

## **CITY COUNCIL AGENDA ITEM**

### **CITY OF SHORELINE, WASHINGTON**

**AGENDA TITLE:** Discussion of Resolution No. 407 - Employee Handbook Updates Including Items Related to Initiative 1433 – Extra Help Sick Leave Policy

**DEPARTMENT:** Human Resources

**PRESENTED BY:** Paula Itaoka, Human Resources Director

**ACTION:**     \_\_\_ Ordinance     \_\_\_ Resolution     \_\_\_ Motion  
              \_\_\_ X Discussion     \_\_\_ Public Hearing

#### **PROBLEM/ISSUE STATEMENT:**

The Employee Handbook requires two substantive updates and one ‘housekeeping’ update. The substantive updates stem from the passage of Washington State Initiative 1433, which was passed in the November 8, 2016 general election, and requires every employer to provide paid sick leave for all workers effective January 1, 2018. While the City’s sick leave policy for regular employees meets most of the requirements in the Initiative, an update is needed to provide restoration of sick leave upon rehire within twelve months. The City also needs to adopt a policy that provides sick leave for Extra Help employees to meet the requirements of Initiative 1433. The housekeeping update is a new section regarding what to do if an employee receives a subpoena or notice of deposition directly. The Employee Handbook was deficient in this area. Adoption of proposed Resolution No. 407 will update the City’s Employee Handbook to account for these updates.

#### **FINANCIAL IMPACT:**

There is no financial impact for the Employee Handbook updates regarding sick leave for regular employees or the new section on subpoenas and depositions. Regarding the update for extra help sick leave, based on 2016 experience, staff estimates approximately 1,200 hours of sick leave will accrue each year for extra help employees. The estimated value of this sick leave is from \$20,000 to \$21,000 a year. Some of this value will convert to actual cost because some sick leave hours must be back-filled (such as lifeguarding hours). However, the actual annual cost is difficult to forecast and will vary over time.

#### **RECOMMENDATION**

Staff recommends that Council discuss Resolution No. 407 updating the City’s Employee Handbook. Council should also determine if there are any further questions or information that staff should bring back for Council consideration. Council is currently scheduled to adopt Resolution No. 407 on June 12, 2017.

Approved By:           City Manager **DT**   City Attorney **MK**

## **BACKGROUND**

The Employee Handbook requires two substantive updates and one 'housekeeping' update. The substantive updates stem from the passage of Washington State Initiative 1433, which was passed in the November 8, 2016 general election, and requires every employer to provide paid sick leave for all workers effective January 1, 2018. While the City's sick leave policy for regular employees meets most of the requirements in the Initiative, an update is needed to provide restoration of sick leave upon rehire within twelve months. The City also needs to adopt a policy that provides sick leave for Extra Help employees to meet the requirements of Initiative 1433. The housekeeping update is a new section regarding what to do if an employee receives a subpoena or notice of deposition directly. The Employee Handbook was deficient in this area. Adoption of proposed Resolution No. 407 (Attachment A) will update the City's Employee Handbook to account for these updates. Exhibit A to this staff report provides those pages of the Employee Handbook which are proposed for amendment.

## **DISCUSSION**

### **Employee Handbook Updates Related to Sick Leave**

Washington State Initiative 1433 (Attachment B), an act relating to fair labor standards, was passed in the November 8, 2016 General Election. Part 2 of the Initiative, effective January 1, 2018, requires that every employer provide paid sick leave for all workers. In summary, Initiative 1433 Part 2 requires that employers:

- provide one hour of sick leave for every forty hours worked,
- allow employees to use accrued sick leave after 90 calendar days from hire,
- allow carryover of up to 40 sick leave hours from one year to the next,
- allow use of sick leave for immediate family as defined by the initiative, and
- reinstate sick leave balances if employees are rehired within 12 months of a separation in service.

The City's sick leave policy for regular employees is a set monthly accrual system based on a continuous schedule throughout the year. This approach is not suitable for extra help employees because they are not continuously scheduled throughout the year. Extra Help employees perform work that ranges from seasonal, to variable, or sometimes intermittently as the work load rises and falls. In other words, it may take multiple weeks for an extra help employee to work 40 hours. A policy that accurately credits one hour of sick leave for every 40 hours worked is needed.

To understand the impact of this new benefit, it is helpful to look at the past. Using data from 2016 staff can reasonably estimate the impact of sick leave for extra help. Last year, there were 203 individuals who worked 53,181 extra help hours in total. Eighty three percent (83%) of these hours were in the Parks Recreation and Cultural Arts department, primarily in recreation programs. Nine percent (9%) of these hours were in the Administrative Services Department, primarily in GIS and computer support functions but also in support of the Smart Policing grant, finance operations, facilities turnover, and council videography. Six percent (6%) of these hours were in Public Works, primarily in surface water support but also in maintenance and engineering. The remaining 2% of these hours were in the City Clerk's office working on public

records disclosure requests. Of the 2016 extra help employees, 182 worked 40 or more hours for the year and would have, in total, accrued 1,247 hours of sick leave. The average accrual of sick leave would have been 6.85 hours for the year, the lowest being 1 hour and the highest 27 hours.

