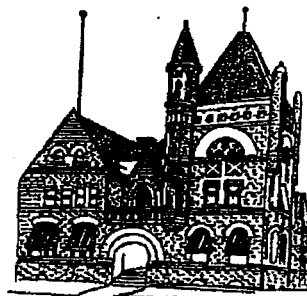




OFFICE OF THE CITY COUNCIL

City of West Haven
355 Main Street
West Haven, Ct. 06516



City Hall
1896 - 1968

John M. Picard
Mayor

Council Members

Martha Bell
Chairwoman

James M. Peccerillo
First District

November 28, 2007

Deborah Conlon
Second District

Sharon Spaziani
Third District

Councilwoman Sharon Spaziani
85 Main Street
West Haven, CT 06516

Stuart Arotzky
Fourth District

Martha Bell
Fifth District

RE: Resolution concerning Fringe Benefits
for Non-Union Employees

James W. O'Brien
Sixth District

Dear Councilwoman Spaziani:

Nancy Rossi
Seventh District

The City Council approved the following motion at a regular meeting
held on Monday, November 26, 2007:

Tracy A. Morrissey
Eighth District

RESOLVED: That a Resolution defining Fringe Benefits for Non-Union
Employees, be approved.

Stephanie Marazzi
Ninth District

Copy of Resolution attached.

Gail S. Burns
Tenth District

Very truly yours,

Domenic A. Broccoli
Councilman-at-Large

Gail G. Carroll
Clerk of the Council

Stephen W. DeCrescenzo
Councilman-at-Large

Edward M. O'Brien
Councilman-at-Large

GGC/dn
enclosure

Gail G. Carroll
Clerk of the Council

c.c.: Mayor John M. Picard
Corporation Counsel
Personnel Director
City Clerk

A RESOLUTION DEFINING EMPLOYEE BENEFITS FOR NON-UNION EMPLOYEES

WHEREAS: The City of West Haven has contracts with various municipal unions; and

WHEREAS: The contracts between the City and the unions define the employee benefits received by the employees covered under those contracts; and

WHEREAS: The City also employs non-union employees who are not covered by a defined benefit policy; and

WHEREAS: It is the policy of the City of West Haven to provide employee benefits to those non-union employees employed by the City;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST HAVEN THAT:

“The Resolution Regarding Fringe Benefits For Other Than Union Employees; and subsequent amendments as adopted on September 23, 1996 are hereby repealed and in place thereof is adopted the following:

1) Elected Officials

A. All elected officials of the City of West Haven shall receive a salary in the amount set by the West Haven City Council at the beginning of such official's term of office and shall not be increased during said term of office.

B. All full-time elected officials shall be entitled to and receive, in the same way and manner as currently provided or to be provided in the future to municipal employees covered under the agreement between the City of West Haven and Communications Worker's of America AFL-CIO, Local 1103 or any recognized successor bargaining unit, the following benefits;

- (1) Longevity
- (2) Insurance
- (3) Car Allowance
- (4) Retirement; and
- (5) Worker's Compensation

C. Elected Officials who are designated as working less than twenty (20) hours per week are not eligible for the benefits provided in Section 1-B except as otherwise required by law.

D. Sick leave already accumulated by an elected official under previous resolutions shall be capped as of the effective date of this resolution, but shall otherwise be available to the elected official in calculating retirement benefits under Article 26 of the current collective bargaining agreement between the City and Communications Workers of America, AFL-CIO Local 1103, or successor agreement thereto.

E. Notwithstanding the provisions of Paragraph B and D above the life insurance and health, prescription and dental benefits otherwise available as a retirement benefit shall only be available to full-time elected officials who have been employed by the City of West Haven for at least 10 years prior to the date of this resolution.

2. Appointed Officials

A. All full-time appointed officials not covered by any bargaining unit agreement shall be entitled to and receive, in the same way and manner as currently provided or to be provided in the future to municipal employees covered under the agreement between the City of West Haven and Communications Worker's of America AFL-CIO, Local 1103 or any recognized successor bargaining unit, the following benefits;

- (1) Longevity
- (2) Sick Leave
- (3) Military Leave
- (4) Jury Duty
- (5) Bereavement Leave
- (6) Vacations
- (7) Insurance
- (8) Car Allowance
- (9) Educational Assistance
- (10) Retirement
- (11) Personal Days
- (12) Worker's Compensation
- (13) Wages

B. Appointed officials who are designated as working less than twenty (20) hours per week are not eligible for the benefits provided in Section 2-A of this resolution, except as otherwise provided by law.

