Case No. 125062

IN THE
SUPREME COURT OF ILLINOIS

MARGARET DYNAK, Plaintiff-Appellant, v. BOARD OF EDUCATION OF WOOD DALE SCHOOL DISTRICT 7, Defendant-Appellee.	)	Appeal From the Appellate Court, Second District, Case No. 2-18-0551 There on Appeal From the Circuit Court of the 18th Judicial Circuit, DuPage County, Illinois Case No. 2016-MR-001368 Honorable Bonnie Wheaton, Judge Presiding

BRIEF AND APPENDIX OF PLAINTIFF-APPELLANT MARGARET DYNAK

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ORAL ARGUMENT REQUESTED

November 12, 2019

E-FILED
11/12/2019 3:20 PM
Carolyn Taft Grosboll
SUPREME COURT CLERK

POINTS AND AUTHORITIES

Introduction

This case concerns the right of public school employees to use accumulated paid sick leave for the birth of a child under Section 24-6 of the Illinois School Code, 105 ILCS 5/24-6, and specifically whether teachers have the right to use 30 days of accumulated paid sick leave for the birth a child, where the birth takes place at the end of one school year, and the use of 30 days of paid sick leave, if permitted, would extend into the following school year. This Court's interpretation of the statutory language at issue will have an immediate and lasting effect on thousands of public employees and their families.

On October 13, 2016, Margaret Dynak, a teacher employed by the Board of Education of Wood Dale School District 7 ("the District"), filed a three-count complaint against the District based on its denial of her request, pursuant to Section 24-6 of the Illinois School Code, 105 ILCS 5/24-6, to use 30 days of accumulated paid sick leave following the birth of her child. Count I alleges that the District violated Section 24-6 of the Illinois School Code by denying her request to use accumulated paid sick leave at the start of the 2016-17 school year following the birth of her child on June 6, 2016. Count II seeks attorneys' fees pursuant to the Attorneys Fees in a Wage Action Act ("Wage Act"), 705 ILCS 225/1, based on the District's failure to pay Dynak all wages due and owing.[1]

The parties filed cross-motions for summary judgment. (C.79-255).[2] On June 20, 2018, the trial court granted the District's motion for summary judgment as to all counts and denied Dynak's motion for summary judgment. (A.208, C.256). The trial court's

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[1] Dynak is not seeking relief under Count III, which had alleged a violation of the Illinois Wage Payment and Collection Act ("IWPCA"), 802 ILCS 115/14(a).

[2] An appendix is filed herewith and will be referred to as "A." and a page number noted as "A.__." References to the record appear as "C.", with page numbers noted as "C.__."

judgment was not based upon the verdict of a jury. No question is raised on the pleadings.

On July 11, 2018, Dynak filed a timely notice of appeal. By opinion filed on June 12, 2019, the Second District Appellate Court affirmed the trial court's ruling, with Justice Hudson dissenting. *Dynak v. Bd. of Educ. of Wood Dale Sch. Dist. 7*, 2019 IL App (2d) 180551. This Court allowed leave to appeal on September 25, 2019. 2019 WL 4720995. By order issued on October 4, the Court extended the time for Dynak to submit her opening brief to November 13, 2019.

Statement of the Issues

1. Did Dynak have a right to use the remaining 28.5 days of accumulated paid sick leave for the birth of a child, pursuant to Section 24-6 of the Illinois School Code, 105 ILCS 5/24-6, over the course of 30 continuous work days, where the use of such leave was interrupted by the summer break?

2. If Dynak was wrongfully denied the right to use 28.5 days of accumulated paid sick leave for the birth of her child, is she entitled to an award of attorneys' fees under the Attorneys Fees in Wage Actions Act, 705 ILCS 225 *et seq*.?

Standard of Review

The standard of review with respect to the issues in this case is *de novo*.

The trial court granted the District's motion for summary judgment and denied Dynak's cross-motion for summary judgment. A motion for summary judgment seeks a judgment based on the pleadings, depositions, and admissions, together with the affidavits filed in support of or against summary judgment. 735 ILCS § 5/2-1005(c). Summary judgment should be granted "if no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law." *Id*. A triable issue only exists when the material facts are disputed or, when the material facts are not in dispute, reasonable persons might draw different inferences from the undisputed facts. *Yarbrough v. Nw. Mem'l Hosp.*,

2017 IL 121367, ¶ 79. When parties file cross-motions for summary judgment, the parties indicate a mutual agreement that the trial court was presented with only a question of law and therefore asked "to decide the issues based on the record." *A.B.A.T.E. of Ill., Inc. v. Quinn*, 2011 IL 110611, ¶¶ 22-23 (citing *Millennium Park Joint Venture, LLC v. Houlihan*, 241 Ill. 2d 281, 309 (2010)). Review of the trial court's order granting the District's motion for summary judgment and denying Dynak's motion for summary judgment is *de novo. Nichols v. Fahrenkamp, 2019 IL 123990, ¶ 13; Cohen v. Chi. Park Dist.*, 2017 IL 121800, ¶ 17.

This case also concerns an issue of statutory interpretation, which is a pure question of law and therefore is to be reviewed *de novo*. *Oswald v. Hamer*, 2018 IL 122203, ¶ 9; *Cohen*, 2017 IL 121800, ¶ 17; *In re S.L.*, 2014 IL 115424, ¶ 16. This Court is "in no way constrained by the appellate court's reasoning. It is the appellate court's judgment, not the reasons given therefor, that is before us for review." *City of Champaign v. Torres*, 214 Ill. 2d 234, 241 (2005).

Statement of Jurisdiction

The Appellate Court had jurisdiction over the appeal pursuant to Illinois Supreme Court Rule 303. On June 20, 2018, the trial court granted the District's motion for summary judgment, denied Dynak's motion for summary judgment, and issued a final and appealable order, as to both parties and on all claims. (A.63; C.256). The notice of appeal was timely filed on July 11, 2018. (A.94; C.260). Following the opinion issued by the Second District on June 12, 2019, Dynak filed a timely petition for leave to appeal in accordance with Supreme Court Rule 315, which this Court allowed on September 25, 2019. (A.30).

Statement of Facts

Dynak is a certified full-time teacher employed by the District. (A.31-32; C.19-20). At the end of the 2015-16 school year, Dynak had accumulated approximately 71 unused paid sick days (A.32; C.20); she was awarded an additional 14 paid sick days at the beginning of the 2016-17 school year (A.32; C.2).

June 7, 2016 was the last day of the 2015-16 school year and was scheduled as a half day of work. (Compl. ¶ 9; Ans. ¶ 9; Dynak Aff. ¶ 10; A.32-33; C.20-21).

On March 15, 2016, Dynak informed the District that she was scheduled to deliver her second child by caesarian-section on June 6, 2016, and that she would be using 1.5 paid sick days on June 6 and 7. (A.32; C.20). In addition, she requested to use 28.5 days of accumulated paid sick leave at the beginning of the 2016-17 school year, starting on August 18, pursuant to Section 24-6 of the School Code. (A.33; C.21).

On April 21, 2016, the District denied her request to use *any* accumulated paid sick leave at the beginning of the 2016-17 school year. (A.33; C.21). Counsel for the parties thereafter exchanged letters, but the District adhered to its refusal to allow Dynak to use 28.5 days of accrued paid sick leave at the beginning of the 2016-17 school year for the birth of her child under Section 24-6. (A.33-34; C.21-22). Dynak thereafter gave birth on June 6, 2016. (A.33; C.22).

August 18, 2016 was the first day of the 2016-17 school year. (A.34; C.22). Dynak was not allowed to use during the 2016-17 school year *any* of the requested 28.5 days of accumulated paid sick for the birth of her child. (A.34; C.22). The value of the 28.5 days of sick leave in unpaid wages was determined to be $7,991.69. (C.132, 172).

Argument

The right to use 30 days of accumulated paid sick leave for the birth of a child is established by the plain statutory language set forth in Section 24-6 of the Illinois School Code. As explained by Justice Hudson in dissent, the question of statutory interpretation presented is "straightforward," as Dynak's right to use the requested leave on 30 continuous work days – notwithstanding the intervening summer break – is apparent on the face of the statute, which can be interpreted without reliance on any tools of statutory interpretation. However, even if this Court were to examine the language of Section 24-6 beyond its plain language – which it need not do – such parsing of the statutory language and its history only further supports the conclusion that employees have the right to use accumulated paid sick leave on 30 continuous work days, despite an intervening break in the school calendar.

In upholding the trial court's ruling, the majority opinion of the Second District appellate court impermissibly read limiting language into the statute; it misconstrued the effect of a break in the school calendar, despite agreeing with Dynak as to the purpose of the statute and as to many of the predicate components of her analysis of the statute; it impermissibly considered the effects on school districts of construing the statute to permit Dynak to use the requested leave, contrary to the doctrine that forbids courts from questioning the wisdom of the legislature's judgment in enacting legislation; and it presented an unworkable standard with respect to when sick leave may be taken if there is a break in the school calendar, thereby failing to provide school districts and public school employees – and the lower courts – with any clarity regarding when leave for birth may be taken under Section 24-6. The majority further erred by concluding that Dynak was not

harmed by the District's denial of her request to use paid sick leave for birth, and by speculating about possible – but non-existent – contractual rights.

Because Dynak had the right to use the requested paid sick leave for birth pursuant to Section 24-6, the District's denial of her request and refusal to compensate her for such paid leave constituted a denial of wages due and owing, which therefore entitles her to an award of reasonable attorneys' fees under the Wage Act.

I. There are No Disputed Material Facts

The material facts in this case are undisputed: Dynak requested to use the remaining 28.5 days of accumulated paid sick leave for the birth of her child at the beginning of the 2016-17 school year pursuant to Section 24-6 of the Illinois School Code, 105 ILCS 5/24-6; she had more days of accumulated paid sick leave than she requested to use; and the District denied that request. Neither party disputes these essential facts.

The District's denial of her request for paid leave is the primary issue raised in this case: the parties disagree about the interpretation of Section 24-6 of the School Code. That issue of statutory interpretation is the only disputed issue with respect to Count I of the complaint, and, in turn, Count II of the complaint is dependent upon Dynak's rights under Section 24-6.

As this case solely turns on an issue of law, summary judgment was the appropriate means for resolving the dispute before the trial court. *Allegis Realty Investors v. Novak*, 223 Ill. 2d 318, 330 (2006).

II. On its Face, the Plain Language of Section 24-6 Provides Dynak With the Right to the Requested Sick Leave for Birth

Section 24-6 unequivocally grants Dynak the right to use up to 30 days of accumulated paid sick leave "for birth." The statute neither places an explicit time limit on

when that leave may be used, nor does it contemplate – in any way – diminishing that statutory right where there is an intervening period of non-work days (e.g., summer, winter, or spring break) during the otherwise *continuous use* of 30 days of sick leave over 30 consecutive work days.[3] Moreover, to limit Dynak's rights under Section 24-6, absent *any* evidence of the General Assembly's intent to include such restriction, would impermissibly read limiting language into Section 24-6.

To these points, and as astutely summarized by Justice Hudson in dissent, the proper interpretation of Section 24-6 is easily answered by the plain language of the statute:

> [T]his issue is relatively straightforward. As noted, section 24-6 states that a teacher may use 30 of his or her accumulated sick days "for birth." A sick day, as the majority observes, can be used only on a workday. Supra ¶ 24. Here, plaintiff gave birth, and she proposed to use 30 of her accumulated sick days on her next 30 workdays. The only issue is that, because plaintiff happened to give birth at nearly the end of a school year, her next 30 workdays were interrupted by the summer break. But the statute provides no exception for that circumstance. Thus, defendant should have granted her request.

Dynak, 2019 IL App (2d) 180551, ¶ 63. As explained below, and consistent with Justice Hudson's analysis, the only conclusion that can be drawn from the plain language of Section 24-6 is that Dynak was entitled to use the requested 30 days of sick leave for birth and the District wrongly denied her request to use such leave pursuant to her rights under

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[3] At a *minimum*, Section 24-6 provides the right to use 30 days of accumulated paid sick leave for birth, beginning on the first *work day* after the birth, across 30 continuous *work days*. This is the question that is presented in this case and the narrow issue to be determined. That being said, that Section 24-6 provides *at least* the right to use paid sick leave for birth on continuous work days, does not mean that Section 24-6 is so limited. Accordingly, in arguing for the right to use sick leave in this case, Dynak is *not* conceding that the use of sick leave for birth *must* begin on the first *work day* immediately following birth, or that such leave *must* be used on continuous work days. As Section 24-6 contains no explicit temporal limitation, it also contains no explicit restrictions on when sick leave for birth must be commenced, nor requires the continuous use of such leave, as long as the use of the leave is "for birth."

the School Code.

A. On its Face, Section 24-6 of the School Code Provides for Paid Sick Leave for Birth

Section 24-6 of the School Code: (1) requires school districts to provide a minimum number of days of paid sick leave each school year; (2) requires districts to allow teachers[4] to accumulate unused sick leave for future use; and (3) specifies the circumstances when teachers may use such paid sick leave.

First, Section 24-6 provides for the acquisition and accumulation of paid sick leave. Section 24-6 mandates that teachers must be granted no fewer than 10 days of paid sick leave per school year, and must be allowed to accumulate a minimum of 180 paid sick days, stating in relevant part:

> The school boards... shall grant their full-time teachers... sick leave provisions not less in amount than 10 days at full pay in each school year. If any such teacher or employee does not use the full amount of annual leave thus allowed, the unused amount shall be allowed to accumulate to a minimum available leave of 180 days at full pay, including the leave of the current year.

105 ILCS 5/24-6.

Second, the statutory provision goes on to define the term "sick leave," establishing the bases for when teachers *must be permitted to use* such leave, including for birth:

> Sick leave shall be interpreted to mean personal illness, quarantine at home, serious illness or death in the immediate family or household, or birth, adoption, or placement for adoption.

Id.

Third, after establishing the conditions for using available paid sick leave, Section

[4] Section 24-6 refers to full-time teachers, among other public school employees. All references herein to the rights of teachers, public school teachers, or employees are to full-time teachers covered by Section 24-6.

24-6 then grants school districts authority to require medical certification after different lengths of leave for those specified reasons, except that school districts *may not* require medical certification for absences of three days or less due to personal illness, or for absences of 30 days or less for birth:

> The school board may require [medical certification] as a basis for pay during leave after an absence of 3 days for personal illness or 30 days for birth or as the school board may deem necessary in other cases."

Id.

Finally, Section 24-6 includes additional provisions regarding medical certification for personal illness for absences for less than three days, as well as some specific provisions regarding the use of paid sick leave for adoption or placement for adoption.

There are several clear conclusions that can be drawn directly from the statutory text. First, Section 24-6 of the School Code expressly provides public school teachers with the right to use 30 days of accumulated sick leave for the birth of a child (as well as for adoption and placement for adoption). Second, the statute explicitly provides that teachers, regardless of gender, may take such paid leaves for up to 30 days for the birth of a child without providing medical certification. Third, the statutory language of Section 24-6 does not contain any explicit temporal limitation – other than that the use of leave must be for "birth" – on when sick leave for birth may be used or otherwise limit the use of leave in relation to *when* the birth takes place.

Moreover, although the majority of the appellate court erred in its holding, both the majority and dissent explicitly agreed with Dynak as to many of these points about the plain meaning of the statutory language. The majority found that the statute "contains no temporal constraints on how to apportion sick leave," *Dynak*, 2019 IL App (2d) 180551, ¶

29, and that "section 24-6 contains no time limits on how sick leave must be taken," *id*. at ¶ 37. Similarly, the dissent found that "section 24-6 states that a teacher may use 30 of his or her accumulated sick days 'for birth'" and the statute provides no exception for the circumstance where a teacher gives birth "at nearly the end of a school year, [and] her next 30 workdays [are] interrupted by the summer break." *Id*. at ¶ 64. The dissent also acknowledged that "the statute itself contains no exception for intervening summer breaks." *Id*. at ¶ 69.

Thus, based on the plain language of Section 24-6, the statute contains *no express* limitation on when the 30 days of sick leave for birth must be used and does not contemplate reducing the amount of available leave based on any intervening period of non-work days.

B. On its Face, Section 24-6 of the School Code Does Not Limit the Use of Leave to the Time Period Immediately Following the Birth

On its face, Section 24-6 does not impose any requirement that the use of sick leave for birth must commence *immediately* after the birth. Nor does Section 24-6 provide that the right to use 30 days of sick leave for birth (without a district being able to require medical certification in order to use such leave) shall be limited or reduced by intervening non-work periods, i.e., summer, winter, or spring break. Section 24-6 is *wholly silent* with regard to the right to use 30 days of sick leave over *continuous work days* where there are periods of extended non-work days.

Section 24-6 therefore does not place any explicit restriction on the time period when leave for birth may be used. Instead, the only limitation Section 24-6 places on the right to use sick leave for birth is that the leave must be "for birth," and school districts are granted the discretion to require medical certification for *absences* for birth of *more than*

30 days.

Thus, Section 24-6 expressly provides employees with a right to use 30 days of accumulated sick leave for the birth of a child. And the statute allows employees to take such paid leaves for up to 30 days for the birth of a child without providing medical certification. Nothing in the express language of Section 24-6 suggests that an employee's right to use 30 days of accumulated paid sick leave for birth may be infringed upon based on *when* the birth occurs, or that the General Assembly intended to deny the right to use such paid leave where the birth occurs at a time when the use of the 30 days of sick leave is interrupted by the summer – or any other – break in the school year.

Indeed, the appellate court majority conceded that Dynak's argument "that she was entitled to 30 consecutive work days beginning when she gave birth… has some logical force," *Dynak*, 2019 IL App (2d) 180551, ¶ 29, and that her interpretation of the statutory language was "not unreasonable," *id*. at ¶ 36.

C. A Court May Not Read an Additional Term Into the Statute

Given the legislature's silence on limiting the proximity of leave for birth to the event of birth, it would be impermissible for a court to read into the statute such a limitation.

The ultimate goal in interpreting the meaning of statutory language is to "ascertain and give effect to the legislature's intent." *Mich. Ave. Nat. Bank v. County of Cook*, 191 Ill. 2d 493, 503 (2000); *see also Roselle Police Pension Bd. v. Vill. of Roselle*, 232 Ill. 2d 546, 552 (2009). The most reliable indicator of the legislature's intent is the language of the statute itself. *Mich. Ave.*, 191 Ill. 2d at 504.

"The cardinal rule of interpreting statutes, to which all other canons and rules are subordinate, is to ascertain and give effect to the intent of the legislature. In determining

legislative intent, a court first should consider the statutory language." *McNamee v. Federated Equip. & Supply Co.* 181 Ill. 2d 415, 423 (1998). The statute must be given its "plain and ordinary meaning, and, where the language is clear and unambiguous, [courts] must apply the statute without resort to further aids of statutory construction." *Mich. Ave.*, 191 Ill. 2d at 503. *See also Rosenbach v. Six Flags Entm't Corp.*, 2019 IL 123186, ¶ 24.

On its face, Section 24-6 unquestionably *does not* state that employees may only use sick leave in the 30 *calendar* days after birth, nor does it identify a specific time period in which the leave *must* be taken. The statute instead clearly states that employees are entitled to use 30 days of paid sick leave "for birth" of a child, and does not expressly limit the timing of the use of leave.

The majority of the appellate court recited the principles that: (1) the best indication of legislative "intent is the language employed in the statute, given its plain and ordinary meaning"; (2) "[w]hen the statute's language is unambiguous, we may not depart from that language by reading into it exceptions, limitations, or conditions unexpressed by the legislature"; (3) "we may not add provisions under *the guise of interpretation;*" and (4) "when the statute is unambiguous, we apply the statute without resort to other aids of statutory construction." *Dynak*, 2019 IL App (2d) 180551, ¶ 19 (citing *Rosenbach*, 2019 IL 123186, ¶ 24; *Palm v. Holocker*, 2018 IL 123152, ¶ 21) (emphasis added).

However, although the majority found that the language of Section 24-6 is "unambiguous," *id.* at ¶ 49,[5] it proceeded to violate the very cardinal rule of statutory interpretation that it purported to follow. The appellate court majority created a balancing

[5] The majority said that "we do not need to resort to aids of construction, like legislative history, because we find the language in section 24-6 to be unambiguous." *Dynak*, 2019 IL App (2d) 180551, ¶ 49.

test out of whole cloth based on the textually-unsupported limitation of "absurdity" or "reasonableness," ruling that: "breaking up a sick leave over a nonwork period would lead to an absurd result if the nonwork period is lengthy in relation to the leave contemplated." *Id*. at ¶ 33. Therefore, the majority said, if there is any "sort of holiday or break period" that interrupts the leave period, there may or may not be a right to use sick leave for birth, "depending on the length of the break versus that of the leave." *Id*. at ¶ 38. The majority declared that, if "there is a one-week break in the middle of a birth-related sick leave, then it *might be reasonable* that the employee would get the remainder of the 30 work days following the conclusion of that break, because the break is much shorter than the contemplated leave period (but, depending on the facts, it *could* still lead to an absurd result." *Id*. at ¶ 37 (emphasis added).[6]

The trial court similarly violated the cardinal rule of statutory interpretation in granting the District's motion for summary judgment. It held that Section 24-6 contains a proximity requirement that is not included in the statutory text, and that this unstated limitation was based on an ascribed "medical" purpose for using sick leave for birth during the postpartum period, which the statutory text does not support. (S*ee, e.g.*, C.86).

Thus, both lower courts impermissibly engrafted judicially-created limitations. *Gaffney v. Orland Fire Prot. Dist.*, 2012 IL 110012, ¶ 56 (courts "will not depart from the plain statutory language by reading into it exceptions, limitations, or conditions that conflict with the expressed intent of the legislature"). However, under the principles of

[6] The majority also similarly adverted that "[w]e could also see a situation in which an employee gives birth one or two calendar weeks before the beginning of a school year and seeks to use the full 30-work-day birth-related sick leave. In any such case, the decision to grant leave would likely turn on the length of the contemplated leave period compared to the length of the break, but as none of those circumstances are before us, we decline to comment further." *Dynak,* 2019 IL App (2d) 180551, ¶ 43.

statutory interpretation, courts may not limit public school employees' rights under the School Code by creating an extra-statutory time limit on when leave for birth may be used.

As Justice Hudson pointedly observed in his dissent, the majority read into Section 24-6 limitations that were not in the statutory text, thereby "rewriting," rather than "construing the statute." *Dynak*, 2019 IL App (2d) 180551, ¶ 63 ("[t]he majority recognizes the well-established principle that we may not read into a statute any exception, limitation, or condition unexpressed by the legislature," but "the majority goes on to do exactly that").

D. The Plain and Ordinary Meaning of the Terms "Absence," "Leave," and "Basis for Pay" in Section 24-6 Confirms That Plaintiff had the Right to Use Accumulated Paid Sick Leave at the Beginning of the 2016-17 School Year

The purpose of accumulated sick leave under Section 24-6 is to provide days off from work *with pay* for the enumerated reasons, as the majority of the appellate court found. *Dynak,* 2019 IL App (2d) 180551, ¶ 24 (sick leave "means an excused day off of work, with pay").

By giving the statutory language its plain, ordinary meaning, the statute's reference to "leave" must mean *time off from work,* and the use of "absence" must mean a time that the employee is not at work when she otherwise would be expected to be. Both those terms refer to days when the employee would *otherwise be working*, but for the use of leave.

