Chapter 51 Administration of Certification of Accumulated Unused Leave for Service Credit and Lump Sum Payments of Leave at Termination/Retirement

100 Purpose

The purpose of this regulation is to outline the conditions under which service credit may be awarded at retirement for lawfully accumulated unused leave.

101 General Requirements for Certification of Accumulated Unused Leave

The following regulation confirms and reaffirms prior construction of law, practice, and procedure of the Public Employees' Retirement System of Misissippi (PERS) relative to the administration of additional service credit for lawfully accumulated unused leave and for the payment of unused leave for retirement purposes. Since May 15, 1984, Miss. Code Ann. §25-11-109 (1972, as amended) has allowed for the certification of accumulated unused leave upon termination of employment or retirement on or after that date. Such leave must be certified to PERS by the governing authority. Effective July 1, 1984, the state's leave law was amended to allow accumulated unused personal and major medical leave of state and university employees to be certified to PERS upon termination of employment.

PERS follows the specific statutory provisions which authorize or limit the accrual of, or payment for, leave applicable to state and university employees, public school personnel, employees of counties, municipalities and other juristic entities, elected officials, court reporters, etc. The following guidelines apply in the accumulation, record keeping, and certification of leave by the employer.

1. Lawfully Adopted Leave Policy

Any accumulated unused leave certified to PERS by the employer must have been accumulated by the employee pursuant to a lawfully adopted and written leave policy. Such policies may be found in statutory law, as in the case of state employees and employees of the institutions of higher learning, and/or in written policies adopted by the applicable governing body of a public school, county, municipality, community college or other juristic entity covered by PERS. Such policies, or the modification thereof, may not be adopted or applied retroactively. Accumulated unused leave certified to PERS pursuant to such policies may not exceed that which could have been accrued under the state's leave law.

Accumulated unused leave certified to PERS by the employer upon termination or retirement of the employee must be leave that is viable under the terms of the policy and available for use by the employee in accordance with the intended purpose, i.e., personal (vacation) leave or major medical (sick) leave. Employers may not create or authorize leave to be accrued for "retirement purposes only" nor may employers certify leave which expires because it may not be carried forward from year to year. Further, employers

may not create and certify other categories of leave which are not available to and certifiable on behalf of state employees. Leave certified to PERS must be eligible for use or payment in the form of wages as any other leave under the applicable policy to be certifiable to PERS.

2. **Requirement that Records Be Maintained**

   Inherent in the certification of accumulated unused leave is the requirement that accurate leave records be kept of such leave by the employer. In the absence of appropriate records, no leave may be certified to or granted by PERS. Leave certified to PERS by an employer must be based on documented policies and records which exist at the time of certification of such leave and which reflect any remaining lawfully accumulated unused leave.

   Generally, once accumulated unused leave is properly certified to PERS, it may not be later "decertified" by the employer or reinstated by the same or another employer, except in the case of wrongful termination where an employee is reinstated to employment back to the date of termination with full compensation, rights, and privileges.

3. **Qualifying Leave that May Be Certified to PERS**

   The state leave law provides that only accumulated unused personal leave and major medical leave accrued under Miss. Code Ann. §§25-3-93 and 25-3-95 (1972, as amended) by the individual employee can be certified to PERS at the time of termination or retirement. Accumulated unused personal or major medical leave (or their equivalent) certified to PERS pursuant to other lawfully adopted policies or statutes may not exceed that which could have been accrued and certified under the state's leave law.

4. **Leave That May Not Be Certified to PERS**

   a. Accumulated unused compensatory leave or any other employer created category of leave other than personal leave or major medical leave may not be certified to PERS for additional service credit.

   b. Leave donated or transferred from one employee to another employee may not be certified to PERS as unused leave of the recipient employee. The accumulation of leave is personal to the individual employee. Only qualifying leave which has actually been accumulated by and which remains unused by the individual employee at termination of employment may be certified to PERS for service credit.

   c. Leave created, granted, or available "for retirement purposes only" may not be certified to PERS. There is no authority for the creation of a category of leave that is available for "retirement purposes only." Leave provided to an employee which cannot be carried over from year to year, and which expires at the end of each year, may not be certified or "banked" for purposes of later certification to PERS.

   d. Accumulated unused leave associated with a refund of contributions may *not* be used for service credit. Leave accumulated and unused during a period of employment for which contributions are made to PERS and subsequently refunded to the terminated employee becomes void when the

refund is made. If the refund is repaid in full, any accumulated unused leave associated with the reinstated service credit may also be reinstated, provided that such leave is or has been certified to PERS. If only a portion of the refund is repaid, the leave remains void and no part of it may be used for additional service credit.

e. Leave accumulated with a governmental employer outside the State of Mississippi, i.e., leave associated with out-of-state service, or under the limited reemployment provisions as a retiree under Miss. Code Ann. §25-11-127 (1972, as amended), may not be certified to PERS for additional service credit. Further, leave accumulated with any other non-covered employment, including leave accumulated with an employer prior to the employer joining PERS or any leave earned while participating in the Optional Retirement Plan or any other plan administered by PERS, may not be certified to PERS for additional service credit.

