

DSWD OPINION NO. 50 S. 2024

DRN: L3-L-LO-24-07-27759-C

MEMORANDUM

FOR : JENNIFER M. RIZO
Director IV Human Resource Management and
Development Service

FROM : THE ASSISTANT SECRETARY FOR GASSG AND
CONCURRENT OFFICER-IN-CHARGE, LEGAL SERVICE

SUBJECT : LEGAL OPINION ON THE STUDY LEAVE AVAILMENT OF
CONTRACTUAL AND CASUAL EMPLOYEES

DATE : 23 JULY 2024

This pertains to your Memorandum¹ seeking clarification from the Legal Service (LS) as to the possible issuance of an internal policy allowing contractual and casual employees to avail of the study leave, similar to that granted to permanent and coterminous employees.

You also referred to us the following documents:

1. Letter from DSWD dated 18 July 2019;
2. Letter from the Civil Service Commission (CSC) dated 18 November 2019; and
3. Administrative Order (AO) No. 16, s. 2018 or the Enhanced Guidelines on Educational Support for DSWD Employees.

In this regard, please consider our comments below.

CSC Memorandum Circular (MC) No. 21, series of 2004, or the "Amendment to Section 68 of CSC MC No. 14, s. 1999 relative to the Guidelines on Study Leave", states that

I. The study leave is a time-off from work not exceeding six (6) months with pay for qualified officials and employees to help them prepare for their bar or board examinations or complete their master's degree. For completion of master's degree, the study leave shall not exceed four (4) months

xxx xxx

II. 7. The employee must have a permanent appointment. However, as the purpose of granting a study leave is to develop a critical mass of competent and efficient employees which will redound to the improvement of the agency's delivery of public services, employees with coterminous appointment *may be allowed to avail of the study leave xxx*"

Furthermore, the 2018 Revised Omnibus Rules on Appointments and Other Human Resource Actions classified and defined the employment statuses as follows:

"Sec. 9. Employment Status. The employment status in the civil service shall be determined by the appointment issued, which can be any of the following:

¹ Annex "A" – Memorandum from the HRMDS

a.) **Permanent** - an appointment issued to a person who meets all the qualification requirements of the position to which he/she is being appointed to, including the appropriate eligibility, in accordance with the provisions of law, rules and standards promulgated in pursuance thereof.

XXX XXX

d.) **Coterminous** – an appointment issued to a person whose tenure is limited to a period specified by law or whose continuity in the service is based on the trust and confidence of the appointing officer/authority or of the head of the organizational unit where assigned.

XXX XXX

f.) **Contractual** – an appointment issued to a person whose employment in the government is in accordance with a special contract to undertake local or foreign-assisted projects or a specific work or job requiring special or technical skills not available in the employing agency, to be accomplished within a specific period. This includes appointments to positions that are co-existent with the duration of a particular project based on the agency's Staffing Pattern as approved by the DBM or the GCG.

Contractual appointments are limited to one year, but may be renewed every year, based on performance, until the completion of the project or specific work. However, if the performance of the appointee is below satisfactory or where the funds have become insufficient or unavailable, the appointing officer/authority may terminate the services of, or replace, the appointee after giving the latter a notice at least 30 days prior to the date of termination of appointment.

XXX XXX

g.) **Casual** — an appointment issued only for essential and necessary services where there are **not enough regular staff** to meet the demands of the service and for **emergency cases** and **intermittent period not to exceed one year**.

Under the maxim "***expressio unius est exclusio alterius***" which translates into "**the express mention of one thing excludes all others**", when a statute includes a list of specific items, that list is presumed to be exclusive, thus, the statute in question applies only to the listed items and not to others. Applying the said maxim, **Item II.7 of Section 68 of the CSC MC only mentioned "permanent" and "coterminous" appointments who may be allowed to avail of the study leave. If the CSC intended that other type of appointments be allowed to avail the same benefit, it should have also included "contractual" and "casual" appointments in its policy. But the CSC did not. As the central personnel agency of the government, it limited the employees who may be allowed to avail of the study leave.**

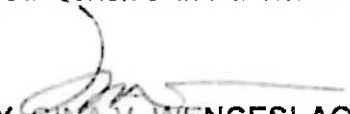
It is, thus, our considered view that contractual and casual employees are not qualified to avail of study leave contemplated under CSC MC No. 21, s. 2004 given that the period of their employments cannot exceed more than one year, albeit renewable which has no assurance of permanency. A study leave can be granted for a period maximum of six (6) months, and depending on the period of study leave granted, the official or employee shall render in full the service obligation for a minimum period of six months up to a maximum of two years.

In view of the foregoing, LS respectfully submits that contractual and casual employees cannot avail of the study leave because only permanent and qualified coterminous employees are entitled under the existing CSC policies, particularly CSC MC 21, s. 2004. The provisions given by the CSC MC is clear and free from ambiguity, hence, we do not need to make any interpretations, more so, beyond what was included in the enumerations provided.

Please be informed that the foregoing legal opinion is based solely on the information provided by your office, and may vary based on additional information or document/s or when the facts are changed or elaborated.

Kindly fill out the attached Customer Feedback Form and return the same to the Legal Service.

For your consideration. Thank you.


ATTY. GINA V. WENCESLAO

CRMS P/1/10000
92

CRP