

AGENDA MATERIAL

DATE 12-3-19 ITEM NO. RA14

Brian Johnson
7025 N Boswell Lane
Tucson, AZ 85743

December 3, 2019

To the Honorable Chairman and Members
Pima County Board of Supervisors

Re: Agenda Item 14 Revisions to Personnel Policy (PP 8-108)

I am writing in regard to changes that were made to BOS PP 8-108 which the Board approved in October of 2017. Specifically part D regarding employees that run for elective office.

Prior to the change made then BOS PP 8-108(D) read:

"When an employee files petitions for an elective office other than School Board Member, the employee **shall** be placed on a leave of absence without pay **if it is determined** that the employee's election activities prevent the employee from performing her/his County duties, or that the election activities adversely affect the operation of the department." (*Emphasis added*).

On January 24, 2017 the County Administrator, C.H. Huckleberry, issued a Memorandum to then H.R. Director Allyn Bulzomi re: "Amending Current Personnel Policies and Merit System Rules Regarding a County Employee Seeking Elected Office" which read:

"Our present Personnel Policies are not specifically clear regarding the investigative process when a County employee files candidacy for elected office. Therefore, please amend current policies through the appropriate process to remove the option for a County employee seeking elected office for which there is monetary compensation from "may be placed on unpaid administrative leave" to 'shall be placed on unpaid administrative leave.'" This amendment would clearly avoid any conflict or appearance of conflict regarding employees who run for elected office while employed by the County." (*The copy of the 2016 version of PP 8-108 that I received did use the word shall.*)

The policy was changed significantly to:

"When an employee files petitions for candidacy for an elective office for which there is monetary compensation, the employee shall be placed on a leave of absence without pay."

Evidently there was some notification to Elected Officials because on June 5, 2017 Pima County Recorder F. Ann Rodriquez issued a Memorandum to then H.R. Director Allyn Bulzomi expressing her concerns with the proposed changes to Personnel Policy 8-108(D). She wrote:

"I am particularly troubled by the proposed change to Personnel Policy 8-108(D)."

NOV 28 12:39 PM '19 POC CLK-80

AKS

“Restrictions that are imposed on a person seeking elected office clearly raises issues under the First Amendment to the United States Constitution. Courts have consistently held that government restrictions that have a chilling effect on the exercise of First Amendment rights must be narrowly tailored to deal with only with the legitimate and significant interests of the government. If the harmful impact to the First Amendment rights exceeds the government’s interest, then the restriction is invalid. The proposed change to Personnel Policy 8-108(D) is neither narrowly tailored nor does it establish exactly what government interest is being protected.”

F. Ann Rodriguez went on to make several other valid points:

- County employees have run for paid offices such as city and town councils in the past without any impact to the employee department.
- The policy requires the leave of absence even if the employee is uncontested in their run for office.
- Partisan candidates often run uncontested in primary races.

She sums up her concerns:

“The only interest the county has in an employee/candidate’s activities is if those activities create a disruption to the county department or prevent the employee from being able to perform their job. Merely filing nomination papers to become a candidate in an election five months later does not do that. Being a candidate in a non-partisan or uncontested race does not create a disruption. In fact, not every contested race requires the candidate to place their life on hold and focus only on the campaign.”

When the change to Personnel Policy 8-108(D) was first presented to the Board at the September 5th 2017 meeting, it was accompanied by a Memorandum to the Board by then Deputy County Administrator Tom Burke which described the new wording of the policy:

“PP 8-108 D. Language expanded and detail added for clarification.”

The agenda for that meeting did not include any comments such as F. Ann Rodriguez’s June 5th 2017 Memorandum, only Mr. Burke’s assessment of the changes to the policy that did not adequately describe the significance of the change.

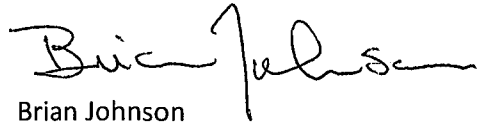
I have other concerns. First, that there is no consideration in the policy as to the length of time of an employee/candidate’s viability as a candidate. If, for example, and employee runs in a contested primary, which I did in 2016, and loses, why should an employee remain on unpaid leave until the General Election in November?