1. The Statute's Use of the Terms "Absence" and "Leave" Confirms That Leave for Birth Applies to Work Days

The legislature placed a limitation on the number of days of accumulated paid sick leave that may be used for the birth of a child, by permitting school districts to require medical certification as a basis for pay during leaves after an absence of 30 days for birth. In so formulating the statutory language, the legislature prohibited school districts from

requesting medical certification "as basis for pay during leave" – i.e., the use of accumulated paid sick leave – until an employee had been *absent for 30 days*. The phrase used by the legislature, "during leave after an absence of ... 30 days for birth," when given its plain, ordinary meaning, must mean that the period for using available days of paid sick leave is to be measured based on the days that an employee is not present for work on school days when he or she is otherwise expected to be at work.

Since courts first examine statutory language to decipher a provision's meaning, and language is to be given its plain and ordinary meaning, the legislature's use of the word "absence" shows that the statute provides for the use of sick leave when employees are *absent from work*, which necessarily means that the days taken for sick leave must be days on which the employee *otherwise would be working*.

"When a court is called upon to determine whether a statutory term has a plain and ordinary meaning, it is appropriate to consult a dictionary." *Bd. of Educ. of Springfield Sch. Dist. No. 186 v. Att'y Gen. of Ill.*, 2017 IL 120343, ¶ 41; *see also Winks v. Bd of Educ., Normal Comm. Unit Sch. Dist. No. 5*, 78 Ill. 2d 128, 137 (1979).

The word "absence" is commonly defined as "a state or condition in which something expected, wanted, or looked for is not present or does not exist," "a failure to be present at a usual or expected place," or "the period of time that one is absent." Absence, Merriam-Webster.com, https://www.merriam-webster.com/dictionary/absence (last visited November 5, 2019). The word "absence" also is strongly associated with an individual's presence at work, as the dictionary provides two examples of the use of the term "absence" in connection with work: "an unexplained absence *from work*"; and "[s]he recently *returned to work* after a long absence." *Id.* (emphasis added).

The General Assembly also used the term "absence" in connection with the word "leave," by referring to "leave after an absence of..." This language is similar to the common phrase "leave of absence," which is defined as a "[t]emporary absence from employment duty with intention to return during which time remuneration and seniority are not normally affected." *Gaiser v. Vill. of Skokie*, 271 Ill. App. 3d 85, 93 (1st Dist. 1995) (quoting Leave of Absence, BLACK'S LAW DICTIONARY (6th ed. 1990)); *see also DeGuiseppe v. Bd. of Fire & Police Comm'rs of Bellwood*, 30 Ill. App. 3d 352, 355 (1st Dist. 1975) ("'leave of absence' is defined as 'temporary absence from duty with intention to return'" (quoting Leave of Absence, BLACK'S LAW DICTIONARY (4th Ed. 1957))). Similarly, "absenteeism" refers to an employee's being absent "from work currently." *Paz v. Commonwealth Edison*, 314 Ill. App. 3d 591, 597 (2d Dist. 2000).

Thus, the use of the terms "absence" and "leave" in Section 24-6 shows that the statute must refer to the use of sick leave as a substitute for pay on days that an employee would have worked, but for the condition causing the need for use of sick leave. For this reason, sick leave cannot be taken during the summer recess. And, because Section 24-6 does not specifically restrict the time when the leave "for birth" may be taken, that leave may be taken on continuous workdays even where the use of that leave is interrupted by summer, winter, or spring break.

2. The Statute's Use of the Terms "Basis for Pay" Further Confirms That Leave for Birth Applies to Work Days

Apart from the use of the terms "absence" and "leave," Section 24-6 uses another term that shows that employees have a right to use 30 days of accumulated sick leave for birth to coincide with days when they would otherwise be paid.

Section 24-6 addresses a school district's authority to request medical certification

as a "basis for pay" during a leave after an absence of 30 days for birth (or three days for illness). This necessarily means that accumulated paid sick leave can only be used when employees are absent during a work day for which they would be paid, i.e., a time when employees are expected to be at work to fulfill their duties and are paid for performing their duties. As employees are not paid for times when they do not work – such as during weekends, or when school is not in session due to a holiday, or during the periods of summer, winter, or spring breaks – accumulated sick pay cannot be used when employees would not otherwise be paid for days when they are working.[7]

Here, ignoring the terms "absence," "leave," and "basis for pay" would run afoul of the dictum that, when construing statutes, a court "must give effect to *every word, clause, and sentence*; it must not read a statute so as to render any part inoperative, superfluous, or insignificant; and it must not depart from the statute's plain language by reading into it exceptions, limitations, or conditions the legislature did not express." *People v. McChriston*, 2014 IL 115310, ¶ 22 (emphasis added). To give effect to those statutory terms, Section 24-6 must be read to permit teachers to use accumulated sick leave for birth on continuous workdays even where the use of that leave is interrupted by summer, winter, or spring break.

3. The Term "Days" in Section 24-6 Must Refer to School Days and Therefore the Right to Use Sick Leave for Birth is Not Affected by Intervening Non-Work Days

As this Court has ruled in construing the School Code, in order to give effect to all of the relevant sections of a statute, under the doctrine of *in pari materia*, "each section

[7] Teachers' pay is based on working the school year, including student attendance days, specified days before the students arrive, as well as days after the students complete their term. 105 ILCS 5/24-1; 105 ILCS 5/10-19.

should be construed with every other part or section of the statute to produce a harmonious whole." *Land v. Bd. of Educ. of City of Chi.*, 202 Ill. 2d 414, 422 (2002). Under that doctrine, the right to use accumulated paid sick leave for birth must be interpreted to refer to working school days and cannot be read to be limited based on periods of non-work days.

The School Code has a number of references to "working days" (*see, e.g.*, 105 ILCS 5/1H-20); more than forty references to "calendar days" (*see, e.g.*, 105 ILCS 5/2-3.25f-5(c); 105 ILCS 5/5-22); and more than thirty references to "school days" (*see, e.g*., 105 ILCS 5/10-19, 14-13.01). Despite the use of these more specific terms like "school days" and "calendar days," outside of Section 24-6, the School Code refers to the term "days" *absent any immediate modifying term* hundreds of times. *See, e.g.*, 105 ILCS 5/1B-5, 1E-20. As a result, the term "days" does not have any fixed meaning within the School Code, and it is therefore only possible to determine the meaning of the word "days" when unmodified *based on the immediate context*.

Accordingly, "days" in Section 24-6 cannot be read *in pari materia* with the entire School Code, but it is possible to interpret the term *consistently* within Section 24-6 itself. The word "days" appears six times in Section 24-6. In each such reference, the context is clear that "days" can only mean work or school days. This is consistent with the manner in which the legislature used the term "days" throughout the School Code: The use of the term must be interpreted by the context in which it is used. Here, Section 24-6 is a provision *exclusively* dealing with the granting, accumulation, and use of accumulated paid sick leave – a benefit that *can only be used* on days when an employee is otherwise *expected to work*. The purpose of the provision, combined with the manner in which the terms "days" is used

each time in Section 24-6, confirm that every use of the term "days" in Section 24-6 has a consistent meaning: working school days.

Thus, the use of the word "days" in Section 24-6 in the phrase "30 days for birth" must mean work days, as it is measured based on a period of absence, and the School Code therefore provides no explicit limit on the *time frame* in which accumulated paid sick leave must be used "for birth." Thus, the right to use sick leave for birth is not affected by intervening non-work days.

The appellate court majority recognized that Section 24-6 "discusses sick leave, which means an excused day off of work, with pay," and that "'day' must mean 'work day' and not 'calendar day.'" *Dynak*, 2019 IL App (2d) 180551, ¶ 24. The majority correctly held that, under Section 24-6, "a leave period comprises only work days," *id*. at ¶ 38; that "a day of sick leave must be a work day," *id*. at ¶ 37; and that the 30 days permitted for the use of sick leave for birth without medical certification "must mean work days, not calendar days," *id*. at ¶ 26. The majority ruled that it "is axiomatic that, if the employee is not required to be at work, then the employee cannot *leave* work." *Id*. at ¶ 37 (emphasis original). Thus, the majority agreed with Dynak that the use of sick leave arises only on days when the teacher would otherwise be working. The majority further correctly rejected the District's argument that the 30 days for a birth-related sick leave should be limited to the days immediately following the birth as that interpretation is in clear conflict with the statutory language. *Id*.

4. The Concept of Sick Leave Itself Necessarily Means That it is to be Used When an Employee Would Otherwise be Working

The common meaning of the terms used by the legislature in defining the availability of sick leave for birth is also consistent with the concept of sick leave itself, or

other similar employee benefits such as paid vacations. Sick leave and paid vacation days are entitlements for an employee to be paid during an *absence* from work, when he or she is otherwise expected to be at work. In the case of school employees, sick leave must coincide with days when school is in session, i.e., on a work day. *In re Marriage of Abrell*, 236 Ill. 2d 249, 264 (2010) ("Sick days and vacation days are alternative wages meant to be paid when the wage earner is unable to work or decides to take a vacation").

As such, that Section 24-6 provides for the number of days of accumulated sick leave an employee may use for the birth of a child must be interpreted to measure the 30 day period as 30 days of *absence from work*. The legislature's choice of language makes clear that only school days, where an employee is expected to work but is otherwise absent following the birth of a child, are the "days" to be counted under Section 24-6.

III. The History and Structure of Section 24-6 Show That it Provides for the Use of Sick Leave for Birth Irrespective of Physical Incapacity, and That the Use of Sick Leave for "Birth, Adoption, or Placement for Adoption" is Distinct From the Previously-Enumerated Bases for Using Sick Leave

As explained above, the plain language of Section 24-6 provides Dynak with the right to use 30 days of sick leave for the birth of her child over the course of 30 continuous work days, and she did not lose the right to use such 30 days of paid sick leave because of the intervening summer break. Accordingly, this Court need not – and, indeed, should not – look beyond the unambiguous language of the Section 24-6. However, even if the Court were to look to other aids of statutory construction, the history of Section 24-6, the amendments to the provision's language, and the structure of the statute further support Dynak's interpretation.

A. Based on its History, Section 24-6 Provides for Sick Leave for Birth Irrespective of Physical Incapacity

Prior to being amended in 2007, Section 24-6 provided for the use of sick leave for "personal illness, quarantine at home, or serious illness or death in the immediate family or household," without reference to birth or adoption. *See Winks*, 78 Ill. 2d at 133. In *Winks*, this Court held that Section 24-6, *as it then existed in 1979*, did not permit employees to use accumulated paid sick leave for "normal" pregnancies or childbirths, as neither qualified as a "personal illness" as then used in Section 24-6. Instead, the Court held that "normal" pregnancy and childbirth could qualify as periods of "temporary incapacity" or "physical incapacity" as those terms were used in other sections of the School Code. *Id*. at 136 (citing 105 ILCS 5/10-22.4 ("[t]emporary mental or *physical incapacity* to perform teaching duties...is not a cause for dismissal") (emphasis added) and 105 ILCS 5/24-13 ("[t]he contractual continued service status of a teacher is not affected by his attained age, promotion, absence caused by temporary illness or *temporary incapacity*...") (emphasis added))). This Court then ruled that, under Section 24-6 as it then existed, paid sick leave for pregnancy and child birth was available only where there were "certain complications which are *variations from normal limits*, as medically established." *Id*. at 140 (emphasis added). Therefore, prior to 2007, only in situations where pregnancy or childbirth constituted a personal illness for the employee – or a serious illness for a member of the employee's immediate family or household – could an employee use paid sick leave.

In 2007, the legislature amended Section 24-6 to add "birth, adoption, or placement for adoption" as bases for using accumulated sick leave, providing that "[s]ick leave shall be interpreted to mean personal illness, quarantine at home, ~~or~~ serious illness or death in the immediate family or household, *or birth, adoption, or placement for adoption*." 2007

Ill. Legis. Serv. P.A. 95-151 (H.B. 1877) (new provision in italics; strikeout deleted).[8]

When the General Assembly amended Section 24-6 in 2007 to expand employees' right to use accumulated paid sick leave for birth, it explicitly chose *not* to define the leave as leave for "pregnancy"; nor did it only provide for paid leave during the period of "temporary incapacity" or "physical incapacity" following birth as those terms had been used in other provisions of the School Code, and as interpreted by this Court in *Winks*. 78 Ill. 2d at 136. Instead, the legislature expanded the term "sick leave" to include use of accumulated paid sick leave for "birth, adoption, or placement for adoption," and made such leave available to both male and female employees. The amendment therefore cannot be said to have provided for the use of accumulated paid sick leave for an employee *only* when she is temporarily incapacitated or has a "physical incapacity" due to pregnancy or childbirth, or when a member of the employee's immediate family or household is temporarily incapacitated as a result of childbirth.[9]

Based on this statutory history, leave "for birth" in Section 24-6 must have its own distinct meaning. The amendment of Section 24-6 in 2007 following the *Winks* decision[10] makes clear that, since 2007, Section 24-6 has provided for the use of accumulated paid

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[8] Section 24-6 was amended again in 2009 to place a limit of "30 days for birth" before a school district could require medical certification as a basis for the leave. 2009 Ill. Legis. Serv. P.A. 96-51 (S.B. 35).

[9] Further, as addressed by the Court in *Winks*, prior to the 2007 amendment, Section 24-6 already provided for use of paid sick leave for an employee where pregnancy resulted in a "personal illness," or where pregnancy or childbirth caused a "serious illness" in a member of the employee's family or household. Section 24-6 continues to provide the right to use accumulated paid sick leave under such circumstances for "personal illness" or "serious illness." Such use of sick leave is not for "birth" based on the Court's prior ruling in *Winks*.

[10] "The legislature is presumed to be aware of judicial decisions interpreting legislation." *Pielet v. Pielet*, 2012 IL 112064, ¶ 48; *see also Kozak v. Ret. Bd. of Firemen's Annuity and Ben. Fund of Chi.*, 95 Ill. 2d 211, 218 (1983).

sick leave "for birth," and the use of that leave cannot be said to be limited to a period of "temporary" or "physical incapacity" resulting from pregnancy or childbirth.[11] To hold otherwise would result in impermissibly interpreting "for birth" in Section 24-6 to have the *same meaning* as "illness" had before the statute was amended, and to have the same meaning as the distinct terms "temporary incapacity" and "physical capacity" as used elsewhere in the School Code. *See F.R.S. Dev. Co. v. Am. Cmty. Bank & Tr.*, 2016 IL App (2d) 150157, ¶ 53 ("When the legislature uses certain language in one part of a statute but uses different language in another part, we assume that different meanings were intended").

Accordingly, in order to interpret Section 24-6 in a manner that is consistent with the rest of the School Code, the phrase "for birth" in Section 24-6 *must* have a distinct meaning from the terms "temporary incapacity" or "physical incapacity" used elsewhere in the statute.

Thus, the right to use sick leave for birth provided by Section 24-6 is not dependent on any incapacity or illness resulting from childbirth – as the District asserts – and the District's purported interpretation must be rejected. Indeed, the majority of the appellate court correctly agreed "with plaintiff's construction insofar as we believe that illness-related leave does focus on physical incapacity whereas the birth-related category focuses on family adjustment." *Dynak*, 2019 IL App (2d) 180551, ¶ 50; *see also id*. at ¶ 32.[12]

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[11] The appellate court majority said "that the inclusion of category (2) (birth-related) appears to be the legislature's response to *Winks*...," and that the "'for birth' category, added in amendments after *Winks*, must be given effect as a different category than the illness category, whose language is substantially the same as that interpreted by *Winks*." *Dynak*, 2019 IL App (2d) 180551, ¶ 23.

[12] Although the majority agreed with Dynak that the trial court was wrong in "accepting defendant's argument that the 30-day birth-related sick leave aligns with the common medical understanding that the mother's body typically needs approximately six weeks to recover from birth," the majority nevertheless affirmed the trial court's judgment. *Dynak*, 2019 IL App (2d) 180551, ¶ 46. But the trial court's judgment was fundamentally

B. The Disjunctive Use of the Word "or" Supports That Leave for "Birth, Adoption, or Placement for Adoption" is Distinct From the Previously-Enumerated Bases for Using Sick Leave

The history of Section 24-6 shows that, in providing for use of sick leave for "birth," the legislature did not require any showing of "temporary incapacity" or "physical incapacity." Moreover, that history – and the use of the word "or" – also shows that the manner in which Section 24-6 was amended leads to the conclusion that birth (and adoption) are bases for the use of sick leave that are distinct from the use of sick leave in cases of illness.

In amending the statute in 2007, the legislature placed the word "or" after the original statutory language defining sick leave, and before "birth, adoption, or placement for adoption." That is, the legislature explicitly did *not* amend the definition of sick leave to read "...serious illness or death in the immediate family or household, birth, adoption, or placement for adoption," which would have added the new language with respect to birth and adoption to the list of pre-existing bases for using sick leave related to personal and serious illnesses. The placement of the word "or" *before* the newly-added bases for using sick leave for birth or adoption has substantive significance.

"The word 'or' is disjunctive. As used in its ordinary sense, the word 'or' marks an alternative indicating the various parts of the sentence which it connects are to be taken separately." *Elementary School Dist. 159 v. Schiller*, 221 Ill. 2d 130, 145 (2006) (citing *People v. Frieberg*, 147 Ill. 2d 326, 349 (1992)). "In other words, 'or' means 'or,'" and "[d]isjunctive therefore connotes two different alternatives." *Id*. *See also People v. Howard*, 2017 IL 120443, ¶ 21; *In re C.N.*, 196 Ill. 2d 181, 210 (2001).

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based on the erroneous conclusion that the right to use sick leave for birth is predicated on physical incapacity.

The appellate court majority agreed that:

> [i]n Section 24-6, the use of the word "or," and its placement in the definition of sick leave under Section 24-6, signify that the phrase "birth, adoption, or placement for adoption" is intended to be separated from the preceding bases for using sick leave. As such, the right to use sick leave for birth (and adoption) is not subjected to the limit for using sick leave for illnesses, which requires that the teacher or someone in her immediate family be ill. The disjunctive "or" is important, because it suggests that the characteristics of the categories differ. If this were not so, then one category would essentially repeat the circumstances of the other category, an interpretation forbidden under the rules of statutory interpretation.

Dynak, 2019 IL App (2d) 180551, ¶ 20.

The appellate court majority found that Section 24-6 "includes two broad categories" for the use of sick leave: "(1) 'personal illness, quarantine at home, serious illness or death in the immediate family or household'; 'or' (2) 'birth, adoption, or placement for adoption.'" *Id*. The majority also correctly held that "each category differs from the other," with the first category concerning "illness, either personal or in the employee's family, which suggests an element of incapacity," while the second category is not "illness-related, meaning that incapacity is not a central feature," but rather "is an addition to the employee's family, rather than any incapacity." *Id*. at ¶¶ 20-21. The majority said that these two categories are "distinct," with the focus of the second category being "on the adjustment to the change in the family, not on any incapacity aspect of birth." *Id*. at ¶ 21; *see also id*. at ¶ 22. The dissent also agreed that the statute "states that a teacher may use his or her accumulated 'sick leave' days for either of two very different events: 'birth' or 'illness.'" *Id*. at ¶ 47.

The majority further found that birth-related sick leave "is primarily concerned with the adjustment to the change in the family," *id*. at ¶ 21; "focuses not on physical incapacity but on family adjustment and bonding," *id*. at ¶ 32; and "focuses on family adjustment,"

id. at ¶ 50. The dissent again agreed. *Id*. at ¶ 68 ("the purpose of allowing the use of sick days 'for birth' is not merely to allow the teacher to recover from the physical effects of the birth; it is to allow for family adjustment and bonding"; "the adjustment period still would have been underway… at the start of the next school year," and "[t]hose days still would have been, per section 24-6, 'for birth'").

C. The Punctuation of Section 24-6 Further Supports That Leave for "Birth, Adoption, or Placement for Adoption" is Distinct From the Previously-Enumerated Bases for Using Sick Leave

A statute's punctuation also may be used to determine the meaning of the statutory language and discern the legislature's intent. *In re D.F.*, 208 Ill. 2d 223, 234 (2003) (citing *Ill. Bell Tel. Co. v. Ames*, 364 Ill. 362, 368 (1936)). The use and placement of a comma is intended to mark separation in a sentence. Comma, Merriam-Webster.com, https://www.merriam-webster.com/dictionary/comma (last visited November 5, 2019). *See Miller v. Sarah Bush Lincoln Health Ctr.*, 2016 IL App (4th) 150728, ¶ 12 (rejecting an interpretation that would make a comma and a word "needless surplusage"). *See generally Goodman v. Ward*, 241 Ill. 2d 398, 408-09 (2011) (relying on the present tense of verbs in construing statute); *Bowman v. American River Transp. Co.*, 217 Ill. 2d 75, 83 (2005) (plain meaning of the statute is apparent to "anyone well versed in statutory construction, or even English grammar").

Here, the General Assembly's use of punctuation when adding "birth, adoption, or placement for adoption" again supports the conclusion that the later-added bases for using sick leave are distinct from those included prior to the 2007 amendment. The General Assembly separated the newly added language, "birth, adoption, or placement for adoption" from the pre-existing language by adding both a comma and the word "or," to

read "household, or birth...."

The placement and use of a comma can significantly affect the meaning of statutory or constitutional language. To this point, the Court has held that, *based on the placement of a comma* in Article I, Section 5 of the Illinois Constitution, that provision was intended to create a separate and distinct right to peaceable assembly. *City of Chi. v. Alexander*, 2017 IL 120350, ¶ 54 ("We conclude that the addition of the comma, as a matter of grammatical construction, altered the meaning of this section..."); *see also* the Appellate Court's decision in that case, *City of Chi. v. Alexander*, 2015 IL App (1st) 122858-B, ¶¶ 58-65 ("The insertion of the comma created an unqualified, 'independent' right to assemble in a peaceable manner").

Accordingly, the basic rules of statutory interpretation require that the language and punctuation of Section 24-6 be given effect. The manner in which the General Assembly added "birth, adoption, or placement for adoption," including the placement and use of the disjunctive "or" and the use of a comma in the amended language, clearly indicates an intent to separate the newly-added language from the previously-enumerated bases for using sick leave. Hence, sick leave may be used for birth without there being any illness, and the leave need not be commenced immediately upon giving birth.

D. The Structure and Terminology of Section 24-6 Also Establish That the Statute Does Not Limit the Availability of Paid Sick Leave For Birth to the Period Needed to Recover From Childbirth

The fact that use of sick leave for birth and adoption is distinct from the use of sick leave for personal illness is also supported by the grouping of the terms "birth," "adoption," and "placement for adoption" together. Under the long-standing doctrine of *noscitur a sociis*, a word is to be "known by the company it keeps." *Corbett v. County of Lake*, 2017

IL 121536, ¶ 31 (citations omitted).

Applying the doctrine of *noscitur a sociis* to the use of the word "birth" in Section 24-6 provides yet further proof that the right to use sick leave for birth is divorced from any medical need, as "birth" must be interpreted in light of its grouping with the terms "adoption" and "placement for adoption." *See In re Marriage of Kates*, 198 Ill. 2d 156, 164 (2001) (analysis of the structure of the sentence in the statute "bears out this interpretation" of the statute). In the case of adoption, there is no event necessitating that the employee undergo a hospital stay or care for a spouse who has just given birth. And, for an adoption, there is not necessarily a fixed, clearly-identifiable event that constitutes a defined beginning of a leave.[13] Nonetheless, Section 24-6 still provides that an employee may use up to 30 days of accumulated paid sick leave for adoption or placement for adoption. Providing for a right to use sick leave for up to 30 days in cases of adoption and for birth (without certification) shows that the legislature intended to provide for the use of accumulated paid sick leave in instances where the commencement of the event is not fixed in time and where the duration of such use of sick leave is not defined by any physical incapacity or illness.

