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LEGAL ALERT**Illinois Supreme Court Finds Paid Sick Leave for Childbirth Must be Taken Immediately Following the Birth**

The Illinois Supreme Court has held that Section 24-6 of the School Code (sick leave), allows teachers to use up to 30 days of accumulated paid sick leave during the six-week period *immediately* following the birth of a child and that once that six-week period has elapsed, a teacher cannot use paid sick days for birth unless there is a medical need based on a physician's certificate.

In this case, the teacher gave birth with a few days left in the school year and used 1.5 sick leave days for maternity leave to finish out that 2016 school year. She then asked to use her "remaining" 28.5 sick leave days (of the 30 "child birth" sick leave days) during her FMLA leave when school began again in the fall. The School District denied her request, stating that the leave was too remote to the qualifying event of the birth of a child. On behalf of the teacher, the teachers' union took the position that the sick leave provisions of the School Code mandate a minimum 30-day period of paid sick leave following the birth of a child and "does not provide for a specific 30[-]day period during which a teacher must take the days off."

The Illinois Supreme Court agreed with the school district and held that the sick leave provisions of Section 24-6 of the Illinois School Code providing for up to 30 sick days for "birth," do not create a right for a teacher to use those sick leave days at any the employees discretion, but rather the sick leave days must be used immediately at and after the birth of a child.

The Court concluded that sick leave for birth under Section 24

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-6 of the School Code must have a temporal connection to the birth and that in the same way that sick leave for illness may not be disconnected in time from the illness; sick leave for birth may not be disconnected in time from the birth.

A more detailed summary of the reasoning and decision of the Supreme Court is set forth below.

The full decision of the Court is available at:

DYNAK v. THE BOARD OF EDUCATION OF WOOD DALE SCHOOL DISTRICT 7, 2020 IL 125062

CASE SUMMARY

Factual Background

Ms. Dynak was a full time teacher who was due to give birth on June 6, 2016. She asked to use 1.5 days of her accumulated paid sick leave on June 6th and June 7th, as June 7th was the last day of the 2015-2016 school year and was scheduled as a half day of work. Ms. Dynak then asked to further exercise her rights to an unpaid leave under the Family and Medical Leave Act for 12 weeks of FMLA leave when the next school year started on August 18, 2016. In conjunction with her unpaid FMLA leave, the teacher asked to use her “remaining” allotment of 28.5 sick days (30 sick days for childbirth minus the 1.5 sick leave days used at the end of the prior school year) during her FMLA leave. The District approved the FMLA leave but stated that since the FMLA leave would begin 10 weeks after the birth of the child, Ms. Dynak was not eligible to use paid sick leave days during her FMLA leave. The FMLA specifically provides that leave is available for the birth of a child for up to one year after the birth; Section 24-6 of the Illinois School Code contains no similar provision.

Issue

The issue examined by the Court then is how an intervening period like a summer break affects a teacher’s right under Section 24-6 of the School Code to use accumulated paid sick leave after the birth of a child. The argument raised by the Teachers’ Union was that there is no explicit temporal limitation in the language of Section 24-6 of the School Code for paid sick leave in connection with a birth. The Union and the teacher argued that Section 24-6 of the School Code does not specify that paid sick leave for birth must be continuous, does not indicate when it must begin, nor whether it must be completed within a certain amount of time after the birth. The Union and teacher interpreted the statute to allow sick leave for birth to be open-ended and noncontinuous. The school district took the position that the leave rights for child birth remain sick leave rights and must be used consistent with the purposes of the statute for conditions related to personal illness.

