

**RESOLUTION NO. 1392**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON,** regarding sick leave provisions and changes in state law for non-represented employees beginning January 1, 2018.

**WHEREAS,** this Resolution pertains to all regular employees, excluding those who are represented by labor organizations, specifically, Teamsters Local 763, Des Moines Police Guild, and Des Moines Police Management Association, and

**WHEREAS,** the City's non-represented employees fall into three groups: General Employees, those who are eligible for overtime compensation under the Fair Labor Standards Act (FLSA); Exempt Employees, those who are exempt under the FLSA; and the remaining exempt employees known as Directors, which for purposes of this Resolution includes all department heads, the Chief Strategic Officer, the Chief Operations Officer, and the City Manager, and

**WHEREAS,** in December 2016, the General Employees and Exempt Employees entered into memorandums of understanding with the City formally acknowledging that they are not collective bargaining organizations, preferring to seek mutual understanding for employees and city management in an informal, collaborative process to discuss issues of concern in the workforce without being bound by the constraints of chapter 41.56 RCW, and

**WHEREAS,** the parties further agreed that the City will treat non-represented employees equitably in relation to those represented by labor unions in accordance with DMMC 2.12.10, with the exception of the constraints of bargaining units with binding arbitration which necessitates a different outcome for certain uniformed groups of employees, and

**WHEREAS,** Initiative 1433, approved by Washington voters in November 2016, increased the minimum wage over several years and requires employers to provide paid sick leave to most employees beginning January 1, 2018, and

**WHEREAS,** under the new law, all eligible City employees must accrue paid sick leave at a minimum rate of one hour of paid sick leave for every forty hours worked; this includes part-time, extra-hire, temporary and seasonal workers, and

**WHEREAS**, regular City employees currently accrue more generous paid sick leave than what is provided under the new law, and

**WHEREAS**, attendance driven compensation is no longer allowed if it dissuades employees from using paid sick leave they are entitled to under the law, and

**WHEREAS**, the City Council approved a Memorandum of Understanding on April 26, 2018 with the Teamsters Local Union Number 763 to address changes in state law regarding paid sick leave, and

**WHEREAS**, the City Council has determined that it is in the best interest of the citizens of Des Moines for the City to provide equitable benefits to non-represented employees consistent with the Teamsters Memorandum of Understanding; now, therefore,

**THE CITY COUNCIL OF THE CITY OF DES MOINES RESOLVES AS FOLLOWS:**

**Sec. 1.** The City hereby provides the following for its regular non-represented employees effective January 1, 2018. All provisions of past resolutions, agreements or memorandums of understanding between the City and the General Employees and the Exempt Employees not modified by this Resolution remain in full force and effect. All personnel rules and regulations as may be promulgated according to DMMC 2.12.10 shall govern unless expressly contrary to this Resolution.

**Sec. 2. Sick Leave.** All full-time employees shall accrue sick leave benefits at the rate of eight (8) total hours for each calendar month of continuous employment. Such sick leave shall be separated into two separate accrual banks, "state sick leave" and "City sick leave." Employees shall accrue one-half of their monthly sick leave accrual at the end of the first pay period of the month and the second half at the end of the second pay period. Part-time employees shall accrue sick leave benefits on a pro rata basis according to hours worked.

All employees shall accrue one (1) hour of paid state sick leave for every forty (40) hours worked. Employees are not entitled to accrue state sick leave for hours paid while not working (such as vacation, paid holidays, or while using state sick leave). In addition, regular full-time employees shall accrue City sick

leave, which when combined with their state sick leave will total eight (8) hours of sick leave per month (prorated for part-time employees).

State sick leave benefits accrue from the date of employment and employees are entitled to use their accrued state sick leave beginning on the ninetieth (90<sup>th</sup>) calendar day after the start of their employment. City sick leave benefits are earned from the date of employment, and may be utilized from date of employment. Employees do not earn sick leave benefits during a leave without pay. Employees do not earn City sick leave benefits, and may not use any earned but unused sick leave benefits during a suspension without pay. Employees continue to earn City sick leave and vacation time while on paid sick leave.

City sick leave benefits not used during the calendar year in which they are earned may be carried over and used during succeeding calendar years. Such benefits may be carried over into successive calendar years so long as the employee remains employed by the City. Employees who transfer to another department retain any accumulated sick leave benefits after transfer to their new position.

Unused state sick leave balances in excess of forty (40) hours remaining at the end of the calendar year shall be credited to the employee's City sick leave balance the following year. State sick leave balances of forty (40) hours or less must carry over to the following calendar year.

Accrued state sick leave must be utilized for authorized purposes first, followed by City sick leave once the employee's state sick leave is exhausted. Employees may use their accrued, unused sick leave hours to care for themselves or a family member (as defined below) for:

(1) Mental or physical illnesses, injuries, or health conditions;

(2) The need for medical diagnosis, care, or treatment of mental or physical illnesses, injuries, or health conditions;  
or

(3) The need for preventive medical care.

For the use of sick leave to care for an employee's family member, "family member" is defined as a child, parent, spouse, registered domestic partner, grandparent, grandchild, or sibling. "Child" is defined as 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). "Parent" is defined as 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.

