S T A T E O F T E N N E S S E E
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Opinion No. 07-005

Whether State Sick Leave Bank Constitutes a "Fringe Benefit Program" Under Federal Law.

QUESTION

Whether the State Employees' Sick Leave Bank, created pursuant to Tenn. Code Ann. § 8-50-901, *et al.*, and its guidelines, is a "fringe benefit program" as that term is employed in 42 U.S.C. § 2000e(k)?

OPINIONS

Yes.

ANALYSIS

The State Employees' Sick Leave Banks[1] are authorized and defined by Tenn. Code Ann. §§ 8-50-901 through 8-50-945. Tenn. Code Ann. § 8-50-901 contains the following definitions applicable to the state employees' Sick Leave Bank:

> As used in this part, unless the context otherwise requires:
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> * * *
>
> (2) "Member" or "participant" means any state employee who has joined the bank by making the initial donation of the minimum number of days necessary and has donated subsequently assessed days;
>
> (3) "Sick leave" means a designated amount of compensated leave accumulated pursuant to part 8 of this chapter that is granted to a member who through personal illness, injury, disability or quarantine,

[1]In addition to the "primary" sick leave bank available to most State employees (Tenn. Code Ann. §§ 8-50-901 through 8-50-910), sick leave banks are also authorized for employees of higher education institutions (Tenn. Code Ann. § 8-50-925), non-faculty positions at certain state schools (Tenn. Code Ann. § 8-50-935), and employees of the Legislative branch of State government (Tenn. Code Ann. § 8-50-945).

> is unable to perform the duties of the member's state position. Sick leave may not be granted for the period of disability when moneys are paid to the member under the Workers' Compensation Law, compiled in title 50, chapter 6;
>
> (4) **"Sick leave bank" or "bank" means a system of accounting for voluntarily pooled and irrevocably donated accumulated personal sick leave which is collected for the purpose of providing sick leave to members of the program who have suffered a personal illness, surgery, disability or quarantine and whose sick leave is exhausted**:
>
> (5) "Sick leave bank trustees" or "trustees" means those persons appointed to govern the activities of the sick leave bank as provided by §§ 8-50-901 — 8-50-909; and
>
> (6) "State employee" means all employees in state service, legislative branch, and constitutional officers who accrue sick leave pursuant to part 8 of this chapter and all employees and teachers of all state special schools. (Emphasis added).

42 U.S.C. 2000e (also referred to as "Title VII") is the portion of the Civil Rights Act of 1964 that addresses Equal Employment Opportunities. Under 42 U.S.C. 2000e, it is unlawful for an employer, among other things,

> (1) to fail or refuse to hire or to discharge any individual, **or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's** race, color, religion, **sex**, or national origin . . .. [2] (Emphasis added).

42 U.S.C. § 2000e(k), about which your opinion request asks, is a portion of the "Definitions"
that are applicable to the substantive provisions of 42 U.S.C. § 2000e, and states, in pertinent part, as follows:

> The terms "because of sex" or "on the basis of sex" include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy,

[2] *See* 42 U.S.C. § 2000e—2(a)(1).

> childbirth, or related medical conditions shall be treated the same for all employment-related purposes, **including receipt of benefits under fringe benefit programs**, as other persons not so affected but similar in their ability or inability to work, and nothing in section 2000e—2(h) of this title shall be interpreted to permit otherwise . . . .. (Emphasis added).

No separate definition of "fringe benefit" or "fringe benefit program" is provided in the "Definitions" section of 42 U.S.C. § 2000e. You have thus inquired as to whether the State Employees' Sick Leave Bank, as defined by Tenn. Code Ann. § 8-50-901, falls within the term "fringe benefit program" as it is employed in Title VII. It does.