Adopting the following updates to the Employee Handbook will ensure the City's sick leave policies comply with the new requirements. Updates are italicized below.

Staff recommends the following update to the sick leave policy for regular and limited term employees:

## **VI. BENEFITS**

### **H. Sick Leave – Regular and Limited Term Employees**

#### **6. Rehired**

*Employees who are rehired within twelve months of a separation in service shall have their unused sick leave balance restored.*

Staff recommends the following update for a new Extra Help sick leave policy effective January 1, 2018:

## **VI. BENEFITS**

### **I. Sick Leave – Extra Help Employees**

*This section becomes effective January 1, 2018.*

*Extra Help employees perform work that is seasonal, variable, intermittent, or part time for a few hours each week; their sick leave benefit is based on actual hours worked.*

#### **1. Accrual and Eligibility to Use Sick Leave**

*Employees will accrue one hour of sick leave for every forty hours worked.*

*Beginning on the ninetieth calendar day after being hired, employees may use accrued sick leave for an illness or disability that requires the employee to be absent from their scheduled work hours. The illness or disability may be their own or that of an immediate family member.*

#### **2. Maximum Carryover**

*The maximum unused sick leave that may be carried over from one calendar year to the next is forty hours.*

#### **3. Separation from Service**

*Sick leave hours are not cashed out upon separation from service and may not be used to extend employment beyond the last scheduled day of work.*

#### **4. Rehired within Twelve Months**

*Employees who are rehired within twelve months shall have their unused sick leave balance restored and will have satisfied their eligibility to use sick leave as required in section one of this policy.*

### 5. On-the-job Injury

An employee who has an on-the-job injury and receives time loss payments from the Washington Department of Labor and Industries (L & I) may not use sick leave for the same hours for which the employee receives the time loss payment. An employee may use sick leave to supplement the time loss payment for the purpose of continuing to receive his or her pay for scheduled hours of work. If an employee is awarded time loss payments for a period that the employee has already used sick leave, the employee shall submit the L & I check to Finance and 'buy back' the equivalent amount of sick leave used. While on time loss, the employee's pay may not exceed the employee's normal pay when not on time loss.

Staff recommends the following updates to definitions regarding sick leave:

## **III. DEFINITIONS**

### **H. De Facto Parent**

A person who has been found by the court to have assumed, on day-to-day basis, the role of the parent, fulfilling both the child's physical and psychological need for care and affection, and who has assumed that role for a substantial period.

### **O. Immediate Family**

Unless defined otherwise in these policies, immediate family is:

- A spouse or domestic partner.
- A child, parent or sibling of the employee, employee's spouse or domestic partner.
  - Child includes adopted, biological, foster, grand, step, child of a legal guardian or a person standing in loco parentis or a de facto parent; regardless of age or dependency status.
  - Parent includes adoptive, biological, foster, grand, step and a person who was a legal guardian or stood in loco parentis or was a de facto parent.
  - Sibling includes adopted, biological, foster, or step.

~~the employee's grandparent, parent, parent-in-law, foster parent, spouse, domestic partner, biological child, adopted child, step child, child of domestic partner, foster child, a legal ward or child of a person standing in loco parentis if the child is younger than 18, grandchild, sister, sister-in-law, brother or brother-in-law.~~

In appropriate circumstances, an employee may believe that another individual should be considered a member of the immediate family for the purpose of applying these policies. The employee shall make a written request explaining to Human Resources why the employee believes that this individual should be considered a member of the immediate family. If Human Resources concurs, they shall forward a recommendation to the City Manager for approval. The City Manager shall decide to approve or deny the request. (If the definition of

immediate family is different in certain approved benefit plans or policies; the provisions of those plans or policies will govern.)

**R. In Loco Parentis**

A person who acts in the place of a parent with legal responsibility to take on some of the functions and responsibilities of a parent.

**T. Normal Pay**

Pay for scheduled hours of work at 1.0 (one) times the hourly rate of pay.

**V. Separation from Service**

Any case where employment ends through death, retirement, resignation, layoff or otherwise a termination of employment.

**Employee Handbook Updates Related Subpoenas and Depositions**

The City Attorney's office complies with Washington Court Rules with respect to all matters pertaining to legal discovery in law suits, including depositions. However, it's possible an employee might receive a subpoena or notice of deposition directly. Adopting the following policy in the Employee Handbook will ensure employees have instructions on what to do if they receive a subpoena or notice of deposition regarding City business. Staff recommends the following update to the Employee Handbook in the Employment Policies section of the handbook:

**IV. EMPLOYMENT POLICIES**

**C. Subpoenas and Depositions**

Sometimes an employee may receive a notice that they are being subpoenaed regarding City business, such as being required to give a deposition. If an employee receives such a notice directly, the employee is to immediately notify the City Attorney's office. The City Attorney's office will assist the employee in preparing for the deposition and will accompany the employee to the deposition, providing the appropriate defense for the employee during the deposition as provided by court rule and law.

