

Alicia G. Limtiaco
Attorney General



Alberto E. Tolentino
Chief Deputy Attorney
General

Office of the Attorney General

August 13, 2008

LEGAL MEMORANDUM

Ref: DOA 07-0925

TO: Director, Department of Administration

FROM: Attorney General *ALG*

SUBJECT: Whether the New Leave Sharing Policy Created by P.L. 29-19 is Legal

On October 18, 2007, you inquired whether the new leave sharing program created by P.L. 29-19:VI:96 is legal. The leave sharing program authorizes Government of Guam employees to donate annual leave or sick leave to other employees who are in need thereof. Section 96 amended Title 4 GCA 4109.2(b) to include this language:

Leave transferred from donors whose hourly rates of pay or salaries are lower than the recipient shall be paid at the hourly rate or salary of the donor. Leave transferred from donors whose hourly rates or pay or salaries are higher than the recipient, shall be paid at the hourly rate or salary of the recipient.

Your memorandum correctly notes that this section means that employees who receive leave donated by other employees will do so at the lesser of the two hourly rates of pay, either that of the donor employee or that of the recipient employee. Your concern about this "reduction" in employee compensation leads you to ask whether this arrangement is legal.

We believe that it is. *I Liheslaturan Guahan* has plenary power to affix the terms and conditions of government employment. Title 48 U.S.C. 1423a; 1422c(a). In fact, *I Liheslaturan Guahan* has enacted extensive laws regarding public employment in Title 4 GCA.

In this case, the sick and annual leave sharing program is a compassionate measure designed to assist employees in need because of medical emergencies, military service and the like. Title 4 GCA §4109.2(a). The program helps employees help each other through "generosity". It is not constitutionally or Organically required. Reducing the benefits available, as P.L. 29-19 did, will save money and is not the deprivation of a property right. The right to leave sharing is a statutory right created by *I Liheslatura* and therefore subject to modification by *I Liheslatura*.

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Your memorandum asks whether it is legal to “reduce” the pay of government employees in this manner. That is not what Section 96 does. The leave received and used by recipient employees is more in the nature of a gift. It is not their salary. Donated leave is an “extra” that these employees are not usually entitled to.

Therefore, Section 96 of Chapter VI of P.L. 29-19 is legal and should be followed by DOA and other government agencies.

A handwritten signature in black ink that reads "David J. Highsmith". The signature is written in a cursive style with a large, sweeping flourish at the end.

DAVID J. HIGHSMITH
Assistant Attorney General