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LEGAL MEMORANDUM

Ref.: AG 11-1169

TO: Director, Department of Administration
Personnel Officer, Office of the Attorney General

FROM: Attorney General 

SUBJECT: Leave Sharing Program Rules and Regulations Contrary to Law.

The Office of the Attorney General has requested of the Civil Division that the Personnel Rules and Regulations for the Government of Guam (hereafter "Rules") be reviewed as they apply to the Leave Sharing Program. An employee of the Office of the Attorney General has attempted to donate a portion of his accumulated sick leave and annual leave hours to his wife, also a government employee, and has been denied the ability to do so because, after the donation has been made, the donor employee will have less than one pay period of sick leave and less than one pay period of annual leave remaining to his credit. The Rules restrict the donation of sick leave and annual leave if the result is that the donor employee will have less than one pay period of accumulated sick leave and of accumulated annual leave. The employee asserts that the law establishing the leave sharing program does not provide for the restriction or limitation found in the Rules. Must the rule be struck as contrary to the law establishing the leave sharing program?

I. Statutory and Regulatory History.

The program to provide that government employees could donate accumulated sick leave and annual leave to another employee was established in law in May 1993 with passage of Public Law 22-10.¹ This original enactment, found at Section 1 of P.L. 22-10, had several conditions established, as follows:

- The donor has sufficient hours of leave accrued to cover the donation.
- No transfer shall be made between employees of separate branches of government unless the person to whom leave is transferred is within the fourth degree of consanguinity of the transferring employee.
- Only leave in excess of forty hours for sick leave and forty hours for annual leave may be transferred.

¹ Codified originally at Title 4, Guam Code Annotated, Section 4109.1.

- No transfer of leave may be made by an employee to his or her supervisor or to any person above him or her in the supervisory chain, or to a member of the supervisory person's family.
- Leave may not be transferred to an employee for use as credit toward retirement or accumulated leave.
- Leave transferred shall be used as leave by the person receiving it.
- Transferred leave cannot be converted into cash or retirement credit.

If a donating employee met these conditions, then law provided that the payroll supervisor shall notify the Payroll Division to transfer the approved number of hours to the recipient employee. The legislature used this mandatory language; once the statutory conditions were met by the donating employee, the government was mandated to effect the donation of leave. Subsequently, the receiving employee is to submit a leave request for the number of hours to be used and the department head of the receiving employee "shall then approve the leave request." P.L. 22-10:1.² The legislature used mandatory language twice, requiring that the government take certain actions once the donating and receiving employees met the criteria for the program. The government shall transfer donated leave, and the government shall approve a leave request from the receiving employee utilizing the donated leave.

The enactment stated legislative intent; that "[a]t times like these, particularly when the employee needs time off to take care of sick family members, the employee might be forced to take leave without pay. Through the generosity of other employees, the affected employees could be relieved of the stress of this situation."

P.L. 22-10, at Section 2, provided that:

"The Department of Administration shall establish a leave sharing program for the Executive Branch pursuant to Section 1 of this Act to be implemented in the same manner as other personnel rules and regulations. The Department of Administration shall submit for adoption to the Civil Service Commission the proposed personnel rules and regulations promulgating the leave sharing program authorized by Section 1 of this Act within one hundred eighty (180) days from the date of this Act."³

In September 1994, the legislature amended this leave sharing program, liberalizing the program to make it easier for employees to donate leave. At P.L. 22-140: IV: 5, the leave sharing program was amended **to remove** the following limitations:

- No transfer shall be made between employees of separate branches of government unless the person to whom leave is transferred is within the fourth degree of consanguinity of the transferring employee.

² Currently codified at 4 GCA §4109.2

³ At this time it is unknown whether the Department of Administration, subsequent to passage of P.L. 22-10, established a leave sharing program, as required, that is, in the same manner as other personnel rules and regulations, and within the time limit required by P.L. 22-10.

- Only leave in excess of forty hours for sick leave and forty hours for annual leave may be transferred.

After this amendment, the leave sharing program **had only these requirements**:

- The donor has sufficient hours of leave accrued to cover the donation.
- No transfer of leave may be made by an employee to his or her supervisor or to any person above him or her in the supervisory chain, or to a member of the supervisory person's family.
- Leave may not be transferred to an employee for use as credit toward retirement or accumulated leave.
- Leave transferred shall be used as leave by the person receiving it.
- Transferred leave cannot be converted into cash or retirement credit.⁴

On October 1, 1996, the Department of Administration promulgated an updated compilation of Personnel Rules and Regulations (the "Rules"), made effective by virtue of Executive Order No. 96-24.⁵ The Rules, at Appendix G, set out Leave Sharing Procedures. These are attached and marked Exhibit A. The Rules applied a limitation and condition on leave sharing that had been previously removed from the program by the legislature. At Appendix G, section B, 2, the Rules state:

- “2. **LEAVE DONOR.** An employee of any branch of the government of Guam who has accumulated annual or sick leave *in excess of one pay period* is eligible to donate leave to another employee in any department or agency. Type of leave donated must meet the criteria for annual or sick leave defined above.” (Emphasis, in *italics*, added.)