5. When Leave Can Be Certified to PERS

a. Leave may be certified by the employer only upon termination of employment of the employee. Termination is defined as a withdrawal from service that means a complete severance of employment in state service by resignation, dismissal, or discharge. Qualifying leave can be certified by the employer after termination of employment of the employee so long as official policies and records exist to support the certification.

Special Circumstances:

(i) If unused leave accrued pursuant to a lawfully adopted leave policy of personal employees of an out-going elected chancery or circuit clerk is not assumed by the in-coming elected chancery or circuit clerk, such leave may be certified to PERS on behalf of the employee by the out-going clerk. If so certified for service credit, such leave may no longer be used by the employee while employed under the new clerk.

(ii) If unused leave accrued pursuant to a lawfully adopted leave policy of employees of an out-going elected district attorney is not assumed by the in-coming elected district attorney, such leave may be certified to PERS on behalf of the employee by the out-going district attorney. If so certified for service credit, such leave may no longer be used by the employee while employed under the new district attorney.

(iii) Where an employee of a covered employer is elected to office with that same covered employer without a break in service between the non-elected and elected employment, all unused leave accumulated by the employee under a policy of the employer prior to taking office as an elected official, must be certified to PERS at the time of transition from the non-elected to the elected position.

b. If an employee transfers from one state agency (including the institutions of higher learning) to another without a break in service (i.e., without a lapse of one eight-hour workday between the termination date at the old

agency and effective date of employment at a new agency), any unused leave is transferable to the state agency to which the employee is transferring. Since July 1, 1998, major medical and personal leave earned by employees are transferable between or among any and all state agencies and senior colleges as well as community and junior colleges.

c. If leave is eligible for transfer to another covered employer, such leave should not be certified to PERS.

6. Conversion of Accumulated Unused Leave from Hours to Days

a. Conversion under policy where leave accrual is no greater than that of the state's leave law.

The maximum accrual rates as provided under the state's leave law is predicated on a normal eight- (8) hour workday and a five- (5) day workweek. To determine the number of days to be certified to PERS, the number of accumulated hours should be divided by eight (8). Only hours that equate to whole days will be used to determine additional service credit upon retirement. Any remaining hours or fraction of a day after accumulated unused leave from all sources has been added together and converted into days will not be used in computing the number of whole days for retirement credit.

b. Conversion under policy where leave accrual is greater than under the state's leave law.

If an employee (e.g., fireman or policeman) accrues leave at a rate in excess of the maximum combined personal and major medical state accrual rate as set forth in Miss. Code Ann. §§25-3-93 and 25-3-95 (1972, as amended), the following formula shall be used to convert the accumulated unused leave hours to days:

(i) Divide the maximum monthly or annual accrual rate under state's leave law by the employee's actual accrual rate (i.e. actual number of hours accrued per month or per year under the applicable policy) at the time of termination;

(ii) Multiply the ratio found in Step (i) by the total number of accumulated unused leave hours to find the adjusted allowable hours;

(iii) Divide the result from Step (ii) by eight (8) to determine the appropriate number of adjusted days that should be certified to PERS.

7. Certification of Accumulated Unused Leave

a. State law at Miss. Code Ann. §25-3-97(1) (1972, as amended) imposes a duty upon agencies to maintain accurate records of employee leave. Hence, all PERS reporting employers who have a leave policy under which accumulated leave is or will be certified to PERS, have a like duty to maintain accurate leave records. For service credit based on accumulated unused leave to be granted for retirement purposes, there must be both a) evidence of a policy established by law or a lawfully adopted leave policy, spread upon the minutes of the appropriate authority or otherwise adopted by formal resolution, and b) records

documenting accumulated unused leave remaining at termination of employment.

b. When accumulated unused leave is certified to PERS by an employer on a form prescribed by the PERS Board of Trustees, such leave is subject to audit by PERS and a copy of the actual leave records and policy may be requested. Upon request, the employer must provide a copy of the leave policy under which any leave is accrued, documentation as to when and how the policy was adopted, and leave records.

