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Arizona Department of Administration

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Nº 199-023 (R99-030)

Questions Presented

You have asked whether:

- (1) the 1999 amendments to the Retiree Accumulated Sick Leave ("RASL") program, which brought university employees participating in a federal retirement system into RASL, apply to university employees who retired before the effective date of that legislation;
- (2) the death benefit provisions of the RASL program apply to officers and employees who participated in an optional retirement program established by the Board of Regents and died before the effective date of the 1999 amendments; and
- (3) the RASL program applies to an individual who leaves State employment and later applies for retirement or only to an officer or employee who retires directly from active employment status.

Summary Answer

1. RASL benefits are not available to university employees participating in a federal retirement system who retired prior to the effective date of the 1999 amendments to RASL.
2. RASL benefits are not available to the beneficiaries of a person who died before the effective date of the 1999 amendments to RASL and who participated in an optional retirement program established by the Board of Regents.
3. An officer or employee must apply for retirement immediately upon separation from State employment to be eligible to participate in RASL.

Background

Before 1985, State employees were not reimbursed for unused sick leave when they left State employment. That year, the Legislature enacted Arizona Revised Statutes ("A.R.S.") § 38-615, which provided that a State officer or employee "who has accumulated 1,000 or more hours of sick leave is eligible, on retirement, to receive \$750." 1985 Ariz. Sess. Laws ch. 234, § 1. This established the RASL program, which at that time expressly applied to State officers and employees participating in the Arizona State retirement system (A.R.S. §§ 38-711 to -794), the public safety personnel retirement system (A.R.S. § 38-842), and optional retirement programs established by the Arizona Board of Regents pursuant to A.R.S. § 15-1628. *Id.* The Legislature subsequently amended the law to include a fourth group -- officers and employees participating in the newly created corrections officer retirement plan. 1988 Ariz. Sess. Laws ch. 309, § 1.

In 1997, the Legislature significantly increased the potential payment for unused sick leave. *See* 1997 Ariz. Sess. Laws ch. 291, § 1. The 1997 legislation provided payment on a graduated basis for up to 1,500 accumulated sick leave hours at 50 percent of the officer's or employee's current hourly rate. *Id.* It also created a retiree accumulated sick leave fund, administered by the Department of Administration, for payments for accumulated sick leave. *Id.* § 2.

The following year, the Legislature again amended A.R.S. § 38-615, limiting the maximum payment for unused sick leave to \$30,000 and providing a death benefit to the beneficiary of a deceased officer or employee as follows:

If an officer or employee is eligible for normal retirement pursuant to Chapter 5, Article 2 [Arizona State retirement system], 4 [public safety personnel retirement system] or 6 [corrections officer retirement plan] of this title but has not retired at the time of the officer's or employee's death, the beneficiary of the officer or employee is eligible to receive payments.

1998 Ariz. Sess. Laws ch. 292, § 3. This death benefit provision did not include officers and employees who participated in an optional retirement program established by the Arizona Board of Regents.

In 1999, the Legislature amended A.R.S. § 38-615 again. 1999 Ariz. Sess. Laws ch. 300, § 9. These amendments rewrote the death benefit provision and added a fifth group of employees to the RASL program -- university officers and employees participating in a federal retirement system. *Id.*

Analysis

A. The RASL Benefit Is Not Available to University Employees Participating in a Federal Retirement System Who Retired Before the Effective Date of the 1999 Amendments to A.R.S. § 38-615.

The 1999 amendments to A.R.S. § 38-615, which became effective August 6, 1999, expanded the RASL program to include "an officer or employee of a university under the jurisdiction of the Arizona Board of Regents who participates in a federal retirement system." 1999 Ariz. Sess. Laws, ch. 300, § 9. You have asked whether university employees participating in a federal retirement system who retired prior to August 6, 1999, are eligible for compensation for unused sick leave.

As a general rule, statutes are not applied retroactively unless declared so by the Legislature. *See* A.R.S. § 1-244; *State v. Gonzales*, 144 Ariz. 512, 513, 687 P.2d 1267, 1268 (1984). The 1999 amendments to A.R.S. § 38-615 did not contain a retroactivity provision. Although there was a specific effort to make the federal retirees amendment retroactive, the Legislature did not approve the proposed retroactivity clause. *See* HB 2353, 44th Leg., 1st Reg. Sess. (Ariz. 1999) (Conference Committee Amendment).⁽¹⁾ Based on the statutory language and legislative history, university employees participating in a federal retirement system who retired prior to August 6, 1999, are not eligible for RASL. Therefore, the 1999 amendments apply only to those

university employees in a federal retirement system who retire on or after the effective date of the 1999 amendments.

B. The RASL Benefit Is Not Available to the Beneficiary of a University Officer or Employee Who Died Before the Effective Date of the 1999 Amendments to A.R.S. § 38-615.

You also asked whether RASL benefits are available to the beneficiary of a university officer or employee who died before the effective date of the 1999 amendments to the RASL. You advised that at least one university retirement system employee who had reached normal retirement age, but had not yet retired, died before the 1999 amendments became effective August 6, 1999. In 1998, the Legislature amended A.R.S. § 38-615 to provide a death benefit. 1998 Ariz. Sess. Laws ch. 292, § 3. The 1998 amendment provided that, if an employee with accrued sick leave who had reached normal retirement age died before retiring, the employee's beneficiary would receive the allowable payment for unused sick leave *Id.*⁽²⁾ The 1998 amendments also provided that sick leave was payable to employees in three annual installments and that an employee's beneficiaries would receive any balance due if that retired employee died before receiving all three installment payments. *Id.*

The provision relating to retired employees who die before receiving their three installments applied to members of all retirement programs enumerated in A.R.S. § 38-615 because it applied to all employees under "this section." *Id.* However, the 1998 amendments regarding payments to beneficiaries of employees who, although eligible to retire, died before retiring, expressly applied only to the members of three of the retirement systems included in the RASL program -- the Arizona State retirement system, the public safety personnel retirement system, and the corrections officer retirement plan ("chapter 5, article 2, 4 or 6" of Title 38). *Id.* This death benefits provision did not include members of optional retirement programs established by the Arizona Board of Regents.

