

1 Legislature passed SSSB 6811, Chapter 128, Laws of 2000, which provided (RCW 28B.50.4893):

2 Part-time academic employees of community and technical colleges shall
3 receive sick leave to be used for the same illnesses, injuries, bereavement, and
4 emergencies as full-time academic employees at the college in proportion to the
individual's teaching commitment at the college.

5 Thus, if a part-time faculty member worked .75 FTE, then he or she is entitled to accrue sick leave
6 at a rate of three-quarters of what a full-time faculty member receives.

7 7. Beginning prior to RCW 28B.50.4893 going into effect, and continuously since then, full-
8 time faculty members at Green River College accrued sick leave at a rate of one day per month.

9 8. A part-time faculty member at Green River College with a three-fourths academic
10 workload (*i.e.*, 75% FTE), from the time the above bill passed until Spring 2019, accrued sick
11 leave at a rate of less than .75 days per month.

12 9. Thus, part-time faculty members, including Plaintiff Dana Rush, did not "receive sick leave
13 to be used for the same illnesses...as full-time academic employees at the college in proportion to
14 the individual's teaching commitment at the college" as required under RCW 28B.50.4893.

15 10. Part-time faculty have a right to use the sick leave they were denied the college.

16 11. Failure to provide proportionate sick leave as required by statute harmed plaintiff Dana
17 Rush by denying him the opportunity to use that sick leave.

18 12. Part-time faculty are entitled to an annual payout of one day's remuneration for every
19 four days of sick leave for sick leave accrued in excess of sixty days under RCW
20 28B.50.553(3).

21 13. Plaintiff Dana Rush was harmed by the failure to provide proportionate sick leave as
22 required by statute because it denied him the opportunity to receive annual payouts pursuant to
23 RCW 28B.50.553(3).

24 14. Part-time faculty are entitled to a payout at time of retirement "equal to one day's
25 current monetary compensation of the employee for each four full days' accrued sick leave" or
26 "with equivalent funds, provide eligible employees with a benefit plan that provides
27 reimbursement for medical expenses." RCW 28B.50.553(4)-(5).

1 15. Plaintiff Dana Rush will be entitled to remuneration at the time of his retirement
2 pursuant to the above statute.

3 16. Plaintiff Dana Rush is harmed because his payout at retirement under RCW
4 28B.50.553(4)-(5) will be diminished by the failure to provide proportionate sick leave as
5 required by state law.

6 17. The defendant had a duty to inform Dana Rush and other part-time faculty of their right to
7 accrue sick leave in the same manner as full-time faculty in proportion to their FTE.

8 18. Plaintiff Dana Rush was entitled to rely on the college's representation about what sick
9 leave they were entitled to. *Samuelson v. Community College Dist. No. 2 (Grays Harbor College)*,
10 75 Wn. App. 340, 346 (1994) ("it is common for employees to rely on their employers for
11 information regarding their benefits").

12 19. Sick leave is a form of wages. *Naches Valley Sch. Dist. No. JT3 v. Cruzen*, 54 Wn. App.
13 388, 399 (1989) (sick leave cash-out is wages); *South Bend Sch. Dist. No. 118 v. White*, 106 Wn.
14 App. 309 (2001) (personal sick leave benefits are wages).

15 20. The college willfully withheld these sick leave benefits because there was no bona fide
16 dispute as to the existence of the statute requiring proportionate sick leave.

17 STATUTORY CLAIM

18 21. Plaintiff Dana Rush is making a claim only under state statute. He is *not* alleging a
19 violation of any collective bargaining agreement.

20 22. Plaintiff Rush's claim for sick leave arises under statute and thus is not subject to any
21 grievance procedure in any collective bargaining agreement.

22 23. To make employees' use of CBA procedures mandatory, the employer's obligation
23 must "arise from the collective bargaining agreement," and not be based on another aspect of
24 the employment relationship. *Int'l Ass'n of Firefighters, Local 1789 v. Spokane Airports*, 146
25 Wn.2d 207, 221, 224 (2002). *Accord, Commodore v. University Mechanical Contractors*, 120
26 Wn.2d 120, 129-30 (1992) ("state statutory or common law claim is independent of the CBA . .
27 . if it could be asserted *without* reliance" on the CBA [Supreme Court's emphasis]); *Lingle v.*

1 *Norge Div. of Magic Chef, Inc.*, 486 U.S. 399, 412 (1988) (wrongful discharge claim based on
2 workers' compensation law did not require interpretation of CBA and thus was not subject to
3 collective bargaining remedies); *Schneider v. Snyder's Foods, Inc.*, 95 Wn.App. 399, 401
4 (1999) ("Only those claims which are founded directly on rights created by a collective
5 bargaining agreement and those *substantially dependent upon construction of the agreement*
6 are governed by [laws regarding CBAs].") (emphasis added). Thus, under labor law, the
7 remedies provided under a CBA do not apply to a claim arising both from the CBA and another
8 source when the claim does not require construing the CBA, but instead are based on
9 construing the other source, either state statutory or common law rights. *Ervin v. Columbia*
10 *Distrib. Inc.*, 84 Wn.App. 882, 889-90 (1997) (even though Ervin did not pursue CBA overtime
11 claim, he could still pursue his right to overtime pay owed under a Washington statute because
12 the statutory claim "d[id] not require construing the collective-bargaining agreement," and
13 could be asserted "without reliance on the collective bargaining agreement" except to establish
14 his rate of pay).