c. No leave may be certified to PERS where an employee terminated employment prior to May 15, 1984 (or July 1, 1984 in the case of state and university employees), or the effective date of a formally adopted leave policy, if later.

d. Only accumulated leave, which has not been used or paid, may be certified. Any lump sum payment of leave automatically reduces the number of accumulated unused leave days which can be certified to PERS by the number of days for which payment is made.

e. Service credit for accumulated unused leave is not posted to a member's account until the time of application for retirement, at which time all eligible accumulated unused leave days certified from all employers are accumulated and converted to retirement service credit. Accumulated unused leave may not be used to determine minimum eligibility (i.e., a minimum of four (4) years of contributing membership service in PERS for members who joined the System before July 1, 2007, or a minimum of eight (8) years of contributing membership services for members who joined the System on or after July 1, 2007,) for service retirement, disability, or survivor benefits.

f. Once the cumulative number of unused leave days is determined at the time of retirement, service credit using whole days is calculated in accordance with the provisions of Miss. Code Ann. §25-11-109 (2) which provides that

(i) No credit will be allowed for less than fifteen (15) days; and thereafter

(ii) Twenty-one (21) days of unused leave shall constitute one (1) month of service credit.

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CONVERSION TABLE

ACCUMULATED UNUSED, NON-COMPENSATED LEAVE TIME

(This table is based on the state's leave law, using an 8-hour workday and a 21-day work month)

COMBINED ACCUMULATED UNUSED PERSONAL AND MAJOR MEDICAL LEAVE	CREDIT EQUIVALENT
15 DAYS TO 77 DAYS	0.25 YEAR
78 DAYS TO 140 DAYS	0.50 YEAR
141 DAYS TO 203 DAYS	0.75 YEAR

204 DAYS TO 266 DAYS	**1.00 YEAR**
267 DAYS TO 329 DAYS	**1.25 YEARS**
330 DAYS TO 392 DAYS	**1.50 YEARS**
393 DAYS TO 455 DAYS	**1.75 YEARS**
456 DAYS TO 518 DAYS	**2.00 YEARS**
519 DAYS TO 581 DAYS	**2.25 YEARS**
582 DAYS TO 644 DAYS	**2.50 YEARS**
645 DAYS TO 707 DAYS	**2.75 YEARS**
708 DAYS TO 770 DAYS	**3.00 YEARS**
771 DAYS TO 833 DAYS	**3.25 YEARS**
834 DAYS TO 896 DAYS	**3.50 YEARS**
897 DAYS TO 959 DAYS	**3.75 YEARS**
960 DAYS TO 1,O22 DAYS	**4.00 YEARS**
1,023 DAYS TO 1,085 DAYS	**4.25 YEARS**
1,086 DAYS TO 1,148 DAYS	**4.50 YEARS**
1,149 DAYS TO 1,211 DAYS	**4.75 YEARS**
1,212 DAYS TO 1,274 DAYS	**5.00 YEARS**
1,275 DAYS TO 1,337 DAYS	**5.25 YEARS**
1,338 DAYS TO 1,400 DAYS	**5.50 YEARS**

(Only whole days are used in determining service credit)

8. Certification of Leave in Cases of Dual Employment

a. Miss. Code Ann. § 25-11-109(2) (1972, as amended) provides in part that "… nor shall more than one (1) year of service be creditable for all services rendered in any one (1) fiscal year; . . ." As a result, no employee may be granted more than one day of creditable service for each calendar day worked regardless of the number of hours worked or number of positions held.

b. Participants in PERS may be employed by two or more covered employers simultaneously. In such case, an employee may accumulate leave under separate leave policies. No employee may receive credit twice for vacation or sick leave earned for the same period of employment. For retirement purposes, upon termination of employment or retirement, a regular employee who has accumulated leave under two or more separate leave policies for the same period of time may elect to use accumulated unused leave credit from only one position. If an employee is simultaneously covered in two positions, one as an elected official and one as a regular employee under a leave policy, the individual as an elected official will automatically receive credit under the special provisions for elected officials.