**FINANCIAL IMPACT**

There is no financial impact for the Employee Handbook updates regarding sick leave for regular employees or the new section on subpoenas and depositions. Regarding the update for extra help sick leave, based on 2016 experience, staff estimates approximately 1,200 hours of sick leave will accrue each year for extra help employees. The estimated value of this sick leave is from \$20,000 to \$21,000 a year. Some of this value will convert to actual cost because some sick leave hours must be back-filled (such as lifeguarding hours). However, the actual annual cost is difficult to forecast and will vary over time.

**RECOMMENDATION**

Staff recommends that Council discuss Resolution No. 407 updating the City's Employee Handbook. Council should also determine if there are any further questions

or information that staff should bring back for Council consideration. Council is currently scheduled to adopt Resolution No. 407 on June 12, 2017.

### **ATTACHMENTS**

Attachment A: Proposed Resolution No. 407

Attachment A, Exhibit A: Revised Employee Handbook Sections

Attachment B: Initiative 1433

**RESOLUTION NO. 407**

**A RESOLUTION OF THE CITY OF SHORELINE, WASHINGTON, ADOPTING REVISIONS TO PERSONNEL POLICIES TO PROVIDE FOR AN UPDATE TO THE SICK LEAVE POLICY FOR REGULAR EMPLOYEES, AN EXTRA HELP SICK LEAVE POLICY, AND A POLICY INSTRUCTING EMPLOYEES ON WHAT TO DO IF THEY RECEIVE A SUBPOENA OR NOTICE OF DEPOSITION REGARDING CITY BUSINESS.**

WHEREAS, the City Council has provided for benefits and working conditions in the Employee Handbook which sets forth the City's personnel policies; and

WHEREAS, since its original adoption, the Employee Handbook has been updated to reflect legislative amendments and other policy updates; and

WHEREAS, the voters of Washington passed Initiative 1433 at the November 2016 General Election which requires the City to provide paid sick leave for all workers – regular and seasonal (extra help) – by January 1, 2018; and

WHEREAS, Initiative 1433 is now codified at RCW 49.46 Minimum Wage Requirements and Labor Standards, specifically at RCW 49.46.020, 49.46.200, and 49.46.210; and

WHEREAS, revisions are necessary to update the sick leave policy for regular employees and to implement a sick leave policy for extra help employees as required RCW 49.46; and

WHEREAS, revisions are necessary to provide employees with instructions on what to do if they receive a subpoena or notice of deposition regarding city business; and

WHEREAS, the City Council, having given full consideration to the proposed revision to the Employee Handbook;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SHORELINE, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:**

**Section 1. Employee Handbook Revision.** Certain sections of the Employee Handbook are revised as provided in Exhibit A to this Resolution.

**Section 2. Corrections by City Clerk.** Upon approval of the City Attorney, the City Clerk is authorized to make necessary corrections to this resolution, including the corrections of scrivener or clerical errors; references to other local, state, or federal laws,

codes, rules, or regulations; or resolution numbering and section/subsection numbering and references.

**ADOPTED BY THE CITY COUNCIL ON JUNE 12, 2017.**

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Christopher Roberts, Mayor

ATTEST:

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Jessica Simulcik Smith, City Clerk





# EMPLOYEE HANDBOOK

Last updated: 2/27/2017xx/xx/xxxx  
Council Resolution 402407

### **III. DEFINITIONS**

**A. Anniversary Date**

The date used for the purpose of calculating leave benefits and length of service. Usually the anniversary date is the date the employee began work for the City, but adjustments to the anniversary date shall be made proportionate to any unpaid time off.

**B. Break in Service**

The period of time between the date an employee separates from service and the date the employee is rehired.

**C. Callback**

All time worked in excess of a scheduled shift, which is not an extension of that shift, and is unanticipated, unforeseen, and not a regular function of the employee's work schedule.

**D. City**

The City of Shoreline, Washington.

**E. City Manager**

The individual appointed by the City Council to serve in this capacity or his or her designee.

**F. Core Hours**

Those hours during which City offices are open to the public and during which staffing is available to provide service to our customers. Core hours for the City are 8:00 a.m. to 5:00 p.m. Monday through Friday.

**G. Demotion**

Any case where a regular employee moves on a non-temporary basis to a different position in a lower salary range with the exception of such movement resulting from a compensation study or salary survey.

**H. De Facto Parent**

A person who has been found by the court to have assumed, on day-to-day basis, the role of the parent, fulfilling both the child's physical and psychological need for care and affection, and who has assumed that role for a substantial period.

**H.I. Department Director**

An individual appointed by the City Manager to serve as Assistant City Manager, Administrative Services Director, City Attorney, Human Resources Director, Parks Recreation and Cultural Services Director, Planning and Community Development Director or Public Works Director or designee.

