



MEMORANDUM

TO: Chief Craig T. Steckler, President CPCA

FROM: Captain Leonard Miranda, Chula Vista PD

DATE: July 19th, 2006

SUBJECT: **Vacation Accrual Under Labor Code 4850**

On April 18th 2006 I submitted the following question to Cal Chiefs:

I'm looking for any agencies that have experienced a 4850 employee who has maxed out on their vacation accrual while out on 4850. Some are of the opinion that once an employee has reached their max accrual of vacation time, they should no longer be allowed to accrue beyond their max. Others are of the opinion that since the employee was off on 4850 and could not use vacation they should be allowed to accrue beyond the max. I'd be interested in hearing from any agencies that have encountered this scenario and what their final outcome was.

Soon after posting this question I received eighteen (18) responses from various law enforcement agencies throughout the state. It was essentially a 50/50 split among the agencies with varied reasoning. No agency reported having to litigate the issue. Following is a breakdown of the input received from the responding agencies.

- (7) Did not allow accruals beyond max
- (6) Did allow accruals beyond max
- (2) Paid the employee rather than go beyond max
- (1) Would not allow the accrual, but would allow 1 week sell back to avoid exceeding max
- (1) Did not have a cap so it's a non-issue
- (1) Didn't know

Because of the varied responses we looked to our City Attorneys Office to render a legal opinion. In short, it was recommended that the subject police officer be allowed to accrue vacation leave over the limit with Civil Service Commission approval. Further, the City can require the officer to use his accrued vacation time to reduce his balance (once back at work, tell him to take a vacation). The

City's written policies and administrative practices were key to reaching this conclusion.

Here is some additional information related to the Attorney's recommendation:

The City of Chula Vista Police Department Legal Advisor has concluded, as it relates to the Chula Vista:

Labor Code section 4850 provides certain designated public safety employees, who are disabled with a work-related injury or illness, with up to one year of leave with full salary, including vested or guaranteed benefits, in lieu of workers' compensation benefits. The one-year period is measured either continuously for a year from the date of injury when the disability is continuous, or by the aggregate of periods of temporary disability due to a single injury. A police officer cannot be denied his vested rights to vacation leave while on section 4850 leave. To determine whether vacation leave is vested, California courts look to a jurisdiction's "contemporaneous administrative practices." Based on analysis of the City of Chula Vista's relevant labor contract, Civil Service Rules, and practices, a City police officer on section 4850 leave should be permitted to accrue vacation leave above the limit with Civil Service approval; however, the officer may be required to take the necessary time off to reduce his excess balance to the appropriate two-year limit within six months after returning to work from the disability.