At Appendix G, section C, the Rules state:

“C. **VOLUNTARY TRANSFER OF LEAVE**

An active employee who *has accrued leave balance in excess of one pay period* may submit a formal written request to his payroll supervisor to make available for transfer annual or sick leave of a minimum of eight (8) hours at any one time to another named employee authorized to receive leave under this procedure. The employee donating the leave *may not request a transfer of an amount of annual or sick leave that would result in reducing his sick or annual leave balance to less than one pay period.*” (Emphasis, in *italics*, added.)

As a result of executive branch rule making, there was imposed upon the leave sharing program a condition for eligibility that had been explicitly removed by the legislature two years earlier.

⁴ There have been four subsequent amendments to the leave sharing program, but these five requirements have not been modified by the legislature after September 1994.

⁵ The Department of Administration's Personnel Rules and Regulations were first promulgated in March, 1979. The October 1, 1996 promulgation was the first comprehensive update of the Rules after March 1979, and, as far as is known, the first time the rules addressed a leave sharing program.

On September 2002, the legislature amended the leave sharing program. P.L. 26-134. The amendment (1) added a section (a) entitled, Legislative Statement; (2) made several grammatical changes so that references to "his," "his or her," and "he or she" became "that person" or "that employee"; (3) *italicized* several words in the substantive text of the law, such as *if*, *not*, and *originally*, presumably for emphasis on those words; and (3) added one substantive restriction, to provide that "[p]articipation in the leave sharing program shall *not* exceed ninety (90) working days." The law was codified at 4 GCA §4109.2, now with a section (a) and a section (b). The Legislative Statement that was specifically added to the law emphasized that leave sharing is available for employees who need to take leave to care for sick relatives, and for employees in the National Guard or Reserves of the U.S. Armed Services who are activated for greater than fifteen (15) days subsequent to the attack on the World Trade Center.

On September 2003, subsection (b) of 4 GCA §4109.2 of the leave sharing program was repealed and reenacted. P.L. 27-29: V: 16. The last sentence of the law was amended, and additional language was added, to wit:

"Participation in the leave sharing program shall *not* exceed ninety (90) working days, unless a medical doctor certifies that the recipient of the leave needs additional time for medical treatment or recovery from a medical illness. An additional ninety (90) working days may be granted upon similar certification by a medical doctor made within two (2) weeks of the first ninety (90) day period."

(Underline denotes added provision to the law.)

On October 2005, the leave sharing program was amended. P.L. 28-068: IV: 105. The changes were, as follows:

- The *italics* added by P.L. 26-134 were removed, although the language remained the same.
- The provisions allowing for the length of time that leave sharing could be used were amended and supplemented so as to provide, as follows:

"Participation in the leave sharing program shall not exceed ninety (90) working days, shall require a certification from the attending medical doctor that the recipient of the leave needs additional time for medical treatment or recovery from a medical illness and is physically unable to return to work due to medical illness. An additional ninety (90) working days may be granted upon similar certification from the attending medical doctor made within two (2) weeks of the first ninety (90) day period. A final period of thirty (30) working days may be granted upon additional certification from the attending medical doctor that additional time is needed for recovery."

Effective January 1, 2006, the leave sharing program provisions were amended to add 4 GCA §4109.3. P.L. 28-068: IV: 37. It provides:

“§4109.3. **Implementation.** The Director of Administration shall maintain and from time to time amend the leave sharing program for the Executive Branch pursuant to Section I of this Act to be implemented in the same manner as other personnel rules and regulations enacted pursuant to §4105 of Title 4, Guam Code Annotated.”

One final amendment has been made, to date, to the leave sharing provisions of law. *Italics* were added back into the law, presumably to emphasize certain words, and several substantive provisions were added to the law. P.L. 29-019: V: 96. The opening sentences of §4109.2 (b) now state:

“*If* a government of Guam employee desires to transfer a number of hours of earned sick leave *or* annual leave to another employee in any department *or* agency of the government, the recipient must first exhaust all his accrued annual and sick leave and compensatory time for the purposes of a medical emergency *or* for personal reasons. 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 of pay *or* salaries are higher than the recipient *shall* be paid at the hourly rate *or* salary of the recipient. ...”

(Underline denotes added provision to the law.)