The expression of one or more items of a class in a statute indicates a legislative intent to exclude all items of the same class that are not expressed. *Pima County v. Heinfeld*, 134 Ariz. 133, 134, 654 P.2d 281, 282 (1982). Here, the Legislature made the death benefit expressly applicable to three retirement programs but failed to include a fourth -- the university retirement plans. Additionally, a more recent, specific statutory provision governs over an older, more general provision. *Lemons v. Superior Court*, 141 Ariz. 502, 505, 687 P.2d 1257, 1260 (1984). Thus, the 1998 amendment creating the death benefit applied only to the three retirement plans specified, even though other portions of the statute applied to four retirement plans. For these reasons, the death benefit for employees eligible for retirement who die before retiring, as enacted in 1998, did not apply to participants in the university retirement programs.

The following year, the Legislature eliminated the language that restricted death benefits to only three of the four eligible retirement programs. Under the 1999 amendments, the beneficiaries receive a lump sum under the RASL "if an officer or employee dies before the officer or employee receives the

total payment due to the officer or employee or if an officer or employee is eligible for normal retirement but has not retired at the time of the officer's or employee's death." 1999 Ariz. Sess. Laws ch. 300, § 9. Under these 1999 amendments, all officers and employees eligible for RASL are eligible for the death benefit. Therefore, people in university retirement plans who were not covered by the death benefits in the 1998 legislation are now covered because of the 1999 amendments to A.R.S. § 38-615.

However, as discussed previously, the 1999 amendments to the RASL are not retroactive because the 1999 legislation did not include a retroactivity clause. *See* A.R.S. § 1-244, *Gonzales*, 141 Ariz. at 513, 687 P.2d at 1268. Because the 1999 amendments are not retroactive, beneficiaries of university employees who died before the effective date of the 1999 amendments are ineligible for RASL payments. *See* 1998 Ariz. Sess. Laws ch. 292, § 3.

C. The RASL Program Is Only Available to Officers and Employees Who Apply for Retirement Benefits Immediately Upon Termination of Employment.

When interpreting statutes, words and phrases are to be given their ordinary meanings. *State v. Takacs*, 169 Ariz. 392, 397, 819 P.2d 978, 983 (App. 1991). When applied to A.R.S. § 38-615, this principle establishes that an officer or employee is ineligible for RASL if the officer or employee separates from State employment and later applies for retirement benefits.

Section 38-615, A.R.S., directs payment for accumulated sick leave "on retirement." This payment for accumulated sick leave on retirement is available to an officer or employee "who *has* at least 500 . . . hours of sick leave." A.R.S. § 38-615(A)(1) (emphasis added). Yet, Arizona Administrative Code R2-5-404(F) (1999), provides that "all sick leave credits are forfeited upon separation from State service." As a result, no officer or employee "has" accumulated sick leave if retirement is delayed until some time after separation from state service. The use of the present tense -- "has" -- together with the regulations regarding forfeiture of sick leave indicates an employee must retire immediately upon termination of employment to qualify for RASL.

This conclusion is further supported by the Legislature's use of the phrase "current hourly rate." The amount of payment for sick leave on retirement is equal to a specified "percent of the officer's or employee's salary at the officer's or employee's *current hourly rate* for each hour of accumulated sick leave." A.R.S. § 38-615(A)(1) (emphasis added). An employee who leaves State employment and later applies for retirement has no "current hourly rate" against which to measure sick leave payments.

Thus, the accumulated sick leave payments are available only to an officer or employee who "has" an accumulated sick leave balance and who has a "current hourly rate." Consequently, RASL can only apply to State employees going immediately from State employment into retirement.

Conclusion

Under the current law: (1) university employees in a federal retirement program who retired before August 6, 1999 are ineligible for RASL; (2) the beneficiaries of university officers and employees who were eligible for retirement but had not yet retired and died before August 6, 1999, are not eligible for RASL payments; and (3) only those State officers and employees who apply for retirement immediately upon separation from State employment are eligible to participate in RASL.

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1. The Conference Committee Amendment included language making the amendments to A.R.S. § 38-615 "apply retroactively to July 1, 1998 to an officer or employee under the jurisdiction of the Arizona Board of Regents who participates in a federal retirement system." The Legislature did not adopt the Conference Committee Report.

2. The relevant language of these 1998 amendments to A.R.S. § 38-615 is as follows:

C. If an officer or employee who elects to receive payments pursuant to . . . this section dies before the officer or employee receives the total payment due to the officer or employee, the officer's or employee's beneficiary shall receive the balance due to the officer or employee.

D. If an officer or employee is eligible for normal retirement pursuant to chapter 5, article 2, 4 or 6 of this title but has not retired at the time of the officer's or employee's death, the beneficiary of the officer or employee is eligible to receive payments or coverage and may make the election prescribed in subsection A of this section.

1998 Ariz. Sess. Laws ch. 292, § 3.

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