Secondly and most important is the possibility of the employee/candidate’s absence creating a hardship for the employee’s department. The policy does not give any discretion or options to the employee/candidate’s Appointing Authority. I would think that an employee who is seriously considering running for an elective office, particularly a County role office such as Treasurer, Recorder or Assessor, has developed knowledge and skills that make that employee valuable to their department and the office they seek.

I fully understand how a disruptive situation can occur when an employee runs in a contested race against his or her Appointing Authority, which is a situation that probably prompted a knee-jerk reaction

to change the policy. It is however, too arbitrary. There should be some provision or exception that would permit the continued service of an employee/candidate at the discretion of the employee's Appointing Authority.

Thank you for taking this into consideration.

A handwritten signature in black ink, appearing to read "Brian Johnson". The signature is fluid and cursive, with the first name "Brian" and last name "Johnson" clearly distinguishable.

Brian Johnson

Attached: documents obtained through Public Records requests regarding the matter

This is the old wording from 2016.

Candidacy for Elective Office

When an employee files petitions of candidacy for an elective office other than School Board Member, the employee shall be placed on a leave of absence without pay if it is determined that the employee's election activities prevent the employee from performing her/his County duties, or that the election activities adversely affect the operation of the department.

In 2017, it was changed to be more restrictive to say:

D. Candidacy for Elective Office

When an employee files petitions of candidacy for an elective office for which there is monetary compensation, the employee shall be placed on a leave of absence without pay.

When an employee files petitions of candidacy for an elective office for which there is not monetary compensation, to include School Board Member, the employee may be placed on a leave of absence without pay if:

1. It is determined by the Appointing Authority that the employee's election activities prevent the employee from performing assigned County duties,
or
2. The election activities adversely affect the operation of the department.



MEMORANDUM

Date: January 24, 2017

To: Allyn Bulzoni, Director
Human Resources Department

From: C.H. Huckelberry
County Administrator 

Re: **Amending Current Personnel Policies and Merit System Rules Regarding a County Employee Seeking Elected Office**

Our present Personnel Policies are not specifically clear regarding the investigative process when a County employee files candidacy for an elected office. Therefore, please amend current policies through the appropriate process to remove the option for a County employee seeking elected office for which there is monetary compensation from "*may be placed on unpaid administrative leave*" to "*shall be placed on unpaid administrative leave.*" This amendment would clearly avoid any conflict or appearance of conflict regarding employees who run for elected office while employed by the County.

CHH/anc

c: Tom Burke, Deputy County Administrator for Administration

From: [Allyn Bulzomi](#)
To: [Cory Dent](#)
Cc: [Wendy Petersen](#)
Subject: FW: Amendment to Personnel Policy and Merit System Rules
Date: Tuesday, January 24, 2017 4:20:57 PM
Attachments: [5xxrwq40axa.pdf](#)

Make it happen

Allyn Bulzomi
Director of Human Resources
Pima County, AZ
150 W. Congress, 4th Floor
Tucson, AZ 85701
Office 520-724-8672
Fax 520-620-1487

From: Amanda N. Colon-Sisco
Sent: Tuesday, January 24, 2017 3:35 PM
To: Allyn Bulzomi <Allyn.Bulzomi@pima.gov>
Cc: Marchelle Pappas <Marchelle.Pappas@pima.gov>; Tom Burke <Tom.Burke@pima.gov>; Lois Burlingham <Lois.Burlingham@pima.gov>; Stella Padilla <Stella.Padilla@pima.gov>
Subject: Amendment to Personnel Policy and Merit System Rules

Mr. Bulzomi:

Please see the attached memorandum regarding the above mentioned subject.

Thank you,

Amanda Colon-Sisco
Executive Secretary
Pima County Administrator's Office
520.724.8661

From: Allyn Bulzomi
To: Tifanie Ward; Cory Dent
Subject: FW: Proposed Merit System Changes-17MEM090
Date: Tuesday, June 6, 2017 8:18:51 AM
Attachments: 17MEM090-Proposed Merit System Changes.pdf

We are going to have to put together all the comments to send up to CHH>

Allyn Bulzomi
Director of Human Resources
Pima County, AZ
150 W. Congress, 4th Floor
Tucson, AZ 85701
Office 520-724-8672
Fax 520-620-1487

From: Kimberly Challender [mailto:Kimberly.Challender@recorder.pima.gov]
Sent: Monday, June 5, 2017 2:52 PM
To: Allyn Bulzomi <Allyn.Bulzomi@pima.gov>
Cc: Tifanie Ward <Tifanie.Ward@pima.gov>
Subject: Proposed Merit System Changes-17MEM090

Please see attached memo from F. Ann Rodriguez regarding the proposed Merit System Rules and Personnel Policies changes.