Added to the end of §4109.2(b) is the following:

- “(1) Employees of the government of Guam *shall* not transfer their unused annual leave *or* sick leave to another employee in exchange for money, favors, *or* items of value. Employees who transfer *or* receive annual *or* sick leave in violation of this provision *shall* be guilty of official misconduct pursuant to Title 9 GCA §49.90.
- (2) This provision *shall* apply to all government employees in the classified, appointed, elected, and unclassified positions, and all branches of the government of Guam, including line departments and agencies, autonomous agencies, public corporations, and all other government instrumentalities.”

This, therefore, encompasses the complete history of legislative and regulatory provisions of the leave sharing program, from its initiation in May 1993 to the present. The legislature has been proactive in modifying this program in order to craft a program that sets a desired policy for government employees, especially for those who may require additional paid leave for medical reasons, to care for sick relatives, and for military duty. After an initial amendment of the statute

that authorized the program, liberalizing donor qualifications, the statutory requirements applicable for the employee who wishes to donate leave time to another employee remain:

- The donor has sufficient hours of leave accrued to cover the donation.
- No transfer of leave may be made by an employee to his or her supervisor or to any person above him or her in the supervisory chain, or to a member of the supervisory person's family.

II. Analysis.

The essential question being asked is whether a regulation, promulgated by Executive Order, that intends to implement a statutory program, can set out a qualification for participation in the program that is narrower than qualifications for participation established by statute. The analysis starts with an understanding of executive power; that is, the power of the executive to carry out the laws enacted by the legislature. In this analysis of the Leave Sharing Program, an Executive Order, E.O. 96-24, establishing the Personnel Rules and Regulations, and specifically, Appendix G to the Rules, has limited the scope of a statute.⁶

The Supreme Court of Guam has stated:

“The Organic Act establishes that the Governor is “responsible for the faithful execution of the laws of Guam and the laws of the United States applicable to Guam.” 48 U.S.C.A. §1422, cited in *People v Cruz*, No.83-00001A, 1983 WL 29956, at *2 (D. Guam App. Div. Sept. 13, 1983). The Organic Act expressly authorizes the Governor to issue executive orders, but also limits the scope of that authority, stating that the Governor “shall have the power to issue executive orders and regulations *not in conflict with any applicable law.*” 48 U.S.C.A. §1422 (emphasis added). If an executive order directly conflicts with applicable statutory law, the order is inorganic and invalid. *In re Camacho*, 2004 Guam 10 ¶ 61; *cf. Bell v. Luis*, 528 F.Supp. 846-51 (D.C.V.I. 1981) (stating that an executive order promulgated by the governor of the Virgin Islands was inorganic and consequently null and void when it conflicted with existing legislation).”

Quoting from *Guerrero v. Santo Thomas*, 2010 Guam 11 ¶ 41. *Guerrero* involves an analysis by the court of a personnel regulation established by an Executive Order. The government asserted that the Executive Order regulation authorized the government to pay law enforcement personnel for overtime only after the personnel had worked 43 hours in a seven day time span, instead of paying overtime after working 40 hours in a seven day time span, as provided in Guam law. The *Guerrero* court rejected the government position, ruled that the Executive Order, in as far as it limited overtime pay to law enforcement personnel contrary to Guam law was inorganic and invalid.

⁶ Personnel Rules and Regulations, Appendix G, at B.2. and at C, limit the provisions of 4 GCA §4109.2(b).

The Leave Sharing program, at 4 GCA §4109.2 (b), provides that “*If* the donor has sufficient hours of leave accrued to cover the donation, the payroll supervisor *shall* notify the Payroll Division to transfer the approved number of hours to the recipient.” The statute places only one limitation on this ‘donor’ provision, that is, that “no transfer of leave may be made by an employee to his or her supervisor or to any person above him or her in the supervisory chain, or to a member of the supervisory person’s family.” The requirement found in the Rules, that further limits a donor, by requiring that donor to preserve “accumulated annual or sick leave in excess of one pay period” and provides that the “employee donating the leave may not request a transfer of an amount of annual or sick leave that would result in reducing his sick or annual leave balance to less than one pay period” is inorganic and null and void. *Guerrero, Id.*

Further, the Rules themselves provide that any provision in conflict with Guam law must defer to the law. The Rules, at Rule 1.600 state:

“STATUTORY CONFLICT

In the event any rule or regulation is in conflict with statute, the statute shall prevail to the extent of inconsistency.”

Therefore, the Rules dictate that the provisions of Appendix G at issue here, that conflict with the statutory provisions of the leave sharing program are not to be enforced.

This conclusion is consistent with Guam law interpreting and applying regulatory schemes that are inconsistent with statutes of Guam. The Supreme Court has held that “[a] party challenging a presumptively valid regulation carries a heavy burden.” *Wade v. Taitano*, 2002 Guam 16 ¶ 12. In order to succeed, the challenging party must establish the absence of any conceivable grounds upon which the rule may be upheld, and an agency’s regulation will not be invalidated unless its provisions cannot by any reasonable construction be interpreted in harmony with the legislative mandate. *Id.*

In light of the history of this statutory scheme, in which the legislature rejected the very concept embodied in the provision that was later pushed upon the program by executive order and regulation⁷, it is not possible to find any valid construction of the regulation that is in harmony with the statute. It is hard to conceive of a provision that would be in less harmony with a statutory scheme than this one that has been clearly rejected by the legislature consistently over the years.