3. The provisions of this resolution shall not be interpreted to deny, impair or withhold in any way the portability of life, health and other insurance coverages as may be required under any applicable state or federal law, including all rights and obligations under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA).

To: Ron Quagliani, Chairman, City Council;

Nancy Rossi, Mayor, City of West Haven

From: Lee Kennedy Tiernan, Corp. Counsel

Re: Vacation pay/buyback Elected Officials

Date: March 25, 2019

I thought this issue was resolved. But, I will make one last attempt to clarify.

The City Charter at Chap. IV sec. 5, states that the city, "...Council shall fix the compensation of all elected and appointed officers of the City."

As it relates to vacation pay for elected officials in the City of West Haven, the City Council approved a "Resolution Defining Employee Benefits for Non-Union Employees" on November 26, 2007. Although the resolution clearly provides for a "vacation" benefit for Appointed Officials it is silent concerning vacation pay regarding elected officials. Notwithstanding, it would appear that the Council wanted appointed officials to receive vacation pay benefits pursuant to the 1103 union contract, but not elected officials. However, according to Conn. Gen. Stat. sec. 31-76k the absence of a written policy concerning vacation pay can result in the state finding that you, the employer, created a employee vacation benefit. But, On December 11, 2018 I put the Mayor on written notice that she should not expect to receive a vacation benefit from December 11, 2018 to the end of her term. That notice from the Corp. Counsel's office is sufficient written notice of the vacation policy concerning the Mayor consistent with the Charter and Conn. General Statutes.

While the Council has not gone on record to alter the ".Employee Benefits for Non-Union Employees" resolution since November 26, 2007 concerning vacation pay or benefits, the Council had a keen interest in Vacation Time and Compensatory Time in 2017. There were many meetings and data exchanged with council members including detailed memos in February and March 2017 to the

Council. It was clear to the Commissioner of Human Resources and Personnel and the Director of Finance that the Council wanted greater accountability. In her letter to then Corporation counsel dated June 1, 2017 it was clear that the Commissioner of Human Resources/Personnel met with at least three councilmen and women. This policy of greater accountability was instituted and I can report that as it relates to management of Compensatory Time, it has been a great success. (See attached).

The Commissioner of Human Resources/Personnel thought this new era of greater accountability applied to elected officials who were willing to account for their hours. To be fair, this seems a reasonable assumption given the intensity and time devoted to this accountability change. However, as Corporation Counsel I would prefer something in the Council record for this office to confirm this vacation policy.

However, pursuant to Conn. Gen. Stat. sec. 31-76k we, The City, appear to have created a policy as it relates to vacation benefits for the Mayor, communicated that policy to the Mayor and the City is thus liable to pay the vacation benefit. I don't know if the Commissioner of Human Resources/Personnel was wrong. She may have been correct as to what the intent was of that Council at that time and the Finance Director agreed. There is some evidence to support that conclusion. However, for this office to be comfortable with vacation pay for Mayor I would require some positive indication in the Council record.

Was it illegal to pay the previous mayor and the current mayor a "vacation benefit"? Indeed, pursuant to Conn. Gen. Stat. Sec. 31-76k it may be illegal not to. While I regret we are going to a less accountable system as it relates to the Mayor, I see no choice at present.

To those who seek to legally recover "vacation pay" from the previous mayor and the current mayor, be advised that any legal recovery would require paying for City lawyers, lawyers for the respective Mayors (again pursuant to state law) and indeed the City has no guarantee of success. I would further point out that the failure to pay an employee an "accrued benefit" can lead to double and triple damages.

In short, it appears we communicated a vacation benefit practice to the previous mayor, established a precedent by paying that benefit to the previous mayor and then continued the practice with this mayor. But, the practice has stopped as of December, 2018.

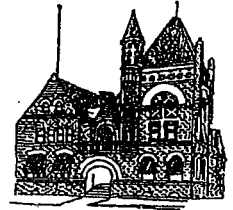
I would note that I cannot find any evidence either mayor **knowingly** violated any rule, law, ordinance or practice concerning this matter.