Moreover, Section 24-6 provides sick leave for adoption, for placement for adoption, and for birth irrespective of whether the employee is male or female, i.e., whether or not the employee will be an adoptive father or mother, or the father or mother of the baby. A father – or mother – may need or want to take sick leave for an adoption or a birth at some point after (albeit not immediately after) birth. Nevertheless, such leave would still

[13] The appellate court majority recognized that "birth-related sick leave includes adoption and placement for adoption, processes that do not necessarily begin clearly on a specific date." *Dynak*, 2019 IL App (2d) 180551, ¶ 37.

be "for birth." And, in any event, the employee using sick leave may do so irrespective of whether there is any physical or medical need to do so. That is true because: (1) Section 24-6 provides for up to 30 days of sick leave for birth *without medical certification*, and (2) fathers may take such leaves even though they have no physical effects due to giving birth.[14]

Thus, Section 24-6 does not limit the availability of paid sick leave for birth to the period needed to recover from childbirth. Accordingly, the right to use sick leave for birth is not determined by the time period during which the employee is physically affected by the childbirth. Such a period may extend into a new school year, even if the employee is not, or is no longer, physically affected by the birth of a child.

IV. By Its Express Terms, Section 24-6 Imposes a Reasonable Limitation on the Right to Use Paid Sick Leave for Birth

As explained above, that courts may not read limiting language into statute is a fundamental and unyielding rule of statutory interpretation. Yet the District argued before both the trial and appellate courts – and both courts agreed – that such limiting language must effectively be read into the statute,[15] because otherwise the right to use sick leave for birth would be unconstrained, leading to imagined "absurd" uses of sick leave for birth. However, by its terms, Section 24-6 contains its own reasonable textual limitation on the right to use paid sick leave. Moreover, the General Assembly has shown that it is capable of placing clear temporal limits on the right to use leave, and it has chosen *not* to do so

[14] For these reasons, the use of sick leave for "birth" under Section 24-6 would similarly be available to an employee where a child is born through surrogacy, as there is no requirement that either parent have any medical need in order to use such leave.

[15] While the appellate court denied that it was reading any such limiting language into the statute, as Justice Hudson pointed out, and as the majority opinion confirms, the effect of the majority's ruling was to read in a limitation on the right to use paid sick leave for birth.

here.

A. The Restriction That Employees May Use 30 Days of Accumulated Sick Leave "For Birth" Without Medical Certification Places a Reasonable Temporal Restriction on the Right to Use Such Leave

On its face, Section 24-6 places its own restriction on when accumulated sick leave may be used, by requiring that the leave must be "for birth," and by providing that it be limited to 30 days of absence from work (without a medical certification). Thus, Section 24-6 requires that there must be a connection between the use of accumulated paid sick leave and the birth of a child, inasmuch as the requested leave must be *connected to the birth of a child*. Accordingly, leave "for birth" may be used for *that purpose*.

This reading of the plain language of Section 24-6 avoids impermissibly reading in additional limitations, while ensuring that use of leave is subject to reasonable temporal restrictions: the right to use accumulated sick leave "for birth" is temporally self-limited by the statute. If a birth occurs at a time where a break during the school year (summer, winter or spring) interrupts the use of the 30 days of accumulated sick leave, the employee is still entitled to use all 30 days of sick leave absent medical certification. Under those circumstances, the requested leave at issue, as is the case here, is still "for birth" despite the intervening break period.[16]

Section 24-6 also provides that sick leave may be used for a death "in the immediate family or household." That provision allows for leave on the date of such deaths, as well as the use of sick leave to attend funerals, burials, memorial services, and other events associated with the death of an immediate family or household member. Funerals, burials,

[16] Although not an issue in this case, the same could be said of an employee who wants to stagger his or her use of leave with that of his spouse or partner. For example, a father's use of 30 days of sick leave beginning 12 weeks after the birth of his child – when his wife returns to work after taking her own leave – would be "for birth" of the child.

memorial services, and other events associated with death may not take place immediately upon the death. This illustrates that, even with respect to the pre-amendment bases for using sick leave, there are instances where the permitted use of sick leave does not have a fixed proximity requirement. So long as the use of the sick leave is "for death… in the immediate family or household," the use of sick leave must be permitted, even if the death has occurred at some time earlier. So, too, with use of sick leave for birth.

Finally, the District has not asserted at any time that Dynak's requested leave was not "for birth." To the contrary, while denying Dynak's request to use the 28.5 days of accumulated paid sick leave at the start of 2016-17 school year "for birth" pursuant to Section 24-6, the District granted Dynak 12 weeks of unpaid leave under the Family Medical Leave Act ("FMLA"), 29 U.S.C. § 2601, *et seq*., beginning "10 weeks after the birth of her child." (*See* Ex. 2 to Compl.; Ex. 2 to Dynak Aff.; *see also* Dynak Aff. ¶ 12). That is, the District admitted that the use of unpaid FMLA leave at the beginning of the 2016-17 school year was *for birth*, but then denied, absent explanation, that the use of paid sick leave *over that very same time period* was "for birth," as required by the School Code. Such a position is indefensible.[17]

[17] The majority of the appellate court rejected the significance of the District's granting Dynak unpaid FMLA leave, "because the purpose behind the FMLA, and the execution of that purpose, differs from the purpose of section 24-6." *Dynak*, 2019 IL App (2d) 180551, ¶ 45. But, according to the majority, the purpose of the right to use paid sick leave for birth under Section 24-6 is for family adjustment and bonding. *Id*., ¶¶ 32, 50. Likewise, the FMLA provides both parents the right to take unpaid "leave to be with the healthy newborn child (i.e., bonding time)." 29 C.F.R. § 825.120(a)(2). Moreover, the majority's criticism misses the point. The District denied Dynak's requested use of paid sick leave for birth, because the District claimed – absent evidence – the requested use of sick leave was too remote from the birth of the child. Yet, with respect to unpaid FMLA leave for birth, the District did not question that Dynak's use of leave was *for the birth of her child*. Accordingly, the District has provided no argument or explanation for why leave over the same period is for birth under the FMLA and not so under Section 24-6. This inconsistency is untenable if both Section 24-6 and the FMLA provide for the use of leave

In sum, based on the statutory terms in Section 24-6, and applicable principles of statutory interpretation, Dynak was entitled to use the requested remaining 28.5 days of sick leave for birth at the beginning of the 2016-17 school year.

B. The General Assembly Knows How to Place Temporal Limitations on Leaves and Chose Not to do so With Respect to the Use of Sick Leave For Birth

That Section 24-6 does not impose a fixed proximity requirement – that sick leave "for birth" need not be taken on continuous *calendar days* immediately after birth – is also supported by the existence of another statutory employee leave provision that expressly limits when such leave may be taken.

The Child Bereavement Leave Act provides leave for employees in connection with the death of an employee's child. There, the legislature explicitly limited the use of bereavement leave to a specific time period that begins when the employee learns of a child's death: "Bereavement leave ... must be *completed within 60 days* after the date on which the employee receives notice of the death of the child." 820 ILCS 154/10(b) (emphasis added).

When the General Assembly amended Section 24-6 to add "birth" as a basis for sick leave, 2007 Ill. Legis. Serv. P.A. 95-151 (H.B. 1877), and when Section 24-6 was amended to place the limit of "30 days for birth" before a school district could require medical certification as a basis for the leave, 2009 Ill. Legis. Serv. P.A. 96-51 (S.B. 35), the General Assembly *could* have prescribed a period of time within which the leave for birth must be taken, as it did in the Child Bereavement Leave Act. If it had so intended, the General Assembly could easily have limited the use of accumulated paid sick leave to the

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for birth for the same purposes – birth *and* bonding.

period of "30 days *from* birth," "*within* 30 days *of* birth," or "30 days *after* birth." However, the legislature did not so word Section 24-6.

Although the majority of the appellate court said that a "direct comparison" of Section 24-6 with the Bereavement Act was "inapt,"[18] it agreed that the Bereavement Act "does provide an illustration of the legislature's competency in expressing time limits, and we agree with plaintiff that section 24-6 does not define an express time limit for the use of the '30 days for birth' period." *Dynak,* 2019 IL App (2d) 180551, ¶ 41.

Thus, the legislature knows how to establish time limits for employees to use statutory rights to leave. In contrast with the Child Bereavement Leave Act, in Section 24-6 of the School Code the legislature placed no such limit (or proximity requirement) for using accumulated paid sick leave in connection with the birth of a child. Since the General Assembly has shown that it is capable of placing specific time limits on similar types of statutorily-provided employee leave when it intends that there be such a limitation, the absence of such a limitation means that there was no such legislative intent. *See, e.g., Bueker v. Madison County,* 2016 IL 120024, ¶ 24 (holding that since the "legislature clearly knows how to include language" to accomplish an objective, which it did in another statute, but did not in the statute before the Court, the absence of such a provision in the statute under consideration led to the conclusion that the statute did not provide the right that the plaintiffs claimed).

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[18] The majority's basis for saying that the comparison is "inapt" was that the Bereavement Act "defines not the benefit but the time period for its use." *Dynak,* 2019 IL App (2d) 180551, ¶ 41. But that is not true, since Section 10(a) of that statute expressly provides that "[a]ll employees shall be entitled to use a maximum of 2 weeks (10 work days) of unpaid bereavement leave." 820 ILCS 154/10(a). Accordingly, the Bereavement Act, on its face, defines *both* the benefit and the period of use, which the General Assembly *could* have done with Section 24-6.

Moreover, there are more than 150 separate sections of the School Code that provide for the explicit timing of when certain actions must be taken "within" a certain number of days. *See, e.g.*, 105 ILCS 5/24-12 ("within 30 days from the conclusion of the hearing…"); 105 ILCS 5/34-85 ("general superintendent must approve those charges within 45 calendar days…"); 105 ILCS 5/24-21.1) ("the board shall transmit such withholdings to the specified labor organization within 10 working days from the time of the withholding"); *see also* 105 ILCS 5/24-11; 105 ILCS 5/24-16.5. In interpreting the language of Section 24-6, "[w]ords and phrases must be interpreted in light of other relevant provisions of the statute and must not be construed in isolation." *Holocker*, 2018 IL 123152, ¶ 21 (citation omitted). Therefore, the General Assembly's use of explicit language to define the time period by which certain actions must be taken in other sections of the School Code supports the conclusion that a specific number of days from birth may not be read into Section 24-6.

The specific language of Section 24-6 therefore establishes that the use of sick leave "for birth" is not limited to the 30 days immediately after birth, and an employee may use all 30 days of accumulated paid sick leave, absent medical certification, where the use of that leave over 30 continuous work days is interrupted by a summer, winter, or spring break.

V. The Majority Opinion Erred With Respect to the Methods of Statutory Interpretation

A. The Majority Opinion Violated the Cardinal Rule of Statutory Interpretation Against Reading a Limitation Into a Statute

Although the majority recognized the fundamental principle that courts may not read into statutes exceptions or limitations that are not expressed by the legislature, and

that it did "not need to resort to aids of construction ... because [it found] the language in section 24-6 to be unambiguous," the majority proceeded to do just that. *Dynak*, 2019 IL App (2d) 180551, ¶¶ 19, 22, 49. While it ruled that "section 24-6 contains no time limits on how sick leave must be taken," *id*. at ¶ 37, or any "temporal constraints on how to apportion sick leave," *id*. at ¶ 29, it nevertheless created a limitation on the use of sick leave for birth that has no basis in the statutory text, and is contrary to the statutory purpose that the majority had identified (allowing paid time off for family adjustment and bonding). *Id*. at ¶¶ 21, 32, 50.

The majority's holding that the right to use sick leave for birth depends on the "length of the contemplated leave period compared to the length of the break," *id*. at ¶ 43, created an extra-statutory limitation on the use of sick leave for birth, which is contrary to this Court's numerous decisions holding that a "court may not inject provisions not found in the statute, however desirable they may appear to be." *Bridgestone/Firestone, Inc. v. Aldridge*, 179 Ill. 2d 141, 154-55 (1997) (reversing because appellate court "essentially rewrote" the statute). *See also Gaffney*, 2012 IL 110012, ¶ 56; *Acme Markets, Inc. v. Callanan*, 236 Ill. 2d 29, 38 (2009); *Rosewood Care Ctr., Inc. v. Caterpillar, Inc.*, 226 Ill. 2d 559, 567 (2007); *People v. Lewis*, 223 Ill. 2d 393, 402 (2006).

B. The Majority Opinion Erroneously Applied the Absurd Results Doctrine

Only when statutory language is found to be ambiguous may a court resort to applying additional tools of statutory construction, even where a court believes that the clear wording of the statutory language may lead to absurd or unwise results. *Petersen v. Wallach*, 198 Ill. 2d 439, 446-47 (2002); *Pauling v. Misevic*, 32 Ill. 2d 11, 15 (1964).

In the present case, the majority explicitly held that statutory language was "plain

and unambiguous," concluding that it "bestows 30 days of sick leave for birth before a certificate may be required." *Dynak*, 2019 IL App (2d) 180551, ¶ 22; *id*. at ¶ 49. Nevertheless, the majority proceeded to restrict the right to use sick leave for birth in order to avoid what it imagined as an "absurd" result.

Doing so conflicts with the Court's decisions that forbid the use of tools of statutory interpretation where a statute is unambiguous, even where a court believes that the literal wording of a statute may lead to absurd or unwise results. *Petersen*, 198 Ill. 2d at 446-47; *Pauling*, 32 Ill. 2d at 15. *See also In re D.F.*, 208 Ill. 2d at 249-50 (Freeman, J., concurring) (citations omitted) (stating that courts may not "displace legislative policy on the basis of speculation that the legislature could not have meant what it unmistakably said").

C. The Majority Opinion Erroneously Invaded the Province of the Legislature

The majority considered "the cost that the school district and the local taxpayers would incur under plaintiff's construction." *Dynak*, 2019 IL App (2d) 180551, ¶ 55. The dissent properly observed that "the cost to the school district and its taxpayers... is particularly a legislative concern." *Id*. at ¶ 69, n.4.

The majority's consideration of the cost of requiring the District to grant Dynak's use of sick leave for birth blatantly conflicts with this Court's doctrine that, "where the language of a statute is unambiguous, the only legitimate function of the courts is to enforce the law as enacted by the legislature." *Aldridge*, 179 Ill. 2d at 154-55. *See also Citibank, N.A. v. Ill. Dept. of Revenue*, 2017 IL 121634, ¶ 70 ("The responsibility for the wisdom of legislation rests with the legislature, and courts may not rewrite statutes to make them consistent with the court's idea of orderliness and public policy"); *Kinsey Distilling Sales Co. v. Foremost Liquor Stores, Inc.*, 15 Ill. 2d 182, 188 (1958) ("this court does not

substitute its judgment for that of the General Assembly but accepts and carries into effect its declared policy"; the Court cannot be concerned with whether it agrees "with the economic and social philosophy reflected by the statute").

Moreover, even if it were appropriate for the majority to consider such potential effects – which it is not – the majority's reasoning was deeply flawed.

First, the majority claimed that, under Dynak's interpretation, school districts and tax payers "effectively have to pay twice," paying for the cost of the employee's sick leave and a substitute covering an absence. *Dynak*, 2019 IL App (2d) 180551, ¶ 55. However, as Justice Hudson correctly observed, such a "'double payment' is required *whenever* a teacher uses sick leave under the statute." *Id*. at ¶ 69, n.4.[19] The same is true whenever employees use any other type of paid leave (e.g., personal day). Accordingly, the majority's holding not only erroneously constrained the judgment of the legislature, but it also did so, in part, by relying on entirely unfounded concerns regarding the costs of administering such leave if Dynak's interpretation were adopted.

Second, the majority ignored the fact that, even if there were *no right to use paid sick leave for birth*, the FMLA allows the use of unpaid leave for the birth of a child within

[19] The majority's single-minded concern for costs to District also overlooked the fact that Section 24-6 provides for the use of *accumulated* paid sick leave. That is, 30 days of sick leave for birth is *only* available where the employee has saved and accumulated enough sick days to use such leave. Therefore, the District has already granted the employee the future right to use such leave, *and* should have budgeted and planned for the cost of the use of such leave. Moreover, by focusing only on the cost to the District, the majority ignored the effect on public school employees, including depriving them of time to care for and bond with their newborn children, or the excruciatingly difficult decision as to whether to stay home with a child without pay or return to work prematurely due to financial constraints – merely based on what time of the year the child is born. While neither of these effects should affect the interpretation of the statutory language at issue, the appellate court majority failed to give any – much less equal – consideration to the effect its decision would have on public school employees.

12 months of the birth. 29 C.F.R. § 825.120(a). While the FMLA does not provide for paid leave, employees' right to use such leave necessitates that districts must plan for and administer such leave, taking necessary actions to cover an absent employee's work duties while he or she is on leave. Therefore, despite the District's unsupported assertions about the difficulty of administering leave for birth under Section 24-6 if Dynak's interpretation is adopted (and the majority's improper consideration of those concerns), all school districts nonetheless must allow for and manage the use of leave for birth occurring many months after the birth, including leaves that may occur at the end of one school year and continue into the next.[20] Moreover, employees' undisputed right to use unpaid FMLA leave months after the birth lays bare the disingenuous nature of the District's protestations about the difficulty of administering leave under Section 24-6, and the falsely-claimed impact on students (*see* C.85), making clear that the District's *only* concern is with the cost of employees exercising their statutory right to use accumulated paid sick leave for birth – a concern that is irrelevant to the meaning of language of Section 24-6.

VI. The Majority Erred in its Interpretation of the Right to Use Sick Leave for Birth

The majority opinion did not only err by reading into Section 24-6 a limitation that has no basis in the text in the statute. It further erred by reaching a conclusion as to the meaning of Section 24-6 that is at odds with all of the majority's predicate findings as to

[20] Under the FMLA, leave "taken for a period that ends with the school year and begins the next semester is leave taken consecutively rather than intermittently. The period during the summer vacation when the employee would not have been required to report for duty is not counted against the employee's FMLA leave entitlement." 29 C.F.R. § 825.601(a). Accordingly, under the FMLA, an employee who gives birth six weeks before the end of a school year and requests to take 12 weeks of FMLA leave is entitled to take six weeks of leave at the end of one school year and then an additional six weeks at the beginning of the next year.

the meaning and purpose of the statute. Thus, the majority's opinion is unfounded and internally inconsistent.

A. Having Found That There is No Temporal Limitation in the Statute on the Right to Use Sick Leave for Birth, the Majority Erred in Erecting a Temporal Limitation

The majority ruled that "section 24-6 contains no time limits on how sick leave must be taken," *Dynak*, 2019 IL App (2d) 180551, ¶ 37, and it recognized that the statute "contains no temporal constraints on how to apportion sick leave," *id*. at ¶ 29. It also conceded that Dynak's argument "that she was entitled to 30 consecutive work days beginning when she gave birth… has some logical force." *Id*. The majority also said that Dynak's argument – that she should be allowed to use her accumulated sick leave on the 30 consecutive work days following the birth of her child – "is not unreasonable." *Id*. at ¶ 36.

Having reached those conclusions – which were correct – there was no basis for the majority to erect a temporal limitation, ruling that "the intervening summer break means that the commencement of the 2016-17 school year was simply too attenuated from the birth of plaintiff's child for plaintiff's construction to avoid absurdity." *Id*. at ¶ 42.

B. Having Found That Sick Leave Only Applies to Work Days, the Majority Erred in Ruling That Sick Leave for Birth Could Not Be Used on the Work Days Immediately Following the Birth

The majority correctly held that, under Section 24-6, "a leave period comprises only work days," *Dynak*, 2019 IL App (2d) 180551, ¶ 38; that "a day of sick leave must be a work day," *id*. at ¶ 37; and that the 30 days permitted for the use of sick leave for birth without medical certification "must mean work days, not calendar days," *id*. at ¶ 26. The majority ruled that it "is axiomatic that, if the employee is not required to be at work, then

the employee cannot *leave* work." *Id*. at ¶ 37 (emphasis original). Thus, the majority agreed with Dynak that the use of sick leave arises only on days when the teacher would otherwise be working.

The majority further rejected the District's argument that the 30 days for a birth-related sick leave should be limited to the calendar days immediately following the birth. *Id*. And the majority rejected the District's argument that "the 30-day birth-related sick leave aligns with the common medical understanding that the mother's body typically needs approximately six weeks to recover from birth," because that contention "finds no support in the language of section 24-6 and cannot be relied upon to properly construe section 24-6." *Id*. at ¶ 46. Thus, according to the majority, the right to use sick leave for birth is not limited to the period immediately following the birth, and does not depend on the parent being incapacitated.

Based on this reading of the statute – which was correct – it necessarily should have followed that Dynak had the right to use the remainder of her 28.5 days of sick leave on the immediately following work days, at the beginning of the school year, following the birth of her child at the end of the preceding school year in June.

C. Having Found That Sick Leave Used for Birth is Different From Sick Leave Used for Illness, the Majority Erred in Ruling That the Use of Sick Leave for Birth is Limited in the Same Manner as When Sick Leave is Used for Illness

The majority found that Section 24-6 "includes two broad categories" for the use of sick leave: "(1) 'personal illness, quarantine at home, serious illness or death in the immediate family or household'; 'or' (2) 'birth, adoption, or placement for adoption.'" *Dynak,* 2019 IL App (2d) 180551, ¶ 20. The majority said that "each category differs from the other," *id*., with the first category concerning "illness, either personal or in the

employee's family, which suggests an element of incapacity," while the second category is not "illness-related, meaning that incapacity is not a central feature," but rather "is an addition to the employee's family, rather than any incapacity," *id*. at ¶ 21. The two categories are "distinct," with the focus of the second category being "on the adjustment to the change in the family, not on any incapacity aspect of birth." *Id*.; *see also id*. at ¶ 22.[21]

Nevertheless, in complete contradiction of these correct conclusions, the majority construed the right to use sick leave for birth as being constrained by the use of sick leave for illness, the very category the majority found to be "distinct" from the use of sick leave for birth. *Id*. at ¶ 36 ("Because birth-related sick leave should be construed in the same manner as illness-related sick leave, interrupting that leave with a lengthy break in relation to the contemplated leave period would cause an absurd result"); *see also id*. at ¶¶ 21, 42.

This glaring internal inconsistency in the majority's opinion was erroneous. The conclusion that Section 24-6 provides for two categories of sick leave necessarily leads to the conclusion that the use of sick leave for birth is *not* limited to situations applicable to illness. As the majority held, the right to use up to 30 days of sick leave for birth is not dependent on the teacher being ill. Thus, a teacher may take the remainder of his or her sick leave for birth when the use of the 30 days is interrupted by the summer break.

[21] Although the dissent criticized the majority for "construing the statute to create two 'categories' of 'leave,'" the dissent nevertheless recognized that the statute "states that a teacher may use his or her accumulated 'sick leave' days for either of two very different events: 'birth' or 'illness.'" *Dynak*, 2019 IL App (2d) 180551, ¶ 66. The dissent concluded that, "because those contexts are so different, the absurdity of the result in one does nothing to establish the absurdity of the result in the other." *Id*. at ¶ 67.

D. Having Found That the Purpose of the Right to Use Sick Leave for Birth is for Family Adjustment and Bonding, the Majority Erred in Ruling That Sick Leave Could Not Be Used on the Work Days Immediately Following the Birth

The majority found that birth-related sick leave "is primarily concerned with the adjustment to the change in the family," *Dynak*, 2019 IL App (2d) 180551, ¶ 21; "focuses not on physical incapacity but on family adjustment and bonding," *id*. at ¶ 32; and "focuses on family adjustment," *id*. at ¶ 50. The dissent agreed, but then recognized the significance of that statutory purpose, explaining that "[t]here would have been nothing absurd about allowing plaintiff to use her sick days at the start of the next school year, as the adjustment period still would have been underway. Those days still would have been, per section 24-6, 'for birth.'" *Id*. at ¶ 68.

