

Note from the Attorney General's Office:

1985 Op. Att'y Gen. No. 85-102 was overruled by
1998 Op. Att'y Gen. No. 98-026.

OPINION NO. 85-102**Syllabus:**

A county employee who works a standard workweek set as full time by his appointing authority at less than forty hours per week is a full-time employee for purposes of R.C. 325.19, and is entitled to the full amount of vacation leave prescribed by R.C. 325.19(A).

To: W. Allen Wolfe, Muskingum County Prosecuting Attorney, Zanesville, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, December 27, 1985

I have before me your request for my opinion concerning the accrual of vacation benefits by county employees pursuant to R.C. 325.19. You specifically ask "whether county employees who work a standard work week less than forty hours would accrue vacation under ORC 325.19 at a prorated rate reflecting the lesser hours worked."

Your letter provides the following background information:

Muskingum County has over 300 employees working for the various departments and boards. A majority of these employees now have, and have always had a standard work week of less than forty hours. Prior to August, 1985 each employee's payroll record reflected a forty hour work week, on an eighty hour pay period regardless of the hours actually worked. Salaries were based upon a biweekly amount rather than an hourly rate. Therefore, each employee received a paycheck based upon the two-week pay period, nominally described as eighty hours, regardless of the actual hours they were required to work by their department's standard work week.

Vacations were also accrued and taken on a weeks and/or days off basis rather than an hourly basis. For example, an employee with one year's service could accrue two weeks or ten days of vacation each year. If this employee took one vacation day off, he or she would receive one-tenth (1/10) of his or her biweekly salary amount as compensation for that vacation day. The records would reflect that the employee took eight hours of vacation even if the employee's regular work day was less than eight hours.

You also state that the county now intends to maintain its payroll records to reflect the actual number of hours worked by its employees. Your specific concern is whether this change in the method of maintaining county payroll records affects the amount of vacation leave to which county employees who work a standard workweek of less than forty hours are entitled.¹

¹ Pursuant to R.C. Chapter 4117, county employees' hourly rates of pay, salaries, other forms of compensation for services rendered, hours, and terms and conditions of employment are subject to collective bargaining. However, in the absence of a collective bargaining agreement, or if an agreement does not provide for a certain matter, the employer and employee are subject to applicable state and

R.C. 325.19 prescribes vacation benefits for full-time county employees and authorizes boards of county commissioners to provide such benefits for part-time county employees, stating in pertinent part:

(A) Each full-time employee in the several offices and departments of the county service, including full-time hourly-rate employees, after service of one year with the county or any political subdivision of the state, shall have earned and will be due upon the attainment of the first year of employment, and annually thereafter, eighty hours of vacation leave with full pay. One year of service shall be computed on the basis of twenty-six biweekly pay periods. A full-time county employee with eight or more years of service with the county or any political subdivision of the state shall have earned and is entitled to one hundred twenty hours of vacation leave with full pay. A full-time county employee with fifteen or more years of service with the county or any political subdivision of the state shall have earned and is entitled to one hundred sixty hours of vacation leave with full pay. A full-time county employee with twenty-five years of service with the county or any political subdivision of the state shall have earned and is entitled to two hundred hours of vacation leave with full pay. Such vacation leave shall accrue to the employee at the rate of three and one-tenth hours each biweekly period for those entitled to eighty hours per year; four and six-tenths hours each biweekly period for those entitled to one hundred twenty hours per year; six and two-tenths hours each biweekly period for those entitled to one hundred sixty hours per year; and seven and seven-tenths hours each biweekly period for those entitled to two hundred hours per year.

(B) A board of county commissioners may, by resolution, grant vacation leave with full pay to part-time county employees. A part-time county employee shall be eligible for vacation leave with full pay upon the attainment of the first year of employment, and annually thereafter. The ratio between the hours worked and the vacation hours awarded to a part-time employee shall be the same as the ratio between the hours worked and the vacation hours earned by a full-time employee as provided for in this section.