9. Calculation of Leave for Elected Officials

a. Prior to July 1, 1987, there was no provision for additional service credit for elected officials based on leave. An elected official is presumed available for official duties at all times. Effective July 1, 1987, special statutory provisions for "elected official leave" were enacted for those elected officials retiring on or after July 1, 1987. *(An elected official, such as a district attorney or elected superintendent of education, does not accrue personal and major medical leave pursuant to a leave policy for employees of the District Attorney or School District. Such officials are covered by the "elected official leave" noted below.)*

b. For retirement purposes, elected officials are entitled to additional service credit at retirement for "elected official leave" calculated as follows:

(i) For service prior to July 1, 1984, the member shall receive credit for leave (combined personal and major medical) for service as an elected official prior to that date at the rate of thirty (30) days per year.

(ii) For service on and after July 1, 1984, the member shall receive credit for personal and major medical leave beginning July 1, 1984, at the rates authorized in Miss. Code Ann. §§25-3-93 and 25-3-95 (1972, as amended), computed as a full-time employee.

Elected official leave for each period of continuous elected official service should be calculated using the above guidelines. This calculation applies whether the elected service was reported as membership service, prior service, or purchased as non-covered or retroactive service. If there is a break in service, the calculation should take the break in service into account, and the accumulation for the subsequent period started again at the lower accrual rate as provided in Miss. Code Ann. §§25-3-93 and 25-3-95 (1972, as amended).

c. Where an employee is a regular employee in one position but also serves as an elected official in another position, he/she may not receive retirement credit for accumulated unused leave under both positions at retirement. Where such service is simultaneous, special "elected official leave" under the statutory provision applies automatically for that period of time.

102 Payment of Unused Leave at Termination, Retirement, Death, or Disability

Miss. Code Ann. §25-1-98 defines a workday for a state employee in a full-time employment position as eight (8) hours in duration. PERS law provides that leave policies for the administration of personal or vacation leave and major medical or sick leave as it relates to PERS cannot exceed that of the state leave law. Thus, for purposes of the payment of leave, the maximum allowable number of days paid will be calculated based on an eight-hour day. Upon termination or retirement, the maximum amount that may be reported to PERS for the payment of accumulated unused leave is 240 hours, which is the product of 30 days times 8 hours per day as provided in Miss.Code Ann. §25-3-93(4).

The following statutes control the payment of leave upon termination of employment:

Statutory Authority	Leave Payment Authorized	Type Employee Affected
Miss. Code Ann §25-3-93(4) (1972, as amended)	Up to 30 days of personal leave payable upon termination	State and University employees (other than 9 month faculty employees)
Miss. Code Ann §25-3-97(3) (1972, as amended)	Up to 120 days of major medical leave (This payment is not reported to PERS)	State and university employees who can no longer work in any capacity of state government due to total disability
Miss. Code Ann §25-3-97(6) (1972, as amended)	All personal leave payable upon death (Note that a lump sum payment of no more than 150 days of personal leave can be reported to PERS.)	State and university employees upon the death of the employee
Miss. Code Ann §25-3-99 and Miss. Code Ann §25-11-103(f) (1972, as amended)	Authorizes the payment of frozen leave payable upon termination (Up to 20 days with the Miss. Employment Security Commission only)	State employees who worked with the MESC prior to 1976 and who had excess leave still credited on their records
Miss. Code Ann §25-3-95(5) (1972, as amended)	Up to 30 days of major medical leave payable only upon retirement	Nine-month faculty members of the eight (8) institutions of higher learning
Miss. Code Ann §37-7-307(5) (1972, as amended)	Up to 30 days of personal and sick leave at the rate paid to substitute teachers payable upon retirement	Licensed (certificated) employees with the public school districts in a position that requires a license
Miss. Code Ann §37-7-307(5) (1972, as amended)	Up to 30 days of personal and sick leave at the applicable federal minimum wage rate payable upon retirement	Non-Licensed (non-certificated) employees with the public school districts
Miss. Code Ann §25-11-103(k) (1972, as amended)	Up to 30 days of leave upon termination	All employees covered under a lawfully adopted leave policy of a county, municipality or

		any other local governing authority that specifically provides for the payment of leave upon termination
Miss. Code Ann §9-13-19 (1972, as amended)	**NONE**	**Court Reporters**
Miss. Code Ann §25-11-109(2) (1972, as amended)	**NONE**	**All Elected Officials**

All payments of leave should be designated with the appropriate wage code when reported to PERS; i.e., 30 days lump sum payment of leave as Wage Code 02 and Service Credit Flag 00; 150 days lump sum payment of personal leave due to death as Wage Code 04 and Service Credit Flag 00; etc. Any compensatory leave paid in a lump sum should be reported as Wage Code 03 and should be allocated to the period in which the leave was actually earned.

