

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

DANA RUSH and a class of similarly)	No. 20-2-03771-1 SEA
situated individuals,)	
)	ORDER GRANTING PLAINTIFFS'
Plaintiffs,)	MOTION FOR PARTIAL SUMMARY
v.)	JUDGMENT TO DETERMINE THE
)	APPLICABLE STATUTE OF
STATE OF WASHINGTON,)	LIMITATIONS
)	
Defendant.)	
)	

THIS MATTER having come before the Court for hearing on plaintiffs' motion for partial summary judgment to determine the applicable statute of limitations. This Court has considered the pleadings and records on file, the arguments of counsel, and the briefing and evidence filed by the parties in connection with the motion, including:

1. Plaintiffs' Motion for Partial Summary Judgment to Determine the Applicable Statute of Limitations (Dkt. 87);
2. Declaration of Erika Haack (Dkt. 89);
3. Declaration of David F. Stobaugh (Dkt. 88);
4. Declaration of Stephen Strong (Dkt. 22);
5. Declarations of Dana Rush (Dkts. 28 and 34);
6. Order Certifying Class (Dkt. 29);

- 1 7. Order Granting Plaintiffs' Motion for Partial Summary Judgment (Dkt. 49);
2 8. Defendant's Response to Plaintiffs' Motion for Partial Summary Judgment to
3 Determine the Applicable Statute of Limitations (Dkt. 91);
4 9. Declaration of Julie Huss (Dkt. 92); and
5 10. Plaintiffs' Reply in Support of Motion for Partial Summary Judgment to Determine
6 the Applicable Statute of Limitations (Dkt. 93).
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8 The Court, being fully informed, hereby enters the following Order:

9 IT IS HEREBY ORDERED that plaintiffs' Motion for Partial Summary Judgment to
10 Determine the Applicable Statute of Limitations is **GRANTED**.

11 **MATERIAL FACTS NOT IN DISPUTE**

12 Representative plaintiff Dana Rush was employed on written contracts. These written
13 contracts incorporated sources of benefits for part-time academic employees.

14 **ORDER**

15 This Court first certified a class as follows (Dkt. 29 at 5):

16 All part-time academic employees who did not accrue sick leave in proportion to
17 their full-time equivalency, whether their accrual was not proportionate because
18 of rate of accrual, or accumulation limitations, or in another fashion. The class is
19 limited in time to employees who worked at a college district, a state agency, an
education service district, a school district or an institute of higher education
within the applicable statute of limitations.

20 That ruling reserved the issue of the statute of limitations.

21 The Court next issued a partial summary judgment ruling on liability. Dkt. 49. This
22 Court ruled on partial summary judgment that the State was required to provide proportionate
23 sick leave to part-time academic employees. Dkt. 49 at 2-3. The Court also found that the State
24 could not have accumulation caps on sick leave earned by part-time academic employees. *Id.*
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26 There are two issues before this Court on the instant partial summary judgment motion on
27

1 the statute of limitations: (1) does a three-year or six-year statute of limitations apply to class
2 membership and (2) how far back may class members accrue sick leave.

3 Under Washington law, a six-year statute of limitations applies to “[a]n action upon a
4 contract in writing, or liability express or implied arising out of a written agreement, except as
5 provided for in RCW 64.04.007(2).” RCW 4.16.040. The exception is not relevant here.
6 Plaintiffs assert that the statute of limitations that applies here is the six-year statute because the
7 written contract incorporates the duty to provide proportionate sick leave both expressly and
8 impliedly. The Court agrees.
9

10 Here, plaintiffs submitted the Declaration of Dana Rush that includes written contracts of
11 employment. Dkt. 34, Ex. 1. The written contracts of employment provide as follows:

12 This offer of employment is made subject to the current negotiated faculty
13 agreement...and the policies and rules and regulations of the College and of other
14 State agencies which the College is required to observe..., and the laws of the
15 State of Washington.¹

16 Plaintiffs submitted evidence that each category refers to sources of benefits for community
17 college faculty. See Dkt. 87 at 6; Dkt. 89, A1-24.

18 For instance, the Green River College collective bargaining agreement with the faculty
19 union provides faculty with sick leave, personal leave, and other types of leave. Dkt 89, A12-13.
20 Green River College has policies and procedures regarding faculty benefits. *Id.* A1-10 (*e.g.*, HR-
21 26 “Remote Work Policy” or HR-36 “Fitness for Duty Policy”). Green River College is also
22 subject to rules made by other agencies, such as the Health Care Authority (Title 182 WAC).

23 ¹ Defendant State of Washington argued that perhaps the representative plaintiff Dana
24 Rush was not representative with regards to the written employment contracts. However, the
25 State provided only speculation with no evidence that any “part-time academic employee” was
26 employed under a different form of contract than the representative plaintiffs. Further, whether
27 Dana Rush met the requirements to serve as class representative was decided previously at the
class certification stage. Dkt. 29.

1 And there are employee benefits for which community college faculty are eligible, like the
2 statutes at issue in this action—RCW 28B.50.4893.