Based on this statutory purpose, there was no basis whatsoever for the majority to hold that there was no right to use the remaining days of sick leave on the immediately following work days, at the beginning of the school year following the birth. This is especially true because the majority did not find – nor could there have been any basis for it to find – that the time period for such family adjustment and bonding ends within a certain number of days after the birth.

VII. The Majority Invoked an Unworkable Standard

The majority of the appellate court held that whether or not there is a right to use accumulated sick leave for birth under Section 24-6 of the School Code depends on whether or not such use would be "absurd." Specifically, it ruled that "breaking up a sick leave over a nonwork period would lead to an absurd result if the nonwork period is lengthy in relation to the leave contemplated." *Dynak,* 2019 IL App (2d) 180551, ¶ 33. However, the majority provided no guidance for how a school district or school employee – or a court

for that matter – is to know when the length of the nonwork period as compared to the leave *becomes absurd.* According to the majority, if there is any "sort of holiday or break period" that interrupts the leave period, there *may or may not be* a right to use sick leave for birth, "depending on the length of the break versus that of the leave." *Id*. at ¶ 38. Even for the shortest breaks in the school year, the majority failed to explain how Section 24-6 applies: If "there is a one-week break in the middle of a birth-related sick leave, then it *might be reasonable* that the employee would get the remainder of the 30 work days following the conclusion of that break, because the break is much shorter than the contemplated leave period (but, depending on the facts, it *could* still lead to an absurd result)." *Id*. at ¶ 37 (emphasis added).[22]

As recognized by the dissent, the majority created "a sliding scale for the use of sick days before and after intervening breaks," without any basis in the statutory text. *Id*. at ¶ 69. "This inexact standard risks arbitrary application and has no roots in the text of the statute." *Id*. Apart from having no support in the statute, the majority's "standard" is simply unworkable, because it wholly lacks any concrete or predictive guideline. *See People ex rel. Madigan v. Ill. Commerce Com'n*, 231 Ill. 2d 370, 384 (2008) (rejecting interpretation because "it would prove to be an unworkable standard"). Rather, the statute permits teachers to use up to 30 days of accumulated sick leave for birth as long as the leave is "for birth," which, as the appellate court ruled, includes a period of time for "family adjustment and bonding." *Dynak*, 2019 IL App (2d) 180551, ¶ 32; *see also id*. at ¶ 50 and ¶ 68 (Hudson,

[22] The majority similarly stated that "[w]e could also see a situation in which an employee gives birth one or two calendar weeks before the beginning of a school year and seeks to use the full 30-work-day birth-related sick leave. In any such case, the decision to grant leave would likely turn on the length of the contemplated leave period compared to the length of the break, but as none of those circumstances are before us, we decline to comment further." *Dynak*, 2019 IL App (2d) 180551, ¶ 43.

J. dissenting).

VIII. The Majority's Decision Will Result in the Arbitrary and Unequal Application of Employees' Right to Use Sick Leave for Birth

The majority's interpretation of Section 24-6 would disparately treat similarly situated employees based merely on the timing of the birth of a child, as Justice Hudson explained:

> Ultimately, according to the majority, a teacher who happens to give birth in the middle of a school year may use 30 accumulated sick days; a teacher who happens to give birth during the last month of a school year may use fewer; and plaintiff, who happened to give birth on very nearly the last day of a school year, may use almost none. All despite the fact that these teachers are otherwise identically situated. This, in my view, would constitute an absurd result.

Dynak, 2019 IL App (2d) 180551, ¶ 70.

The majority ignored the unfair and unjust consequences of its interpretation of the right to use sick leave for birth, based solely on *when* a birth occurred. Not only is such an inequitable result *not* supported by the plain language of the statute, but also courts must avoid interpretations that produce such disparate, unjust results in the absence of clear statutory language. *Holocker*, 2018 IL 123152, ¶ 21; *Bayer v. Panduit Corp.*, 2016 IL 119553, ¶ 32 (rejecting interpretation that "would require us to recognize a distinction for which there is no basis in either the statute or the case law construing the statute").

IX. The Majority Erred in Concluding That Plaintiff Was Not Harmed by the Denial of the Right to Use Sick Leave for Birth

The majority ruled, in effect, that the denial of the right to use paid sick days results in no harm, because Dynak "was granted all of the time that she requested; she just did not receive pay for the time off. Plaintiff will receive the funds she was denied, just at a later date, when she retires or separates from her employment." *Dynak*, 2019 IL App (2d)

180551, ¶ 54.[23] This was clear error.

First, the right to use sick leave under Section 24-6 is to *be able to use sick leave*, and *to be paid* during such absences. This is the fundamental benefit under the statute. The very purpose of sick leave is to provide for payment of a salary or wages during a period when an employee is unable to work, so that the employee does *not suffer a loss of income*. By being deprived of her paid sick leave benefit, Dynak suffered a loss of 28.5 days of pay, totaling $7,991.69. Such a loss constitutes harm in a very real sense.

Second, under the majority's "logic," even if an employee is indisputably sick, and even if he or she is absent due to an illness *during the regular school year*, there would be no right to use paid sick leave, because the denial of paid leave would not harm the employee, and the employee would therefore have no recourse. Such an outlandish reading of the statute would nullify its very purpose, and therefore was erroneous. *See Nelson v. Artley*, 2015 IL 118058, ¶ 25; *Ill. State Treasurer v. IWCC*, 2015 IL 117418, ¶ 39.

Third, that Dynak still has all of her sick leave days does not mean that she was not harmed. Beyond the fact that she has lost 28.5 days of pay, there is no assurance that she will in fact be able to use any of her accumulated sick pay at another time, because: (1) she may not later be absent from work due to a condition that warrants use of sick leave; (2) she may leave the District, and, if she does, she has no right to be compensated by the

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[23] The majority also asserted, incorrectly and without foundation, that "plaintiff has couched her arguments around the idea of days away from work rather than payment for those days." *Dynak*, 2019 IL App (2d) 180551, ¶ 35. Later in its opinion, the majority conceded that "this case was more concerned with money than time." *Id*. at ¶ 55. Even more importantly, this case, and the right to use leave for birth pursuant to Section 24-6, is about the right to use *paid sick leave* – the right to be on leave from work *and* to be paid during that time. The right to be on leave from work and the payment to the employee during that leave period are therefore inextricably linked, and the consequences of denying an employee the right to use sick leave for birth under Section 24-6 can only be measured by acknowledging both aspects of paid sick leave.

District for the value of her unused sick leave or to take her sick leave benefits with her to be used if she were to be employed by another school district, *see* 105 ILCS 5/24-6; and (3) even if she remains employed by the District until she retires, she has no right to be paid for unused sick leave. *Grant v. Chi. Bd. of Educ.*, 282 Ill. App. 3d 1011, 1017 (1st Dist. 1996), appeal denied, 169 Ill. 2d 566 (1996). Moreover, even if Dynak were to continue to work for the District until she retires – a speculative assumption at this early point in her career – she would be able to get credit toward her pension for only a small fraction of her accumulated sick leave. *See* 40 ILCS 5/16-127(b)(6). As the dissent recognized, under the majority's ruling, "[t]he consequence for plaintiff is that she may use almost none of the sick days that she has accumulated over the years as a full-time teacher with defendant." *Dynak*, 2019 IL App (2d) 180551, ¶ 63.

X. The Majority Erred in Referring to a "Sub Rosa Paid Parental Leave"

The majority observed that "adopting plaintiff's and the dissent's construction would tend to confer upon teachers and teachers alone a sort of sub rosa paid parental leave based on the fortuity of the timing of birth.... There is no textual support for such an intention. If the legislature had intended to confer paid parental leave, it would not have hijacked a sick-leave provision to do so." *Dynak*, 2019 IL App (2d) 180551, ¶ 56. In so concluding, the majority erred.

As the majority itself found, Section 24-6 was amended, in part, to add birth (and adoption and placement for adoption) as a basis for using sick leave in response to *Winks*, where this Court ruled that "normal" maternity leave was not covered by the statute's concept of sick leave, which, at that time, was only based on illness. *Dynak*, 2019 IL App (2d) 180551, ¶ 23 (citation omitted). By adding birth and adoption as a basis for use of sick

leave, the legislature extended the sick leave statute to cover family adjustment and bonding. *Id*. at ¶¶ 21, 32, 50.

Moreover, whether the right to use sick leave for birth under Section 24-6 is considered "parental leave" is a meaningless distinction. The question presented is *not* whether Section 24-6 provides for "parental leave" – regardless of how one chooses to define that term.[24] The question is whether public school employees are entitled to use 30 days of accumulated paid sick leave over 30 continuous work days despite an intervening summer recess.

Most crucially, to the extent the majority was troubled by this right being extended to "teachers alone,"[25] the extension of such a right was a decision that the legislature made, and it is not for the majority to withhold such a benefit based on its unfounded belief about when sick leave *should* be able to be used. *Ultsch v. Ill. Mun. Retirement Fund*, 226 Ill. 2d 169, 184 (2007) ("There is no rule of statutory construction that authorizes a court to declare that the legislature did not mean what the plain language of the statute says"); *Ill. Landowners All., NFP v. Ill. Commerce Comm'n*, 2017 IL 121302, ¶ 50 ("Of all the principles of statutory construction, few are more basic than that a court may not rewrite a statute to make it consistent with the court's own idea of orderliness and public policy"). Accordingly, whatever the Court thinks about the wisdom of granting such right to public

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[24] The District and Dynak agree that, where there are no intervening periods of non-work days, Section 24-6 provides the right to both mothers and fathers to use 30 days of accumulated paid sick leave for the birth of a child, which could only be used on work days. (*See* C.37, 85, 252). Therefore, when there are no intervening breaks, there is no dispute that Section 24-6 effectively provides for six (calendar) weeks of paid leave to all employees for the birth of a child. Whether such leave is characterized or labeled as parental leave, or some other type of benefit, has no bearing on the question of when leave for birth may be used pursuant to Section 24-6.

[25] Section 24-6 also provides the right to use sick leave to certain other educational employees.

school employees covered by Section 24-6, or the wisdom of placing that right in a provision of the School Code addressing the right to use sick leave, the interpretation of Section 24-6 must be based on the statutory text.

XI. The Majority Erred in Speculating About Possible Contractual Rights to Sick Leave

The majority made erroneous and speculative references to possible rights Dynak might have to use paid sick leave for birth under the collective bargaining agreement between the teachers' union and the District. *Dynak,* 2019 IL App (2d) 180551, ¶¶ 34-35, 55. But Dynak has no such rights under that agreement, which is why she filed this lawsuit.

XII. As Plaintiff Has Established That She Was Wrongfully Denied the Right to Use Sick Leave for Birth, and Thus Was Denied Wages Due and Owning, She is Entitled to Attorneys' Fees Under Count II of Her Complaint

Count II of the complaint seeks attorneys' fees pursuant to the Wage Act, 705 ILCS 225/1, based on the District's failure to pay Dynak all wages due and owing.

The appellate court majority rejected Dynak's claim for attorneys' fees under the Wage Act, because the claim is dependent on her prevailing on the merits. *Dynak,* 2019 IL App (2d) 180551, ¶ 58. Because the majority erred regarding the merits of the claim, this Court should rule that Dynak is entitled to an award of attorneys' fees.

The Wage Act provides, in relevant part, that, where an employee brings an "action for wages earned and due and owing according to the terms of the employment ... and demand was made in writing at least 3 days before the action was brought, for a sum not exceeding the amount so found due and owning, then the court *shall allow* to Plaintiff a reasonable attorney fee of not less than $10, in addition to the amount found due and owing for wages...." 705 ILCS 225/1 (emphasis added). Accordingly, Dynak must establish that: (1) she has brought a claim for wages, which are owed to her based on employment as a

public school teacher covered by the Illinois School Code; (2) the District failed to pay those wages; and (3) the demand was made at least three days prior to filing suit for a sum not exceeding the amount owed. The undisputed facts establish each of these elements.

First, it is undisputed that Dynak was denied payment for wages in the amount $7,991.69, which she is entitled to based on her employment as a public school employee covered by the Illinois School Code. (Compl. ¶¶ 1, 4-5; Ans. ¶¶ 1, 4-5; Dynak Aff. ¶ 23; A.31-32; C.19, 20, 59, 60, 122). Accordingly, pursuant to the School Code, Dynak requested to use 28.5 days of *accumulated* paid sick pay at the start of the 2016-17 school year for the birth of her child. (Compl. ¶¶ 6-7; Ans. ¶¶ 6-7; Dynak Aff. ¶¶ 5, 13, 18; A.32; C.20, 60, 129, 131). At the end of the 2015-16 school year, Dynak had 71 days of unused sick days, which she had earned based on work already performed. (Compl. ¶ 6; Ans. ¶ 6; Dynak Aff. ¶ 5; A.32; C.20, 60, 129). That is, she requested to use, pursuant to her statutory rights, accumulated paid sick leave that was earned based on *work already performed*. (Dynak Aff. ¶¶ 5, 18; C.129, 131). Thus, the wages sought were due and owning.

Second, the District denied Dynak's request to use accumulated paid sick leave for the birth of her child, and did not pay her for 28.5 days of her leave at the beginning of the 2016-17 school year. (*See* Compl. ¶¶ 12, 15-16; Ans. ¶¶ 12, 15-16; Exs. 2, 4 to Compl.; Dynak Aff. ¶¶ 12, 17, 23; Ex. 2 to Dynak Aff.; Ex. 2 to Rios Aff.; A.33, 41-42, 47-50; C.21, 29-30, 35-38, 130, 131, 132, 136-37, 163-66).

Third, on October 6, 2016, Dynak's counsel made a demand on the District's counsel, for payment of all lost wages owed to Dynak based on the District's improper denial of her request to use 28.5 sick days at the start of the 2016-17 school year. (Compl. ¶ 32; Ans. ¶ 32; Ex. 8 to Compl.; Thoma Aff. ¶¶ 5, 12-18; Exs. 1, 5 to Thoma Aff; A.36,

60-62; C.24, 48-50, 64, 170, 171-72, 174-76, 185-90).[26] That demand was made more than three days before the filing of this lawsuit on October 13, 2016. (Compl. ¶ 33; Ans. ¶ 33; Ex. 8 to Compl.; Thoma Aff. ¶ 19; Ex. 1 to Thoma Aff.; A.36, 60-62; C.24, 48-50, 64, 172, 174-76).

Accordingly, as there are no issues of material fact with respect to Dynak's claim for attorneys' fees under the Wage Act, this Court should reverse the trial court's denial of Dynak's motion for summary judgment with respect to Count II and hold that the District is liable for Dynak's reasonable attorneys' fees based on its wrongful denial of her request to use sick leave for birth pursuant to Section 24-6.

Conclusion

For the foregoing reasons, the Court should reverse the judgment of the appellate court, and should remand with directions to grant plaintiff's motion for summary judgment with respect to Counts I and II of the complaint, to award her damages in the amount of $7,991.69 as the value of the 28.5 days of sick leave pay that the District denied her, and to award attorneys' fees (in an amount to be determined by the trial court) pursuant to Count II and the Wage Act.

Respectfully submitted,

/s/ Ryan M. Thoma
One of the Attorneys for Plaintiff-Appellant Margaret Dynak

[26] But for the erroneous information provided by the District, the demand letter would have sought payment of $7,991.69, instead of $8,074.91, and not exceeded the amount of wages due and owning. (Thoma Aff. ¶ 18; C.172).

Certification of Compliance

I hereby certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) Statement of Points and Authorities, the Rule 341(c) Certificate of Compliance, the Certificate of Service, and those matters to be appended to the brief under Rule 342(a) is 50 pages.

/s/ Ryan M. Thoma

Certificate of Service

I, Ryan M. Thoma, an attorney, certify that I caused the foregoing Brief on Behalf of Plaintiff-Appellant and accompanying appendix to be filed with the Illinois Supreme Court Clerk's Office, by using the Odyssey eFileIL electronic filing system, on the 12th day of November, 2019.

I further certify that I caused a copy the foregoing Brief and Appendix of Plaintiff-Appellant Margaret Dynak and accompanying appendix to be served on the following persons by email on the 12th day of November, 2019.

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned attorney certifies that the statements set forth in this instrument are true and correct.

/s/ Ryan M. Thoma

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Case No. 125062

IN THE
SUPREME COURT OF ILLINOIS

MARGARET DYNAK, Plaintiff-Appellant, v. BOARD OF EDUCATION OF WOOD DALE SCHOOL DISTRICT 7, Defendant-Appellee.	)))))))))))	Appeal From the Appellate Court, Second District, Case No. 2-18-0551 There on Appeal From the Circuit Court of the 18th Judicial Circuit, DuPage County, Illinois Case No. 2016-MR-001368 Honorable Bonnie Wheaton, Judge Presiding

APPENDIX
OF PLAINTIFF-APPELLANT MARGARET DYNAK

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Sec. 24-6. Sick leave.
(105 ILCS 5/24-6)

Sec. 24-6. Sick leave. The school boards of all school districts, including special charter districts, but not including school districts in municipalities of 500,000 or more, shall grant their full-time teachers, and also shall grant such of their other employees as are eligible to participate in the Illinois Municipal Retirement Fund under the "600-Hour Standard" established, or under such other eligibility participation standard as may from time to time be established, by rules and regulations now or hereafter promulgated by the Board of that Fund under Section 7-198 of the Illinois Pension Code, as now or hereafter amended, sick leave provisions not less in amount than 10 days at full pay in each school year. If any such teacher or employee does not use the full amount of annual leave thus allowed, the unused amount shall be allowed to accumulate to a minimum available leave of 180 days at full pay, including the leave of the current year. Sick leave shall be interpreted to mean personal illness, quarantine at home, serious illness or death in the immediate family or household, or birth, adoption, or placement for adoption. The school board may require a certificate from a physician licensed in Illinois to practice medicine and surgery in all its branches, a chiropractic physician licensed under the Medical Practice Act of 1987, a licensed advanced practice registered nurse, a licensed physician assistant, or, if the treatment is by prayer or spiritual means, a spiritual adviser or practitioner of the teacher's or employee's faith as a basis for pay during leave after an absence of 3 days for personal illness or 30 days for birth or as the school board may deem necessary in other cases. If the school board does require a certificate as a basis for pay during leave of less than 3 days for personal illness, the school board shall pay, from school funds, the expenses incurred by the teachers or other employees in obtaining the certificate. For paid leave for adoption or placement for adoption, the school board may require that the teacher or other employee provide evidence that the formal adoption process is underway, and such leave is limited to 30 days unless a longer leave has been negotiated with the exclusive bargaining representative.

If, by reason of any change in the boundaries of school districts, or by reason of the creation of a new school district, the employment of a teacher is transferred to a new or different board, the accumulated sick leave of such teacher is not thereby lost, but is transferred to such new or different district.

For purposes of this Section, "immediate family" shall include parents, spouse, brothers, sisters, children, grandparents, grandchildren, parents-in-law, brothers-in-law, sisters-in-law, and legal guardians.

(Source: P.A. 99-173, eff. 7-29-15; 100-513, eff. 1-1-18.)

2019 IL App (2d) 180551
No. 2-18-0551
Opinion filed June 12, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

MARGARET DYNAK, Plaintiff-Appellant, v. THE BOARD OF EDUCATION OF WOOD DALE SCHOOL DISTRICT 7, Defendant-Appellee.	)))))))))))	Appeal from the Circuit Court of Du Page County. No. 16-MR-1368 Honorable Bonnie M. Wheaton, Judge, Presiding.

PRESIDING JUSTICE BIRKETT delivered the judgment of the court, with opinion.
Justice McLaren concurred in the judgment and opinion.
Justice Hudson dissented, with opinion.

OPINION

¶ 1 Plaintiff, Margaret Dynak, appeals the judgment of the circuit court of Du Page County granting the motion for summary judgment of defendant, the Board of Education of Wood Dale School District 7, and denying plaintiff's cross-motion for summary judgment. The issue presented here is whether, under section 24-6 of the School Code (105 ILCS 5/24-6 (West 2016)), plaintiff was entitled to use 30 days of her accumulated sick leave following the birth of her child. Specifically, plaintiff gave birth to her child at the end of the 2015-16 school year and defendant granted her 1.5 days of sick leave; plaintiff then requested to use 28.5 days of sick leave to begin the 2016-17 school year, and defendant denied that request. Plaintiff also claimed that defendant owed her attorney fees, pursuant to the Attorneys Fees in Wage Actions Act

(Wage Act) (705 ILCS 225/1 (West 2016)), and the parties agree that this claim is tied to the outcome of plaintiff's claim under the School Code. We affirm.

¶ 2 I. BACKGROUND

¶ 3 We summarize the pertinent facts appearing in the record. Plaintiff has been a full-time teacher with defendant since the beginning of the 2008-09 school year. By the end of the 2015-16 school year, plaintiff had accumulated 71 paid sick days. At the beginning of the 2016-17 school year, plaintiff was awarded an additional 14 paid sick days, giving her a total of 85 paid sick days.

¶ 4 On March 15, 2016, plaintiff submitted a letter to the superintendent, Dr. John Corbett. Plaintiff wrote that she was scheduled to have her child by caesarean-section on June 6, 2016, the last full day of the 2015-16 school year. June 7, 2016 was a half day. Thus, plaintiff stated that she would be using 1.5 paid sick days on June 6 and 7. Plaintiff also stated that she intended to take 12 weeks of leave under the Family and Medical Leave Act of 1993 (FMLA) (see 29 U.S.C. § 2601 *et seq.* (2012)), commencing on August 18, 2016, the beginning of the 2016-17 school year. Plaintiff further stated, however, that she intended to take the first 28.5 days of that leave as paid sick days. Plaintiff expressly tied her use of the sick days to section 24-6 of the School Code, claiming that, under her reading, she could take 30 consecutive paid sick days for the birth of her child.

¶ 5 On April 21, 2016, Corbett replied to plaintiff's letter and approved plaintiff's request to use 1.5 paid sick days at the end of the 2015-16 school year and 12 weeks of FMLA leave at the beginning of the 2016-17 school year. Corbett denied, however, plaintiff's request to use 28.5 sick days at the beginning of the 2016-17 school year. Corbett stated that, because plaintiff's FMLA leave would "begin 10 weeks after the birth of her child, she [would] not be eligible to

use sick days for the leave unless additional circumstances exist[ed] that would normally allow for the use of paid sick leave."

¶ 6 After defendant's denial of plaintiff's request to use paid sick leave, Sylvia Rios, associate general counsel for the Illinois Education Association, formally reiterated plaintiff's request. According to Rios, section 24-6 entitled plaintiff to use up to 30 days of accumulated paid sick leave for the birth of her child, without having to provide medical certification, and this could encompass the 1.5 days at the end of the 2015-16 school year and the 28.5 days at the beginning of the 2016-17 school year.

¶ 7 On May 20, 2016, defendant replied to Rios, again denying the request to use the 28.5 paid sick days. On June 1, 2016, Rios sent to defendant a final demand requesting that, before June 15, 2016, defendant state its final position with regard to plaintiff's request. Defendant did not respond to that letter. On June 6, 2016, as scheduled, plaintiff gave birth to her child.

¶ 8 On August 18, 2016, the 2016-17 school year began, along with plaintiff's approved FMLA leave. On August 22, 2016, Corbett e-mailed to plaintiff his congratulations, along with two documents. One document was a letter confirming that, on November 10, 2016, plaintiff would resume her duties following the completion of her leave. The second document was a summary of plaintiff's salary for the 2016-17 school year, showing that plaintiff would be docked 58 days of pay coinciding with her leave and confirming that she could not use any paid sick days for that period. At all times relevant here, plaintiff had maintained more accumulated paid sick days than the 28.5 days she requested to use at the beginning of the 2016-17 school year.

