

**SUPERIOR COURT OF WASHINGTON FOR KING COUNTY**

DANA RUSH and a class of similarly situated individuals,	)	No. 20-2-03771-1 SEA
	)	
Plaintiffs,	)	ORDER GRANTING PLAINTIFFS'
v.	)	MOTION FOR PARTIAL SUMMARY
	)	JUDGMENT AND DENYING
STATE OF WASHINGTON,	)	DEFENDANT'S MOTION FOR SUMMARY
	)	JUDGMENT
Defendant.	)	
	)	

This matter came before the Court on the parties' cross-motions. The Court heard the argument of counsel on September 18, 2020 and considered the following:

1. Plaintiffs' Motion for Partial Summary Judgment;
2. The Declaration of Dana Rush dated June 4, 2020;
3. The Declaration of Dana Rush dated June 16, 2020;
4. The Declaration of Stephen Strong dated June 4, 2020;
5. Discovery Filing dated June 4, 2020;
6. Discovery Filing dated August 21, 2020;
7. Defendant's Motion for Summary Judgment;
8. The Declaration of Shirley Bean;
9. The Declaration of John Boesenberg;
10. Defendant's Notice of Errata;
11. Defendant's Response to Plaintiffs' Motion for Partial Summary Judgment;

ORDER GRANTING PLAINTIFFS' MOTION FOR  
PARTIAL SUMMARY JUDGMENT - 1

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**COPY**

- 1 12. Plaintiffs' Response to Defendant's Motion for Summary Judgment;
- 2 13. Discovery Filing dated September 8, 2020;
- 3 14. Plaintiffs' Reply in Support of Plaintiffs' Motion for Partial Summary Judgment;
- 4 15. Discovery Filing dated September 14, 2020;
- 5 16. Defendant's Reply.

6 **MATERIAL FACTS NOT IN DISPUTE**

7 The Court previously certified a class of all part-time faculty who did not accrue sick  
8 leave in proportion to their full-time equivalency. Doc. #29. As class representative, Dana  
9 Rush is suing on behalf of all part-time faculty. The following material facts are without  
10 substantial controversy.

- 11 1. The State has not provided sick leave that is proportionate to the sick leave  
12 received by full-time faculty.
- 13 2. The State has imposed sick leave accumulation limits on part-time faculty.
- 14 3. Rather than providing sick leave for all part-time faculty that is proportionate to  
15 full-time faculty, the State has imposed full-time equivalency (FTE) limits on which part-time  
16 faculty are eligible, *e.g.*, only allowing those whose FTE is 50% of full-time to accrue sick  
17 leave.

18 **ORDER**

19 Plaintiffs' motion for partial summary judgment is granted and the defendant's is  
20 denied.

21 Part-time faculty have a right to sick leave in proportion to their full-time equivalency  
22 (FTE%) as compared to the sick leave accrued by full-time faculty during a year. The  
23 calculation of FTE% may only be based on comparing a part-time faculty member's in-class  
24 hours to the in-class hours of a full-time faculty member at the same college and in the same  
25 discipline as required under RCW 28B.50.489(1); out-of-class hours may not be used in this  
26 calculation. The requirement of RCW 28B.50.489(1) that the calculation of sick leave is based  
27 on a comparison of the in-class hours of part-timer faculty to only the in-class hours of full-

1 time faculty also means that a part-time faculty member cannot be required to work during the  
2 summer to receive sick leave if a full-time faculty member receives sick leave in the summer  
3 without working. The amount of loss to any faculty member can be calculated by subtracting  
4 the amount that the faculty member received from the proportionate amount the part-time  
5 faculty member should have received.


6 RCW 28B.50.4893(3) provides that part-time faculty members who “accrue” sick leave  
7 under the statute may participate in the attendance incentive program under RCW 28B.50.553.  
8 The attendance program provides faculty members with an optional annual 25% payout for  
9 unused sick leave in excess of sixty days. RCW 28B.50.553(3). It also provides faculty  
10 members with a 25% payout of all unused sick leave at retirement. The right to participate in  
11 the attendance incentive program includes the right to accrue and accumulate sick leave.  
12 Colleges cannot place accumulation limits on sick leave earned or accrued by part-time faculty.

13 RCW 28B.50.4893 provides that *all* part-time faculty shall receive proportionate sick  
14 leave. Colleges cannot limit participation to only a subset of part-time faculty.

15 RCW 28B.52.220 governs the ability of local colleges to bargain over how part-time  
16 faculty accrue sick leave. Part-time faculty have an independent non-negotiable right to  
17 proportionate sick leave.

18 Additionally, because the right to proportionate sick leave does not arise solely out of  
19 any collective bargaining agreement (CBA), it is not mandatory to use CBA grievance  
20 procedures. Accordingly, the certified class of part-time faculty may recover sick leave they  
21 were unlawfully denied in this action without pursuing any CBA grievance remedies.

22 Dated this this 18th day of September, 2020.

23  
24 

25 Marshall Ferguson  
26 King County Superior Court Judge  
27

1 Presented by:

2 BENDICH, STOBAUGH & STRONG, P.C.

3

4 /s/ Alexander F. Strong

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5 David F. Stobaugh, WSBA #6376

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