Sincerely,

Kim Challender
Pima County Recorder's Office
(520) 724-4357



Mailing Address
P. O. Box 3145
Tucson, AZ 85702-3145

F. Ann Rodriguez
Pima County Recorder

County Public Service Center
240 North Stone Avenue, 1st Floor
Tucson, AZ

Recording history one document at a time.

Christopher J. Roads
Chief Deputy Recorder
Registrar of Voters

Document Recording: (520) 724-4350

Voter Registration: (520) 724-4330

Fax: (520) 623-1785

www.recorder.pima.gov

MEMORANDUM

To: Allyn Bulzomi
Human Resources Director

From: F. Ann Rodriguez
Pima County Recorder

RE: Proposed changes to Merit System Rules and Personnel Policies
8-108 D and 10.2 (B)

Date: June 5, 2017

I am writing this memo to express my concerns about a couple of the recent proposed changes to the Merit System Rules and Personnel Policies.

I am particularly troubled by the proposed change to Personnel Policy 8-108(D). That proposed change applies to candidates for public office.

Restrictions that are imposed on a person seeking elected office clearly raise issues under the First Amendment to the United States Constitution. Courts have consistently held that government restrictions that have a chilling effect on the exercise of First Amendment rights must be narrowly tailored to deal only with the legitimate and significant interests of the government. If the harmful impact to the First Amendment rights exceeds the government's interest, then the restriction is invalid. The proposed change to Personnel Policy 8-108(D) is neither narrowly tailored nor does it establish exactly what government interest is being protected.

The current version of the policy is narrowly tailored. An employee who is a candidate for public office may be placed on leave of absence if their candidacy prevents them from being able to perform their tasks or if their candidate activities adversely impact the operations of the department. The current policy therefore clearly defines the county's interests: (1) making certain that the candidacy does not prevent someone from being able to do their job and (2) making certain that the candidacy does not disrupt the operations of the department.

Under the new proposed version, immediately upon filing a nomination petition for paid public office, an employee/candidate is forced to be placed on unpaid leave of absence without any regard to whether or not the candidate is able to perform their job duties and regardless of whether or not there is any impact on the operations of the department. This imposes a significant financial penalty on anyone

seeking public office even if there is zero impact on the county or the department. County employees have run for paid offices on city and town councils in the past. Although there was no impact to the employing department during that candidacy, the proposed policy would require the candidate/employee to be placed on an unpaid leave of absence immediately upon filing the nomination petition. Nomination petitions are generally filed in May and June for elections occurring in November. This would require the employee to be on unpaid leave for more than 5 consecutive months merely for exercising their First Amendment right to run for public office.

The policy requires the leave of absence even if the employee is uncontested in their run for office. It makes no sense whatsoever to force an employee into an unpaid leave of absence when their candidacy is not a contested race.

Quite often the offices sought are non-partisan. Only the City of Tucson has partisan races for its council. In a non-partisan contest, the candidate's name does not appear on the ballot until the November election cycle. The proposed policy would therefore require the employee to be on an unpaid leave for 4 full months before the voting for the election cycle even starts and before the campaigning starts in earnest. Even if the candidate was running for a partisan office and therefore appeared on the ballot for the August cycle, partisan candidates in the primary elections quite often run uncontested races. It is therefore doubtful that an uncontested primary race would have any impact on the employee's ability to perform their job or disrupt the department operations.

In many elections, when there is a contested primary race, the general election race is uncontested. The candidate who won the primary election is the only candidate on the general election ballot. Again, since the proposed policy applies to anyone, even if their race is uncontested, the employee would still be forced into an unpaid leave of absence during the uncontested race.

The only interest the county has in an employee/candidate's activities is if those activities create or cause a disruption to the county department or prevent the employee from being able to perform their job. Merely filing nomination papers to become a candidate in an election five months later does not do that. Being a candidate in a non-partisan or an uncontested race does not create a disruption. In fact, not every contested race requires the candidate to place their life on hold and focus only on the campaign.