"Fringe benefits" are generally and widely defined as employment benefits given in addition to salary and/or wages. In *Hamblen County Education Assoc. v. Hamblen County Bd. Of Education*, 892 S.W.2d 428 (Tenn. Ct. App. 1994), the Tennessee Court of Appeals had occasion to determine the definition of "fringe benefits" and concluded:

> 'Fringe benefits' is a broad concept. It is one which we all encountered when we first entered the labor market. It is commonly understood in this country to mean benefits which accrue to an employee by reason of his employment other than the employee's salary or wages. **The word 'fringe' in this context is to differentiate these benefits from the 'direct' benefit of one's salary or wages.** Lexicographers appear to be of one mind in defining the concept of 'fringe benefits.' The term has been defined as the '[s]ide benefits that accompany or are in addition to a person's regular compensation (e.g., paid insurance, paid holidays and vacations).' William Statsky, *West's Legal Thesaurus/Dictionary*, 340 (1986). Another dictionary has defined a "fringe benefit" as '[a]n employment benefit given in addition to one's wage or salary.' *The American Heritage Dictionary of the English Language* (William Morris, Editor, 1978).
>
> Recognized legal dictionaries are in accord. In *Ballentine's Law Dictionary* at 503 (3rd ed. 1969), the term is defined as '[b]enefits received by any employee in addition to wages or salary, such as group insurance, pension rights, etc.' The most authoritative of the legal dictionaries gives a more detailed, but substantially similar, definition of 'fringe benefits':
>
> > Side, non-wage benefits which accompany or are in addition to a person's employment such as paid insurance, recreational facilities, sick leave, profit-sharing plans, paid holidays and vacations, etc. Such

> benefits are in addition to regular salary or wages and are a matter of bargaining in union contracts.

Black's Law Dictionary, 667-68 (Sixth Edition 1990).

In *NL Industries, Inc. v. Dill*, 769 P.2d 920 (Wyo. 1989), the Supreme Court of Wyoming was called upon to define 'fringe benefits' in a Wyoming statute. In holding that a relocation cost reimbursement fell within the statutory language 'fringe benefits,' the court defined the concept as follows:

> . . . fringe benefits are the ancillary considerations of a material nature which include medical insurance, retirement programs, stock purchase plans, annual and sick leave, good lighting, coffee hours, and all other similar results of employment which serve the personal interests of the employer and may further include cars, housing, expense accounts and use of credit cards. [. . ..]

Id. at 925.[3]

(Emphasis added).

Federal courts have observed the same distinction between salary and wages, on the one hand, and fringe benefits, encompassing all other benefits of employment (including sick leave) on the other.[4] And, the same usage of "fringe benefit" is reflected in federal regulations.[5]

Accordingly, it is clear that the State Sick Leave Bank, statutorily defined as a "system of accounting for voluntarily pooled and irrevocably donated accumulated personal sick leave" is a "fringe benefit program" as that term is employed in 42 U.S.C. § 2000e(k).

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[3]*Hamblen County Education Assoc. v. Hamblen County Bd. Of Education*, 892 S.W.2d at 432-433 (Tenn. Ct. App. 1994) (footnote omitted).

[4]*See, e.g., Suggs v. ServiceMaster Educ. Food Mgmt*., 72 F.3d 1228, 1233 (6th Cir. 1996) (distinguishing, in analyzing damages in a discrimination case, between (1) salary, and (2) "[s]ick leave, vacation pay, pension benefits *and other fringe benefits* the claimant would have received, but for discrimination . . .")(Emphasis added). *See also, Rasimas v. Michigan Dept. Of Mental Health*, 71 F.2d 614, 626-627 (6th Cir. 1983)(Same).

[5]*See, e.g*., 29 C.F.R. § 1604.10. *See also,* Appendix to 29 C.F.R. Part 1604 ("In the area of fringe benefits, such as disability benefits, sick leave and health insurance, the same principle applies. A woman unable to work for pregnancy-related reasons is entitled to disability benefits or sick leave on the same basis as employees unable to work for other medical reasons").

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