for the purpose of engaging in other employment.*

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Subsection K - our office has recently conducted research into the board's authority to determine whether departmental seniority will be interrupted or continued when an employee is granted special leave with or without pay. Revised Statute 33:2538 provides that the board must adopt rules providing for leaves of absence for employees of the classified service. Revised Statute 33:2533.20 provides that regular and permanent employees must serve their suspensions without accruing seniority. There are no other provisions in civil service law, however, that give the board the authority to cancel an employee's seniority.

Therefore, inasmuch as the civil service boards do not have the authority to adopt rules that are contrary to state law we are recommending revisions to this rule.

M. Family Medical Leave (Public Law 103-3)

1 - 5. No proposed revisions.

6. ~~Accrual of departmental seniority while on FMLA leave shall continue only when FMLA leave is run concurrently with paid leave. Unpaid FMLA leave shall be served without credit for departmental seniority.~~

*Accrual of departmental and/or promotional seniority shall continue while an employee is on paid or unpaid family medical leave.*

Subsection M, Number 6 - this revision is needed in order to comply with the provisions of the Family Medical Leave Act.

N. Administrative Leave with pay

The appointing authority may grant administrative leave with pay for ~~periods~~ *a period* not to exceed sixty (60) *consecutive calendar* days when circumstances develop that would warrant the removal of an employee from the department without disadvantage in order for the appointing authority to conduct an investigation concerning the conduct of the employee or as may otherwise be required under department policies and procedures. ~~This period may be extended up to an additional sixty (60) day period with prior approval of the civil service board,~~ *This leave*

*may be extended for an additional period not to exceed sixty (60) consecutive calendar days with prior approval of the board,* when circumstances warrant such extension. Administrative leave shall be terminated upon the employee being ordered to return to active duty or upon the appointing authority affecting disciplinary action, whichever occurs first.

Subsection N - revisions we feel are needed for clarification.

After your board has adopted these revisions, we suggest that Chief Chauvin revise the department policies on leaves to match the board rules as adopted. Of course, the department policies may also include procedures such as employee notification when he/she cannot report to duty; when and how employees must submit verification of the reason for the absence from work; the employees' behavior while on sick leave; when and how annual leave is requested and used; and other such types of rules are appropriate as policies that are maintained by the administration, but not as board rules. Such administrative directives do not fall under the statutory authority of your board.

The governing authority may need to develop a leave code for each of the leaves of absence that fire employees may be granted, in accordance with the rules adopted by your civil service board, for accurate record keeping practices.

#### DISCLAIMER

**The advice that may be contained in this communication is provided under authority of R.S. 33:2479.G and R.S. 33:2539.A. It shall not be construed as legal advice. The recipient is encouraged to consult an attorney regarding specific legal questions or concerns.**