R.C. 325.19(A) provides generally that a full-time county employee, after one year of service, is entitled to eighty hours of vacation leave per year. The statute also provides for an increase in the number of hours of vacation leave to which such an employee is entitled after eight, fifteen, and twenty-five years of service. For ease of discussion I will address the operation of R.C. 325.19 only as it relates to

local laws concerning wages, hours and terms and conditions of employment. See generally 1984 Op. Att'y Gen. No. 84-092 (discussing county commissioners' authority with respect to county employees' compensation). Since you do not indicate that the county employees' vacation benefits are governed by collective bargaining agreements, this opinion will address only the vacation benefits to which county employees are entitled pursuant to R.C. 325.19.

employees who are entitled to eighty hours of vacation leave per year, although the statute operates in the same manner with respect to those entitled to one hundred twenty, one hundred sixty, or two hundred hours of leave per year.

In order to be entitled to the vacation benefits set forth in R.C. 325.19(A), one must be a full-time employee, defined in R.C. 325.19(G)(1) as: "an employee whose regular hours of service for a county total forty hours per week, or who renders any other standard of service accepted as full-time by an office, department, or agency of county service" (emphasis added).

You state that the standard workweek is not uniform throughout the county, and although certain county employees work forty hours per week, a majority of county employees work a standard week of less than forty hours. You question whether all such employees are entitled to the vacation benefits prescribed by R.C. 325.19(A).

Unlike the state, for whom the legislature has prescribed a standard workweek of forty hours, R.C. 124.18, a county has no statutorily defined standard workweek. Rather, each county office may set its own standard. See 1975 Op. Att'y Gen. No. 75-078 (stating that in the absence of statute, there is no requirement of uniformity among county offices as to a standard workweek for purposes of computing overtime compensation); 1962 Op. Att'y Gen. No. 3464, p. 971, 973 (prior to legislature's defining term "full-time employee," for purposes of R.C. 325.19, "what is a full-time employee must depend on what the particular employer requires as the normal working day and the normal working week for his employees").

Thus, where a county office establishes a standard workweek of less than forty hours, any employee for whom such standard workweek is prescribed falls within the definition of a full-time employee, as set forth in R.C. 325.19(G)(1). Thus, even though a county employee's standard workweek is less than forty hours, so long as such service is considered by his appointing authority to be full time, he is entitled to the full amount of vacation leave prescribed by R.C. 325.19(A). 1983 Op. Att'y Gen. No. 83-097; 1982 Op. Att'y Gen. No. 82-055, n.1 at 2-158 ("all county employees who are considered to be full time by their appointing authorities are entitled to vacation leave benefits pursuant to the scheme set forth in R.C. 325.19(A)").

In contrast, R.C. 325.19(B) authorizes a board of county commissioners to establish a vacation benefit plan for part-time county employees. Concerning the amount of vacation leave which may be granted under such a plan, R.C. 325.19(B) states: "The ratio between the hours worked and the vacation hours awarded to a part-time employee shall be the same as the ratio between the hours worked and the vacation hours earned by a full-time employee as provided for in this section." A board of county commissioners may establish such a prorated vacation plan, however, only for part-time county employees.

For purposes of R.C. 325.19, a part-time employee:

means an employee whose regular hours of service for a county total less than forty hours per week, or who renders any other standard of service accepted as part-time by an office, department, or agency of

county service, and whose hours of county service total at least five hundred twenty hours annually.

R.C. 325.19(G)(2). Thus, if a county employee's regular hours of service are less than forty per week where the appointing authority considers forty hours per week the standard workweek or if the employee is otherwise considered to be part time by his appointing authority, he is entitled to participate in any vacation leave program which may be established by the board of county commissioners under R.C. 325.19(B).

In the situation you present, the employees work less than forty hours per week, yet the number of hours they work are determined by their appointing authorities to constitute a standard workweek. Although such employees render less than forty hours of service per week, since such service is accepted by their appointing authorities as full-time service, they qualify for the vacation benefits prescribed by R.C. 325.19(A) for full-time employees.

