



Department of Management Services
Division of Human Resource Management

RULE INTERPRETATION

STATUTE/RULE REFERENCE NUMBER: <i>Section 121.091(13)(c)2., and Section 121.091(13)(c)5.d., Florida Statutes (F.S.) and Rule 60L-34.0041(6)(d) and Rule 60L-34.0044(5), Florida Administrative Code (F.A.C.)</i>	TRACKING NUMBER: <i>60L-34-2008-#013</i>
SUBJECT: <i>Disposition of Annual and Special Compensatory Leave Payments Made to Employees Entering the Deferred Retirement Option Program (DROP) if DROP Participation is Later Rendered Null and Void</i>	
APPROVAL SIGNATURE: <i>Sharon D. Larson, Director</i> <i>Sharon D. Larson</i>	EFFECTIVE DATE: <i>December 3, 2008</i>

Question 1:

If an employee fails to terminate employment under DROP, is he/she required to repay (or may he/she voluntarily repay) the annual or special compensatory leave payments received at the time of entering DROP?

Interpretation:

No; the employee is not required nor permitted to repay such leave payments.

As noted in an analysis provided by the Department of Management Services' Office of the General Counsel, the DROP law does not address repayment of any leave credits paid to the employee at the time of entering DROP. Instead, when an employee does not terminate employment as required by the DROP law, the DROP law addresses the impact on DROP membership and requires that the employee's participation in DROP be rendered null and void. This law further requires that the employee's membership in the appropriate retirement plan be re-established retroactive to the date of commencement in DROP and that the agency pay any retirement contributions that may be due. As such, the DROP law sets forth provisions relating to how voiding DROP impacts retirement benefits, but not leave benefits. Similarly, the attendance and leave rules make no provisions for restoring leave credits that were properly paid at the time of entering DROP.

According to the Bureau of State Payrolls, Department of Financial Services, there is no statutory or rule language to justify treating lump sum payments of leave credits made upon entering DROP as 'salary overpayments' in the event that DROP is voided. No payroll error has occurred and, even if such payments were to be considered "errors", the federal limitations on allowing adjustments to prior year taxable income and income tax withholding would make adjustment of payroll records unfeasible in the majority of cases.

Furthermore, there are no provisions in Chapters 110 or 121, F.S., nor Rule Chapter 60L-34, F.A.C., to suggest that these payments were meant to be revocable. If, at the time of the request, the employee was eligible for payment as per Section 121.091(13)(c)2, F.S., and Rules 60L- Rule 60L-34.0041(6)(d) and 60L-34.0044(5), F.A.C., then payment is available at the option of the employee.

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In sum, the DROP law contemplated the election of lump sum payment of leave credits as a separate election from participation in DROP. The DROP law has from its inception included a provision regarding the circumstances and manner for voiding DROP. Because pension payments deferred into DROP are subject to a pre-defined rate of return, their accumulation is monitored on paper and no actual monetary transactions occur until the employee has officially terminated from DROP. Consequently, the restoration of the employee's retirement plan status does not impact federal tax reporting. On the other hand, the option for receiving payment of leave credits was added to the DROP law one year after the passage of DROP, and no provision was made in either the law or the rules of the State Personnel System for voiding such payments. Furthermore, voiding such payments is problematic to administer because of the impact on federal tax reporting.

Question2:

What is the impact on the employee, if DROP membership is voided, but annual and/or special compensatory leave payments are not?

Interpretation:

The employee will still be subject to the provisions of Section 121.091(13)(c)2., F.S., which limit the amount of annual leave credits that may be paid upon separation from service, to the difference between the maximum allowed under the employee's pay plan and the amount paid at the time of entering DROP. However, if the employee subsequently applies for retirement and the previous lump sum payment of annual and/or special compensatory leave still falls into one of the employee's five highest fiscal years of earnings, then such payments would still enhance the calculation of the employee's average final compensation.

Statute Citation:

Section 121.091(13), F.S., Deferred Retirement Option Program.

(c)2. Each employee who elects to participate in the DROP shall be allowed to elect to receive a lump-sum payment for accrued annual leave earned in accordance with agency policy upon beginning participation in the DROP. Such accumulated leave payment certified to the division upon commencement of DROP shall be included in the calculation of the member's average final compensation. The employee electing such lump-sum payment upon beginning participation in DROP will not be eligible to receive a second lump-sum payment upon termination, except to the extent the employee has earned additional annual leave which combined with the original payment does not exceed the maximum lump-sum payment allowed by the employing agency's policy or rules. Such early lump-sum payment shall be based on the hourly wage of the employee at the time he or she begins participation in the DROP. If the member elects to wait and receive such lump-sum payment upon termination of DROP and termination of employment with the employer, any accumulated leave payment made at that time cannot be included in the member's retirement benefit, which was determined and fixed by law when the employee elected to participate in the DROP.

Section 121.091(13), F.S., Deferred Retirement Option Program.

- (c)5.d. A DROP participant who fails to terminate employment as defined in s. 121.021(39)(b) shall be deemed not to be retired, and the DROP election shall be null and void. Florida Retirement System membership shall be reestablished retroactively to the date of the commencement of the DROP, and each employer with whom the participant continues employment shall be required to pay to the System Trust Fund the difference between the DROP contributions paid in paragraph (i) and the contributions required for the applicable Florida Retirement System class of membership during the period the member participated in the DROP, plus 6.5 percent interest compounded annually.

Rule Citation:**Rule 60L-34.0041, F.A.C., Annual Leave**

- (6)(d) An employee electing to participate in DROP may request payment for accrued annual leave at the time of entry into DROP; alternatively, the employee may elect to defer payment until separation from service. If an employee elects immediate payment, then upon separation from service the employee shall be eligible for accrued annual leave payment only to the extent the employee has earned additional annual leave, which combined with the original payment does not exceed the applicable maximum amount specified in paragraphs (a) or (b) of this subsection 60L-34.0041(6), F.A.C.

Rule 60L-34. 0044, F.A.C., Special Compensatory Leave.

- (5) At the time of entry into the DROP, an employee electing to participate in the program may request payment of any unused special compensatory leave that was earned within eleven months before entry into the DROP.