3 Here, the laws of the State of Washington provide particular benefits for “part-time
4 academic employees of the communities and technical colleges.” RCW 28B.50.4891 provides
5 that “for the purposes of determining eligibility for receipt of state-mandated benefits *for part-*
6 *time academic employees* at community and technical colleges, each institution shall report to the
7 appropriate agencies the names of eligible part-time academic employees who qualify for
8 benefits based on calculating the hours worked by part-time academic employees as a percentage
9 of the part-time academic workload to the full-time academic workload in a given discipline in a
10 given institution.” RCW 28B.50.489 specifies that “sick leave” eligibility for “part-time
11 academic employees” is calculated in the manner prescribed in RCW 28B.50.4891, and provides
12 the definition of a “full-time academic workload” for purposes of the eligibility calculation.
13 RCW 28B.50.4893 states that “part-time academic employees of *community and technical*
14

15 *colleges shall receive sick leave...in proportion to the individual’s teaching commitment.”* RCW
16 28B.52.220 provides that “with respect to the *community and technical colleges part-time*
17 *academic employees*, the permissible scope of collective bargaining under this chapter shall be
18 governed by RCW 28B.50.4893.” RCW 28B.50.551 provides that “for part-time academic
19 employees,” sick “leave entitlement shall be accumulated.” And RCW 28B.50.553 provides that
20 “academic employees,” including part-time academic employees, are entitled to a cash out of
21 sick leave at retirement.
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23 These sick leave statutes are not laws of general application and they are not external to
24 the State. Here, the Legislature controlled the State’s relationship with the part-time academic
25 employees via statute.
26

1 The Court finds that the written contracts expressly incorporate the benefits for part-time
2 academic employees that are provided for in the laws of the State of Washington.

3 Additionally, statutes that intend to affect the subject matter of a contract become
4 incorporated into such contracts by operation of the law and thus are “a liability arising out of a
5 written contract” and subject to the six-year statute of limitations. RCW 4.16.040

6 It is a “well established rule [that] a statute which affects the subject matter of a contract, in
7 contemplation of the law, is incorporated into and becomes thereof, provided of course that the
8 statute is in effect at the time the contract is made.” *Dopps v. Alderman*, 12 Wn.2d 268, 273 (1942).
9 The Supreme Court applied this rule in *Malcolm v. Yakima City Consol. Sch. Dist.*, 23 Wn.2d 80
10 (1945) to find that a six-year statute of limitations applied to a teacher’s claim that a rent provision in
11 her employment contract was void due to state law. The Court ruled that because she was employed
12 by written contract, her “cause of action is based on written contract” and “limited by the six-year
13 statute of limitations.” *Id.* at 396.

14 Washington courts have understood that the laws governing the benefits provided to public
15 employees are at least an implied term of public employee employment contracts and, thus, the
16 question for the statute of limitations in the case of public employment is whether the employment
17 contract is written or oral. *Noah v. State*, 112 Wn.2d 841, 843 (1989) (explaining “there is no written
18 agreement between plaintiffs and the State”); *Campbell v. King County*, 34 Wn. App. 474, 480
19 (1984) (“application of the 3-year statute of limitations...is required...[by the] nature of the
20 agreement they sue upon, *i.e.*, the oral contract of hire with King County”).

21 Here, like *Malcolm*, and unlike *Noah* and *Campbell*, plaintiffs are employed on written
22 contracts. The Legislature has passed a series of laws specifically intending to affect the subject
23 matter of the employment contracts of the part-time academic employees. See *supra*, p. 4. The
24 State’s liability to provide sick leave is thus an implied part of the employment contract between
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1 the State and the part-time academic employees. Since the specific statutes governing the
2 employment relationship are an implied part of the employment contracts and the class members
3 are employed under written contracts, the State's liability is also an implied liability arising out
4 of a written agreement. The six-year statute of limitations thus also applies for this independent
5 reason.

6
7 This ruling is consistent with the Court's earlier ruling that "because the rights to
8 proportionate sick leave does not arise *solely* out of any collective bargaining agreement, it is not
9 mandatory to use collective bargaining agreement grievance procedures." Dkt. 49 at 3. The
10 Court's earlier ruling contemplated that the right to sick leave could arise out of sources other
11 than collective bargaining agreements, such as the individual written employment contracts at
12 issue in this motion.

13 Therefore, the actions that the issue encompasses are based upon contracts in writing and
14 the liabilities both express and implied arising out of those written agreements. The applicable
15 statute of limitations is six years under RCW 4.16.040(1).

16
17 Turning to the next statute of limitations issue, the Court finds that, since sick leave can
18 be accumulated and is a retirement benefit, that the statute of limitations accrues at retirement.
19 *Johnson v. City of Aberdeen*, 14 Wn.App. 545, 546 (1975) (sick leave payout due at retirement is a
20 "retirement benefit" and "deferred compensation"); RCW 28B.50.553(4) ("At the time of
21 separation from employment with a college district or the state board for community and
22 technical colleges *due to retirement*..., an eligible employee...may receive remuneration...for
23 each four full days' accrued sick leave."); *Naches Valley Sch. Dist. v. Cruzen*, 54 Wn.App. 388,
24 396 (1989) (cash for accumulated unused sick leave is deferred compensation). Since the statute of
25 limitations accrues only at retirement, a plaintiff need only sue within the applicable statute of
26 limitations period (here, six years) to obtain the retirement benefit he or she is due. Class members
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1 are entitled to recoup all lost sick leave that should have been accumulated prior to the accrual of the
2 statute of limitations at retirement. Thus, the class members are entitled to recoup sick leave back
3 to the effective date the 2006 amendment to RCW 28B.50.4893 or the start of their employment,
4 whichever is later. *Court's oral ruling incorporated herein by reference.*

5 DATED this 22nd day of September, 2023.

7 
8 The Honorable LeRoy McCullough

9 Presented by:

10 BENDICH, STOBAUGH & STRONG, P.C.

12 /s/ Alexander F. Strong

13 Alexander F. Strong, WSBA #49839

14 David F. Stobaugh, WSBA #6376

15 Stephen K. Strong, WSBA #6299

Attorneys for Plaintiffs

16 *Per - email, 9/22/23, defendant*
17 *agrees as to facts only. LRM*
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