My office has to make prudent financial decisions concerning the legal affairs of the City. This office cannot expend any more time concerning this issue. Thank you.



DEPARTMENT OF PERSONNEL

City of West Haven
355 Main Street
West Haven, CT 06516
(203) 937-3558



City Hall
1896 - 1968

Edward M. O'Brien
Mayor

Beth A. Sabo
Director of Personnel & Labor Relations
Commissioner of Human Resources

June 1, 2017

Vincent Amendola, Jr.
Corporation Counsel
City of West Haven
355 Main Street
West Haven, CT 06516

Re: Commissioners Receiving Compensatory Time

Dear Vincent:

I apologize for the delay in this response, but I actually just received this in the mail. When I first started as Director of Personnel, I met with all the appointed and elected officials regarding not only compensatory time, but vacation and sick time as well.

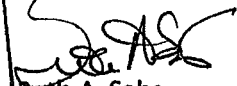
We discussed the practice of accountability for each of those items. There had been some issues with the prior administration and their answerability of sick, vacation and compensatory time. I indicated that appointed individuals could accrue compensatory time on the basis of hour for hour. It needed to be recorded. The entry had to include the date, time, reason and the amount of time accrued. Conversely, if they elected to utilize some of the compensatory time, that had to be recorded also. Some would argue that if you are appointed, you can take whatever time you want. There needs to be documentation to substantiate time off. As for the sick and vacation, it was indicated to each that they were to fill out an attendance card, which would be entered into Novatime for the record. If they elected not to keep an accounting, each was told that if and when they left, they could not ask for payment of unused vacation or sick (if they had enough years to retire) or be able to buy a year's worth of service for retirement purposes... there was to be no payment for compensatory time.

There was a subsequent meeting with the Mayor, Councilwoman Morrissey, Councilwoman Riccio and I believe Councilman Quagliani relative to appointed employees using sick time to buy years of service. At this meeting I reiterated the practice of recording time owed and taken. It was then determined that the ability to purchase a year of service (30 sick days) would be limited to one.

It has always been that some appointed employees have documented their compensatory time for accountability and some elect not to record any. Each appointed official, if documenting, as always kept the records themselves. However, each appointed official is accountable to the Chief Elected Official.

If you have any questions, please do not hesitate to contact me. Thank you.

Sincerely,



Beth A. Sabo
Commissioner

Cc: Mayor O'Brien

Compensatory Time Records
Local 1103- Supervisors/Managers

Name	2017 (Highest Amount)	2019
Mark Bisaccia	411.25	180.75
John Bernardo	79.38	4.63
Bob Zyskowski	44.14	127.27
Rob Sandella	51.63	70.75
Eileen Krugel	154.38	31.00
David Richards	33.38	33.13
Ann Marie Gradoia	41.88	35.00
Douglas Kidd	93.75	26.50
Patricia Campbell	69.38	14.89
Leslie-Marcarelli-Naizby	88.00	54.50
Mark Paine*	743.88	204.50
Abdul Quadir	655.04	210.88
Frank Gladwin	422.00	10.62
Lloyd Adams	964.88	238.75
Doug Colter	233.53	138.49
Cathy Conniff	175.63	66.13
David Killeen	63.76	53.26

Name	2017 (Highest Amount)	2019
George Sherman	5.00	1.03
Rich Boyne	10.38	4.25
Sharon Mancini	28.51	14.26
Tom Conroy	204.76	118.88
Diane Dietman	354.12	148.51
Helyn Johnson	814.07	230.37
Daniel Ampofo	140.04	61.29
Maureen Lillis	25.57	6.07
Lucy Bango	75.75	48.87
Robert Morton	67.42	63.80

* Cannot accrue anymore compensatory time



November 8, 2016

Vincent N. Amendola, Jr.
Office of Corporate Counsel
City Hall
355 Main Street, 3rd Floor
West Haven, CT 06516

Re: Payment of accrued sick leave upon retirement

Dear Mr. Amendola.:

My colleague, Michael Dorney, has asked me to address the issue of how much deferral of payment of accrued sick leave is permissible without triggering potential negative tax consequences for impermissible deferrals under Internal Revenue Code Section 409A or under the doctrine of constructive receipt.

