


COUNCIL OF THE DISTRICT OF COLUMBIA
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Memorandum

January 5, 2022

TO: Nyasha Smith, Secretary to the Council
FR: Phil Mendelson, Chairman 
RE: Personnel Policy for Determining Creditable Service for Annual Leave Accrual

Purpose:

The purpose of this memorandum is to explicitly provide that annual leave calculations shall include creditable service a Council employee may have earned while working for an independent District government agency, board, or commission. For instance, if a current Council employee previously worked at the Public Charter School Board which is an independent agency of the District government, his or her time served there should count toward annual leave accrual here at the Council.

Conclusion:

For purposes of determining years of creditable service for annual leave accrual under 6-B DCMR § 1233.1, a Council employee shall be entitled to receive credit for all service creditable under the District retirement benefits program established pursuant to Section 2605 (D.C. Official Code § 1-626.05) of the Comprehensive Merit Personnel Act (CMPA) and any other retirement benefits program operated by a District government agency, as that term is defined in section 301(1) of the CMPA (D.C. Official Code § 1-601.03(1)), including by an independent agency, board, or commission.

Reasoning:

This variance is issued pursuant to my personnel authority under D.C. Official Code § 1-604.06(b)(3)(A) and according to 6B DCMR § 104.¹

For purposes of calculating the rate at which a District employee accrues annual leave pursuant to section 1203 of the CMPA, District regulations provide that “an employee shall be entitled to receive service credit for . . . all service creditable under the District retirement benefits program established pursuant to Section 2605 of the CMPA” (D.C. Official Code § 1-626.05).

Under this regulation, time that a Council employee spent working for a District government board or commission does not count toward the employee’s creditable service for purposes of annual leave accrual

¹The Chairman’s authority to grant a waiver or “variance” from the DCMR is derived from D.C. Official Code § 1-604.06(b)(3)(A)(ii), which states that “[f]or employees of the Council, the Chairman of the Council shall exercise the authority possessed by the Director of the Department of Human Resources...” The Director of DCHR is authorized to grant a variance from the DCMR under certain specified circumstances, including an unnecessary hardship in complying with the rules, the variance is within the spirit of the rules, the efficiency of the District government will be protected and promoted, or the integrity of the category of Service would be protected and promoted. Variances are required to be published and granted whenever like conditions apply. 6B DCMR § 104.

unless the board or commission elected to participate in the District's retirement benefits program.² However, the CMPA does not distinguish between District employees covered by the District's retirement program and those who are not for purposes of annual leave accrual. Indeed, the CMPA states that annual leave shall accrue as follows:

(A) One-half day for each full biweekly pay period for an employee with less than 3 years of federal or District government service;

(B) Three-fourths day for each full biweekly pay period, except that the accrual for the last full biweekly pay period in the year is one and one-fourth days, for an employee with 3 but less than 15 years of federal or District government service; and

(C) One day for each full biweekly pay period for an employee with 15 or more years of federal or District government service. (D.C. Official Code § 1-612.03(e)(1))

For purposes of annual leave accrual, employees who previously worked for District boards or commissions (or other independent agency) should not be treated differently than employees who previously worked for the Mayor or an independent agency covered by the District's retirement benefits program. I don't see a policy basis for the differential treatment and besides, such a distinction imposes an unnecessary hardship on employees who have served the District government but are nevertheless excluded from the District's retirement benefits program.

Accordingly, for purposes of determining years of creditable service for annual leave accrual under 6-B DCMR § 1233.1, a Council employee shall be entitled to receive credit for all service creditable under the District retirement benefits program established pursuant to Section 2605 of the CMPA (D.C. Official Code § 1-626.05) and any other retirement benefits program operated by a District government agency, as that term is defined in section 301(1) of the CMPA (D.C. Official Code § 1-601.03(1)), including by an independent agency, board, or commission.

The Council must compete with the private sector for employee talent and should therefore be able to promise all employees who have worked in District government service, irrespective of the agency for which they worked, that they will be treated the same for purposes of annual leave accrual. Granting the same benefits to all Council employees promotes government efficiency.

Application of Variance:

This variance shall apply retroactively to any Council employee under my personnel authority. Pursuant to D.C. Official Code § 1-604.06(b)(3)(A)(ii) and 6-B DCMR § 104.3, a Council employee not under my personnel authority may use this variance upon written authorization by the Councilmember who is the employee's personnel authority. Such written authorization shall be filed with the Secretary of the Council, who shall keep a record of all Council employees accruing annual leave pursuant to this variance. A copy of this variance and any accompanying authorization shall be placed in the District personnel file of each employee to whom it applies.

This variance shall apply until superseded by law or until the Mayor issues regulations negating its necessity.

²D.C. Official Code § 1-602.03(3) exempts employees of boards and commissions from the District's retirement benefits program; however, a board or commission may elect, upon the Mayor's approval, to participate in the District's retirement benefits program, see 6-B DCMR § 2699.1 (defining covered employment).