15 24. Here, Plaintiff Dana Rush's claim arises under statute and only requires application of
16 the state statute. His claim does not require interpretation of any CBA, nor is it based on a
17 CBA.

18 CLASS ACTION ALLEGATIONS

19 25. Plaintiff Dana Rush represents a class of similarly situated individuals, part-time faculty
20 who did not accrue proportionate sick leave as required by statute.

21 26. The defendant's failure to provide sick leave as required by statute affects all part-time
22 faculty who did not accrue sick leave as required under RCW 28B.50.4893. These class members
23 are entitled to declaratory and injunctive relief, requiring the defendant to provide sick leave as
24 required by state law. These class members are also entitled to monetary relief that is incidental to
25 the declaratory or injunctive relief, *e.g.*, sick leave payouts.

26 27. Other Washington community and technical colleges also failed to provide proportionate
27 sick leave to part-time faculty as required by statute.

1 28. Part-time faculty have a right to use the sick leave they were denied.

2 29. Failure to provide proportionate sick leave as required by statute harmed class members
3 by denying them the opportunity to use that sick leave.

4 30. Part-time faculty are entitled to an annual payout of one day's remuneration for every
5 four days of sick leave for sick leave accrued in excess of sixty days under RCW
6 28B.50.553(3).

7 31. Class members were harmed because they did not accrue sick leave as required by
8 statute because it denied them the opportunity to receive annual payouts pursuant to RCW
9 28B.50.553(3).

10 32. Part-time faculty are entitled to a payout at time of retirement "equal to one day's
11 current monetary compensation of the employee for each four full days' accrued sick leave" or
12 "with equivalent funds, provide eligible employees with a benefit plan that provides
13 reimbursement for medical expenses." RCW 28B.50.553(4)-(5).

14 33. Class members have been and will continue to be harmed because their payout at
15 retirement under RCW 28B.50.553(4)-(5) will be diminished because they did not accrue sick
16 leave as required by statute.

17 34. The failure to provide sick leave as required by statute also affects part-time faculty who
18 transfer to another college district, a state agency, an education service district, a school district or
19 an institute of higher education because they have a right to transfer their accumulated sick leave
20 under RCW 28B.50.551(5).

21 35. Part-time faculty members were entitled to rely on the their employer's representation
22 about what sick leave they were entitled to.

23 36. There are at least several hundred part-time faculty members who did not accrue sick leave
24 as required by statute.

25 37. The class is so numerous that joinder of all members is impractical. Joinder of members
26 who suffered a monetary loss is impractical both because that group is numerous and also because
27 the monetary claims are small relative to the burdens of litigation.

1 38. There are common questions of law and fact that pertain to the class, both for those entitled
2 only to declaratory and injunctive relief and also those who are entitled to declaratory and
3 injunctive relief and the monetary relief that flows from that relief, *e.g.*, whether the defendant
4 provided part-time faculty with all the proportionate sick leave they are entitled to by statute.

5 39. Plaintiff Rush's claims are typical of the class in that they arise from whether part-time
6 faculty accrued sick leave as required by statute.

7 40. Plaintiff Rush will adequately represent and protect the interests of the class because he
8 retained competent and experienced counsel and his interest is in the litigation and not antagonistic
9 to members of the plan. Plaintiff Rush and the class have the same interest in obtaining a ruling
10 that they did not accrue proportionate sick leave as required by statute.

11 41. The defendant failed to perform a legal duty on grounds applicable to the class, *i.e.*, the
12 defendant failed to provide proportionate sick leave as required by statute.

13 42. Because the defendant has acted on grounds applicable to the class, making declaratory and
14 injunctive relief appropriate with respect to the class as a whole, the class should be certified under
15 CR 23(b)(2). Monetary relief for class members who were denied sick leave benefits is
16 appropriate under CR 23(b)(2) because the monetary relief (sick leave payout) flows directly from
17 the declaratory and injunctive relief sought.

18 43. Because employees are entitled to accrue and use sick leave up until retirement and receive
19 a payout at retirement, they are entitled to back sick leave for the entire period of time they did not
20 accrue sick leave as required by statute. See *Scannell v. City of Seattle*, 97 Wn.2d 701, 706 (1982)
21 (requiring Seattle to pay vacation compensation up to statutory maximum accumulation [240
22 hours] during employees' first nine years of service and all additional vacation compensation
23 earned after the first nine years); *Bowles v. Wash. Dept. Ret. Sys.*, 121 Wn.2d 52, 79-80 (1993) (for
24 retirement benefits "the limitations period begins to run upon the employee's retirement"). Sick
25 leave has no maximum accumulation balance, unlike the vacation leave in *Scannell*.

26 RELIEF

27 The plaintiff on behalf of himself and a class of similarly situated individuals seeks the

1 following relief:

2 A. Declaratory and injunctive relief establishing that the sick leave accrual policies for part-
3 time faculty violated the state statute.

4 B. An injunction requiring that plaintiffs receive all the sick leave they are entitled to by state
5 statute.

6 C. Monetary relief flowing from the declaratory and injunctive relief, *e.g.*, sick leave payouts.

7 D. Double damages pursuant to RCW 49.52.070.

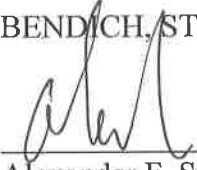
8 E. Attorney fees pursuant to the common fund doctrine and RCW 49.48.030.

9 F. Interest on the monetary relief.

10 G. Such other relief as the Court may deem just and equitable.

11 DATED this 11th day of February, 2020.

12 BENDICH, STOBAUGH & STRONG, P.C.

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