**I.J. Domestic Partner**

The individual named in a current, valid Affidavit of Marriage/Domestic Partnership on file with the City's Human Resources Department. The Partnership may be of the same or opposite sex. The Partnership must satisfy the following criteria:

- Partners shall not be part of another Domestic Partnership or marriage,
- Partners shall be mentally competent, 18 years of age or older, not related by blood closer than permitted for marriage under RCW 26.04.020.1a and .2.

- With approval from Human Resources based on an evaluation of employment status including measurement period implications.

**c) Less than 20 Ongoing**

Work that is ongoing and consistent with few hours but regularly scheduled each week.

Maximum Hours:

- 1,040 a year and
- an average of 20 per week during the first 3 months of employment and during 12 months of employment.

Break in Service Requirement before Rehire:

- 13 weeks, or
- Longer than the employee was employed, or
- With approval from Human Resources based on an evaluation of employment status including measurement period implications.

**L.M. Exempt Employee**

An employee exempt from the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA) as defined by that Act or applicable state law and designated as such by the City Manager. Exempt positions are so indicated on the salary table adopted by the City Council.

**M.N. Flex-Time**

A work schedule that permits flexible starting and quitting times or other alternative work schedules within limits set by the respective Department Director.

**N.O. Immediate Family**

Unless defined otherwise in these policies, immediate family is:

- A spouse or domestic partner.
- A child, parent or sibling of the employee, employee's spouse or domestic partner.
  - Child includes adopted, biological, foster, grand, step, child of a legal guardian or a person standing in loco parentis or a de facto parent; regardless of age or dependency status.
  - Parent includes adoptive, biological, foster, grand, step and a person who was a legal guardian or stood in loco parentis or was a de facto parent.
  - Sibling includes adopted, biological, foster, or step.

~~the employee's grandparent, parent, parent-in-law, foster parent, spouse, domestic partner, biological child, adopted child, step child, child of domestic partner, foster child, a legal ward or child of a person standing in loco parentis if the child is younger than 18, grandchild, sister, sister-in-law, brother or brother-in-law.~~

In appropriate circumstances, an employee may believe that another individual should be considered a member of the immediate family for the purpose of applying these policies. The employee shall make a written request explaining to

Human Resources why the employee believes that this individual should be considered a member of the immediate family. If Human Resources concurs, they shall forward a recommendation to the City Manager for approval. The City Manager shall decide to approve or deny the request. (If the definition of immediate family is different in certain approved benefit plans or policies; the provisions of those plans or policies will govern.)

**O.P. Insubordination**

Expressed hostility or contempt for an employee's supervisor or willful disregard of a supervisor's reasonable directive.

**P.Q. Intern**

A position that is a form of on-the-job training that may be either voluntary or on paid status.

**R. In Loco Parentis**

A person who acts in the place of a parent with legal responsibility to take on some of the functions and responsibilities of a parent.

**Q.S. Non-Exempt Employee**

An employee covered by the minimum wage and overtime provisions of the Fair Labor Standards Act.

**T. Normal Pay**

Pay for scheduled hours of work at 1.0 (one) times the hourly rate of pay.

**R.U. Promotion**

Any case where a regular employee moves on a non-temporary basis to a different position in a higher salary range with the exception of such movement resulting from a compensation study or salary survey.

**V. Separation from Service**

Any case where employment ends through death, retirement, resignation, layoff or otherwise a termination of employment.

**S.W. Standby**

Specific assignment of an employee during off-hours to be available to come to work if needed. Standby is not considered as time worked.

**T.X. Step Increase Date**

The date that is used for the purpose of annual performance review and step increase. Usually the step increase date is the date the employee began work in his or her current position, but adjustments shall be made proportionate to any unpaid time off.

**U.Y. Time in Paid Status**

The period of hours during a pay cycle for which an employee receives compensation including hours worked, vacation, sick, holiday, management, personal or other paid leaves.

**V.Z. Transfer**

Any case where a regular employee moves on a non-temporary basis to a different position in the same salary range.

knowledge, skills and abilities and the work responsibilities of the position; the position may be re-posted and made available to external applicants.

**B. Reference Checking**

All requests for information regarding past or present employees shall be directed to the Human Resources Department. Human Resources will then release information stating job title, length of service and eligibility for rehire. If the employee has signed a statement releasing the City from liability, additional information may be given.

**C. Subpoenas and Depositions**

Sometimes an employee may receive a notice that they are being subpoenaed regarding City business, such as being required to give a deposition. If an employee receives such a notice directly, the employee is to immediately notify the City Attorney's office. The City Attorney's office will assist the employee in preparing for the deposition and will accompany the employee to the deposition, providing the appropriate defense for the employee during the deposition as provided by court rule and law.

**C.D. Prohibited Political Activities – Code of Ethics, Appendix A**

While all employees have the right to participate in political or partisan activities of their choosing, employees are stewards of the public's trust in matters of City government. Political activity may not adversely affect the responsibilities of employees in their official duties. Because of the sensitive nature of the services in which the City is engaged, the following activities are prohibited:

**1. Use of City Resources, Property, Authority and Influence**

Employees may not campaign on City time or in City uniform or while representing the City in any way. Employees may not allow others to use City facilities or funds for political activities. Employees may not use City authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office.