¶ 9 On October 6, 2016, plaintiff made a written demand upon defendant, seeking payment for the unpaid wages resulting from defendant's denial of plaintiff's request to use the 28.5 paid

sick days. In the demand letter, plaintiff sought $8,074.91 in unpaid wages. However, the information upon which this claim was based was incorrect, because defendant had, in the summary of plaintiff's 2016-17 salary, used an incorrect pay rate. During the litigation, plaintiff corrected the amount to $7,991.46 and defendant did not dispute the correction.

¶ 10 On October 13, 2016, plaintiff filed a three-count complaint against defendant. In count I, plaintiff sought a declaratory judgment that she was allowed to use paid sick leave for the birth of her child, even though the leave would occur after the summer break. In count II, plaintiff sought attorney fees pursuant to the Wage Act. In count III, plaintiff alleged that defendant violated section 14(a) of the Illinois Wage Payment and Collection Act (820 ILCS 115/14(a) (West 2016)) by denying plaintiff's request to use paid sick leave. (Plaintiff represents that, after she filed her complaint, she "became aware of binding precedent" invalidating her claim in count III, and she does not seek review of the trial court's dismissal of that count.)

¶ 11 On April 26, 2018, defendant filed a motion for summary judgment on plaintiff's claims. On April 27, 2018, plaintiff filed a cross-motion for summary judgment. On June 20, 2018, the cross-motions for summary judgment advanced to argument before the trial court. The trial court orally ruled:

> "In order to adopt the interpretation of the statute urged by the plaintiff, the Court would have to find that the conditions set forth in the definition of sick leave create a vested right in the plaintiff and other similarly situated persons regardless of when those conditions occurred.
>
> The accident of giving birth in the summertime, I don't believe creates any kind of a right in the plaintiff to sick leave at a future period in time that is not covered by the Act.

> For instance, if there were a death in the plaintiff's immediate family that took place on June 15th, after the school year ended, she could not reasonably expect to have three days of sick leave for that occurrence, but the sick leave taking place after the school [year] started.
>
> And the same could be said for any of the other occurrences that are set forth in the definition of sick leave.
>
> I believe that the interpretation urged by the defendant is a proper interpretation of the law.
>
> I believe that the condition[s] set forth in the statute have to be read in peri [*sic*] materia, and that the plaintiff is not entitled to the sick leave in addition to the family medical leave."

¶ 12 The trial court granted defendant's motion for summary judgment and denied plaintiff's cross-motion for summary judgment. Plaintiff timely appeals.

¶ 13 II. ANALYSIS

¶ 14 On appeal, plaintiff contends that the trial court erred by granting summary judgment in favor of defendant. Plaintiff argues that section 24-6 of the School Code plainly and unambiguously entitled her to use her accumulated sick leave for the birth of her child even though the leave would occur after the summer break. Plaintiff also makes the related argument that, if she was entitled to use her sick leave, then, under the Wage Act, she is entitled to the attorney fees incurred in enforcing her rights. The interpretation of section 24-6 will determine the outcome of plaintiff's second contention. Therefore, we turn to the parties' arguments regarding section 24-6.

¶ 15 A. Standard of Review

¶ 16 This case arises from the disposition of cross-motions for summary judgment. Summary judgment is proper when the pleadings, depositions, admissions, and affidavits show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2016). Where the parties have filed cross-motions for summary judgment, they have conceded that there are no genuine issues of material fact and have agreed that only questions of law are involved. *Nationwide Financial, LP v. Pobuda*, 2014 IL 116717, ¶ 24. In such a situation, the parties request that the court decide the issues as a matter of law. *Id.* We review *de novo* the trial court's judgment on cross-motions for summary judgment. *Id.*

¶ 17 B. Construction of Section 24-6 of the School Code

¶ 18 The central issue presented in this case is the interpretation of section 24-6 of the School Code regarding the use of accumulated sick leave for the birth of a child. Section 24-6 provides:

> "The school boards of all school districts, including special charter districts, but not including school districts in municipalities of 500,000 or more, shall grant their full-time teachers, and also shall grant such of their other employees as are eligible to participate in the Illinois Municipal Retirement Fund under the '600-Hour Standard' established, or under such other eligibility participation standard as may from time to time be established, by rules and regulations now or hereafter promulgated by the Board of that Fund under Section 7-198 of the Illinois Pension Code, as now or hereafter amended, sick leave provision not less in amount than 10 days at full pay in each school year. If any such teacher or employee does not use the full amount of annual leave thus allowed, the unused amount shall be allowed to accumulate to a minimum available leave of 180 days at full pay, including the leave of the current year. Sick leave shall be interpreted to

mean personal illness, quarantine at home, serious illness or death in the immediate family or household, or birth, adoption, or placement for adoption. The school board may require a certificate from a physician licensed in Illinois to practice medicine and surgery in all its branches, a chiropractic physician licensed under the Medical Practice Act of 1987, a licensed advanced practice nurse, a licensed physician assistant, or, if the treatment is by prayer or spiritual means, a spiritual adviser or practitioner of the teacher's or employee's faith as a basis for pay during leave after an absence of 3 days for personal illness or 30 days for birth or as the school board may deem necessary in other cases. If the school board does require a certificate as a basis for pay during leave of less than 3 days for personal illness, the school board shall pay, from school funds, the expenses incurred by the teachers or other employees in obtaining the certificate. For paid leave for adoption or placement for adoption, the school board may require that the teacher or other employee provide evidence that the formal adoption process is underway, and such leave is limited to 30 days unless a longer leave has been negotiated with the exclusive bargaining representative.

If, by reason of any change in the boundaries of school districts or by reason of the creation of a new school district, the employment of a teacher is transferred to a new or different board, the accumulated sick leave of such teacher is not thereby lost, but is transferred to such new or different district.

For purposes of this Section, 'immediate family' shall include parents, spouse, brothers, sisters, children, grandparents, grandchildren, parents-in-law, brothers-in-law, sisters-in-law, and legal guardians." 105 ILCS 5/24-6 (West 2016).

¶ 19 When interpreting a statute, we must ascertain and give effect to the legislature's intent. *Rosenbach v. Six Flags Entertainment Corp.*, 2019 IL 123186, ¶ 24. The best indication of that intent is the language employed in the statute, given its plain and ordinary meaning. *Id.* When the statute's language is unambiguous, we may not depart from that language by reading into it exceptions, limitations, or conditions unexpressed by the legislature; likewise, we may not add provisions under the guise of interpretation. *Id.* Moreover, when the statute is unambiguous, we apply the statute without resort to other aids of statutory construction. *Palm v. Holocker*, 2018 IL 123152, ¶ 21. If, however, the meaning of the statute is unclear, we may consider the purpose behind the law and the evils the law was intended to remedy. *Id.* We have an obligation to construe statutes in a manner that avoids absurd, unreasonable, or unjust results that the legislature could not have intended. *Id.* With these principles in mind, we turn to the language of section 24-6.

¶ 20 As a starting point, section 24-6 ties sick leave very specifically to the school year, awarding a teacher "not less in amount than 10 days at full pay in each school year." 105 ILCS 5/24-6 (West 2016). This suggests that sick leave pertains only to the school year, not to other portions of the year outside of the school year, such as summer break.[1] Next, we note that

[1] Other related leave provisions are also tied to the school year or periods occurring within the school year. *E.g.*, *id.* § 24-6.1 (provides sabbatical leave for teachers "for a period of at least 4 school months but not in excess of one school term"); *id.* § 24-6.3 (where a teacher is an elected trustee of the Teachers' Retirement System of the State of Illinois (System), the school board shall give that teacher at least 20 days of paid leave of absence per year for the teacher to engage in system-related business and the System shall reimburse the school district for the

section 24-6 defines sick leave as for "personal illness, quarantine at home, serious illness or death in the immediate family or household, or birth, adoption, or placement for adoption." *Id.* We note that this definition includes two broad categories of circumstances: (1) "personal illness, quarantine at home, serious illness or death in the immediate family or household"; "or" (2) "birth, adoption, or placement for adoption." *Id.* In other words, "[s]ick leave shall be interpreted to mean" category (1) *or* category (2). The disjunctive "or" is important, because it suggests that the characteristics of the categories differ. If this were not so, then one category would essentially repeat the circumstances of the other category, an interpretation forbidden under the rules of statutory interpretation. See *In re Appointment of Special Prosecutor,* 2019 IL 122949, ¶ 23 (each word, clause, and sentence of a statute must be given meaning and should not be rendered superfluous). Thus, giving effect to the characteristics of each category means that each category differs from the other.

¶ 21 In category (1), the overarching characteristic seems to be illness, either personal or in the employee's family, which suggests an element of incapacity. Thus, in category (2), for birth-related sick leave, the overarching characteristic cannot be illness-related, meaning that incapacity is not a central feature. There can be some overlap; for example, if the employee gives birth, there can be some element of incapacity. However, if the employee is the partner of

actual cost of hiring a substitute teacher during the leaves of absence; likewise, if a school board employee is an elected trustee of the Illinois Municipal Retirement Fund (Fund), the board shall provide at least 20 days of paid leave of absence per year for the employee to engage in Fund-related business and the Fund may reimburse the school district for the actual cost of hiring a substitute employee).

the individual giving birth, or if the circumstances involve adoption or placement for adoption, the central feature is an addition to the employee's family, rather than any incapacity. Thus, category (2) is distinct from category (1) (and thus not superfluous) in that the focus is on the adjustment to the change in the family, not on any incapacity aspect of birth.

¶ 22 This distinction between category (1) and category (2) is reinforced by looking at the benefits associated with each. In general, an employee may claim up to "3 days for personal illness or 30 days for birth" before the school board may require a certificate to justify the absence. 105 ILCS 5/24-6 (West 2016). Personal illnesses are often of relatively brief duration; thus, in general, the legislature permitted the board to require certification of personal illnesses only when they exceed the three-day threshold. By contrast, the adjustment to a new baby is a lengthier process; the 30-day threshold "for birth" seems to account for this. Based on its plain and unambiguous language, section 24-6 bestows 30 days of sick leave for birth before a certificate may be required.

¶ 23 We note that the inclusion of category (2) (birth-related) appears to be the legislature's response to *Winks v. Board of Education*, 78 Ill. 2d 128 (1979). *Winks* interpreted section 24-6 as it existed at that time to answer the question of whether maternity leave was included within the statute's concept of sick leave. *Id.* at 131-32. The court held that it was not, based on the plain language of the statute. *Id.* at 140. Thus, the "for birth" category, added in amendments after *Winks*, must be given effect as a different category than the illness category, whose language is substantially the same as that interpreted by *Winks*.

¶ 24 The next question is whether "day" in section 24-6 refers to a calendar day or a work day. The provision discusses sick leave, which means an excused day off of work, with pay. It would be absurd to give an employee leave on a day that the employee is not required to be present at

work. Therefore, "day" must mean "work day" and not "calendar day." We note that there is no question that *Winks* interpreted "day" to mean "work day." *Id.* at 142 (nothing in the record "show[ed] that any of [the plaintiff's] time absent from teaching duties was attributable to" her pregnancy; the plaintiff "has not established that she has lost any working days due to her 'personal illness' [(complications of her pregnancy, primarily involving varicose veins)] and therefore [she] may not recover sick leave benefits under section 24-6"). Finally, some examples serve to bolster our conclusion.

¶ 25 First, if an employee who works Monday through Friday were to experience a personal illness beginning on a Saturday and concluding on a Sunday, the employee would not have to invoke any sick leave at all, because he or she would not be required to be at work. Thus, for sick leave to provide any meaningful benefit to the employee, "day" must mean "work day," not "calendar day." If that employee were to experience a three-day illness commencing on a Monday, then the employee would be entitled to take three days of sick leave. If, by contrast, the three-day illness were to commence on a Thursday, the employee would incur only two days of sick leave. Requiring an employee to take sick leave for days the employee is not obligated to be at work would be an absurd result. Thus, for purposes of section 24-6, "day" must refer to "work day" and not "calendar day."

¶ 26 It could be argued that, owing to the distinctions between the two categories, the term "days" in the phrases "3 days for personal illness" and "30 days for birth" need not be interpreted in the same manner. This argument fails by overlooking the tenet of statutory construction that presumes that a word or phrase that is repeated in a statute will have the same meaning throughout. *Iwan Ries & Co. v. City of Chicago*, 2018 IL App (1st) 170875, ¶ 23. Moreover, given the fact that section 24-6 discusses sick leave, it would be incongruous to interpret "3 days

for personal illness" as meaning 3 work days while interpreting "30 days for birth" as meaning 30 calendar days, some of which, necessarily, would be days when the employee is not obligated to be at work. Thus, despite the divergent characteristics of the two categories, "days" must have the same meaning when applied to either category, or absurdity would result. Additionally, nothing in the plain language of section 24-6 suggests that "days" should be interpreted differently for illness-related sick leave versus birth-related sick leave. Therefore, we must conclude that, in order to avoid an absurd construction, "days" must mean work days, not calendar days.

¶ 27 As a final point, we note that the legislature amended section 24-6 to add the "for birth" category to sick leave benefits. In other words, a teacher is eligible to use accrued sick leave both for illness and for birth. However, section 24-6 remained unchanged in one important respect: sick leave still applied only to working days, not nonworking days. Sick leave under the amended section 24-6 may be accrued only during the school year (*i.e.*, during working days) and is available for use only during work days.

¶ 28 The balance of section 24-6 deals with the certification of sick leave and who is required to pay for the certification and under what circumstances. Of note to the issue presented, if a school board requires certification for less than 3 days of illness-related sick leave, the board must pay for it. See 105 ILCS 5/24-6 (West 2016). However, the board may not require certification for any birth-related sick leave of less than 30 days. See *id.* In addition, section 24-6 awards a minimum of 10 days of paid sick leave each year, and an employee is allowed to accumulate a minimum of 180 days of paid sick leave overall. *Id.* Section 24-6 also appears to contemplate that a local union can negotiate more generous terms than the minimums the statute

sets forth (*e.g.*, more sick days per school year, greater accumulation, or longer periods before certification may be required).

¶ 29 As we construe the relevant language of section 24-6, an employee is entitled to 30 work days for a birth-related sick leave. The final question is what that means under the facts of this case. Plaintiff argues that, because her birth-related sick leave began with 1.5 days at the end of the 2015-16 school year, she was entitled to continue that leave with 28.5 days after the intervening summer break. Pointing out that the statute contains no temporal constraints on how to apportion sick leave, plaintiff contends that she was entitled to 30 consecutive work days beginning when she gave birth. While plaintiff's argument has some logical force, we believe that it would lead to an absurd result. Again, some examples will help to flesh out the problems inherent in plaintiff's construction.

¶ 30 Suppose that an employee becomes ill on the final two days of a school year, is then ill for seven calendar days, makes a complete recovery, and obtains a medical certificate. Following the illness, the employee experiences no other health disturbances and is fit and able to return to work on the first day of the following school year. As we have seen above, the employee would be entitled to illness-related sick leave for the final two days of the previous school year. Under plaintiff's construction, because the illness lasted longer than the 3-day threshold and was certified, that employee could also claim one more day of sick leave on the first day of the new school year. However, such a claim would divorce sick leave from the event requiring the leave. Thus, plaintiff's construction of section 24-6 in this scenario would lead to an absurd result.

¶ 31 Suppose that the employee experienced the same seven-day illness but it instead began five (calendar) days before the start of the new school year. Under this scenario, the illness

would consume the first two days of the new school year, and the employee would be entitled to only those days of sick leave. The employee would not be able to take the other five days of sick leave even if the employee obtained a certificate, because that would be an absurd result, again divorcing sick leave from the triggering event.

¶ 32 Plaintiff argues that, as we noted above, illness-related sick leave is fundamentally different from birth-related sick leave, because illness-related leave involves some element of physical incapacity and, although birth-related sick leave can have an ancillary component of physical incapacity, it is primarily concerned with the adjustment to the change in the family. However, both illness-related sick leave and birth-related sick leave are defined and dealt with in the same statute, and thus they are inextricably connected (and, as a result, must be implemented similarly). With that said, we agree that birth-related sick leave focuses not on physical incapacity but on family adjustment and bonding. If this were not so, then birth-related sick leave would not be available to fathers (and it would be subsumed into illness-related sick leave). However, each type of sick leave has a triggering event. For illness-related sick leave, that triggering event is an illness or similar event, either to the employee or to a close family member. For birth-related sick leave, that triggering event is a birth (or adoption or placement for adoption). In its wisdom, the legislature decreed that an employee is entitled to a 30-work-day leave for the event of a birth and, as with illness-related leave, divorcing the leave from the triggering event would render the provision absurd.

¶ 33 We also note that the tenet of statutory construction that requires ascribing the same meaning to the same words used throughout a statute also compels this result. *Iwan Ries*, 2018 IL App (1st) 170875, ¶ 23. As the subject of section 24-6 is sick leave, due to a triggering event of either illness or birth, the leave granted should be interpreted in the same manner in each case.

Thus, if it would be an absurd result for an illness-related sick leave to be divorced from the triggering event of an illness, it would likewise be an absurd result for birth-related sick leave to be divorced from the triggering event of a birth. That is to say, breaking up a sick leave over a nonwork period would lead to an absurd result if the nonwork period is lengthy in relation to the leave contemplated. Thus, as using an illness-related sick leave after a week-long break (during which the illness has resolved) would be unreasonable, using a birth-related sick leave after the 10 weeks of summer break would be unreasonable, as we have explained above.

¶ 34 A perhaps more fruitful lens through which to consider section 24-6 is to consider it in light of a collective bargaining agreement (CBA). Plaintiff adverts to the CBA here by noting that the union had bargained to obtain 14 days of sick leave for each school year. That suggests that the CBA contains an explicit provision dealing with sick leave. Unfortunately, plaintiff did not place that agreement into the record before the trial court. As a result, any argument arising from the CBA is not properly before us and must be considered forfeited.

¶ 35 We also note that the argument could be made that, beyond the time off of work when using sick leave, the more important consideration is receiving full pay for that time. This appears to be the actual focus of this case. Defendant did not have a problem granting plaintiff time off at the beginning of the 2016-17 school year but balked at her request to receive pay for the first 28.5 days by using her accumulated sick leave. Plaintiff argues that defendant deemed the FMLA leave to be "for birth" and thus tacitly recognized that birth-related sick leave should apply. This might be a stronger argument if plaintiff had tied it to her bargained-for benefits under the CBA. However, plaintiff has couched her arguments around the idea of days away from work rather than payment for those days. Thus the issue is not squarely before us, and we decline to address it further.

¶ 36 Plaintiff's argument that she should be allowed to use her accumulated sick leave essentially as she sees fit, where she would use it on the 30 consecutive work days following the birth of her child, is not unreasonable. However, as plaintiff notes, section 24-6 does not contain any time limits on the use of leave beyond defining the period within which an employee may not be required to provide certification for the event triggering the leave. Plaintiff does not suggest how to incorporate any time limits that would avoid the absurd result that would result from her position that any sick leave should include the 3 or 30 consecutive work days, regardless of any holiday or break occurring between the first and last days of the leave. To draw those lines would be adding terms into the statute that the legislature did not include. See *Rosenbach*, 2019 IL 123186, ¶ 24. Instead, we are limited to interpreting the statute as written, so as to avoid an absurd result. *Palm*, 2018 IL 123152, ¶ 21. Because birth-related sick leave should be construed in the same manner as illness-related sick leave, interrupting that leave with a lengthy break in relation to the contemplated leave period would cause an absurd result. Thus, under the facts presented here, where plaintiff's birth-related sick leave was properly triggered on the penultimate day of the 2015-16 school year but then interrupted by the summer break, adopting plaintiff's construction would lead to an absurd result, allowing the leave to reinitiate approximately 10 weeks after the triggering event.

¶ 37 Defendant appears to advocate[2] that the 30 days for a birth-related sick leave should comprise the birth date and the immediately following days. This is problematic for a number of

[2] We note that part of defendant's appellate strategy is not to offer a competing construction of section 24-6. Indeed, defendant does not attempt to ascertain the legislature's intent in enacting the statute. Instead, defendant challenges plaintiff's arguments and relies on

reasons. First, a day of sick leave must be a work day, so defendant's position would have to be revised to mean the immediately following work days, which is actually what plaintiff advocates. Second, birth-related sick leave includes adoption and placement for adoption, processes that do not necessarily begin clearly on a specific date. Obviously an adoption will occur on a specific date, but the adopting employee might need to be present for a period of time before receiving custody of the child (and similarly for placement for adoption). Adoption-related sick leave would necessarily have to incorporate this period, but, under defendant's position, the leave could begin only on the date that the employee received custody.[3] Finally, and most importantly, section 24-6 contains no time limits on how sick leave must be taken. Defendant's construction would require us to write in those limits, and this we may not do. See *id.* Under our construction, however, the watchword is reasonableness. Suppose that there is a one-week break in the middle of a birth-related sick leave, then it might be reasonable that the employee would get the remainder of the 30 work days following the conclusion of that break, because the break is much shorter than the contemplated leave period (but, depending on the facts, it could still lead to an absurd result). Moreover, sick leave means that the employee is absent from work for

the fact that, below and here, plaintiff has the burden of persuasion. This, of course, is a viable strategy, but it does not much assist our consideration of section 24-6.

[3] We note that the birthing process can likewise occur over more than one day and that complications can require the mother to take leave before giving birth. Such complications, however, would fall under illness-related sick leave (based on physical incapacity), and the beginning of labor would also seem to be the actual triggering event for a birth-related sick leave.

some reason covered by the statute or a CBA. It is axiomatic that, if the employee is not required to be at work, then the employee cannot *leave* work. Here, plaintiff was not required to be at work for approximately 10 weeks after her leave was triggered, due to the summer break.

¶ 38 Accordingly, we hold first that a leave period comprises only work days. If the leave period is interrupted by some sort of holiday or break period, then, depending on the length of the break versus that of the leave, allowing the employee to claim the remainder of the leave period immediately following the break could yield an absurd result. Here, plaintiff sought to use the remaining 28.5 work days of her birth-related sick leave following the approximately 50-work-day summer break. The break was too long for this construction to avoid absurdity. Thus, we agree with the trial court's judgment.

¶ 39 C. Plaintiff's Specific Contentions

¶ 40 We now address plaintiff's specific contentions. As an initial matter, because we agree with plaintiff that the term "days" in section 24-6 necessarily refers to work days, we do not need to address her contentions on this point. We note that defendant does not directly challenge the interpretation of "days" in section 24-6. Defendant's interpretation instead seems fluid, accepting that sick-leave days are in fact work days but implying that the 30 days for a birth-related sick leave are actually calendar days and yet inconsistently arguing that the 30-day period coincides with common medical knowledge that it takes about six (calendar) weeks for the mother's body to return to normal. We need not respond to defendant's position either, but we do note that, in justifying the 30 days for birth-related sick leave as coincident to the six (calendar) week period of medical recovery from birth, defendant concedes that the proper interpretation is, in fact, work days, because 30 work days correspond to six calendar weeks.

¶ 41 Plaintiff notes that section 24-6 specifies a sick-leave period of "30 days for birth" (105 ILCS 5/24-6 (West 2016)), but that it does not provide when the 30-day period must commence. To do so, the legislature would have had to decree that it be completed within 30 days of birth, or 30 days after the birth. Plaintiff contrasts section 24-6's "30 days for birth" provision with section 10(b) of the Child Bereavement Leave Act, which provides that an employee must complete the bereavement leave "within 60 days after the date on which the employee receives notice of the death of the child." 820 ILCS 154/10(b) (West 2016). The direct comparison is inapt because, unlike the "30 days for birth" provision in section 24-6, section 10(b) defines not the benefit but the time period for its use. However, section 10(b) does provide an illustration of the legislature's competency in expressing time limits, and we agree with plaintiff that section 24-6 does not define an express time limit for the use of the "30 days for birth" period. With that said, as explained above, plaintiff's construction, while not as unlimited as defendant wishes us to believe, nevertheless would result in an absurdity under the facts of this case and thus cannot stand.