“Because “[a]n agency cannot create rules, through its own interstitial declaration, that were not contemplated or authorized by the Legislature,” *id.*, the court can only uphold rules and regulations promulgated by the agency “which are consistent with the legislative scheme.” *ASARCO, Inc. v Puget Sound Air Pollution Control Agency*, 771 P2d 335, 339 (WASH. 1989).”

Wade v. Taitano, 2002 Guam 16 ¶7.

⁷ The concept was amended right out of the legislative scheme by P.L. 22-140: IV: 5.

Finally, it might be argued that the legislature, by failing to ‘overrule’ the regulatory scheme concerning the limitation placed on the donor by Appendix G to the Rules, has in effect, approved of the regulation with its silence, or, approved of the regulation because it was not addressed by the legislature in its five amendments of the statutory scheme since the promulgation of Executive Order 96-24. The *Guerrero* court dismissed such an argument, and stated:

“No comparable statute establishes a work period for law enforcement other than the standard forty-hour workweek. Management contends, “[i]f I Liheslatura disagreed with this policy [adopting the section 201(k) exemption], it could have overturned E.O. 96-08 many years ago.” Appellee’s Br. At 7. Management, without citation to any relevant precedent, invites us to create a new rule of statutory construction, whereby the court would infer the meaning of the Guam Minimum Wage and Hour Act’s plain text from the Legislature’s subsequent failure to pass another law. We decline to do so.”

Guerrero v. Santo Thomas, 2010 Guam 11 ¶ 19. The legislature’s lack of action cannot be construed as an adoption of a regulation that is otherwise contrary to law.

III. Conclusion.

Employees of the government of Guam who have accumulated annual leave and sick leave must be permitted to donate that leave without application of those provisions in the Personnel Rules and Regulations that require that a donor of leave have an accrued leave balance in excess of one pay period, or those provisions that prohibit the donation of leave that would result in reducing the donor’s sick or annual leave balance to less than one pay period.⁸

Pursuant to the Organic Act of Guam, and Guam law, as applied here, certain terms and language of Appendix G of the Personnel Rules and Regulations is struck out at Section B, 2, and at Section C, as follows:

B. 2. LEAVE DONOR.

An employee of any branch of the government of Guam who has accumulated annual or sick leave ~~in excess of one pay period~~ is eligible to donate leave to another employee in any department or agency. Type of leave donated must meet the criteria for annual or sick leave defined above.

“C. VOLUNTARY TRANSFER OF LEAVE

⁸ We have not been asked to analyze every provision of the Rules found at Appendix G, section C, to include, as an example, the provision that a donor must make available for transfer a minimum of eight hours at any one time to another named employee. Under the principles of *Guerrero v. Santo Thomas*, 2010 Guam 11, and *Wade v. Taitano*, 2002 Guam 16, this minor divergence from the statute may be found to be a reasonable administrative requirement in the implementation of the Leave Sharing program.

An active employee who has accrued leave balance in excess of one pay period may submit a formal written request to his payroll supervisor to make available for transfer annual or sick leave of a minimum of eight (8) hours at any one time to another named employee authorized to receive leave under this procedure. The employee donating the leave may not request a transfer of an amount of annual or sick leave that would result in reducing his sick or annual leave balance to less than one pay period.

The instructions for two forms contained at Appendix G also require certain terms and language to be struck out. At page G7 of Appendix G, instruction #8 reads:

The donating employee must certify this request by signing and dating the form. In addition, the donor employee must obtain certification from his payroll supervisor indicating the donor has accrued the amount of leave to be donated in addition to the required one pay period leave which must remain in the donor's leave account.

At page G8 of Appendix G, instruction #9 reads:

To donate leave, the donor employee must obtain certification from his payroll supervisor indicating the donor has accrued the amount of leave to be donated, in addition to the required one pay period leave, which must remain in the donor's leave account.

Two forms require certain terms and language to be struck out. The SICK/ANNUAL LEAVE DONATION REQUEST FOR MEDICAL EMERGENCY REASONS form, following page G7, reads, at #8:

8. Certification of Leave Donor
 - A. I hereby certify that I am voluntarily donating the leave hours on item 5 above and request that my Payroll Supervisor transfer the above listed hours of my sick/annual leave to the Leave Recipient listed above. I understand that a minimum of one period of balance will be retained in my leave account for my personal use.
 - B. I hereby certify that the donor has accrued the amount of leave to be donated in addition to the required one pay period leave which must remain in the donor's account.