Quite simply the proposed amendment to Personnel Policy 8-108(D) is excessively overbroad in impacting the employee/candidate's First Amendment rights, clearly imposes a financial burden on the employee merely for running for public office, is not narrowly tailored to serve the county's interests and in fact is so broad that it serves no legitimate governmental interest. The current policy is more than sufficient to protect the county department's legitimate interest. The Appointing Authority should be the only one to make the decision as to whether a candidacy negatively impacts a department or whether or not the employee is not able to perform their job duties.

Even if you ignore the constitutional issues, the proposed change is simply bad public policy.

One other rule that needs to be changed is the period of Promotion Probation contained in Rule 10.2(B). Several years ago the period of probation for all county employees was a range of from six to twelve months. My policy was to place all new employees on a period of 12 months of probation.

The county probation period was subsequently changed to a flat 12 month probation period. In late 2015, the period of promotional probation was reduced from 12 months to a period of 6 months. That reduction presents a detrimental impact on the Recorder's Office operations and an unfair impact on a newly hired employee who is transferring from another county department.

The Recorder's Office has an extensive formal training process for newly hired employees. Employees do not typically complete the entire training process for nine to eleven months. We do not train each person in every task immediately. They receive one-on-one training for each task. Once they have progressed in the training, they are then assigned to another task to perform for a period of time in order to show they can successfully complete the task and in order to reinforce the lessons learned in the training. Once the employee has shown proficiency in performing the task, training then commences on the next new task. During the training for the second task, they are also assigned periods when they must perform the prior task so that they continue with their proficiency in the earlier tasks. All of these training steps take time. The complexity of the tasks increase with each new task assigned.

While the shorter period may make sense to a department that does not have the extensive learning curve of the Recorder's Office, or in the situation of an intra-department promotion, it creates a significant problem when we hire an employee from another county department. Although this new worker has zero knowledge of the activities of the Recorder's Office when hired, we are now forced by the short probationary period to take them through the entire training process in a much shorter period of time than a person hired from outside the county.

That is a disservice to the interdepartmental employee. It also makes us question whether or not we should hire a potential employee from another county department and subject them to the abbreviated training period or hire a non-county person who can take the entire 12 month period for training.

The period of promotional probation should return to a 12 month period. This would treat all applicants whether coming from outside the county or internal promotional applicants equally.

At the least this promotional policy should be modified to a range from 9 to 12 months to allow the department a longer period when it is appropriate for the operations of that county department. This information could be posted as part of the application process through ADP of what the department's promotional probationary period would be for internal county applicants. All applicants would be advised of their probationary period prior to accepting the position and the probationary period would be outlined in the new hire's performance plan.

Thank you for your consideration of these issues. Should you have any questions or need additional input, please call me at 44297.

From: Cory Dent
To: Allyn Bulzoni
Cc: Wendy Petersen; Tifanie Ward; Cory Dent; Marchelle Pappas
Subject: 6.5.17 F. Ann Rodriguez Response to CHH Changes to PP 8-108
Date: Thursday, June 8, 2017 2:53:48 PM
Attachments: 6.5.17 F. Ann Rodriguez Response to CHH Changes to PP 8-108 - Abridged.pdf
6.5.17 F. Ann Rodriguez Response to CHH Changes to PP 8-108 - Unabridged.pdf

Attached please find Abridged and Unabridged documentation of F. Ann Rodriguez' response to the TB/CHH directive to alter Personnel Policy 8-108 D as follows:

D. Candidacy for Elective Office

When an employee files petitions of candidacy for an elective office **FOR WHICH THERE IS MONETARY COMPENSATION**, ~~other than School Board Member~~, the employee shall be placed on a leave of absence without pay.

WHEN AN EMPLOYEE FILES PETITIONS OF CANDIDACY FOR AN ELECTIVE OFFICE FOR WHICH THERE IS NOT MONETARY COMPENSATION, TO INCLUDE SCHOOL BOARD MEMBER, THE EMPLOYEE MAY BE PLACED ON A LEAVE OF ABSENCE WITHOUT PAY IF: if

1. It is determined **BY THE APPOINTING AUTHORITY** that the employee's election activities prevent the employee from performing his/her **ASSIGNED** County duties, or
2. that the election activities adversely affect the operation of the department.

Would you like me to forward this to Tom?