Section 409A was added to the Internal Revenue Code in 2004, as a result of issues related to the Enron case. The purpose of 409A was to limit deferral of income to very narrow situations. The language of Section 409A is very broad and applies to virtually every situation where there is even a short deferral of income. Treasury Regulations were promulgated and, after extensive comment from stakeholders, the Regulations included some narrowly tailored exceptions designed to exempt pre-existing situation that were not considered to be abusive. One of the exceptions was for PTO (paid time off policies of employers including sick time, vacation time and other paid time off plans). Of particular concern was that some of these plans were subject to collective bargaining so that it would be very disruptive and costly for employers to have to reconcile these plans with the provisions of 409A.

However, even prior to 409A, there was the general common law doctrine of “constructive receipt” which meant that an employee could be deemed to be in receipt of income if all of the events necessary to receive the income had occurred. See Treas. Reg. Section 1.451-2(a). This doctrine is to prevent taxpayers from deferring income to save taxes. While there has been no specific guidance under 409A as to what constitutes a PTO “plan,” PLR 9009052 made clear that an employee is in constructive receipt of income as soon as leave can be “cashed out.”

E-mail: Elizabeth.atkinson@leclairryan.com
Direct Phone: 757.217-4538

999 Waterside Drive, Suite 2100
Norfolk, Virginia 23510
Phone: 757.624.1454 \ Fax: 757.624-3773

Vincent N. Amendola, Jr.
November 8, 2016
Page 2



There have also been several Private Letter Rulings issued prior to the Section 409A regulations that dealt with the constructive receipt aspects of PTO, such as PLR 200130015 and PLR 200450010. Those PLRs dealt with the ability of municipal employees to elect to receive cash in lieu of carryover leave. The concern was maintaining a reasonable PTO program that did not cross over into a mechanism for deferred compensation.

In addition, under 409A, the IRS is likely to have concerns about PTO plans that permit an unlimited amount of leave to be carried over and banked because guidance from IRS in the form of private letter rulings have expressed concerns about "excessive accumulation" of time carried forward from year to year. Many employers limit carryover to 80 hours per year.

In the absence of a written plan, it would be hard to argue that a deferral beyond a reasonable administrative period (probably 30 days) would be permissible. And, even if there is a written plan, the employee would be in constructive receipt once the condition for "cash out" is met, such as giving notice of retirement. Therefore, it is important to ensure that the payment is made within the same tax year as the notice is given, unless the notice is given so late in the year that it is administratively impractical to process the payment for leave within that calendar year.

Therefore, our conclusion is that the retired employee's leave must be paid before the end of the calendar year and cannot be spread over several tax years. It may be prudent to create a limitation on carryover, as many other municipalities have done, and substitute a year-end cash out of excess leave or permit it to be contributed to a retirement plan. Please call me at (757) 217-4538 if you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Elizabeth J. Atkinson', with a long horizontal line extending to the right.

Elizabeth J. Atkinson

EJA:sb



December 9, 2016

**CONFIDENTIAL – SUBJECT TO
ATTORNEY-CLIENT PRIVILEGE**

Vincent N. Amendola, Jr., Esq.
Corporation Counsel
City of West Haven
355 Main Street
West Haven, Connecticut 06516

Re: City of West Haven – Legal Services

Dear Vincent:

Kevin McNabola from the Finance Office contacted me on October 20 regarding payment of accrued sick leave upon retirement. He was facing a fast-approaching retirement date of a Firefighter and required some advice on the legality of deferral of an accrued benefit payment. I verbally consulted with Liz Atkinson, a Tax lawyer in our Norfolk, Virginia office. Liz is a former IRS employee. Based on her advice, I issued a short opinion letter for Kevin's use in dealing with what I recall to be a 10-24 retirement date.

Liz continued to work finalizing research and issued a November 8, 2016 opinion letter directed to your attention, the original of which I have enclosed for your records.

Questions about the retirement continued, and I further conferred with Kevin on various dates through November 17, 2016. In total, our office worked on the case on 9 separate days between October 20, 2016 and November 17, 2016. The bill covering that work is enclosed in this package for your regular processing. I want to let you know that I have taken steps to assure that there would be no duplication or overcharge for our work in this matter. Consequently, I have written off my time expended on three separate dates with a zero billing, and reduced Elizabeth's rate to \$300 per hour for the 2.10 hours she spent on the case.