The ANNUAL LEAVE DONATION REQUEST FOR PERSONAL REASONS form, following page G8, reads, at # 8:

8. Certification of Leave Donor
 - A. I hereby certify that I am voluntarily donating the leave hours on item 5 above and request that my Payroll Supervisor transfer the above listed hours of my sick/annual leave to the Leave Recipient listed above. I understand that a minimum of one period of balance will be retained in my leave account for my personal use.

- B. I hereby certify that the donor has accrued the amount of leave to be donated ~~in addition to the required one pay period leave which must remain in the donor's account.~~


JOHN M. WEISENBERGER
Assistant Attorney General

LEAVE SHARING PROCEDURES

PURPOSE

The purpose of the Leave Sharing Program is to provide assistance to employees who need to take extended period of absence from their employment for personal reasons as defined in this procedure. Absence must be for a minimum of 10 consecutive work days for medical emergency, and a minimum of five consecutive work days for other personal reasons.

STATEMENT OF POLICY

It is the policy of the government of Guam to provide assistance to employees, who need to be absent from their jobs for personal reasons, as defined in this procedure, but have exhausted their earned leave accrual. Through the generosity of other employees, annual or sick leave may be donated to those employees with legitimate needs for extended absence from work, as determined by their appointing authorities and/or the Director of Administration.

A. GLOSSARY

1. **EMPLOYEE.** A person currently employed by the government of Guam and who is entitled to leave accrual.
2. **FAMILY MEMBER.** Spouse, including a so-called "common law" spouse if such spouse is 18 years old or over, and has cohabited with the employee for at least the last two consecutive years immediately preceding the request for leave donation. Other recognized family members include children and adopted children and their spouses, grandchildren and adopted grandchildren, parents and parents-in-law, in loco parentis, grandparents, brothers and sisters.
3. **LEAVE DONOR.** An employee whose voluntary written request for transfer of leave to a leave recipient is certified and approved by his agency payroll supervisor.
4. **LEAVE RECIPIENT.** A current employee for whom the employing agency has approved an application for extended absence from his employment, and is

certified to be eligible to receive leave donated by another employee of the government of Guam.

5. **PERSONAL REASONS.** For the purpose of this procedure, "personal reasons" is defined as those defined in "medical emergency" below, adoption of a child, divorce and separation, loss of a family member, cosmetic and voluntary surgery, child care, legal commitments, education, care for family member, who is elderly or has a mental or physical disability, and other reasons as determined by the Director of Administration.
6. **MEDICAL EMERGENCY.** A medical condition of an employee or a family member that is likely to require an employee's absence from duty for a prolonged period of time, and to result in a substantial loss of income to the employee because of unavailability of paid leave.
7. **ANNUAL LEAVE.** For purposes of the Leave Sharing Program, an employee may request annual leave to care for a sick family member and for other personal reasons authorized by this procedure. An employee may also opt to use annual leave in lieu of sick leave for absence, because of his illness and other authorized use of sick leave.
8. **SICK LEAVE.** Leave which is authorized for the employee who is incapacitated to perform regular duties or available light duty, due to illness or injury; medical treatment; complications due to pregnancy; childbirth; or when the employee's presence on the job will jeopardize the health of others because of exposure to a contagious disease (requires a quarantine by medical authority).
9. **IN LOCO PARENTIS.** Refers to the situation of an individual who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.

B. ELIGIBILITY

1. **LEAVE RECIPIENT.** Any employee of the government of Guam, who meets the definition of family member and the intent and purpose of the Leave Sharing Program, who has used his appropriate accrual leave (annual, sick, and/or compensatory time off [CTO]), e.g. if employee is requesting sick leave, his sick leave should be used first; if employee is requesting annual leave, his annual leave should be used first before receiving leave donated by another employee. To be eligible for leave donation, the leave recipient shall be absent 10 consecutive work days or more for the medical emergency reasons, and five consecutive work days or more for other personal reasons, and must meet the criteria for annual or sick leave approval as defined in Chapter 8.

2. **LEAVE DONOR.** An employee of any branch of the government of Guam who has accumulated annual or sick leave in excess of one pay period, is eligible, to donate leave to another employee in any department or agency. Type of leave donated must meet the criteria for annual or sick leave defined above.

C. VOLUNTARY TRANSFER OF LEAVE

An active employee who has accrued leave balance in excess of one pay period may submit a formal written request to his payroll supervisor to make available for transfer, annual or sick leave of a minimum of eight hours at any one time, to another named employee authorized to receive leave under this procedure. The employee donating the leave may not request a transfer of an amount of annual or sick leave that would result in reducing his sick or annual leave balance to less than one pay period.