City sick leave benefits may be used in accordance with the City Personnel Manual. In accordance with state law, state sick leave benefits may be used by eligible employees for actual periods of temporary disability associated with pregnancy or childbirth during which the employee is physically unable to perform her duties as certified by a licensed physician. State sick leave may also be used for (a) a child with a health condition that requires treatment or supervision; or (b) a spouse, parent, parent-in-law, or grandparent of the employee who has a serious health condition or an emergency condition. For the purposes of this section, "health condition", "serious health condition", "emergency condition" and "mental or physical disability" are defined by WAC 296-130-020(10-14).

Employees may use their accrued, unused state sick leave when their City building (work site) 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 by order of a public official for any health-related reason. See the definition of "child" in the previous section.

Employees may use their accrued, unused state sick leave to seek legal or law enforcement assistance or remedies to ensure the health and safety of the employee and their family members including, but not limited to:

- (1) Preparing for, or participating in, any civil or criminal legal proceeding related to or derived from domestic violence, sexual assault, or stalking;

- (2) Seek treatment by a health care provider for physical or mental injuries caused by domestic violence, sexual assault, or stalking;

(3) Attend health care treatment for a victim who is the employee's family member;

(4) Obtain, or assist the employee's family member(s) in obtaining, services from: A domestic violence shelter; a rape crisis center; or a social services program for relief from domestic violence, sexual assault, or stalking.

(5) Obtain, or assist a family member in obtaining, mental health counseling related to an incident of domestic violence, sexual assault, or stalking in which the employee or the employee's family member was a victim of domestic violence, sexual assault, or stalking.

(6) Participating, for the employee or for the employee's family member(s), in: safety planning; or temporary or permanent relocation; or other actions to increase the safety from future incidents of domestic violence, sexual assault, or stalking.

(7) For purposes of leave related to domestic violence, sexual assault, or stalking, "family member" is defined as any individual whose relationship to the employee can be classified as a child, spouse, parent, parent-in-law, grandparent, or person with whom the employee has a dating relationship.

In the event an employee exhausts his or her accrued sick leave, the employee has the option to use accrued vacation leave or compensatory time.

Employees injured on the job shall not simultaneously collect sick, vacation or compensatory leave and Worker's Compensation payments greater than the employee's regular pay. The City provides "Sick Leave Buy Back" to enable employees, off work due to a workplace injury, to receive a paycheck while they wait for the Department of Labor and Industries (L&I) to process their claim and issue time-loss compensation. Employees use sick leave for the absence, but then have much of their sick leave accruals credited back based on the L&I payment. Employees must use their available sick leave bank, and when and if the employee's sick leave is exhausted, compensatory time or accrued vacation leave may be used. It is mandatory for the employee to buy back their sick leave hours with the time loss payment so that the employee receives no more than 100% of their wages during a time loss event. In any event, the

Employer shall pay only up to the maximum of the difference between the payment received under Worker's Compensation by such employee and the employee's regular straight-time rate of compensation that the employee would have received from the Employer if able to work. Such payment by the Employer shall be limited to the period of time that such employee has accumulated paid leave credits. The foregoing shall be accomplished by the employee depositing the time loss check from Worker's Compensation and "buying back" the sick leave with a personal check or money order payable to the City of Des Moines. Once the employee has bought back all available sick and vacation leave, the employee shall no longer accrue paid leave benefits and shall not be required to surrender the time loss payments from Worker's Compensation to the Employer.

Payment of City sick leave benefits is conditioned upon the employee notifying the supervisor or Department Director, or designee, of the employee's absence(s) as outlined in Section 4.H Attendance and Tardiness/Absenteeism of the City's Personnel Manual. Failure to give the required notice may result in no payment of City sick leave benefits or other compensation for such absence(s).

Employees must provide reasonable notice of an absence from work for the use of sick leave to care for themselves or a family member, or because the employee's child's school or place of care is closed by order of a public official for any health-related reason, as follows.

If an employee's absence is foreseeable, the employee must provide notice to their supervisor or designee at least 10 days, or as early as practicable, before the first day sick leave is used. If possible, notification should include the expected duration of the absence.

If an employee's absence is unforeseeable, the employee must contact their supervisor or designee as soon as possible before the required start of their shift. If the absence continues beyond the first day, the employee shall notify the supervisor on a daily basis.

(1) If circumstances allow, employees should provide notice as soon as the employee learns of the need for sick leave.

(2) In the event it is not practicable to provide notice of an unforeseeable absence, a person on the employee's behalf may provide such notice.

(3) If possible, this notification should include the expected duration of the absence.

For the use of domestic violence, sexual assault, or stalking, if the absence is foreseeable, an employee must give advance oral or written notice to their supervisor or designee as soon as possible. If an employee is unable to give advance notice because of an emergent or unforeseen circumstance related to the employee or family member being a victim of domestic violence, sexual assault, or stalking, the employee or their designee must give oral or written notice no later than the end of the first day that the employee takes such leave.