¶ 42 Plaintiff next argues that the fact that the 30-day period may be used only "for birth" (and adoption and placement for adoption) provides the necessary time limit. According to plaintiff, the "for birth" language requires a connection between the use of accumulated paid sick leave and the birth of a child. Plaintiff's contention, however, proves too much. Because the requirements for illness-related leave and birth-related leave must be interpreted similarly (see *Iwan Ries*, 2018 IL App (1st) 170875, ¶ 23), plaintiff's construction would also have to apply to illness-related leave, and this would cause an absurd result, as explained above. There is a difference between a weekend-long interruption of an illness-related sick leave and a much longer interruption such as the summer break at issue here (although the specific circumstances

could affect the outcome). Thus, here, the intervening summer break means that the commencement of the 2016-17 school year was simply too attenuated from the birth of plaintiff's child for plaintiff's construction to avoid absurdity. Because we must avoid a construction that results in an absurd outcome (*Palm*, 2018 IL 123152, ¶ 21), plaintiff's argument fails.

¶ 43 Plaintiff suggests that an intervening two-week winter break or a one-week spring break would pass muster. Neither scenario, however, is before us. We could also see a situation in which an employee gives birth one or two calendar weeks before the beginning of a school year and seeks to use the full 30-work-day birth-related sick leave. In any such case, the decision to grant leave would likely turn on the length of the contemplated leave period compared to the length of the break, but as none of those circumstances are before us, we decline to comment further.

¶ 44 Plaintiff also argues that defendant's acceptance of her request to use FMLA leave (29 U.S.C. § 2601 *et seq.* (2012)) validates that her request to use the 28.5 days of her birth-related sick leave was, in fact, "for birth." Plaintiff notes that defendant approved plaintiff's "request for a 12[-]week leave [pursuant] to the Family Medical Leave Act, *** [to] begin 10 weeks after the birth of [plaintiff's] child." Plaintiff states that, while defendant accepted that the FMLA leave was "for birth," it also denied plaintiff's request "to use sick days for the leave" unless medical certification was provided. Plaintiff argues that defendant's allowance of FMLA leave "for birth" and its denial of birth-related sick leave for a portion of the very same period are contradictory and "indefensible." We disagree.

¶ 45 The FMLA expressly provides that an employee's entitlement to use FMLA leave for the birth of a child expires 12 months after the child's birth. *Id.* § 2612(a)(2). Thus, unlike section

24-6, the FMLA expressly provides a time period in which to use the leave; by contrast, the sole triggering event in section 24-6 is the child's birth and no provision is made for when birth-related sick leave must be used. Thus, because the purpose behind the FMLA, and the execution of that purpose, differs from the purpose of section 24-6, defendant's acceptance of plaintiff's FMLA leave "for birth" neither contradicts its denial of plaintiff's request to use birth-related sick leave nor is it indefensible.

¶ 46 Next, plaintiff assails the trial court's judgment for accepting defendant's argument that the 30-day birth-related sick leave aligns with the common medical understanding that the mother's body typically needs approximately six weeks to recover from birth. We agree with plaintiff that defendant's argument finds no support in the language of section 24-6 and cannot be relied upon to properly construe section 24-6. See *Rosenbach*, 2019 IL 123186, ¶ 24 (a court may not incorporate into a statute terms not included by the legislature). However, this does not mean that we reject the trial court's judgment, as we review only the trial court's judgment and not its reasoning. See *Republic Bancorp Co. v. Beard*, 2018 IL App (2d) 170350, ¶ 26. As we above determined that the trial court's judgment was correct, we reject plaintiff's contention that we must disturb that judgment based on the court's acceptance of defendant's argument that was unsupported by the statute.

¶ 47 Plaintiff next assails the trial court's judgment because the trial court interpreted illness-related leave and birth-related leave similarly. Specifically, plaintiff finds fault with the trial court's statement in explanation of its judgment:

> "For instance, if there were a death in the plaintiff's immediate family that took place on June 15th, after the school year ended, she could not reasonably expect to have

> three days of sick leave for that occurrence, but the sick leave taking place after the school [year] started.
>
> And the same could be said for any of the other occurrences that are set forth in the definition of sick leave."

Plaintiff argues that, by interpreting "leave" similarly in the two broad categories, the trial court effectively subsumed birth-related leave into illness-related leave and placed the same time limit on the use of such leave. We disagree.

¶ 48 Plaintiff's argument overlooks that a repeated term must be construed similarly throughout the statute. See *Iwan Ries*, 2018 IL App (1st) 170875, ¶ 23. The trial court correctly applied this principle. In addition, as we discussed above, the approximately 10-week, or 50-work-day, interruption of the leave means that plaintiff's construction leads to an absurd result. See *Palm*, 2018 IL 123152, ¶ 21. For these reasons, we reject plaintiff's contention.

¶ 49 Plaintiff next argues that the trial court incorrectly interpreted the legislative history of section 24-6. This is another attack on the trial court's reasoning. As we review only the trial court's judgment here (see *Republic Bancorp*, 2018 IL App (2d) 170350, ¶ 26), and as we have determined that judgment to be correct, we reject plaintiff's argument. We also note that we do not need to resort to aids of construction, like legislative history, because we find the language in section 24-6 to be unambiguous. *Palm*, 2018 IL 123152, ¶ 21 (where statutory language is unambiguous, it will be given effect without resort to other aids of construction). Plaintiff's contention does not change our construction or conclusion regarding section 24-6.

¶ 50 Plaintiff next contends that the fact that section 24-6 permits an employee to take up to 30 days of birth-related sick leave without providing certification means that the sick leave need be taken only "for birth" and during consecutive work days. Plaintiff argues that the fact that a

male may also take birth-related sick leave means that the purpose of birth-related sick leave is not the recovery from physical incapacity but is independent from physical incapacity. We agree with plaintiff's construction insofar as we believe that illness-related leave does focus on physical incapacity whereas the birth-related category focuses on family adjustment. As discussed above, however, that is not the end of the story, and our construction must be reasonable and avoid an absurd result not intended by the legislature. Plaintiff's contention fails to address the further steps necessary to properly construe section 24-6.

¶ 51 Last, plaintiff objects to defendant's argument, below and here, that plaintiff's construction untethers birth-related sick leave from its triggering event. Plaintiff notes that defendant goes so far as to suggest that adopting plaintiff's construction would mean that a parent could take the 30-day birth-related sick leave even years after a birth, simply by claiming that it is for the birth and has not yet been taken. Obviously, defendant's parade of horribles is hyperbolic and runs afoul of absurdity, which, apparently, is the point. At root, plaintiff argues that, so long as the work days are consecutive, then the leave period should be permitted regardless of any interruptions by breaks, holidays, or other nonwork days. We rejected that construction above and, for the same reasons, we again reject it.

¶ 52 D. The Dissent

¶ 53 The dissent essentially adopts plaintiff's arguments about how birth-related sick leave should be calculated. We have addressed those arguments and need not repeat ourselves in response. There are, however, several points that flow from the dissent's contentions.

¶ 54 First, in the posture of the case, the parties have couched their arguments in terms of time. The dissent also adopts this posture, contending that plaintiff "may use almost none of the sick days that she has accumulated." *Infra* ¶ 63. This obscures the fact that plaintiff was granted

all of the time that she requested; she just did not receive pay for the time off. Plaintiff will receive the funds she was denied, just at a later date, when she retires or separates from her employment.

¶ 55 As this case was more concerned with money than time, the second point that neither plaintiff nor the dissent has acknowledged is the cost that the school district and the local taxpayers would incur under plaintiff's construction. A school district (and hence the local taxpayers) would effectively have to pay twice: for the teacher on birth-related sick leave and for the substitute teacher covering for the absence. Beyond the double payment, the school district would also incur costs in planning and arranging for the protracted absence, both in time and resources. As we recognized above, an economic argument might have been more persuasive in that plaintiff is being deprived of the statutory (and presumably contractual) benefit of the bargain she accepted in becoming a teacher. The flip side, however, is the cost to the school district and its taxpayers. Obviously, we did not base our judgment on this point, but it is important to note its existence.

¶ 56 We also note that adopting plaintiff's and the dissent's construction would tend to confer upon teachers and teachers alone a sort of *sub rosa* paid parental leave based on the fortuity of the timing of birth. (Again, we emphasize that plaintiff received the time requested, just not the present use of the funds.) There is no textual support for such an intention. If the legislature had intended to confer paid parental leave, it would not have hijacked a sick-leave provision to do so.

¶ 57 E. Plaintiff's Wage Act Claim

¶ 58 The parties agree that the success of plaintiff's claim for attorney fees under the Wage Act is tied to the success of plaintiff's construction of section 24-6. Plaintiff argues that, if she prevails, she is entitled to attorney fees, and defendant argues that, because plaintiff did not

prevail below and should not prevail here, she is not entitled to fees. As we have held that the trial court properly ruled against plaintiff on the section 24-6 issue, plaintiff is not entitled to attorney fees.

¶ 59 III. CONCLUSION

¶ 60 For the foregoing reasons, we affirm the judgment of the circuit court of Du Page County.

¶ 61 Affirmed.

¶ 62 JUSTICE HUDSON, dissenting:

¶ 63 The majority recognizes the well-established principle that we may not read into a statute any exception, limitation, or condition unexpressed by the legislature. *Supra* ¶ 19. Nevertheless, in my view, the majority goes on to do exactly that. Although section 24-6 states merely that a teacher may use 30 of his or her accumulated sick days "for birth" (105 ILCS 5/24-6 (West 2016)), the majority holds that, in fact, he or she may do so except when the summer break interrupts those days. The consequence for plaintiff is that she may use almost none of the sick days that she has accumulated over the years as a full-time teacher with defendant. In my view, the majority is not construing the statute but rewriting it, and in doing so it is reaching, rather than avoiding, an absurd result. Accordingly, I respectfully dissent.

¶ 64 To me, this issue is relatively straightforward. As noted, section 24-6 states that a teacher may use 30 of his or her accumulated sick days "for birth." A sick day, as the majority observes, can be used only on a workday. *Supra* ¶ 24. Here, plaintiff gave birth, and she proposed to use 30 of her accumulated sick days on her next 30 workdays. The only issue is that, because plaintiff happened to give birth at nearly the end of a school year, her next 30 workdays were interrupted by the summer break. But the statute provides no exception for that circumstance. Thus,

defendant should have granted her request.

¶ 65 The majority, however, creates that exception, and it does so purportedly to avoid an absurd result. It would be absurd, the majority reasons, to permit a teacher to take a part of a "birth-related sick leave" before the summer break and to take the remainder after. *Supra* ¶ 29. But its argument to this effect is that, because it would be absurd to permit this for an "illness-related sick leave," and because the two "categories" of "leave" must operate similarly, it must also be absurd to permit this for a "birth-related sick leave." *Supra* ¶ 33. I cannot subscribe to this analysis.

¶ 66 First, the statute does not provide that a teacher may take a "birth-related sick leave" or an "illness-related sick leave." It simply states that a teacher may use his or her accumulated "sick leave" days for "birth" or for "illness." 105 ILCS 5/24-6 (West 2016). The distinction is subtle but important. Only by construing the statute to create two "categories" of "leave" can the majority declare the obligation to construe the term "leave" consistently in both contexts. *Supra* ¶ 47. But again, the statute does no such thing. It simply states that a teacher may use his or her accumulated "sick leave" days for either of two very different events: "birth" or "illness." There is nothing in the statute that requires the same construction in those different contexts.

¶ 67 And indeed, because those contexts are so different, the absurdity of the result in one does nothing to establish the absurdity of the result in the other. The majority observes that, if a teacher were to contract a seven-day illness on the next-to-last workday of a school year, it would be absurd to allow the teacher to use a sick day on the first workday of the next school year. *Supra* ¶ 30. Yet the statute itself would not permit this: it allows the use of sick days for "illness," and this hypothetical teacher had no illness on that first workday. So, of course, the teacher could not use a sick day on that workday.

¶ 68 However, as the majority acknowledges, the purpose of allowing the use of sick days "for birth" is not merely to allow the teacher to recover from the physical effects of the birth; it is to allow for family adjustment and bonding. *Supra* ¶ 21. Presumably, by the start of the next school year, plaintiff had recovered from the physical effects of the birth. But this did not make her equivalent to the majority's hypothetical teacher who had recovered from an illness. There would have been nothing absurd about allowing plaintiff to use her sick days at the start of the next school year, as the adjustment period still would have been underway. Those days still would have been, per section 24-6, "for birth."

¶ 69 In any event, the fact remains: the statute itself contains no exception for intervening summer breaks. The creation of that exception is the legislature's province, not our own.[4] I would add that the same holds true for the majority's creation of a sliding scale for the use of sick days before and after intervening breaks. *Supra* ¶ 38 ("If the leave period is interrupted by some sort of holiday or break period, then, depending on the length of the break versus that of the leave, allowing the employee to claim the remainder of the leave period immediately

[4] Whether the exception should be justified by "the cost to the school district and its taxpayers" (*supra* ¶ 55) is particularly a legislative concern. See *Wilkins v. Gaddy*, 734 F.3d 344, 351 (4th Cir. 2013) ("Protection of the public fisc is a core responsibility of the legislative branch."). In my view, however, the majority unfairly suggests that plaintiff's "construction" of the statute—which I note again is simply a reading of it—would require the district and its taxpayers to pay both for a teacher's use of sick days and for "the substitute teacher covering for the absence." *Supra* ¶ 55. This "double payment" (*id.*) is required *whenever* a teacher uses sick days under the statute; it is not a product of plaintiff's particular "construction."

following the break could yield an absurd result."). This inexact standard risks arbitrary application and has no roots in the text of the statute.

¶ 70 Ultimately, according to the majority, a teacher who happens to give birth in the middle of a school year may use 30 accumulated sick days; a teacher who happens to give birth during the last month of a school year may use fewer; and plaintiff, who happened to give birth on very nearly the last day of a school year, may use almost none. All despite the fact that these teachers are otherwise identically situated. This, in my view, would constitute an absurd result.

¶ 71 For these reasons, I respectfully dissent.

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September 25, 2019

In re: Margaret Dynak, Appellant, v. The Board of Education of Wood Dale School District 7, Appellee. Appeal, Appellate Court, Second District.
125062

The Supreme Court today ALLOWED the Petition for Leave to Appeal in the above entitled cause.

We call your attention to Supreme Court Rule 315(h) concerning certain notices which must be filed.

Neville, J., took no part.

Very truly yours,

Carolyn Taft Grosboll

Clerk of the Supreme Court

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS
CHANCERY DIVISION

MARGARET DYNAK, Plaintiff, v. BOARD OF EDUCATION OF WOOD DALE SCHOOL, DISTRICT 7 Defendant.	)	Case No. **2016MR001368**

COMPLAINT

Plaintiff Margaret Dynak ("Dynak"), by and through her undersigned attorney, hereby complains of Defendant Board of Education of Wood Dale School District 7, DuPage County, Illinois ("District"), as follows:

COUNT I

ILLINOIS SCHOOL CODE
DECLARATORY JUDGMENT & WAGE ACTION

1. Dynak is a resident of the State of Illinois and is a certified teacher in the State of Illinois.

2. The District, located in DuPage County, is authorized by Article 10 of the Illinois School Code, 105 ILCS 5/10 *et seq*., to manage the affairs of Wood Dale School District 7.

3. The Wood Dale Education Association, IEA-NEA ("Association") is the exclusive bargaining representative for the certified teachers and para-professionals of Wood Dale School District 7, having been certified by the Illinois Educational Labor Relations Board to represent those employees.

4. Dynak has been a full-time employee with the District since the beginning of the 2008-09 school year.

5. At all times pertinent hereto, Section 24-6 of the Illinois School Code, 105 ILCS 5/24-6, provided as follows:

> The school boards of all school districts, including special charter districts, but not including school districts in municipalities of 500,000 or more, shall grant their full-time teachers... sick leave provisions not less in amount than l0 days at full pay in each school year. If any such teacher or employee does not use the full amount of annual leave thus allowed, the unused amount shall be allowed to accumulate to a minimum available leave of 180 days at full pay, including the leave of the current year. Sick leave shall be interpreted to mean personal illness, quarantine at home, serious illness or death in the immediate family or household, or birth, adoption, or placement for adoption. The school board may require a certificate from a physician licensed in Illinois... as a basis for pay during leave after an absence of 3 days for personal illness or 30 days for birth or as the school board may deem necessary in other cases.

6. At the end of the 2015-16 school year, Dynak had accumulated approximately 71 unused paid sick days.

7. At the start of the 2016-17 school year, Dynak was awarded an additional 14 paid sick days, for a total of 85 unused paid sick days.

8. In the spring of 2016, Dynak wrote to the District Superintendent, Dr. John Corbett ("Corbett"). In her letter to Corbett, Dynak informed the District of her scheduled c-section to deliver her second child on June 6, 2016. Accordingly, Dynak informed the District that she would be using 1.5 paid sick days on June 6 and 7, 2016. A copy of this letter has been submitted herewith as Exhibit 1.

9. June 7, 2016 was the last day of the 2015-16 school year and was scheduled as a half day.

10. Dynak's letter to the Superintendent further informed the District of her intent to take

12 weeks of leave under the Family Medical Leave Act ("FMLA") for the birth of her child and bonding time with her newborn, to commence at the start of the 2016-17 school year on August 18, 2016.

11. Dynak's letter informed the school that she would be utilizing 28.5 days of accumulated paid sick leave at the beginning of her FMLA leave on August 18, 2016, pursuant to District's policy and Section 24-6 of the Illinois School Code.

12. In correspondence dated April 21, 2016, Corbett approved Dynak's request for 12 weeks of unpaid leave under the FMLA, but denied her request to utilize any unused paid sick leave at the beginning of the 2016-17 school year. A copy of the letter from Corbett is submitted herewith as Exhibit 2.

13. On or about May 5, 2016, attorney Sylvia Rios ("Rios"), Associate General Counsel of the Illinois Education Association, wrote to District attorney John E. Fester ("Fester"), of the law firm Scariano, Himes and Petrarca, reiterating Dynak's intent to use 28.5 days of accrued paid sick leave at the beginning of the 2016-17 school year due to the birth of her child. A copy of Rios' May 5, 2016 letter is submitted herewith as Exhibit 3.

14. Rios' May 5, 2016 correspondence provided an explanation of Section 24-6 of the School Code, in an effort to resolve the dispute with the District. Rios asked the District to grant Dynak's request to use 28.5 days of her accumulated paid sick leave commencing August 18, 2016.

15. On or about May 20, 2016, Fester responded to Rios' May 5, 2016 letter. A copy of Fester's May 20, 2016 letter is submitted herewith as Exhibit 4.

16. Fester's May 20, 2016 response again denied Dynak the use of 28.5 sick days under Section 24-6 of the School Code.

17. On or about June 1, 2016, Rios replied to Fester's May 20, 2016 correspondence, requesting that the District state on or before June 15, 2016 its final position with respect to Dynak's request to use 28.5 days of accrued paid sick days following the birth of her child at the beginning of the 2016-17 school year. A copy of Rios' June 1, 2016 letter is submitted herewith as Exhibit 5.

18. Dynak gave birth to a baby girl on June 6, 2016.

19. Neither Fester nor any representative of the District ever responded to Rios' June 1, 2016 letter.

20. Wood Dale School District teachers returned to their classrooms on August 18, 2016 for the 2016-17 school year.

21. Dynak's approved FMLA unpaid leave began on August 18, 2016.

22. On or about August 22, 2016, Dynak received an email from District Superintendent Corbett. Corbett stated that two documents were attached to the email and that copies of those documents would also be mailed to Dynak. A copy of Corbett's August 22, 2016 email correspondence with Dynak is submitted herewith as Exhibit 6.

23. The documents attached to the August 22, 2016 email included a letter confirming Dynak's FMLA return to work date as November 10, 2016 and an enclosure summarizing Dynak's salary for the 2016-2017 school year. Copies of Corbett's letter on behalf of the District and the attached salary information are submitted herewith as Exhibit 7.

24. The summary produced by the District listed 58 unpaid dock days for Dynak; she was not credited for any requested paid sick days for the period of her leave beginning on August 18, 2016.

25. At all relevant times, Dynak has maintained unused accumulated paid sick leave days

greater than the number of days she requested to use at the beginning of the school year.

26. The District violated Section 24-6 of the Illinois School Code by failing and refusing to permit Dynak to use 28.5 days of her accumulated paid sick leave at the beginning of the 2016-17 school year.

27. As a result of the District's denial of Dynak's request to use 28.5 paid sick days, she is owed $8,075.91 in unpaid wages.

28. A true controversy exists between the parties.

WHEREFORE, Plaintiff Margaret Dynak prays that a judgment be entered as follows:

A. Determine and adjudicate the rights and liabilities of the parties under the Illinois School Code, 105 ILCS 5/24-6.

B. Pursuant to the Illinois Code of Civil Procedure, 735 ILCS 5/2-701, find and declare that Plaintiff had a right under the Illinois School Code, 105 ILCS 5/24-6, to use the requested 28.5 days of accrued paid sick leave at the beginning of the 2016-17 school year following the birth of her child with no need to provide medical certification that she had a personal illness.

C. That Defendant be ordered to restore to the Plaintiff any and all lost benefits.

D. That judgment be entered in favor of the Plaintiff and against the Defendant in an amount equal to the amount of pay for which Plaintiff was docked.

E. That Defendant be ordered to pay costs incurred by Plaintiff in this action.

F. That the Court enters such further orders as it deems just and equitable.

COUNT II

ATTORNEYS' FEES IN WAGE ACTIONS ACT

29. Plaintiff Dynak incorporates by reference the allegations contained in Count I, paragraphs 1-28.

30. Section 10-20.7 of the School Code, 105 ILCS 5-10-20.7, grants Defendant the authority to employ teachers and fix their salaries, subject to the terms and conditions of the District's collective bargaining agreement with the Association.

31. At all times pertinent hereto, the Attorneys Fees in Wage Actions Act, 705 ILCS 225/1, has provided as follows:

> Whenever a mechanic, artisan, miner, laborer, servant or employee brings an action for wages earned and due and owing according to the terms of the employment, and establishes by the decision of the court or jury that the amount for which he or she has brought the action is justly due and owing, and that a demand was made in writing at least 3 days before the action was brought, for a sum not exceeding the amount so found due and owing, then the court shall allow to the plaintiff a reasonable attorney fee of not less than $10, in addition to the amount found due and owing for wages, to be taxed as costs of the action.

32. A written demand was made to the Defendant on October 6, 2016, to reimburse Dynak for the wages lost based on the District's denial of her request to use 28.5 days of sick leave at the beginning of the 2016-17 school year, resulting in $8,074.91 in lost wages. A copy of her counsel's letter of October 6, 2016 making such demand is submitted herewith as Exhibit 8.

33. Dynak brought an action for wages earned and due and owing according to the terms of her employment more than three (3) days after her written demand was made on the District.

34. Under the Attorneys Fees in Wage Actions Act, Plaintiff is entitled to an award of reasonable attorneys' fees of not less than $10, in addition to the amount found due and owing for

wages, to be taxed as costs of the action.

WHEREFORE Plaintiff Margaret Dynak prays that a judgment be entered as follows:

A. That the Defendant be ordered to pay Plaintiff reasonable attorneys' fees in addition to the amount found due and owing for wages.