**2. Coercion**

Employees may not directly or indirectly coerce, attempt to coerce, or command a state or local officer or employee to pay, lend, or contribute anything of value to any party, committee, organization, agency, or person for political purposes.

**3. Elected Office, Commission or Board Service**

Employees may not serve as an elected official of the City, a member of a City commission, or a member of a City board while an employee of the City.

**4. Conflict of Interest**

If there is a conflict of interest between an employee's elected position outside of the City and their position with the City, the employee must resign from one of the positions.

Violation of any part of this policy may be grounds for disciplinary action, up to and including termination.

A personal day needs to be scheduled by mutual agreement of the employee and the supervisor and may be used for any reason. Non-exempt staff may use these days as normal workdays or in increments of one or more hours (up to the total hours of two normal work days.) Exempt staff must use a full day at a time.

Personal days will be awarded effective January 1 of each year. An employee hired July 1 or later will receive only one personal day in that calendar year. Any personal days not used by the end of the calendar year will be forfeited.

### **3. Holidays for Reason of Faith or Conscience**

Applies to: All Employees

If an employee's religious beliefs include observance of a holiday or leave is needed to attend a religious activity of faith or conscience that is not a City holiday, the employee may take up to two days off per calendar year unless the leave would create an undue hardship for the City as defined in WAC 82-56-020 or a risk to public safety. The leave requires the approval of the Department Director.

Regular employees may use a personal day, vacation, compensatory time, or leave without pay, extra help employees may use leave without pay.

## **H. Sick Leave – Regular and Limited Term Employees**

Employees accrue paid time off for sick leave at the rate of eight hours for each month worked. Regular and limited term part-time employees receive prorated sick leave accrual based on the ratio of their normally scheduled work week to a forty hour week. The City Manager is authorized to negotiate starting balances of sick leave with individual staff members.

### **1. Purpose**

The purpose of sick leave is to provide an 'insurance policy' of a bank of paid leave to be used in the event that an employee or immediate family member experiences an illness or disability that requires an employee to be absent from work. Employees who are ill or disabled are expected to use sick leave to recover and to not report to work when they could expose co-workers to illness.

Employees shall use leave to account for any sick leave related absence whether full or partial day unless they have otherwise made up the time in the same work week.

### **2. Use of Sick Leave**

#### **a) Employee**

Sick leave may be used when an employee is ill, injured, disabled (including a disability due to pregnancy or childbirth) or has been exposed to a contagious disease where there is a risk to the health of others, or for medical or dental examinations or treatment when such appointments cannot be scheduled outside of working hours, or when the use of a prescription drug impairs job performance or safety.

#### **b) Immediate Family Members**

Sick leave may be used to care for a member of the immediate family who is ill, injured or disabled. Sick leave may also be used for qualifying Family Leave provided for in the Family Leave section.

**c) Doctor's Note**

After three days of sick leave an employee may be asked to provide a doctor's note or other evidence of inability to work at the discretion of the supervisor or Department Director.

**d) Notification**

Each employee, or someone on their behalf, should inform their supervisor if unable to come to work. This notification should be done each day prior to the scheduled starting time unless on long-term leave, so arrangements can be made to cover the absence.

**3. Conversion of Vacation to Sick Leave**

If an employee on approved vacation is hospitalized or experiences a similar extraordinary sick leave event, the employee may make a written request to the City Manager to convert the sick leave connected time from vacation leave to sick leave. The City Manager shall consider the facts involved and shall approve or deny the request.

**4. Maximum Balance**

The maximum banked balance of sick leave is 1040 hours. Regular and limited term part time employees maximum banked balance will be prorated based on the ratio of their normally scheduled work week to a forty hour week.

**5. Separation from Service**

Upon separation, if an employee is eligible for retirement as defined by the rules and regulations of the Washington State Public Employees Retirement System, an employee shall be paid for 10% of their accrued but unused sick leave.

**6. Rehired**

Employees who are rehired within twelve months of a separation in service shall have their unused sick leave balance restored.

**6.7. On-the-job Injury**

An employee who has an on-the-job injury and receives time loss payments from the Washington Department of Labor and Industries (L & I) may not use sick leave for the same hours for which the employee receives the time loss payment. An employee may use sick leave to supplement the time loss payment for the purpose of continuing to receive his or her normal salary. If sick leave is exhausted, the City will use other available leave to supplement the time loss, unless the employee otherwise notifies Payroll in writing. If an employee is awarded time loss payments for a period that the employee has already used sick leave or other available leave, the employee shall submit the L & I check to Finance and 'buy back' the equivalent amount of leave used. While on time loss, the employee's salary may not exceed the employee's normal salary when not on time loss.

**I. Sick Leave – Extra Help Employees**

This section becomes effective January 1, 2018.

Extra Help employees perform work that is seasonal, variable, intermittent, or part time for a few hours each week; their sick leave benefit is based on actual hours worked.