When an employee has used state sick leave for an authorized use for more than three (3) consecutive days, the employee must provide verification that establishes or confirms that the use of sick leave is for an authorized purpose. "Three (3) consecutive days" means an absence for a full work day or partial work day on each of three consecutive days during which the employee is required to work. For those employees with a regular work schedule, when the employee is "required to work" means the employee's regular schedule. However, an employee who is on a scheduled day off, such as a holiday or scheduled vacation day, cannot use sick leave because the employee is not required to work that day. Acceptable verification for absences exceeding three days are specified as follows.

For care of the employee or the employee's family member, acceptable verification may include:

(1) A written or oral statement from the employee indicating that the use of sick leave is necessary to care for the employee or their family member for an authorized purpose;

(2) A doctor's note or a signed statement by a health care provider indicating that the use of state sick leave is for care of the employee or their family member for an authorized purpose; or

(3) Other documentation demonstrating that the employee's use of sick leave is for care of the employee or their family member for an authorized purpose.

Verification must be provided to the City within ten (10) calendar days of the first day an employee used sick leave to care for themselves or a family member.

(a) When an employee or the employee's family member has been a victim of domestic violence, sexual assault, or stalking, the employee's choice of documents listed in WAC 296-128-660 satisfies this verification requirement; such verification must be in a timely manner.

(b) In the event the employee's child's school or place of care is closed by order of a public official for any health-related reason, acceptable verification may include written notice of closure by order of the public official; such verification must be provided to the City within ten (10) calendar days of the first day the employee used state sick leave for such purpose.

When an employee has used City sick leave, the employee may be required to provide certification of illness from a qualified health care provider whenever absent for two (2) or more days or has established a pattern which appears to indicate abuse and is requested by the employee's immediate supervisor or the Department Director, or designee. Examples of such an established pattern include when employee calls in sick on a day when a vacation request was denied, or absences or tardiness when particular job duties are performed, on a day before or after days off, holidays, scheduled vacation, or weekends. The employee shall be required to provide a written release to return to work from a qualified health care provider whenever requested by the employee's immediate supervisor or the Department Director, or designee. The City may require any employee returning after an absence to be examined by a second qualified health care provider of the City's choice.

Any employee found to have abused sick leave benefits or privileges by falsification or misrepresentation shall be subject to corrective action, including but not limited to repayment to the City of any amounts paid to such employee for such periods of absence, or discipline, up to and including discharge.



**Sec. 3.** The attendance incentive contained in the following paragraph is prohibited by state law and is hereby removed from the City Personnel Manual as it relates to Employees covered by this Resolution:

Employees who utilize twenty-four (24) hours or less of sick leave in any calendar year shall receive 10 (ten) hours of vacation time. This is calculated per calendar year and is not available for people who work less than a full year. The employees who qualify for this additional vacation time, and the respective Department Director, shall receive a notice of the qualification in January immediately following the completion of the applicable calendar year. The time is immediately available upon notification and the use of this time follows the same guidelines as noted in Section 7.C of the City's Personnel Manual.

**Sec. 4. General Employees and Sick Leave Balances**

General (non-exempt) employees with a sick leave balance of over one hundred and fifty (150) hours shall have one (1) hour of their monthly sick leave accrual of eight (8) hours cashed and deposited into the ICMA-RC 457 Plan. General (non-exempt) employees whose balance is over two hundred and fifty (250) hours shall have two (2) hours of their monthly sick leave accrual of eight (8) hours cashed and deposited into the ICMA-RC 457 Plan.

**Sec. 5. Vacation and Holiday**

Holidays - An employee is eligible for a paid holiday if he or she is on paid status during the work day before and after the holiday. Employees shall receive the following holidays off with eight (8) hours of compensation at their regular straight-time hourly rate of pay:

|                                   |                         |
|-----------------------------------|-------------------------|
| New Year's Day                    | January 1               |
| Martin Luther King Jr.'s Birthday | 3rd Monday in January   |
| President's Day                   | 3rd Monday in February  |
| Memorial Day                      | Last Monday in May      |
| Independence Day                  | July 4                  |
| Labor Day                         | 1st Monday in September |
| Veteran's Day                     | November 11             |

|   |                                       |
|---|---------------------------------------|
| Thanksgiving Day                        | 4th Thursday in<br>November           |
| Day after Thanksgiving<br>Christmas Day | Day after Thanksgiving<br>December 25 |

Employees shall receive four (4) hours off at their regular straight-time hourly rate of pay the afternoon of Christmas Eve Day, December 24. In addition, employees shall receive twenty-four (24) floating holiday hours as scheduled by the employee and approved by the supervisor. Regular part-time employees shall receive the above paid holidays on a prorated basis.

**Sec. 6. Conflicts.** Where a conflict exists between the terms of this Resolution and the Des Moines Personnel Manual, this Resolution shall control.

**Sec. 7. Ratification and confirmation.** Any acts consistent with the authority and prior to the effective date of this Resolution are hereby ratified and confirmed.


**ADOPTED BY** the City Council of the City of Des Moines, Washington this 18th day of October, 2018, and signed in authentication thereof this 18th day of October, 2018.

  
M A Y O R

APPROVED AS TO FORM:

  
Assistant City Attorney

ATTEST:

  
City Clerk