D. RECEIPT OF SICK/ANNUAL LEAVE

The leave recipient must use his respective personal accrued leave or earned CTO before he may be eligible to use the leave donated by another employee.

E. CONDITIONS FOR APPROVAL OF LEAVE TRANSFER FOR MEDICAL EMERGENCY

An appointing authority may permit an employee of the agency to receive donated leave based on the provisions of this procedure. The Director of Administration will conduct periodic audits on all donated leave transactions processed and approved by agency/department directors, and will repeal and take corrective actions on those approved actions which are not in compliance with this procedure. Employees found to have abused or committed fraudulent acts relative to the use of donated leave, shall be required to pay back the government for the full amount of his salary paid, as a result of the use of the donated leave. Appointing authorities may approve requests for donated leave subject to the following conditions:

1. The employee, or a member of his family suffers from a medically certified incapacitation due to illness, injury, impairment, or physical or mental condition which has caused, or is likely to cause, the employee to go on leave for at least 10 consecutive work days. An employee who is medically certified to be incapacitated for duty shall use sick leave, and at his option, use a combination of annual leave and/or CTO earned to his credit. However, an employee who needs to care for a family member shall use his annual leave and/or CTO earned and donated annual leave, but not sick leave.

2. The employee's need to be absent from work is certified by a licensed practicing physician.
3. The employee has to exhaust the type of leave, i.e., sick or annual, he is requesting, before the donated leave is used. An employee who is on sick leave status may opt to use annual leave, but should not be required to use annual leave.

Therefore, when the employee's sick leave has been exhausted, the employee may use his annual leave or use donated sick leave, but will not be required to exhaust annual and CTO earned. Similarly, an employee should not have to exhaust his sick leave in order to be eligible for donated annual leave for absence of a personal nature during the duration of the absence.

4. The employee has complied with the agency's policy concerning the request and approval of sick leave, annual leave or CTO.

F. CONDITIONS FOR APPROVAL OF LEAVE TRANSFER FOR OTHER PERSONAL REASONS

The appointing authority may submit a request for leave transfer, for reasons other than "medical emergency," for an employee in his agency to the Director of Administration for final approval. The Director of Administration will review and process all requests for donated leave, for non-medical reasons, on a case-by-case basis. The following are some of the more common non-medical reasons which employees may use to justify requests for a donated leave. However, these reasons do not, in and of themselves, become an authorization for personal reasons.

1. Adoption of a child, or to place a child up for adoption.
2. The employee is undergoing divorce or separation proceedings.
3. Loss of a family member.
4. Cosmetic and voluntary surgery.
5. Child care.
6. Legal commitments.
7. Education.
8. To care for an elderly or physically/mentally disabled member of the family.

G. PROCEDURES

It is the responsibility of the employee requesting for donated leave to obtain proper leave authorization from his supervisor and the department/agency head. The approved Leave Application Form (FCN 2-0-1) must be accompanied by the attached request for leave transfer forms (medical emergency and other personal reasons), endorsed by the donating employee, payroll supervisor and the appointing authority. The following officials are authorized to give final approval for leave transfer requests based on personal reasons:

1. Appointing authority of the recipient employee may approve all requests for medical emergency, subject to audit and repeal by the Director of Administration upon finding of non-compliance to established policy and procedures.
2. The Director of Administration has the final approval authority for all leave transfer requests submitted by the appointing authority of the recipient employee for all other personal reasons authorized by this procedure.
3. The payroll supervisor of both donor and recipient must ensure appropriate action is taken to accommodate the request in a timely manner.

All salary payments made to an employee while on leave transferred under this procedure shall be made by the agency/department employing the person receiving the leave. The leave recipient will continue to accrue annual and sick leave for as long as he is on a pay status.

Any leave transferred under this procedure for a specific request which remains unused, shall be returned to the leave donor. Any employee, who needs additional time off for reasons authorized by this procedure, may submit a new request for leave donation. All approved requests for leave transfers will be used for one time only.

H. LIMITATIONS

Transfers of leave are subject to the following restrictions.

1. No transfer may be made by any employee to his or her supervisor or to any person above him or her in the supervisory chain, or to a member of the supervisor's or such supervisory person's immediate family.
2. Leave may not be transferred to another employee if, as leave recipient, he intends to use it for credit towards retirement or accumulated leave.

3. Donated leave shall not be converted to cash or retirement credit by the leave recipient.
4. Annual or sick leave donated by an employee is understood to be a donation and shall not be sold or loaned to the recipient.
5. No employee shall directly or indirectly intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce any other employee for the purpose of interfering with the employee's right to voluntarily contribute leave when authorized under this procedure. For the purpose of this procedure, "intimidate, threaten, or coerce" shall include, without being limited to, the promise to confer or the conferring of any benefit or effecting or threatening to effect any reprisal.