B. That the Court enter such further relief as it deems just and equitable.

COUNT III

ATTORNEYS' FEES, COSTS AND DAMAGES UNDER THE ILLINOIS WAGE PAYMENT AND COLLECTION ACT

35 Plaintiff Dynak incorporates by reference the allegations contained in Count I, paragraphs 1-28

36. Plaintiff Dynak incorporates by reference the allegations contained in Count II, paragraphs 29-34.

37. Section 14(a) of the Illinois Wage Payment and Collections Act ("IWPCA"), 802 ILCS 115/14(a), grants Plaintiff the authority to file a civil action to collect wage underpayments, damages at 2% of the underpayment for each month following the underpayment, and recover costs and reasonable attorneys' fees.

38. At all times pertinent hereto, Section 14(a) of the IWPCA, 802 ILCS 115/14(a), provided as follows:

> Any employee not timely paid wages, final compensation, or wage supplements by his or her employer as required by this Act shall be entitled to recover through a claim filed with the Department of Labor or in a civil action, but not both, the amount of any such underpayments and damages of 2% of the amount of any such underpayments for each month following the date of payment during which such underpayments remain unpaid. In a civil action, such employee shall also recover costs and all reasonable attorney's fees.

39. By failing and refusing to grant Plaintiff the use of 28.5 days of paid sick leave, the District failed to pay Plaintiff wages and compensation that was due to her.

40. The District thereby violated Section 14(a) of the IWPCA.

WHEREFORE Plaintiff Margaret Dynak prays that a judgment be entered as follows:

A. That the Defendant be ordered to pay Plaintiff damages in the sum of 2% of the underpayment for each month following the underpayment, in addition to the amount found due and owning for wages.

B. That the Defendant be ordered to pay Plaintiff reasonable attorneys' fees.

C. That the Defendant be ordered to pay Plaintiff all costs associated with the filing of this civil action.

D. That the Court enters such further relief as it deems just and equitable.

Margaret Dynak, Plaintiff

By one of her attorneys,

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October 13, 2016

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2016MR001368

Exhibit 1

Margaret Dynak
523 N. Elm Street
Mount Prospect IL, 60056

March 15, 2016

Dr. John Corbett
Wood Dale Board of Education
543 N. Wood Dale Rd.
Wood Dale, IL 60191

Dear Dr. Corbett and the Wood Dale Board of Education,

On June 6, 2016, I am expecting to deliver my second child through a scheduled C-section due to health concerns. I will be utilizing 1.5 days of my accumulated sick leave for June 6 and June 7, 2016.

Per Board of Education Policy 5.185 Family and Medical Leave, I am notifying you of my intent to utilize Family Medical Leave for a period of 12 weeks beginning August 18, 2016. My anticipated return date is November 10, 2016. I understand that my current insurance benefits will remain intact for the duration of this leave. In accordance with Board Policy and the School Code, 105 ILCS 5/24-6, I will be utilizing accumulated sick leave for the first 28.5 days of the twelve-week leave.

Please let me know if you have any questions. I am happy to meet with you to discuss them and provide you with any documentation, including a note from my physician.

Thank you and best regards,

M Dynak

Margaret Dynak

CC: Ms. Christina Cail

2016MR001368

Exhibit 2

WOOD DALE
SCHOOL DISTRICT 7
STRIVE FOR EXCELLENCE

JOHN W. CORBETT, Ed. D.
Superintendent

MERRI BETH KUDRNA, Ed. D.
Curriculum Director

ABE SINGH
Business Manager

April 21, 2016

Ms. Margaret Dynak
523 N. Elm St.
Mt. Prospect, IL 60056

Dear Ms. Dynak:

Your request for a 12 week leave, as it pertains to the Family Medical Leave Act, was approved by the Board of Education at its regular meeting on April 20, 2016. Per our phone conversation on April 15th, since your FMLA will begin 10 weeks after the birth of your child, you will not be eligible to use sick days for the leave unless additional circumstances exist that would normally allow for the use of paid sick leave.

Please complete and return the Family Medical Leave Act form to the business office at your earliest convenience. Also, be advised that it is your responsibility to notify Barb Soss within two days upon the birth of your child.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

John W. Corbett, Ed. D.
Superintendent

cc: employee file

2016MR001368

Exhibit 3

Illinois Education Association-NEA
Chicago Office
230 West Monroe Street, Suite 2640, Chicago, IL 60606-4902
312.407.0227 • Fax: 312.407.009

May 5, 2016

Via EMAIL and First Class U.S. Mail

John E. Fester, Esq.
Scariano, Himes and Petrarca
Two Prudential Plaza, Suite 3100
180 North Stetson
Chicago, Illinois 60601
jfester@edlawyer.com

Re: Margret Dynak Birth Leave Pay

Dear Mr. Fester:

I have been contacted by the Wooddale Education Association, IEA-NEA to assist with Wood Dale School District 7's denial of Ms. Dynak's request to use her accumulated sick leave to be paid during her maternity leave. This is a request that the District immediately abide by its obligation under the School Code to allow Ms. Dynak to use her accumulated sick leave for 30 school days and receive pay for those days requested.

Ms. Dynak is due to give birth on or about June 6, 2016. Teachers are to report for work on August 18, 2016 for the 2016-2017 school year. The District has denied Ms. Dynak's request to use accumulated sick leave stating that because her request for leave comes 10 weeks after the birth of her child she must take her leave unpaid unless she can demonstrate "additional circumstances" which allow for the use of sick leave. The District has approved for Ms. Dynak to take unpaid FMLA leave.

The District is misreading Section 24-6 of the School Code. Based on the structure of Section 24-6, "birth" is a separate category from "personal illness" or "serious illness" in the immediate family or household, since "birth" follows those terms with the disjunctive "or": "Sick leave shall be interpreted to mean **personal illness**, quarantine at home, **serious illness** or death **in the immediate family or household**, **or birth**, adoption, or placement for adoption"

(emphasis added). In general, "[t]he word 'or' [in a statute] is disjunctive. [citation omitted] Disjunctive connotes two different alternatives....Thus, '[a]s used in its ordinary sense, the word "or" marks an alternative indicating the various parts of the sentence which it connects are to be taken separately.'" *Goldberg v. Brooks*, 409 Ill.App.3d 106, 111, 948 N.E.2d 1108, 1114 (1st Dist. 2011) (grammar and the rules of statutory construction point to the conclusion that the provision under consideration referred to "a separate category"). Thus, to qualify for sick leave under Section 24-6, at least for the initial 30 days, there should be no requirement of a showing of illness with respect to the employee or the baby.

This reading is consistent with the following provision in Section 24-6, which permits school boards to require a certificate from a doctor or other provider "as a basis for pay during leave," but only "**after** an absence of 3 days for personal illness or **30 days for birth** or as the school board may deem necessary in other cases." Moreover, the statute does not say that, at least in the case of childbirth, the "basis of pay" must be infirmity. Thus, the District is required to provide at least 30 days of sick leave for the birth of a child irrespective of medical conditions.

The purpose of sick leave days accumulated under Section 24-6 is to provide days off of work with pay for the enumerated reasons. The statute's reference to "leave" contemplates time off from work. The use of "absence" means that the employee is not at work. Both terms refer to days when the employee would otherwise be working but for the leave. The phrase "3 days for personal illness" only refers to workdays and weekdays, because otherwise that period could pass over a weekend and adjacent holiday, without any actual time off work. The statute *does not* say 30 days *after* the birth. The statute states, and therefore the employee is entitled to take off 30 work days for the birth of a child. The statute contemplates, and the employee must be allowed, to use her accumulated sick leave days for pay during actual work days.

The statute does not provide for a specific 30 day period during which a teacher must take the days off. Sick leave is a substitute for wages. If the District is counting summer, non-work days against the statutorily mandated minimum 30 day period, the District is defeating the very purpose of an employee having the right to use accumulated sick leave to substitute for wages that would have been earned if the employee was actually working. The District must pay the employee for the full, statutorily allowed, complement of days.

The statute is clear. Parents must be allowed to use *at least 30 days* of paid sick leave following the birth of a child. After 30 days of paid sick leave use, the District can, but is not required to, request certification for *additional* days of paid sick leave. Please have the District take necessary steps so that Ms. Dynak is paid for 30 days of sick leave at the beginning of the 2016-2017 school year. In the event the District will not meet this obligation, be advised that we additionally seek attorney fees if court action is necessary. 705 ILCS 225/1 and 820 ILCA 115.

Please let me know how the District plans to resolve this matter.

Sincerely,

Sylvia Rios
Associate General Counsel
Illinois Education Association

cc: Kevin Ballard, IEA UniServ Director

2016MR001368

Exhibit 4

SCARIANO, HIMES AND PETRARCA
ATTORNEYS AT LAW • CHARTERED

JOHN E. FESTER
Ext. 239
jfester@edlawyer.com

TWO PRUDENTIAL PLAZA, SUITE 3100
180 NORTH STETSON
CHICAGO, ILLINOIS 60601-6702
312-565-3100 · 800-820-3101
FACSIMILE 312-565-0000
WWW.EDLAWYER.COM

May 20, 2016

Sylvia Rios, Esq.
Illinois Education Association
230 W. Monroe St, Suite 2640
Chicago, Illinois 60606

Re: Wood Dale District 7

Dear Ms. Rios:

Thank you for your correspondence of May 5, 2016, regarding the requested use of paid sick leave by Margret Dynak at the start of the 2016-17 school year. As you will recall, Ms. Dynak is due to give birth sometime in early June 2016. I have reviewed your parsing of Section 24-6 of the *School Code* and do not find your arguments supported by your language analysis, nor by the legislative history from 2007 and 2009 when Section 24-6 was amended. Specifically, we take issue with your position that the availability of 30 sick days is untethered from the actual event of birth, such that the days effectively become paid time off to be used during some arbitrary time period unexpressed in the statute.

However, in order to better understand how you see this section of the *School Code* implemented as a practical matter, I would like to know your position on the following questions:

1. Do you maintain that there is any time limit for the 30 sick days to be used in connection with the birth of a child? A literal reading of your position is that by virtue of giving birth (or having one's spouse give birth), a school employee is vested with the right to use 30 sick days at any time for the remainder of his/her employment with the school district. How long following birth do you maintain the days are available for use and where do you find support for that time frame?

2. You have stated that you do not believe the days are granted due to any occurrences that immediately follow the event of giving birth, such as the typical six-week postpartum period that physicians recognize as the common time period during which a new mother undergoes postpartum physical changes and other post-delivery adjustments. If you do not recognize any postpartum purpose for the availability of these sick days, do you have evidence of another motivation for the legislature granting these days?

3. Are there any reasons that must be given for using the sick days in connection with birth? For illness, the employee or someone in the immediate family or household must be sick. For bereavement, there must be a death in the immediate family or household. For adoption, the employee must either be adopting a child or placing a child for adoption. Under your argument, for example, could the days be used for a vacation?

4. Do the sick days have to be used consecutively? If not, could a teacher take one day a week of her choosing for 30 weeks? Wood Dale allows sick days to be used in half-day increments. Could a teacher take 60 half-days throughout the school year(s)? This would be detrimental to student learning and very disruptive to a school's operation, particularly if more than one teacher invoked the options described above.

5. If a teacher completed adopting or placing a child for adoption during summer break, would that teacher then be entitled to use 30 sick days at the start of the next school year?

It is our belief that sick days are provided to give employees a source of leave time with pay when one of the events in Section 24-6 (illness, death, birth, adoption) requires an employee to miss scheduled work days. It is entirely reasonable to assume, consistent with widely accepted medical practice, that for six weeks following birth, a new mother or father would need time off, not for illness, but because the significant recovery that follows birth is impacting the mother and/or father, and as such, the appropriate use of sick leave is presumed. After the recognized six weeks immediately following birth have passed, medical certification of the continued need for leave may be required. However, if those six weeks occur outside the employee's work year, then what is the purpose of providing additional sick leave when the employee is fully able to work?

In contrast, if sick days are vested simply because of the occurrence of a Section 24-6 event, even though no work is required to be missed, the nature of sick leave becomes vastly altered and produces absurd results. For example, you appear to suggest that if a member of an employee's immediate household dies and services are held over summer break, or if an adoption is completed on June 15, that the employee should get to use paid sick leave at the start of the next school year. Similarly, if the timing of the birth is such that more than six weeks have passed and the employee has no need to miss work, we do not understand why sick leave would be available to this employee at the start of the next school year, but not to an employee who was sick over the summer, or completed an adoption in July.

I look forward to your responses so I may help my client better understand your insistence that they make the change in practice that you have requested. Thank you.

Very truly yours,

SCARIANO, HIMES AND PETRARCA, CHTD.

JOHN E. FESTER

JEF/emm
cc: Dr. John Corbett, Superintendent

G:\WP51\COMMON\SD0\SD007D\LTR\RIOS SICK LEAVE 052016.DOCX

SCARIANO, HIMES AND PETRARCA
ATTORNEYS AT LAW
CHARTERED
TWO PRUDENTIAL PLAZA
180 N. STETSON, SUITE 3100
CHICAGO, ILLINOIS 60601-6702

Sylvia Rios, Esq.
Illinois Education Association
230 W. Monroe St, Suite 2640
Chicago, Illinois 60606

2016MR001368

Exhibit 5

Illinois Education Association-NEA
Chicago Office

www.ieanea.org
ILLINOIS EDUCATION ASSOCIATION

230 West Monroe Street, Suite 2640
Chicago, IL 60606-4902
312.407.0227
Fax 312.407.0229

June 1, 2016

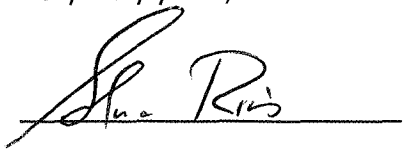
VIA EMAIL and U.S. Mail
John E. Fester, Esq.
Scariano, Himes and Petrarca
Two Prudential Plaza, Suite 3100
180 North Stetson
Chicago, Illinois 60601
jfester@edlawyer.com

Re: Margret Dynak birth leave pay

Dear Mr. Fester:

I am in receipt of your May 20, 2016 letter. Unfortunately, it is almost wholly non-responsive to the issue at hand. In the letter, you pose a series of questions on the premise you need additional information regarding the IEA's interpretation of Section 24-6 of the School Code in order to advise your client. Section 24-6 of the School Code has been in effect since 2009. I have it on good authority that your firm has discussed the interpretation of Section 24-6 with the IEA on numerous occasions in the seven years the language has been in effect. As such, it is my good faith belief your firm has sufficient understanding about the IEA's position to advise your client. Please let me know by or before June 15, 2016 whether your client will grant Ms. Dynak's leave request in the manner requested.

Very truly yours,



Sylvia Rios
Associate General Counsel
Illinois Education Association

cc: Kevin Ballard, IEA UniServ Director

2016MR001368

Exhibit 6

From: Margaret Zajac
To: Ryan Thoma
Subject: Fw: FMLA - Information
Date: Wednesday, October 05, 2016 1:46:12 PM

Sent from Outlook

From: Dynak, Margaret <mdynak@wdsd7.org>
Sent: Wednesday, October 5, 2016 1:25 PM
To: margaret zajac
Subject: Fwd: FMLA - Information

---------- Forwarded message ----------
From: **Corbett, John** <jcorbett@wdsd7.org>
Date: Fri, Aug 26, 2016 at 8:36 AM
Subject: Re: FMLA - Information
To: "Dynak, Margaret" <mdynak@wdsd7.org>
Cc: Barbara Soss <bsoss@wdsd7.org>

Margaret,

The payment for insurance should be sent to the District Office. Please address the envelope to Barb Soss. Also, if you wish you can make installment payments, if that is easier for you. You can call or email Barb Soss and work out a payment schedule with her.

Kind regards ~

On Wed, Aug 24, 2016 at 9:44 PM, Dynak, Margaret <mdynak@wdsd7.org> wrote:

> Hi Dr. Corbett,
>
> Thank you for the response. Can you please tell me where I need to send the payment for the insurance and by when?

Thank you again,

Margaret Dynak

On Mon, Aug 22, 2016 at 2:47 PM, Corbett, John <jcorbett@wdsd7.org> wrote:

Dear Margaret,

I hope you are enjoying your time at home with Lydia.

Attached to this email you will find two documents that are also being (US) mailed to you today. A letter regarding your FMLA and a summary of your salary payments for the 2016/17 school year.

Kind regards ~

--

John W. Corbett, Ed. D.
Superintendent

Wood Dale School District 7
543 N. Wood Dale Road
Wood Dale, IL 60191
Phone: 630-595-9510
Fax: 630-595-5625

Follow me on Twitter: @johnwcorbett
Click on the icon below to link directly to my Twitter account.

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--

John W. Corbett, Ed. D.
Superintendent

Wood Dale School District 7
543 N. Wood Dale Road
Wood Dale, IL 60191
Phone: 630-595-9510
Fax: 630-595-5625

Follow me on Twitter: @johnwcorbett
Click on the icon below to link directly to my Twitter account.

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2016MR001368

Exhibit 7

WOOD DALE
SCHOOL DISTRICT 7
STRIVE FOR EXCELLENCE

JOHN CORBETT, Ed. D.
Superintendent

MERRI BETH KUDRNA, Ed. D.
Curriculum Director

ABE SINGH
Business Manager

August 22, 2016

Ms. Margaret Dynak
523 N. Elm St.
Mt. Prospect, IL 60056

Dear Ms. Dynak:

Attached you will find the summary of your salary payments for the 2016/17 school year, calculated with your return to work date being November 10, 2016. This summary takes into consideration your 12 week FMLA leave. As was explained to you in our phone conversation on April 15th and subsequent letter on April 21st, since your FMLA begins 10 weeks after the birth of your child, you are not eligible to use sick days for this leave unless additional circumstances exist that would normally allow for the use of paid sick leave.

Congratulations again on the birth of your daughter Lydia. Enjoy your time at home with her and we look forward to seeing you later this fall.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

John W. Corbett, Ed. D.

John W. Corbett, Ed. D.
Superintendent

cc: employee file

NAME Margaret Dynak

RETURN DATE: 11/10/16
Birth of Baby 6/6/16

Salary	$57,600.00 NEED NEW CONTRACT AMOUNT
TRS	$5,184.00
Net	$52,416.00
Biweekly (by 26)	$2,016.00
Daily (by 185)	$283.33

Days to be paid 2016/17--FT Hrs		SICK	COLD DAYS	Dock	Contract Days
Aug				10	
Sept				21	
Oct				20	
Nov	12			7	
Dec	12				
Jan	21				
Feb	19				
Mar	18				
Apr	19				
May	22				
June	4				
TOTAL	127.0	0.0	0.0	58.0	185.0

Days Paid	127.00
Amt Due	**$35,982.80**

	Base	Other	TOTAL
09/02/16			0.00
9/16/16			0.00
9/30/16			0.00
10/14/16			0.00
10/28/16			0.00
11/11/16			0.00
11/25/16	1,799.14	0.08	1,799.22
12/9/16	1,799.14		1,799.14
12/23/16	1,799.14		1,799.14
1/6/17	1,799.14		1,799.14
1/20/17	1,799.14		1,799.14
2/3/17	1,799.14		1,799.14
2/17/17	1,799.14		1,799.14
3/3/17	1,799.14		1,799.14
3/17/17	1,799.14		1,799.14
3/31/17	1,799.14		1,799.14
4/14/17	1,799.14		1,799.14
4/28/17	1,799.14		1,799.14
5/12/17	1,799.14		1,799.14
5/26/17	1,799.14		1,799.14
6/9/17	1,799.14		1,799.14
6/23/17	1,799.14		1,799.14
7/7/17	1,799.14		1,799.14
7/21/17	1,799.14		1,799.14
8/4/17	1,799.14		1,799.14
8/18/17	1,799.14		1,799.14
	35,982.80	**0.08**	**35,982.88**

Money owed for weeks not paid:

*WDEA Dues owed to Union	none
Health Ins.	1,605.78
Dental Ins.	231.12
Vision Ins.	35.22
Flex Accl.--Health	none
Flex Acct.--Dep. Care	none
Annuities(optional)	none

Exhibit 8

LAW OFFICES
ALLISON, SLUTSKY & KENNEDY, P.C.
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LICENSED IN ILLINOIS AND TEXAS
ANGIE COWAN HAMADA
SARA S. SCHUMANN
RYAN M. THOMA

TELEPHONE
(312) 364-9400

FACSIMILE
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October 6, 2016

Via Email and U.S. Mail

John E. Fester
Scariano, Himes and Petraca
Two Prudential Plaza, Suite 3100
180 North Stetson
Chicago, Illinois 60601
jfester@edlawyer.com

Re: Wood Dale School District 7 and Margaret Dynak Birth Leave Pay

Mr. Fester:

My law firm represents Margaret Dynak in connection with the decision by your client, Wood Dale School District 7 ("District"), to deny her request to utilize unused sick leave following the birth of her child.

As reflected in correspondence previously sent to you by Illinois Education Association Associate General Counsel Sylvia Rios, the District's denial of Ms. Dynak's request to make use of paid sick leave beginning on August 18, 2016 was a violation of Section 24-6 of the School Code. The District is required to allow Ms. Dynak to utilize up to 30-days of her available paid sick leave following the birth of a child without medical certification as described in the applicable provision of the School Code. As the statute places no time restriction on the use of that paid sick leave, it was improper for the District to deny Ms. Dynak's request to use 28.5 sick days at the beginning of the 2016 school year.

As the District's denial of Ms. Dynak's request to use sick leave following the birth of her child was a violation of the Illinois School Code, Ms. Dynak demands that the District reimburse her for all wages improperly docked from her pay in relation to her leave commencing on August 18 ($8,074.91), as well as the amount improperly charged to her to cover the cost of insurance during this period which is to be paid by the District as part of her salary ($919.92), totaling $8,994.83. Please respond to this demand by no later than the close of business on October 10, 2016. The

District's failure to agree to make Ms. Dynak whole by reimbursing her for all lost wages, or a failure to respond to this letter within the time frame indicated, will result in this firm taking any necessary legal action on Ms. Dynak's behalf to recoup all amounts owed to her.

Please feel free to contact me if you have any questions.

Sincerely,

Ryan M. Thoma

RMT/pde

UNITED STATES OF AMERICA

STATE OF ILLINOIS COUNTY OF DU PAGE

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

MARGARET DYNAK

-VS-

WOOD DALE SCHOOL DISTRICT 7 BOARD OF EDUCATION OF

CASE NUMBER : 2016MR001368

ORDER

FILED

18 Jun 20 AM 10: 23

Chris Kachiroubas

CLERK OF THE
18TH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS

This matter coming to be heard on the parties' cross-motions for summary judgment, due notice having been given to all parties entitled thereto, the Court being fully advised in the premises, orders as follows for the reasons stated on the record:

1) Defendant's motion for summary judgment as to all counts is granted;

2) Plaintiff's motion for summary judgment is denied; and

3) This order is final and appealable.

Submitted by: ADAM DAUKSAS
Attorney Firm: SCARIANO HINES &PETRARCA
DuPage Attorney Number: 75640
Attorney for: BOARD OF EDUCATION
Address: TWO PRUDENTIAL PLAZA, 180 N STETSON, SUITE 3100
City/State/Zip: CHICAGO, IL, 60601-0000
Phone number: 312-565-3100
Email address : adauksas@edlawyer.com

Entered: Bonnie M Wheaton

File Date: 06/20/2018

JUDGE BONNIE M WHEATON
Validation ID : DP-06202018-1023-43287

Date: 06/20/2018

Table of Contents

APPEAL TO THE APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS

MARGARET DYNAK
Plaintiff/Petitioner

Reviewing Court No: 2-18-0551
Circuit Court No: 2016MR001368
Trial Judge: BONNIE M WHEATON

v.