I note that the vacation benefits prescribed by R.C. 325.19(A) are set forth in terms of hours, rather than days or weeks. Although R.C. 325.19(A) prescribes vacation benefits in terms of a certain number of hours of vacation leave per year, such benefits accrue on the basis of biweekly pay periods.² Op. No. 83-097; 1976 Op. Att'y Gen. No. 76-001 (pursuant to R.C. 325.19, vacation benefits accrue on the basis of service completed by pay periods, not on the basis of hours actually worked). Thus, an employee who works less than forty hours in a standard workweek is entitled to eighty hours of vacation leave per year, accrued at the rate of three and one-tenth hours per biweekly period. Even though such employee would have been entitled, prior to 1974, see footnote two, supra, to two weeks of vacation leave, he is now entitled to eighty hours of vacation leave, despite the fact that such eighty hours constitute more than the number of hours he works in a two-week period.

So long as an employee is considered to be a full-time employee by the county office, department, or agency in which he is employed, he is entitled to the full number of hours of vacation leave prescribed for an employee with the requisite service time, even though his standard workweek is less than forty hours. See Op. No. 83-097 (where an employee is regularly scheduled to work a workweek which the appointing authority considers to be full time, there is no statutory authority for the reduction of his benefits because the employee actually works less than the number of hours for which he has been scheduled).

² Prior to the amendment of R.C. 325.19 in 1974 Ohio Laws, Part II, 334 (Am. S.B. 408, eff. July 22, 1974), vacation benefits were prescribed in terms of weeks rather than hours. Further, prior to the 1974 amendment of R.C. 325.19, vacation leave was credited to each employee "upon each successive annual recurrence of the anniversary date of his employment; provided, the anniversary date may be deferred because of periods of time which the employee is not in active pay status." 1973 Ohio Laws, Part I, 782 (Am. S.B. 177, eff. Dec. 17, 1973). The 1974 amendment of R.C. 325.19, however, provided for vacation benefits to accrue at the rate of a specified number of hours "each biweekly period."

You specifically mention 1977 Op. Att'y Gen. No. 77-007 which concluded at 2-26 that, pursuant to R.C. 325.19, "the number of hours of vacation leave accrued biweekly [must] be adjusted proportionately to reflect differences in employees' standard work weeks." As you also note, Op. No. 77-007 was overruled by Op. No. 82-055. The basis for overruling Op. No. 77-007 was the amendment of R.C. 325.19 in 1979-1980 Ohio Laws, Part I, 2542 (Am. H.B. 333, eff. May 13, 1980), which provides a definition of a full-time employee as including an employee who works a standard workweek, although less than forty hours per week, which the appointing authority considers to be full-time service. By this amendment, the legislature clarified that any employee who is considered by his appointing authority to be rendering full-time service, even though less than forty hours per week, is entitled to receive the full vacation benefits prescribed by R.C. 325.19(A).

Your question, however, whether a county employee who works a standard workweek of less than forty hours and who formerly received the equivalent of ten days of vacation leave will now receive an increase in vacation benefits because he will now receive eighty hours of leave, which will be more than the equivalent of ten of his working days. As set forth above, however, in 1974 Ohio Laws, Part II, 334 (Am. S.B. 408, eff. July 22, 1974), the legislature changed the method of computing vacation benefits from a weekly to an hourly rate. Thus, a county employee is now entitled to a certain number of hours, rather than days or weeks, per year as vacation leave. In light of the plain language of R.C. 325.19, I must concur with the conclusions set forth in Op. No. 82-055.

It is, therefore, my opinion, and you are advised that, a county employee who works a standard workweek set as full time by his appointing authority at less than forty hours per week is a full-time employee for purposes of R.C. 325.19, and is entitled to the full amount of vacation leave prescribed by R.C. 325.19(A).