**1. Accrual and Eligibility to Use Sick Leave**

Employees will accrue one hour of sick leave for every forty hours worked.

Beginning on the ninetieth calendar day after being hired, employees may use accrued sick leave for an illness or disability that requires the employee to be absent from their scheduled work hours. The illness or disability may be their own or that of an immediate family member.

**2. Maximum Carryover**

The maximum unused sick leave that may be carried over from one calendar year to the next is forty hours.

**3. Separation from Service**

Sick leave hours are not cashed out upon separation from service and may not be used to extend employment beyond the last scheduled day of work.

**4. Rehired within Twelve Months**

Employees who are rehired within twelve months shall have their unused sick leave balance restored and will have satisfied their eligibility to use sick leave as required in section one of this policy.

**5. On-the-job Injury**

An employee who has an on-the-job injury and receives time loss payments from the Washington Department of Labor and Industries (L & I) may not use sick leave for the same hours for which the employee receives the time loss payment. An employee may use sick leave to supplement the time loss payment for the purpose of continuing to receive his or her pay for scheduled hours of work. If an employee is awarded time loss payments for a period that the employee has already used sick leave, the employee shall submit the L & I check to Finance and 'buy back' the equivalent amount of sick leave used. While on time loss, the employee's pay may not exceed the employee's normal pay when not on time loss.

**I.J. Donated Leave**

Applies to: Regular and limited term employees.

A Department Director, after consulting with Human Resources, may recommend that the City Manager allow a regular employee to receive donated sick leave from another regular employee. The City Manager may approve the donated leave if he or she finds that the employee meets all of the following criteria.

**1. Criteria**

- a) The employee needs leave that qualifies for sick leave, which is of an extraordinary or severe nature and that has caused, or is likely to cause, the employee to either go on leave without pay or to terminate employment; and
- b) The employee has depleted all of his or her available leave time; and



# Initiative Measure No. 1433

filed January 22, 2016

AN ACT Relating to fair labor standards; amending RCW 49.46.005, 49.46.020, 49.46.090, 49.46.100, and 49.46.120; adding new sections to chapter 49.46 RCW; prescribing penalties; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1.** It is the intent of the people to establish fair labor standards and protect the rights of workers by increasing the hourly minimum wage to \$11.00 (2017), \$11.50 (2018), \$12.00 (2019) and \$13.50 (2020), and requiring employers to provide employees with paid sick leave to care for the health of themselves and their families.

**Sec. 2.** RCW 49.46.005 and 1961 ex.s. c 18 s 1 are each amended to read as follows:

(1) Whereas the establishment of a minimum wage for employees is a subject of vital and imminent concern to the people of this state and requires appropriate action by the legislature to establish minimum standards of employment within the state of Washington, therefore the legislature declares that in its considered judgment the health, safety and the general welfare of the citizens of this state require the enactment of this measure, and exercising its police power, the legislature endeavors by this chapter to establish a minimum wage for employees of this state to encourage employment opportunities within the state. The provisions of this chapter are enacted in the exercise of the police power of the state for the purpose of protecting the immediate and future health, safety and welfare of the people of this state.

(2) Since the enactment of Washington's original minimum wage act, the legislature and the people have repeatedly amended this chapter to establish and enforce modern fair labor standards, including periodically updating the minimum wage and establishing the forty-hour workweek and the right to overtime pay.

(3) The people hereby amend this chapter to conform to modern fair labor standards by establishing a fair minimum wage and the right to paid sick leave to protect public health and allow workers to care for the health of themselves and their families.

#### **PART I**

#### **ESTABLISHING FAIR LABOR STANDARDS BY INCREASING THE MINIMUM HOURLY WAGE TO \$11.00 (2017), \$11.50 (2018), \$12.00 (2019) AND \$13.50 (2020)**

**Sec. 3.** RCW 49.46.020 and 1999 c 1 s 1 are each amended to read as follows:

~~(1) ((Until January 1, 1999, every employer shall pay to each of his or her employees who has reached the age of eighteen years wages at a rate of not less than four dollars and ninety cents per hour.~~

~~(2) Beginning January 1, 1999, and until January 1, 2000, every employer shall pay to each of his or her employees who has reached the age of eighteen years wages at a rate of not less than five dollars and seventy cents per hour.~~

~~(3) Beginning January 1, 2000, and until January 1, 2001, every employer shall pay to each of his or her employees who has reached the age of eighteen years wages at a rate of not less than six dollars and fifty cents per hour.~~

~~(4))~~ (a) Beginning January 1, 2017, and until January 1, 2018, every employer shall pay to each of his or her employees who has reached the age of eighteen years wages at a rate of not less than eleven dollars per hour.

(b) Beginning January 1, 2018, and until January 1, 2019, every employer shall pay to each of his or her employees who has reached the age of eighteen years wages at a rate of not less than eleven dollars and fifty cents per hour.

(c) Beginning January 1, 2019, and until January 1, 2020, every employer shall pay to each of his or her employees who has reached the age of eighteen years wages at a rate of not less than twelve dollars per hour.