GOVERNMENT OF GUAM
DEPARTMENT OF ADMINISTRATION

INSTRUCTIONS FOR COMPLETING FORM
**SICK/ANNUAL LEAVE DONATION REQUEST
FOR MEDICAL EMERGENCY REASON**

1. Enter employee names, the Recipient first and then the Donor.
2. Enter the social security numbers for both employees.
3. Enter the classifications of the employees and the associated pay grade for each.
4. Enter each employee's Agency and Division.
5. Enter the dates for which the donated leave is to be used.

Note: These dates must not be for a prior period of time as the request must be approved before leave can be taken. Also, enter the total hours and leave type to be used during this period of time (hours of leave donated).

6. Explain the appropriate reason (medical emergency) for which this leave will be used. The recipient employee must sign and date the form.
7. To receive leave, the requesting employee (recipient) must obtain certification from his agency payroll supervisor on his leave account.
8. The donating employee must certify this request by signing and dating the form. In addition, the donor employee must obtain certification from his payroll supervisor indicating the donor has accrued the amount of leave to be donated in addition to the required one pay period leave which must remain in the donor's leave account.

INSTRUCTIONS FOR RECIPIENT ON THE REQUIRED DOCUMENTATION

- A. The recipient shall attach a copy of the medical certification by a licensed practicing physician.
- B. Attach a copy of the approved Request for Leave (Form FCN 2-0-1). Note: Absence must be for a minimum of 10 consecutive work days for medical emergency reasons.
9. Recipient's Appointing Authority's certification.

DEPARTMENT OF ADMINISTRATION

SICK/ANNUAL LEAVE DONATION REQUEST FOR MEDICAL EMERGENCY REASONS

	LEAVE RECIPIENT	LEAVE DONOR
1. EMPLOYEE NAME		
2. SOCIAL SECURITY NO.		
3. CLASS TITLE, PAY GRADE/STEP		
4. AGENCY/DIVISION		

5. DONATED LEAVE PERIOD: FROM - _____ TO: _____ TOTAL HOURS: _____

6. EXPLANATION OF ILLNESS/INJURY: _____

I hereby certify that I have secured permission from my agency to use donated sick/annual leave pursuant to the leave sharing procedures. This request is due to the above referenced illness/injury and will be used during the dates listed above in order to continue my compensation. I understand that my own accrued leave will be exhausted first before the donated leave.

Certification of Leave: _____ Date _____
Recipient's Signature

7. CERTIFICATION FROM LEAVE RECIPIENT'S PAYROLL SUPERVISOR

A. I certify that the employee requesting for donated leave has accrued the following hours to his/her leave account.

<input type="checkbox"/>	ANNUAL LEAVE	Balance: _____	PPE: _____	
<input type="checkbox"/>	SICK LEAVE	Balance: _____	PPE: _____	
<input type="checkbox"/>	COMPENSATORY TIME	Balance: _____	PPE: _____	

Payroll Supervisor: _____ Date _____

8. CERTIFICATION OF LEAVE DONOR

A. I hereby certify that I am voluntarily donating the leave hours on Item 6 above and request that my Payroll Supervisor transfer the above listed hours of my sick/annual leave to the Leave Recipient listed above. I understand that a minimum of one pay period of balance will be retained in my leave account for my personal use.

Leave Donor: _____ Date _____

B. I hereby certify that the donor has accrued the amount of leave to be donated in addition to the required one pay period leave which must remain in the donor's leave account.

<input type="checkbox"/>	ANNUAL LEAVE	Balance: _____	PPE: _____	
<input type="checkbox"/>	SICK LEAVE	Balance: _____	PPE: _____	

Payroll Supervisor: _____ Date _____

9. I hereby certify for the Recipient Agency listed above that this request meets the guidelines for donating sick/annual leave pursuant to the leave sharing procedures. I authorize my agency to add the total hours donated above to the recipient employee listed.

APPROVED DISAPPROVED

Recipient's Appointing Authority _____ Date _____

GOVERNMENT OF GUAM
DEPARTMENT OF ADMINISTRATION

INSTRUCTIONS FOR COMPLETING FORM
**ANNUAL LEAVE DONATION REQUEST FOR
PERSONAL REASONS**

1. Enter employee names, the Recipient first and then the Donor.
2. Enter the social security numbers for both employees.
3. Enter the classifications of the employees and the associated pay grade for each.
4. Enter each employee's Agency and Division.
5. Enter the dates for which the donated leave is to be used.
Note: These dates must not be for a prior period of time as the request must be approved before leave can be taken. Also, enter the total hours to be used during this period of time (hours of leave donated).
6. Explain the appropriate personal reason (reasons authorized by leave sharing procedures) for which this leave will be used. The recipient employee must sign and date the form.
7. The donating employee must certify this request by signing and dating the form.
8. To receive leave, the requesting employee (recipient) must obtain certification from his agency payroll supervisor and the approval of the appointing authority indicating the request meets all guidelines, and is approved for acceptance of the donated leave.
9. To donate leave, the donor employee must obtain certification from his payroll supervisor indicating the donor has accrued the amount of leave to be donated, in addition to the required one pay period leave, which must remain in the donor's leave account.
10. Final approval for donated leave requests for personal reasons (other than medical emergency) is the Director of Administration. Upon approval/disapproval of the request, a copy will be forwarded to the payroll supervisors of the recipient and donor, and the appointing authorities of both employees.
11. The recipient shall attach some form of proof (notarized affidavit or certification) to prove validity of request.