Court Analysis and Decision

Section 24-6 of the School Code defines sick leave for full-time teachers. It provides that eligible employees are granted at least 10 paid sick days per school year, with the unused amount allowed to accumulate, including paid leave of “30 days for birth”. The Court disagreed with the arguments made by the Teachers’ Union and teacher, concluding that Section 24-6 of the School Code does expressly limit a teacher’s right to use paid sick leave for birth. The Court noted that the leave for child birth is part of Section 24-6 of the School Code which expressly provides for sick leave, not simply leave. Section 24-6 of the School Code lists “birth” as one of the events that allows a teacher to be absent from work. The Court added however that the statute goes on to provide that a medical

certificate is required “as a basis for pay during leave after an absence of ... 30 days for birth” evidencing the statutory intent that sick leave for birth must have a temporal connection to the birth. The Court emphasized “... the 30-day requirement only makes sense if the intent was for paid sick leave to follow immediately after the birth. If, as plaintiff, contends, an employee can take 30 days of paid sick leave ‘for birth’ months or even years after the birth, it would be illogical to require a medical certificate in order to extend that 30-day period.”

The Court pointed to the specific language and intent of the statute, and how it has been amended over time, to support its conclusion. Previously, the definition of “sick leave” in Section 24-6 of the School Code did not include birth or adoption but rather only included “personal illness, quarantine at home, or serious illness or death in the immediate family or household.” That version of the statute required a certificate from a physician for continued paid leave after an absence of three (3) days for personal illness, or as the school board determined was necessary in other cases. In 2007, the definition of sick leave in Section 24-6 of the School Code added “birth” to the group of bases for sick leave, i.e. personal illness, quarantine at home or serious illness or death in the immediate family or household. The Court noted the general rule that words grouped in a list should be given related meaning, stating that there is no indication in Section 24-6 of the School Code that sick leave for “birth” was to operate differently from sick leave for “personal illness, quarantine at home, or serious illness or death in the immediate family or household.”

Having determined that birth should be treated similarly to the other bases for the use of sick leave, the Court held:

The only reasonable way to interpret the statute’s allowance of sick leave for personal illness, quarantine at home, or serious illness or death in the immediate family or household is that the sick leave must be contemporaneous with the event. The provision requiring a teacher to provide a medical certificate after an absence of three days for personal illness is clear evidence that the legislature did not intend for sick leave to be separated in time from the actual illness.

The Court was clear that it could not accept plaintiff’s reading of sick leave for “birth” as it would lead to an absurd meaning of the statute, positing that under such a reading a teacher could then use paid sick leave at the beginning of the school year to make up for the days lost to illness or family death during the summer break or that a sick teacher could choose to come to work while sick, then take paid sick leave on future days when he or she is well. The Court found that in the same way that sick leave for illness may not be disconnected in time from the illness, sick leave for birth may not be disconnected in time from the birth and that the statute allows an employee who experiences a qualifying event to use accumulated paid sick leave at the time of that event, not later at the employee’s discretion. The Court found that there was clear evidence that the legislature did not intend for sick leave to be separated in time from actual illness, and that there was no evidence that the legislature intended to create a vested right in an employee to take paid sick leave on any days the employee chooses. Finally, the Illinois Supreme Court pointed out that the employee who happens to give birth over the summer is not being treated unfairly or losing out on accumulated paid sick leave, as the employee can save his or her sick days for another future qualifying event or receive credit for them at the time of retirement

There was some disagreement among the Justices about whether the leave must “immediately” follow the qualifying event (here “birth”) or whether it must have a reasonable temporal relationship to the event. Regardless, the Justices were in agreement that allowing the use of sick leave after a 10

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week break since the qualifying event did not have any reasonable temporal relationship to the birth.

This court case did not discuss the specific terms of the applicable collective bargaining agreement. Of course, the amount of sick leave that is provided and the conditions applied to its use are all mandatory subjects of bargaining under the Illinois Educational Labor Relations Act. To the extent your collective bargaining agreement states something other than the plain language of Section 24-6 of the School Code; you should discuss with your labor attorney your ability to adjust the provisions regarding the use of accumulated sick leave for birth or adoption of a child in the CBA. In addition, we believe that there is a fairly good chance of an amendment to the statute to “correct” the Court’s decision.