(d) Beginning January 1, 2020, and until January 1, 2021, every employer shall pay to each of his or her employees who has reached the age of eighteen years wages at a rate of not less than thirteen dollars and fifty cents per hour.

(2)(a) Beginning on January 1, ((2001)) 2021, and each following January 1st as set forth under (b) of this subsection, every employer shall pay to each of his or her employees who has reached the age of eighteen years wages at a rate of not less than the amount established under (b) of this subsection.

(b) On September 30, ((2000)) 2020, and on each following September 30th, the department of labor and industries shall calculate an adjusted minimum wage rate to maintain employee purchasing power by increasing the current year's minimum wage rate by the rate of inflation. The adjusted minimum wage rate shall be calculated to the nearest cent using the consumer price index for urban wage earners and clerical workers, CPI-W, or a successor index, for the twelve months prior to each September 1st as calculated by the United States department of labor. Each adjusted minimum wage rate calculated under this subsection ((+4)) (2)(b) takes effect on the following January 1st.

((+5)) (3) An employer must pay to its employees: (a) All tips and gratuities; and (b) all service charges as defined under RCW 49.46.160 except those that, pursuant to RCW 49.46.160, are itemized as not being payable to the employee or employees servicing the customer. Tips and service charges paid to an employee are in addition to, and may not count towards, the employee's hourly minimum wage.

(4) Beginning January 1, 2018, every employer must provide to each of its employees paid sick leave as provided in Part II of this act.

(5) The director shall by regulation establish the minimum wage for employees under the age of eighteen years.

## **PART II**

### **ESTABLISHING FAIR LABOR STANDARDS BY REQUIRING EMPLOYERS TO**

## PROVIDE PAID SICK LEAVE TO EMPLOYEES

NEW SECTION. **Sec. 4.** The demands of the workplace and of families need to be balanced to promote public health, family stability, and economic security. It is in the public interest to provide reasonable paid sick leave for employees to care for the health of themselves and their families. Such paid sick leave shall be provided at the greater of the newly increased minimum wage or the employee's regular and normal wage.

NEW SECTION. **Sec. 5.** (1) Beginning January 1, 2018, every employer shall provide each of its employees paid sick leave as follows:

(a) An employee shall accrue at least one hour of paid sick leave for every forty hours worked as an employee. An employer may provide paid sick leave in advance of accrual provided that such front-loading meets or exceeds the requirements of this section for accrual, use, and carryover of paid sick leave.

(b) An employee is authorized to use paid sick leave for the following reasons:

(i) An absence resulting from an employee's mental or physical illness, injury, or health condition; to accommodate the employee's need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or an employee's need for preventive medical care;

(ii) To allow the employee to provide care for a family member with a mental or physical illness, injury, or health condition; care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or care for a family member who needs preventive medical care; and

(iii) When the employee's place of business has been closed by order of a public official for any health-related reason, or when an employee's child's school or place of care has been closed for such a reason.

(c) An employee is authorized to use paid sick leave for absences that qualify for leave under the domestic violence leave act, chapter 49.76 RCW.

(d) An employee is entitled to use accrued paid sick leave beginning on the ninetieth calendar day after the commencement of his or her employment.

(e) Employers are not prevented from providing more generous paid sick leave policies or permitting use of paid sick leave for additional purposes.

(f) An employer may require employees to give reasonable notice of an absence from work, so long as such notice does not interfere with an employee's lawful use of paid sick leave.

(g) For absences exceeding three days, an employer may require verification that an employee's use of paid sick leave is for an authorized purpose. If an employer requires verification, verification must be provided to the employer within a reasonable time period during or after the leave. An employer's requirements for verification may not result in an unreasonable burden or expense on the employee and may not exceed privacy or verification requirements otherwise established by law.

(h) An employer may not require, as a condition of an employee taking paid sick leave, that the employee search for or find a replacement worker to cover the hours during which the employee is on paid sick leave.

(i) For each hour of paid sick leave used, an employee shall be paid the greater of the minimum hourly wage rate established in this chapter or his or her normal hourly compensation. The employer is responsible for providing regular notification to employees about the amount of paid sick leave available to the employee.

(j) Unused paid sick leave carries over to the following year, except that an employer is not required to allow an employee to carry over paid sick leave in excess of forty hours.

(k) This section does not require an employer to provide financial or other reimbursement for accrued and unused paid sick

leave to any employee upon the employee's termination, resignation, retirement, or other separation from employment. When there is a separation from employment and the employee is rehired within twelve months of separation by the same employer, whether at the same or a different business location of the employer, previously accrued unused paid sick leave shall be reinstated and the previous period of employment shall be counted for purposes of determining the employee's eligibility to use paid sick leave under subsection (1)(d) of this section.

(2) For purposes of this section, "family member" means any of the following:

(a) A child, including a biological, adopted, or foster child, stepchild, or a child to whom the employee stands in loco parentis, is a legal guardian, or is a de facto parent, regardless of age or dependency status;

(b) A biological, adoptive, de facto, or foster parent, stepparent, or legal guardian of an employee or the employee's spouse or registered domestic partner, or a person who stood in loco parentis when the employee was a minor child;

(c) A spouse;

(d) A registered domestic partner;

(e) A grandparent;

(f) A grandchild; or

(g) A sibling.