WOOD DALE SCHOOL DISTRICT 7 BOARD OF EDUCATION OF
Defendant/Respondent

10

E-FILED
Transaction ID: 2-18-0551
File Date: 9/7/2018 10:05 AM
Robert J. Mangan, Clerk of the Court
APPELLATE COURT 2ND DISTRICT

REPORT OF PROCEEDINGS - TABLE OF CONTENTS

Page 1 of 1

E-FILED
10/8/2019 9:17 AM
Carolyn Taft Grosboll
SUPREME COURT CLERK

IN THE CIRCUIT COURT OF DUPAGE COUNTY
FOR THE EIGHTEENTH JUDICIAL CIRCUIT OF ILLINOIS

MARGARET DYNAK, Plaintiff, -vs- BOARD OF EDUCATION OF WOOD DALE SCHOOL DISTRICT 7 Defendant.	)	No. 16 MR 1368

REPORT OF PROCEEDINGS had at the hearing of the above-entitled cause before the Honorable Bonnie M. Wheaton, Judge of said Court, recorded on the DuPage County Computer-Based Digital Recording System, DuPage County, Illinois, and transcribed by Jean M. Tartaglia, Certified Shorthand Official Court Reporter, commencing on the 20th day of June, A.D., 2018.

Jean M. Tartaglia, Official Court Reporter

PRESENT:

ALLISON, SLUTSKY & KENNEDY, PC, by
MR. RYAN M. THOMAS

appeared on behalf of The People of the State of Illinois;

SCARIANO, HIMES AND PETRARCA, CHARTERED, by
MR. ADAM DAUKSAS

appeared on behalf of the Defendant.

THE CLERK: Dynak versus Wood Dale School District.

THE COURT: All right, gentleman. Sorry for that.

MR. DAUKSAS: Adam Dauksas on behalf of the Wood Dale School District.

THE COURT: Spell you last name, please.

MR. DAUKSAS: D as in David, a-u-k-s-a-s.

MR. THOMA: Ryan Thoma on behalf of plaintiff, Margaret Dynak. Last name is spelled, T as in Tom, h-o-m-a.

THE COURT: I had a sense of de`ja` vu when I was reading this, and I realized that it's the same song, different lyrics.

MR. DAUKSAS: I'm sure.

THE COURT: You may proceed.

MR. DAUKSAS: Your Honor, you have a preference in the order the parties go?

THE COURT: It's Dynak's petition so --

MR. THOMA: Your Honor, the parties are here today on cross-motions for summary judgment. It is clear from the briefings submitted in this case, parties do not dispute the material facts. Circumstances given rise to this case are simple and separate forward.

Ms. Dynak requested to use 30 days of accumulated paid sick leave for the birth of her child.

The birth of that child occurred on June 6, 2016, a day and a half before the school year ended.

She requested to then take leave at the beginning of the next school year, the 2016, '17 school year, using 28 and a half days of accumulated paid sick leave.

At the beginning of that leave, the District denied that request. They permitted her to use 12 weeks of FMLA leave and did not pay her the balance of the requested accumulated paid sick leave.

The plaintiff's case is presented in a simple interpretation of Section 24 6. It's carried that burden in it's briefings to this Court. And I'll go over the points of our interpretation as presented.

Clearly, as written, Section 24 6 provides for the right to use 30 days of accumulated paid sick leave for the birth of her child.

Here, she requested to use that leave across 30 continuous workdays without any interruption.

And that there's nothing in the plain language in Section 24 6 that dictates that she -- that her right to use that paid sick leave for birth is to be diminished or infringed upon or abrogated by any of the intervening period of nonwork days.

The plaintiff's interpretation of the relevant statutory language is supported by the express terms of the statute.

It avoids infamously reading in limitations to that provision.

It's consistent with the rest of the school code, and it's consistent with the statutory history provision, as well as prior decisions interpreting Section 24 6 of the school code and issues related to the use of sick leave for birth of a child.

To be clear off the bat, despite claims made in the District's briefing, the plaintiff does not claim that the leave for birth may be used at any time or it is somehow untethered from the event of birth.

In fact, the question we have posed this to Court is for it to determine what "for birth" means within Section 24 6.

The question is what are the limits on that?

And we do not maintain that leave may be used at any time for any reason. It's just determining when "for birth" is appropriate.

We start with the statutory language which is clear.

First, birth is defined as parts of leave as

one of the enumerated circumstances in which you may use sick leave.

The only limit placed on the right to use birth within Section 24 6 is that Districts are given the discretion, if they so chose, to require medical certification as a basis for pay during leave after an absence of 30 days for birth.

First, looking at the way the sick leave is defined to include birth, it's important to look at the fact that there are two categories of leave within the definition of what constitutes sick leave.

So sick leave shall be interpreted to mean personal illness, quarantine at home, serious illness or death in immediate family or household.

When the statute was amended, the legislature, instead of tacking on birth, leave and adoption to that list, decided to place a coma there and add the or disjoining it from the previous cases, the use of sick leave for illness and adding a leave which is effectively for parental leave, for birth, adoption and placement for adoption.

The way that the statute is written, also, reinforces the fact that the District is wrong to complain that there has to be a medical need to use the

leave for birth.

First, leave is available to covered employees regardless of gender. Both male and female has been taken.

Second, the grouping of birth, adoption and placement for adoption should be -- those terms should be interpreted together.

That means that adoption is a clear circumstance where there is no birth for any employee taking leave. There's no postpartum recovery period or any medical event which someone would need to recover from.

Most importantly, if you look at the limit placed on the statute and that it says that you have to take -- that you can take 30 days -- you could be absent for 30 days without the District being able to require medical certification, that means that that 30-day period is only unconsidered with any medical status. It's only after the 30 days can the District require medical certification to take the leave.

The plaintiff's position is, also, reinforced by the specific language that is used within Section 24 6. And this goes to the point of the fact that the 30-day period is a 30-day period of absence from work and

that 24 6 is only concerned with periods of working days. It is unconcerned with calendar days or other time periods.

First, it's a provision that provides leave which is, obviously, only to be used on working days.

A provision dealing with paid leave where employees are entitled to be absent from work and receive payment has no concern on nonworking days.

Second, as we detailed in our briefs, the specific terms, absence, leave, as well as the statute's use of "as a basis for pay," makes clear that the 30-day period has to be a 30-day working period.

We, also, went through the school code and showed that you can -- in order to interpret the meaning of the word "day" within Section 24 6, you have to look at how it was specifically used in that provision. And that is because the school code does not use terms consistently to refer to days. It uses calendar days at certain points, it uses school days, and then it uses the word "day" unmodified by any other term all throughout. So it requires to look down at the specific provision.

Here, each instance of the use of the word "day" has to refer to a working school day and not a calendar day, meaning that the right to be absent from

work for 30 days isn't measured by the period of work days and not concerned with intervening periods of nonwork.

Most importantly, if you look at the statute, it is inescapable that it does not contain any temporal limitation on the right to use that leave.

It does not say it has to be used six weeks from birth.

It does not say that you loose the right if there is summer break or that if winter break intervenes or even if there happens to be a single holiday that occurs.

It simply does not place that limit on the right to use leave.

Now, that doesn't lead to the conclusion that the District wants you to believe, which is that it's some sort of right you can use at any time, however you so may choose.

It still has been tethered to birth.

But that just means that it's a factual inquiry into how the leave is to be used.

Most importantly, there's a number of cases we have cited as a tentative statutory interpretation that this Court may not read an additional term in its

statute.

It is impermissible for this Court, as the District asked you to, to read in 30 days may be used for leave within six weeks of birth. That's not what the statute says.

Also, we have pointed to a similar statute where the General Assembly has made clear that it is more than capable of placing temporal limitations on the right to use leave when it so chooses.

Pointed to the Child Bereavement Act which explicitly states that that leave must be used 60 days from the event.

Again, 24 6 does not say the leave has to be used 30 days from birth or six weeks from birth. It contains no such limitation.

As we are asking you to determine whether the leave here was for birth within the meaning of 24 6 as a factual matter, we point out that the plaintiff has claimed that the leave was for birth. She's attested to that, and the District has not objected that her leave was for birth.

They, also, granted her FMLA leave at the beginning of the school year, during the same period she requested to use accumulated paid sick leave, and that

leave was granted for birth.

Ultimately, plaintiff's position --

THE COURT: Wait. Say that again.

MR. THOMA: She was granted FMLA leave at the beginning -- for the same period, but that leave was for the birth of her child.

Saying as simply as a factual matter --

THE COURT: Right. But that wasn't -- Yeah. okay. That was not sick leave.

MR. THOMA: No, it was unpaid leave. They denied the request to use paid sick leave.

Ultimately, plaintiff's position boils down to the fact that the statute, as written, doesn't permit the District to deny her the right to use and be absent from work for 30 days using her accumulated paid sick leave based on any intervening recess period of nonwork, be it summer break, winter break or simply a holiday.

The District's position relies on the fact that -- it's claim that the use of leave has to be for a medical purpose, that the use must be immediately upon birth, and that the plaintiff may only use the leave six weeks from the date of birth.

Again, Section 24 6 does not include any of these restrictions.

To support this position, the District has presented no statutory analysis; that is, offered no explanation for how this Court should adopt its position without impermissibly reading in a limitation to the statute, and has presented no explanation for how its interpretation of the statute links with Illinois Supreme Court precedent presented to you in the Winks case, which explicitly deals with periods of post -- of recovery from child birth and other provisions in the school code that address that period.

First, the District has said that you should accept its position because it has so-called medical support.

One, as I've already detailed, there is no such basis that the leave here is concerned with any sort of medical condition.

Two, plaintiff is unaware of any sort of tentative statutory interpretation that dictates that the Court accept the interpretation that is somehow based on a medical purpose.

And the District, also, focuses much of its time trying to argue against the plaintiff's position by inflating into a straw man that it can easily knock down. This is it's claim that we're asking for an unfettered

right to use sick leave.

Again, the leave must be tied to birth.

If you've reviewed our briefing, which I'm sure you have, we have never claimed that you could use sick leave at any time.

And, of course, there are limits to the right to use sick leave.

We are simply stating in the circumstances of this case it is permissible to use the 30 days and the District violated her rights under 24 6 in denying the request.

THE COURT: But are they limits to the use of sick leave? You said, of course, there are --

MR. THOMA: I believe it's a factual determination that -- the statute, as written, says that the leave is for birth. That requires that a specific request for leave has to be determined whether it is for birth.

Now, the District has, basically, said, well, we can cut through this, and we can make this simple. And it's offered a bright line. It says six weeks from the date of birth because it wants to try to paint the fact that for birth was not -- that the time that leave is available was not clearly defined in the statute is somehow a fault of plaintiff's interpretation.

But the statute says what it says.

The District's offered you a six-week limit, but it's not supported by the language. So I would say that each instance of leave has to be determined based on the specific facts.

THE COURT: Well, doesn't the statute, also, say that the school board may require a physician certificate 30 days after birth?

MR. THOMA: Right. And the 30-day period is referring to a 30-day period of absence.

It doesn't say 30 days from birth.

It says a leave of absence of 30 days.

MR. DAUKSAS: That's not what it says.

THE COURT: I think for birth.

MR. THOMA: Okay. We can --

THE COURT: All right. Go ahead.

MR. THOMA: Well, no. I mean, we -- I read it. It says: As a basis for pay during leave after an absence of 30 days for birth.

It does not say anything about a specific time period from the birth.

The District has, also, attempted to claim that the plaintiff is seeking some sort of radical right to pay parental leave.

But as I addressed at the outset, if you look at the statute, clearly, leave for birth, adoption, and placement for adoption is functionally equivalent to a right to have some leave for childcare or for the birth of a child or for the adoption of a child.

If you take the scenario that the District would not deny that a teacher would be entitled to leave, you have a birth during the school year and there's no intervening days of nonwork, there's not a single holiday, it's six weeks of consistent work, meaning with weekends off, 30 days of absence, that's six weeks of paid leave for the birth of a child. That's functionally equivalent, and I would say undistinguishable from paid paternity leave -- or paid birth leave. I don't know how would distinguish the two. That's exactly what the legislature provided.

The District, also, attempts to say that the plaintiff's interpretation can't be correct because there's nothing in the legislative history that supports the specific interpretation of the language.

Well, first, lack of statements in the legislative history don't prove anything one way or another. There's simply things that were unsaid.

Two, the District ignores the fact that there's

nothing in the legislative history that supports its interpretation.

There's nothing that says that leave has to be for medical reason.

There's nothing that says it has to be within six weeks of birth.

And most importantly, you only look at the legislative history if the text is unclear.

We've presented a clear interpretation of the statutory text that supports our position and that there is no such limitation that the District claims.

The District similarly points to lack of public statements by the General Assembly when the statute was amended.

Again, things not said by General Assembly members have no bearing on what Section 24 6 means. The statute is to be interpreted as written.

Similarly, the District points to other State's parental leave laws, how those were passed and the fanfare or lack thereof regarding those laws.

Again, the District has not presented any analysis of similar leave provisions in other states to try to aid your interpretation of Section 24 6. It's just that other states have laws, and they did this when

they passed them. That doesn't answer the question presented here.

And as I've alluded to and we've talked about, a lot of what the District focuses on is sort of it's parade of horribles of sort of extreme uses of paid sick leave to try to say that the plaintiff's use here has to be denied because it can conjure up all sorts of examples and ways of which the leave would not be tied to birth.

But the fact that there's not a clear bright line does not mean that the plaintiff's position is wrong.

The Court just must answer the question of when leave is appropriately for birth.

There's nothing in the statute that says that the leave has to be taken immediately after birth or that it has to be reduced or somehow totally abrogated, depending on the timing of the birth.

And I, finally, point the Court to the Winks decision, which we believe explicitly precludes the District's position.

In that case, while the Court was examining Section 24 6, prior to its amendment, to add leave for birth, adoption or placement adoption, it said that personal illness didn't encompass or didn't cover

ordinary childhood.

But it did refer to the periods of childbirth and recovery thereof as being covered by other portions of school code, using the terms, temporary incapacity or physical incapacity.

Those phrases explicitly refer to the six-week time period of recovery.

When the General Assembly amended Section 24 6, it provided for leave for birth.

It did not provide leave for physical incapacity due to childbirth.

If the school code is to be interpreted consistently, then the term for birth in 24 6 has to have a different meaning than physical incapacity or temporary incapacity as interpreted by the Illinois Supreme Court.

And the District has offered no response to our analysis of this relevant precedent.

Accordingly, plaintiff believes that it presented an interpretation of 24 6 that establishes that she was entitled to use the leave and that that right was not somehow diminished or abrogated based on the -- by the summer break in this intervening period of nonwork days.

And, finally, briefly on Count Two, Count Two

is seeking attorneys' fees under the Attorney's Fees in Wage Actions Act is clearly dependent on plaintiff's success in Count One.

But plaintiff believes it established that she's entitled to use the total of 30 days of cumulative paid sick leave.

The District's denial of that right constitutes that she was has wages due and owing for the value of that 28 and a half days, and the plaintiff should be a entitled to award of reasonable attorneys' fees to be proved at a later time.

THE COURT: Thank you.

Counsel.

MR. THOMA: Sure.

There's a lot to unpack there.

I think the first thing I want to start off by addressing is the Winks case, and that's a 1979 Illinois Supreme Court case that was rendered well before these amendments that you we're addressing today came into play in 2007 and 2009.

We did address that case in our reply brief. We specifically pointed out that the Winks Court simply concluded that the General Assembly did not intend to include normal pregnancy and childbirth within the sick

pay coverage of Section 24 6 of the school code. That's a quote. That's their conclusion.

And that has -- the statute has, obviously, been amended to include childbirth. We're not arguing childbirth.

And as the plaintiff points out in their briefs, the issue is here is whether that leave needs to be taken immediately childbirth. And that's what we're discussing.

So Winks isn't on point. Winks doesn't address the situation. So to the extent plaintiff wants to rely on that case, I believe that's that error.

What we have here is two competing versions of Section 24 6.

One is the District's that places a reasonable and rational restriction on using sick leave, sick leave for childbirth or for illness or for any of the other qualifying events under that statute. And that's that there is a need to miss work. And that usually follows immediately after or there's a proximate, you know, nexus to that qualifying event.

I'm sick. I need sick leave.

There's a death in the family. I need sick leave.

I have a child. I need sick leave.

It's not that event vests you with an unfettered right to somehow use sick leave later on down the line at some point during your employment.

Now, we heard Mr. Thoma say that there's a limit. I don't know what that limit is. There is no limit. There's no limit expressed in the statute. There's no limit that plaintiff's expressed in their pleadings.

And so we're left with no temporal requirement, no proximity requirement under their interpretation. And that could lead to an absurd result.

And we're not pointing -- bringing up a straw man. We are raising that to the Court's attention because this case and the interpretation of a law can't be taken in one person's vacuum, that, hey, her factual situation was such that she wanted to use sick leave starting the following school year.

But under their interpretation of the law, that interpretation has to be applied to everything else that falls under the statute.

For instance, if you look at the language of the statute, the four words that Mr. Thoma refers to, 30 days for birth, come immediately after three days for

personal illness.

So under their logic, if I'm sick, I automatically get three days for that illness? Because that's the same argument.

And you can't read knows four words out of the statute but read his four words into the statute. It's the same statute.

And what the District is pointing out is that this law is going to apply to a myriad number of absences and illness and deaths and births, and there has to be some connection to that underlying event. Otherwise, there's going to be absurd results all over the place.

I heard nothing from Mr. Thoma and there's nothing in their briefs that would prohibit under their interpretation, for instance, my wife, who's a public school teacher, giving birth, as she just did in April of this past year, and then two years from now, saying, well, it's for birth. I need 30 days for my child, and I'm going to be out. That would happen all over the State.

And what we're saying is that that doesn't make sense, and that's not expressed either by case law, it's not expressed in the legislative history.

And I heard Mr. Thoma say, hey, there's nothing

that goes one way or the other. It's not my burden here.

It's the plaintiff's burden to present this Court to evidence as to what the intent of the legislative was.

And there's no evidence that suggests that they've created a paid family leave benefit by inserting four or eight words into a sick leave statute nine years ago.

And what the District has done is show and present to the Court and asking the Court to take judicial notice of, other State statutes that have provided paid family leave. And they do it in a complex and comprehensive fashion where employees fund it through mandatory payroll deductions. The benefit is less than full pay, which is what they're seeking. And it covers a wide swathe of employees.

For instance, in New York all private employees benefit from that law.

Here, what they're proposing is that only teachers in Illinois get this benefit.

Well, I have a qualifying event and it vests me with that right to take sick leave at any point without notice and under, essentially, no restriction at any time in the future.

And what we're saying is hold on. Tap the brakes. That doesn't make any sense. There's no evidence to suggest that's what the legislature intended. Because all these other states, there are reams and reams of paper and guidance on how this thing is implemented. There's nothing here.

The Illinois State Board of Education has published nothing. There's no administrative regulation that addresses this.

And so what they're trying to create is a right that they couldn't get via the legislature. And they're trying to jam it through on eight words in a sick leave statute.

And what we're pointing out is that idea is preposterous and it's fundamentally -- I'm not even sure how we'd implement it.

And so there's just couple of other things that I'd like to point out here.

If we just step back again and look at the actual language of the statute, the provision that we're addressing talks about requiring a certificate from a physician as a basis for pay for leave after a period of three days for personal illness or 30 days for birth.

And now we're going to take that and say that

provides a right for parental leave, which it's not -- it's just not in the law.

And for Mr. Thoma to assert that I'm reading something into the law, I find disingenuous because what we heard from him is that, well, when there's summer break or when there's fall break or when there's winter break or spring break, then you get to use it following that. And it's actually parental leave because there's a comma.

I'm not asking the Court to read anything into the law, contrary to those arguments that were just made.

So with that being said, our briefs cover all of these arguments by Mr. Thoma. And I think we've briefed this six ways to Sunday, as I'm sure you've read. There's probably 100 pages of briefing on this.

And I think our position is made clear here, but for him to point out that Child Bereavement Leave Act, which is unpaid statute which came into play after these amendments, could the legislature have been more clear in 24 6? Sure.

But it set forth a common sense interpretation of how sick leave, as everyone in this room knows how it works, and that's all we're asking for.

We're not asking for any exception. We're not

asking for any condition. That's it.

And given the fact that it's sick leave, there is a medical connection here.

And by us pointing to the postpartum period, which is generally defined as six weeks following birth, which squarely aligns with 30 school days, five days a week, that there is a rational common sense reason for why you put 30 days into a sick leave statute. And that's what we're asserting.

We're not asking you to read anything into the law. And, you know, that in and of itself is more evidence than has been presented by the plaintiff for their interpretation.

So -- Oh, I end my --

THE COURT: In order to adopt the interpretation of the statute urged by the plaintiff, the Court would have to find that the conditions set forth in the definition of sick leave create a vested right in the plaintiff and other similarly situated persons regardless of when those conditions occurred.

The accident of giving birth in the summertime, I don't believe creates any kind of a right in the plaintiff to sick leave at a future period in time that is not covered by the Act.

For instance, if there were a death in the plaintiff's immediate family that took place on June 15th, after the school year ended, she could not reasonably expect to have three days of sick leave for that occurrence, but the sick leave taking place after the school career started.

And the same could be said for any of the other occurrences that are set forth in the definition of sick leave.

I believe that the interpretation urged by the defendant is a proper interpretation of the law.

I believe that the condition set forth in the statute have to be read in peri materia, and that the plaintiff is not entitled to the sick leave in addition to the family medical leave.

So I will grant the motion for summary judgment urged by the defendant.

I will deny the plaintiff's motion for summary judgment.

That will be a final and appealable order, and we'll see if this time the Appellate Court reaches the merits.

MR. DAUKSAS: Thank you, your Honor.

THE COURT: All right. Thank you.

Jean M. Tartaglia, Official Court Reporter

MR. THOMA: Thank you, your Honor.

(Which were all the proceedings had at the hearing of the above-entitled cause, this date.)

STATE OF ILLINOIS)
) SS.
COUNTY OF DU PAGE)

I, JEAN M. TARTAGLIA, certify the foregoing to be a true and accurate transcript of the computer-based, digitally recorded proceedings of the above-entitled cause to the best of my ability to hear and understand, based upon the quality of the audio recording pursuant to Local Rule 1.03(b).

Jean M. Tartaglia

Official Court Reporter
Eighteenth Judicial Circuit of Illinois
DuPage County

APPEAL TO THE APPELLATE COURT OF ILLINOIS
SECOND DISTRICT
FROM THE CIRCUIT COURT THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS

MARGARET DYNAK, Plaintiff-Appellant, v. BOARD OF EDUCATION OF WOOD DALE SCHOOL, DISTRICT 7, Defendant-Appellee.	))))))))))	Case No. 2016-MR-001368 Honorable Bonnie M. Wheaton

NOTICE OF APPEAL

Notice is hereby given that Plaintiff, Margaret Dynak, by and through her attorneys, hereby appeals to the Illinois Appellate Court of Illinois, Second District, this Court's Order of June 20, 2018 in Case No. 2016-MR-1368 granting the motion for summary judgment of Defendant Board of Education of Wood Dale School, District 7 and denying Plaintiff's motion for summary judgment, for the reasons stated on the record.

Respectfully submitted,

Margaret Dynak, Plaintiff-Appellant

By: _____
One of Plaintiff-Appellant's Attorneys

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July 11, 2018

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APPEAL TO THE APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS

MARGARET DYNAK
Plaintiff/Petitioner

Reviewing Court No: 2-18-0551
Circuit Court No: 2016MR001368
Trial Judge: BONNIE M WHEATON

v.

WOOD DALE SCHOOL DISTRICT 7 BOARD OF EDUCATION OF
Defendant/Respondent

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