INDEX OF STATUTORY AND OPINION AUTHORITY

Authority to use leave as additional service credit – Miss. Code Ann. §§25-11-103(i) and 25-11-109(2) (1972, as amended)

Requirement for written policy and records - Miss. Code Ann. §25-3-97(1) (1972, as amended)
and Opinions dated 1/25/1989 to Joseph F. Mooney; 8/14/1998 to Edward Ranck; 9/6/2002 to Wendell H. Trapp; 11/01/2002 to Olen C. Bryant, Jr.

Maximum accrual limits for retirement purposes - Miss. Code Ann. §§25-3-93, 25-3-95 and 25-11-103(i) (1972, as amended) and Opinions dated 1/25/1989 to Joseph Mooney; 9/13/1994 to Walter P. Cartier; 6/27/1994 to Richard G. Noble; 3/23/2001 to Paula S. Yancey

Compensatory leave may not to be certified to PERS for additional service credit- Miss. Code Ann. §§25-3-92, 25-3-93, and 25-3-95 (1972, as amended)

Leave policy may not be retroactive – Opinions dated 8/14/1998 to Edward Ranck; 9/6/2002 to Wendell H. Trapp; 11/01/2002 to Olen C. Bryant, Jr.

Unused leave may not be accumulated for "retirement purposes only"; Leave which expires at the end of each year may not be certified or "banked" for certification to PERS; Other categories of leave which are not

available to state employees may not be certified -Opinions dated 6/27/1994 to Richard G. Noble; 5/26/1998 to Frank Ready; 11/01/2002 to Olen C. Bryant, Jr.

Transfer of leave between and among state agencies, universities and community colleges - Miss. Code Ann. §25-3-97 (1972, as amended); Opinion dated 4/27/2001 to Ronald D. Michael

Accumulated leave associated with a refund of contributions becomes void - Miss. Code Ann. §25-11-117 (1972, as amended)

When leave may be certified to PERS (e.g. <u>upon withdrawal from service)</u> - Miss. Code Ann. §25-11-103(i) (1972, as amended)

Leave may not be used to qualify for minimum four-year service requirement for retirement, disability or survivor benefits – Miss. Code Ann. § 25-11-109(1) (1972, as amended)

Certification of leave in cases of dual employment – Opinions dated 12/28/1992 to Milton G. Walker and 2/16/2001 to Frank Ready

Calculation of leave for elected officials – Miss. Code Ann. 25-11-109(2) (1972, as amended) and Opinion dated 2/16/2001 to Frank Ready

Authority of public school districts to establish a leave policy - Miss. Code Ann. §37-7-307(2) (1972, as amended)

Authority for counties, municipalities or other juristic entities to establish leave policies - Miss. Code Ann. §25-11-103(i) (1972, as amended); Opinions dated 7/18/1997 to William Dean Stark; 9/10/1999 to Jane Ward; 3/23/2001 to Paula S. Yancey

Leave for Court Reporters - Miss. Code Ann. §9-13-15; §9-13-17; §9-13-19 (1972, as amended); Opinion dated 5/26/1998 to Frank Ready

Leave for Compulsory School Attendance Officers - Miss. Code Ann. §37-13-89(6)(a) (1972, as amended); Opinion dated 8/18/1998 to Edward Ranck

Leave for employees of Community and Junior Colleges – Opinions dated 3/8/1990 to David M. Haraway; 4/27/2001 to Ronald D. Michael; and 10/31/2003 to Frank Ready.

Payment of personal leave to state and university employees (other than 9 month faculty employees) upon termination– Miss. Code Ann. §25-3-93(4) (1972, as amended) ; Opinion dated 9/2/1992 to Thomas H. Dyson

Payment of major medical leave to state and university employee in event of disability - Miss. Code Ann. §25-3-93(3) (1972, as amended)

Payment of personal leave to state and university employee in event of death - Miss. Code Ann. §25-3-97(6) (1972, as amended)

Payment of frozen leave- Miss. Code Ann. §25-3-99 and §25-11-103(f) (1972, as amended)

Payment of major medical leave to nine-month faculty member of 8 institutions of higher learning upon retirement- Miss. Code Ann. §25-3-95(5) (1972, as amended)

Payment of up to 30 days personal and sick leave for licensed and non-licensed public school employees upon retirement- Miss. Code Ann. §37-7-307(5) (1972, as amended)

Payment of upon to 30 days leave upon termination for employees of political subdivisions - Miss. Code Ann. §25-11-103(k) (1972, as amended)

Payment of leave to employees of a county, municipality or other political subdivision - Miss. Code Ann. §25-11-103(k) (1972, as amended)

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