(3) An employer may not adopt or enforce any policy that counts the use of paid sick leave time as an absence that may lead to or result in discipline against the employee.

(4) An employer may not discriminate or retaliate against an employee for his or her exercise of any rights under this chapter including the use of paid sick leave.

### **PART III**

#### **MISCELLANEOUS**

NEW SECTION. **Sec. 6.** (1) Beginning January 1, 2017, all existing rights and remedies available under state or local law for enforcement of the minimum wage shall be applicable to enforce all of the rights established under this act.

(2) The state shall pay individual providers, as defined in RCW 74.39A.240, in accordance with the minimum wage, overtime, and paid sick leave requirements of this chapter.

**Sec. 7.** RCW 49.46.090 and 2010 c 8 s 12043 are each amended to read as follows:

(1) Any employer who pays any employee less than ~~((wages))~~ the amounts to which such employee is entitled under or by virtue of this chapter, shall be liable to such employee affected for the full amount ~~((of such wage rate))~~ due to such employee under this chapter, less any amount actually paid to such employee by the employer, and for costs and such reasonable attorney's fees as may be allowed by the court. Any agreement between such employee and the employer ~~((to work for))~~ allowing the employee to receive less than ~~((such wage rate))~~ what is due under this chapter shall be no defense to such action.

(2) At the written request of any employee paid less than the ~~((wages))~~ amounts to which he or she is entitled under or by virtue of this chapter, the director may take an assignment under this chapter or as provided in RCW 49.48.040 of such ~~((wage))~~ claim in trust for the assigning employee and may bring any legal action necessary to collect such claim, and the employer shall be required to pay the costs and such reasonable attorney's fees as may be allowed by the court.

**Sec. 8.** RCW 49.46.100 and 2010 c 8 s 12044 are each amended to read as follows:

(1) Any employer who hinders or delays the director or his or her authorized representatives in the performance of his or her duties in the enforcement of this chapter, or refuses to admit the

director or his or her authorized representatives to any place of employment, or fails to make, keep, and preserve any records as required under the provisions of this chapter, or falsifies any such record, or refuses to make any record accessible to the director or his or her authorized representatives upon demand, or refuses to furnish a sworn statement of such record or any other information required for the proper enforcement of this chapter to the director or his or her authorized representatives upon demand, or pays or agrees to pay (~~wages at a rate less than the rate applicable~~) an employee less than the employee is entitled to under this chapter, or otherwise violates any provision of this chapter or of any regulation issued under this chapter shall be deemed in violation of this chapter and shall, upon conviction therefor, be guilty of a gross misdemeanor.

(2) Any employer who discharges or in any other manner discriminates against any employee because such employee has made any complaint to his or her employer, to the director, or his or her authorized representatives that he or she has not been paid wages in accordance with the provisions of this chapter, or that the employer has violated any provision of this chapter, or because such employee has caused to be instituted or is about to cause to be instituted any proceeding under or related to this chapter, or because such employee has testified or is about to testify in any such proceeding shall be deemed in violation of this chapter and shall, upon conviction therefor, be guilty of a gross misdemeanor.

**Sec. 9.** RCW 49.46.120 and 1961 ex.s. c 18 s 4 are each amended to read as follows:

This chapter establishes ((a)) minimum standards for wages, paid sick leave, and working conditions of all employees in this state, unless exempted herefrom, and is in addition to and supplementary to any other federal, state, or local law or ordinance, or any rule or regulation issued thereunder. Any standards relating to wages, hours, paid sick leave, or other working conditions established by



any applicable federal, state, or local law or ordinance, or any rule or regulation issued thereunder, which are more favorable to employees than the minimum standards applicable under this chapter, or any rule or regulation issued hereunder, shall not be affected by this chapter and such other laws, or rules or regulations, shall be in full force and effect and may be enforced as provided by law.

NEW SECTION. **Sec. 10.** The state department of labor and industries must adopt and implement rules to carry out and enforce this act, including but not limited to procedures for notification to employees and reporting regarding sick leave, and protecting employees from retaliation for the lawful use of sick leave and exercising other rights under this chapter. The department's rules for enforcement of rights under this act shall be at least equal to enforcement of the minimum wage.

NEW SECTION. **Sec. 11.** The provisions of this act are to be liberally construed to effectuate the intent, policies, and purposes of this act. Nothing in the act precludes local jurisdictions from enacting additional local fair labor standards that are more favorable to employees, including but not limited to more generous minimum wage or paid sick leave requirements.

NEW SECTION. **Sec. 12.** This act shall be codified in chapter 49.46 RCW and is subject to RCW 49.46.040 (Investigation, etc.) and RCW 49.46.070 (Recordkeeping).

NEW SECTION. **Sec. 13.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 14.** This act takes effect on January 1, 2017.

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