A. Types of Leave

Leaves of absence without pay may be granted by a department to an employee for the following reasons and lengths of time:

<u>Reason</u>	<u>Maximum Leave Time</u>
Education	One (1) year
Medical	One (1) year
Candidacy for Elective Office	Six (6) months
Best Interest of County	One (1) year
Humanitarian/Personal	Six (6) months
Family and Medical Leave	Twelve (12) to Twenty-six (26) weeks
Victim	Unlimited

All leaves of absence must have the written approval of the employee's Appointing Authority, except leave designated under the Family and Medical Leave Act.

B. Education

An employee may be granted a leave of absence without pay for educational purposes when it is determined that such leave is in the best interest of the County and/or does not adversely affect its operation.

C. Medical

An employee may be granted a leave of absence without pay when unable to work because of a medical condition that is documented by a recognized physician or medical practitioner to include conditions arising from pregnancy or childbirth. For continuing conditions, official documentation of the status of the condition may be required on a monthly basis at the discretion of the Appointing Authority. Upon returning to work from medical leave, the employee shall provide a written release from his/her attending physician or medical practitioner. Upon receiving notification of approval for long term disability coverage, employees shall immediately resign from County employment if the benefit is awarded retroactively, or no later than one day before the long term disability coverage is scheduled to begin.

If an interactive process under the Americans with Disabilities Act (ADA) results in an accommodation agreement that permits the employee to work a part-time schedule, the employee will be permitted to remain employed by the County and his/her long term disability benefits will be offset by County wages as provided in ARS § 38-797.07(A)(1)(h). Intermittent medical leave without pay may occur as

an ADA accommodation as determined by Federal law and regulations under the ADA or due to a serious medical condition as determined by Human Resources and may be interspersed with paid time. The ADA is set out by administrative procedures which comply with the Americans with Disabilities Act.

D. Candidacy for Elective Office

When an employee files petitions of candidacy for an elective office **FOR WHICH THERE IS MONETARY COMPENSATION**, ~~other than School Board Member~~, the employee shall be placed on a leave of absence without pay.

WHEN AN EMPLOYEE FILES PETITIONS OF CANDIDACY FOR AN ELECTIVE OFFICE FOR WHICH THERE IS NOT MONETARY COMPENSATION, TO INCLUDE SCHOOL BOARD MEMBER, THE EMPLOYEE MAY BE PLACED ON A LEAVE OF ABSENCE WITHOUT PAY IF: if

1. It is determined **BY THE APPOINTING AUTHORITY** that the employee's election activities prevent the employee from performing his/her **ASSIGNED** County duties, or
2. ~~that~~ The election activities adversely affect the operation of the department.

E. Best Interest of County

With the full concurrence of the employee and the Appointing Authority and the approval of the County Administrator, an employee may be placed on a leave of absence without pay if it is determined that such leave is in the best interest of the County.

F. Humanitarian/Personal Reasons

An employee may be granted a leave of absence without pay for humanitarian or personal reasons when it is determined that undue hardship to the employee would otherwise result and that the operation of the department would not be adversely affected or to supplement bereavement leave pursuant to 8-107 E.4. Humanitarian/personal leave includes a leave of absence due to the birth and/or adoption of a child and the serious illness of a child, stepchild, foster child, grandchild, spouse, mother, father, grandparent, domestic partner and/or the child of the domestic partner, as established by affidavit once a year or more often if a relationship has changed in that calendar year or must have a current affidavit on file with the Human Resources Department for the domestic partner or child of the domestic partner enrolled under the County's health benefits plan.

G. Family and Medical Leave Act (FMLA) Leave

1. Family and Medical Leave: An employee may be granted a leave of absence without pay as determined by Federal law and regulations under

the FMLA. The FMLA is set out by administrative procedures which comply with the Family and Medical Leave Act.

2. Military Family Leave: The federal FMLA entitles eligible employees to take leave for a covered family member's service in the Armed Forces as established in the Federal law and regulations.
- G. 3. The employee is required to use accrued sick and/or annual leave banks and compensatory time concurrent with FMLA unpaid leave and pursuant to administrative procedures. This applies to all eligible exempt and non-exempt employees on intermittent or continuous FML.