12. Attach a copy of the approved Request for Leave (Form FCN 2-0-1).

Note: Absence must be for a minimum of five consecutive work days for personal reasons.

GOVERNMENT OF GUAM
DEPARTMENT OF ADMINISTRATION

ANNUAL LEAVE DONATION REQUEST FOR PERSONAL REASONS

	LEAVE RECIPIENT	LEAVE DONOR
1 EMPLOYEE NAME		
2 SOCIAL SECURITY NO.		
3 CLASS TITLE, PAY GRADE/STEP		
4 AGENCY/DIVISION		

5 DONATED LEAVE PERIOD: FROM: _____ TO: _____ TOTAL HOURS: _____

6 AUTHORIZED PERSONAL REASONS: _____

I hereby certify that I have secured permission from my agency to use donated annual leave pursuant to the leave sharing procedures. This request is due to the above referenced personal reason(s) and will be used during the dates listed above in order to continue my compensation because my leave will have exhausted prior to this request.

Leave Recipient: _____ Date: _____

7 CERTIFICATION FROM LEAVE RECIPIENT'S PAYROLL SUPERVISOR

A I certify that the employee requesting for donated leave has accrued the following hours to his/her leave account.

<input type="checkbox"/>	ANNUAL LEAVE	Balance: _____	PPE: _____
<input type="checkbox"/>	COMPENSATORY TIME	Balance: _____	PPE: _____

Payroll Supervisor: _____ Date: _____

B I hereby certify for the Recipient Agency listed above that this request meets the guidelines for donating annual leave pursuant to the leave sharing procedures.

Recipient's Appointing Authority: _____ Date: _____

8 CERTIFICATION OF LEAVE DONOR

A I hereby certify that I am voluntarily donating the leave hours on item 5 above and request that my Payroll Supervisor transfer the above listed hours of my annual leave to the Leave Recipient listed above. I understand that a minimum of one pay period of balance will be retained in my leave account for my personal use.

Leave Donor: _____ Date: _____

B I hereby certify that the donor has accrued the amount of leave to be donated in addition to the required one pay period leave which must remain in the donor's leave account.

	ANNUAL LEAVE	Balance: _____	PPE: _____
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Payroll Supervisor: _____ Date: _____

9 APPROVED DISAPPROVED

Director of Administration: _____ Date: _____



AFFIDAVIT

THIS IS TO CERTIFY THAT, FOR THE PURPOSE OF RECEIVING DONATED LEAVE FOR A PERSONAL REASON, I AM INVOLVED IN ONE OF THE APPROVED REASONS FOR DONATED LEAVE LISTED BELOW: *(Check One)*

1. Adopting a child or placing a child up for adoption.

2. Undergoing divorce or separation proceedings.

3. Death of a family member:

Name of Deceased: _____

Relationship to Employee: _____

Date of Death: _____

4. Undergo Cosmetic and/or voluntary surgery.

5. Temporary care of child or children until a permanent child care arrangement can be made.

6. Take care of legal commitments.

7. Return to school, take additional training and other educational programs.

8. Temporary care of an elderly or physically/mentally disabled member of the family.

Name of Family Member: _____

His/Her Date of Birth: _____

Relationship to Employee: _____

9. OTHER: (Specify) _____

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING STATEMENT IS TRUE AND CORRECT.

SIGNATURE OF EMPLOYEE

DATE

TERRITORY OF GUAM)
) ss
CITY OF AGANA)

ON THIS _____ day of _____, before me, a Notary Public in and for the Territory of Guam, personally appeared _____, and he/she acknowledged to me that he/she executed the foregoing instrument, as his/her voluntary act and deed for the purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

NOTARY PUBLIC

< S E A L >

My Commission expires: _____

Leonardo M. Rapadas
Attorney General



Phillip J. Tydingco
Chief Deputy Attorney General

OFFICE OF THE ATTORNEY GENERAL

December 28, 2011

LEGAL MEMORANDUM

Ref.: AG 11-1169

TO: Director, Department of Administration

FROM: Attorney General

SUBJECT: Leave Sharing Program Rules and Regulations Contrary to Law.

EXHIBIT A