E-mail: Michael.Dorney@leclairryan.com
Direct Phone: (203) 672-3210
Direct Fax: (203) 672-3233

545 Long Wharf Drive, Ninth Floor
New Haven, Connecticut 06511
Phone 203.672.3200 \ Fax 203.672.3201

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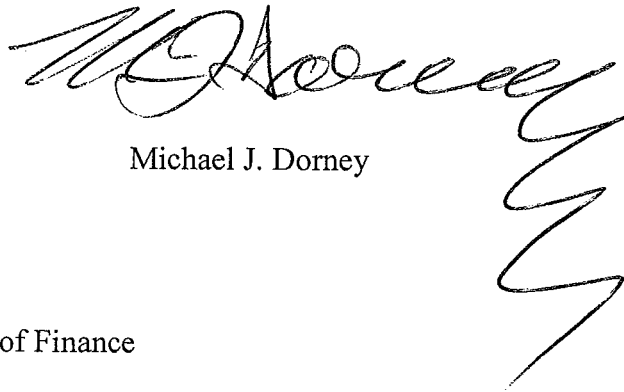
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ATTORNEYS AT LAW \ WWW.LECLAIRRYAN.COM

Vincent N. Amendola, Esq.
December 9, 2016
Page 2

I thought it best to bring the details to your attention and suggest that you retain the original opinion in your files for future use. Please let me know if you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "M. Dorney", with a long, sweeping flourish extending downwards and to the right.

Michael J. Dorney

MJD/cs
Enclosures

cc: Kevin McNabola, Director of Finance
(with enclosures)

19638804.1

this section, requiring towns to provide mem-

§ 7-101a. Protection of municipal officers and municipal employees from damage suits. Reimbursement of defense expenses. Liability insurance. Time limit for filing notice and commencement of action

(a) Each municipality shall protect and save harmless any municipal officer, whether elected or appointed, of any board, committee, council, agency or

GENERAL PROVISIONS

Ch. 97

§ 7-101a

commission, including any member of a local emergency planning committee appointed from such municipality pursuant to section 22a-601, or any municipal employee, of such municipality from financial loss and expense, including legal fees and costs, if any, arising out of any claim, demand, suit or judgment by reason of alleged negligence, or for alleged infringement of any person's civil rights, on the part of such officer or such employee while acting in the discharge of his duties.

(b) In addition to the protection provided under subsection (a) of this section, each municipality shall protect and save harmless any such municipal officer or municipal employee from financial loss and expense, including legal fees and costs, if any, arising out of any claim, demand or suit instituted against such officer or employee by reason of alleged malicious, wanton or wilful act or ultra vires act, on the part of such officer or employee while acting in the discharge of his duties. In the event such officer or employee has a judgment entered against him for a malicious, wanton or wilful act in a court of law, such municipality shall be reimbursed by such officer or employee for expenses incurred in providing such defense and shall not be held liable to such officer and employee for any financial loss or expense resulting from such act.

(c) Each such municipality may insure against the liability imposed by this section in any insurance company organized in this state or in any insurance company of another state authorized to write such insurance in this state or may elect to act as self-insurer of such liability.

(d) No action shall be maintained under this section against such municipality or employee unless such action is commenced within two years after the cause of action therefor arose nor unless written notice of the intention to commence such action and of the time when and the place where the damages were incurred or sustained has been filed with the clerk of such municipality within six months after such cause of action has accrued.

(e) For the purposes of this section "municipality" means any town, city, borough, consolidated town and city, consolidated town and borough, district, district department of health, or authority established by the general statutes, a special act or local law, ordinance or charter or any public agency.

(1971, P.A. 726; 1975, P.A. 75-408, § 1; 1977, P.A. 77-399; 1980, P.A. 80-403, § 9, eff. May 23, 1980; 1989, P.A. 89-212, § 11; 1989, P.A. 89-378.)

Historical and Statutory Notes

Codification

Section heading was changed to conform to Gen.St. Rev. to 1987.

Gen.St. Rev. to 1991, changed the section heading from "Protection of municipal officers and full-time municipal employees from damage

suits. Reimbursement of defense expenses. Liability insurance. Time limit for filing notice and commencement of action" to "Protection of municipal officers and municipal employees from damage suits. Reimbursement of defense expenses. Liability insurance. Time limit for filing notice and commencement of action".

Cross References

Expenditure of public funds to influence vote, civil penalty, prohibition against indemnification, see C.G.S.A. § 9-369b.