H. Victim Leave

1. General Conditions

- a. An employee may be granted a leave of absence without pay for an unlimited amount of time under the provisions of the Arizona Victim Leave Law, ARS § 8-420 and § 13-4439, if the employee is a "victim" of a crime. The leave of absence shall be granted for the employee to attend all court proceedings involving the perpetrator(s) of the crime(s) against the employee.

Exception: an employee's time may be limited if it creates an undue hardship, as defined by the statute, for the County.

- b. The employee shall maintain all seniority rights while absent from employment under these provisions.
 - c. All records regarding an employee's victim leave shall be considered confidential and maintained in a separate department personnel file.
2. Eligibility: to be eligible for victim leave, an employee must have been the victim of a juvenile offense or adult crime.
- a. "Victim" is defined as a person against whom the delinquent act or criminal offense has been committed, or if the person/victim is killed or incapacitated, the person's immediate family or lawful representative.
 - (1) "Immediate family" means a victim's spouse, parent, child, sibling, grandparent or lawful guardian.
 - (2) "Lawful representative" means a person who is designated by the victim or appointed by the court to act in the best interests of the victim.
 - b. Exception: a family member is not entitled to take victim leave who

is in custody for an offense or is the accused.

3. Employee's option for pay: victim leave is unpaid, unless the employee elects to use accrued sick and/or annual leave, or compensatory time, none of which need be exhausted before victim leave begins.
- H. 4. Department requirements: at the conclusion of the leave period, the department shall assign the employee to the same or an equivalent position with the same pay, benefits and working conditions. An employee has no greater right to restoration or to other benefits than if the employee had been continuously employed during the leave period.
5. Leave request procedure: an eligible employee shall provide the Department with the following documentation before victim leave is granted:
 - a. A copy of the notice from law enforcement or the prosecutor regarding the employee's status as a crime victim; and
 - b. A copy, if applicable, of the notice of any scheduled proceeding.

I. General Provisions

1. An employee shall submit his/her request for a leave of absence without pay at least two (2) weeks in advance of such leave, unless such advance time is not practicable, or is reduced or waived by the department. The employee must also make arrangements with Human Resources regarding continuation of and payment for group insurance. Approval must be obtained before such leave begins.
2. Annual leave and sick leave shall not accrue while an employee is on a leave of absence without pay, including continuous FML, unless the employee is using his/her own leave banks. Employees on intermittent or reduced schedule leave under FMLA, on intermittent medical leave or on intermittent victim leave shall accrue annual and sick leave based on the number of regular hours paid in the same pay period during which leave is used, including all hours of the employee's own leave and/or time worked. Unpaid hours will not be calculated nor applied for the purpose of determining annual and sick leave accruals.
3. An employee on a leave of absence without pay, who is not using his/her accrued leave banks, shall not receive pay for holidays.
4. An approved leave of absence without pay is not considered a break in County service, but no credit is given toward seniority unless the leave of absence without pay was for Uniformed Services leave in accordance with 8-103 G.1.b.

5. A leave of absence without pay shall not be granted for an employee to engage in outside employment.

- I. 6. A department may appoint a temporary replacement, without a guaranteed length of employment, or detail another employee to substitute for an employee on a leave of absence without pay, until the regular employee returns. Upon agreement with the department, the employee is not obligated to remain on the leave of absence until the scheduled end date if reasons for the leave have changed and the employee is able to return from the leave earlier than scheduled.
7. An employee starting a leave of absence without pay, who wishes to continue coverage under any of the County's group insurance programs, must make coverage and payment arrangements with Human Resources prior to such leave.
8. An employee starting an approved leave of absence without pay, other than FML, is expected to pay the full cost of the insurance premiums, which includes both employee's and employer's shares. The employee starting FML is expected to pay only the employee's cost of the premiums. If an employee cancels insurance coverage while out on a leave of absence, the employee can elect to continue coverage within thirty-one (31) calendar days upon returning to work.
9. An employee on intermittent medical leave will receive the employer's share of the insurance premium as long as he/she receives sufficient pay to cover the employee's share. Otherwise, the employee is responsible for the employer's and the employee's share of the insurance premium.
10. A leave of absence without pay, when granted, must be continuous and may not be interspersed with paid time, except for intermittent medical leave, for intermittent FML, and for intermittent victim leave.
11. Resignation during a leave of absence without pay becomes effective two (2) weeks from date of notice, or at the end of the leave of absence, whichever occurs first.