

# Health & Human Services and Public Safety Committee Agenda

Tuesday, May 8, 2018, 5:30pm

Room 209, City Hall

*Councilor Belinda Ray, District 1, Chair*

*Councilor Brian Batson, District 3*

*Councilor Pious Ali, At-Large*

1. Announcements
2. Review And Approval Of Minutes From The April 10, 2018 Meeting And April 24, 2018 Meeting.

Documents:

[HHS PS MINUTES APRIL 24 2018 DRAFT.PDF](#)  
[HHS PS MINUTES APRIL 10 2018.PDF](#)

3. Mandatory Paid Sick-Leave Ordinance

- Committee Chair will provide an introduction and background information on the ordinance.
- City staff will present their answers to Committee questions from the November 14, 2017 meeting.
- Committee questions & discussion

Documents:

[2018-05-04 HUMAN RESOURCES COMMITTEE PACKET.PDF](#)  
[2018-05-04 CORPORATION COUNSEL COMMITTEE PACKET.PDF](#)

4. Next Steps
5. Next Meeting: May 22

NOTE: Since there are no action items on the agenda, there will be no opportunity for public comment at this meeting. Please feel free to send comments to members of the committee on any issue at any time via email. Councilors email addresses are available on the city website: [www.portlandmaine.gov](http://www.portlandmaine.gov)

*The live stream of this meeting is available at: [www.portlandmaine.gov/livestream](http://www.portlandmaine.gov/livestream)*

*Keep up to date with the new shelter design and planning process at the City's website:*

[www.portlandmaine.gov/shelterplanning](http://www.portlandmaine.gov/shelterplanning)



## Health & Human Services and Public Safety Committee Minutes

Tuesday, April 24, 2018, 5:30pm, Council Chamber, City Hall

Committee Attendance:

Councilors Belinda Ray, Chair (District 1), Brian Batson (District 3), Pious Ali (At-Large)

Councilor Attendance: Jill Duson (At-Large), Spencer Thibodaux (District 2), Nick Mavodones (At-Large)

City Staff: Mayor, Ethan Strimling; Director of Health and Human Services, Dawn Stiles; Executive Assistant, Adam Harr; Director of Human Resources, Gina Tapp

### **AGENDA ITEM 1 – Announcements and Approval of Minutes:**

Meeting was called to order at approximately 5:33 PM.

Chair Ray announced that the next meeting will cover paid sick leave and moved to approve them at then next meeting on May 8<sup>th</sup> and the councilors agreed unanimously.

### **AGENDA ITEM 2 – Paid Sick Leave**

Council introduction: Chair Ray explained that the Maine Women's Lobby and Southern Maine Workers Center presented proposed mandatory paid sick leave ordinance to the Council on November 14<sup>th</sup>. The committee asked many questions. Staff will answer questions from that meeting on May 8<sup>th</sup> with public comments taken at this meeting. This is a large policy proposal that will stay in committee for as long as it takes to make sure the recommendations that ultimately get sent to the full Council are right for Portland.

Public Comment:

Summary of the 59 people who gave public comment over the three hour meeting:

- Harm from people going to work sick
  - Public health risk of spreading disease
  - Question of morality and human dignity/human rights
- One size does not fit all
  - Employers with PTO policies
    - Employees that work in multiple locations in and outside of Portland
  - Minor employees
  - Migrant/Seasonal workers
  - Student workers
  - Service/retail industry business models
    - Call outs
    - Retail prices staying competitive with online



- Tipped workers
- Affordability concerns for small businesses
- Sick time policy concerns
  - Vestment period
  - Rollover and accrual
  - Abuse
  - Too generous
  - Is it enough to cover major injury/illness?
- Broad definition of family
  - Inclusive of LGBTQ+ individuals
  - Abuse concerns
- Government overreach
- Collaborative process
  - Inclusive of employers and employees
  - Avoid us-vs-them mentality
- Cost of enforcement
  - Tax increase?
- Labor is undervalued and systemically undercompensated

Committee Discussion:

Chair Ray thanked everyone who spoke and for everyone being able to be heard while expressing opposing viewpoints.

Chair Ray asked that everyone who receives public comment forward it to Adam.

Councilor Batson asked that everyone who cited statistics to please send them.

Councilor Ali thanked those who spoke.

Next meeting:

May 8 in Room in 209. City staff will have Paid Sick Leave Ordinance answers to questions from the November 14<sup>th</sup> meeting.

Meeting adjourned.



## Health & Human Services and Public Safety Committee Minutes

Tuesday, April 10, 2018, 5:30pm, Room 209, City Hall

Committee Attendance:

Councilors Belinda Ray, Chair (District 1), Brian Batson (District 3), Pious Ali (At-Large)

City Staff: Mayor, Ethan Strimling; Director of Health and Human Services, Dawn Stiles; Director of Public Health, Dr. Kolawole Bankole; Director of Social Services, David MacLean; Executive Assistant, Adam Harr; Director of the Oxford Street Shelter, Robert Parritt; General Assistance Program Manager, Aaron Geyer; Community Health Promotions Specialist, Zoe Odlin-Platz; Community Health Promotions Specialist, Lizzie Garnatz; Family Health Program Manager, Anne Lang;

Partner Agency Staff: Medical Director of the India Street Public Health Center, Dr. Christina Demetteo

Public: Mark Noyes; Chris Berkeley, Sarah Michniewicz, Mark Swan, George Rhau

### **AGENDA ITEM 1 – Announcements and Approval of Minutes:**

Meeting was called to order at approximately 5:30 PM.

Chair Ray announced that the next meeting will cover paid sick leave and moved to accept the March 20<sup>th</sup> meeting minutes. The motion was seconded with all in favor.

### **AGENDA ITEM 2 – Oxford Street Shelter**

OSS: ([handout available here](#)):

<https://www.portlandmaine.gov/AgendaCenter/ViewFile/Item/6047?fileID=33219>)

- There was a typo: beds per night should be beds per day
- Averaging about 115 people per day; some stay all day and some move throughout.
- Broken ground on storage and external restrooms. They will open as soon as possible.
  - Next phase: 5 additional stalls in external bathroom
  - 200 units of storage in cubbies. it will be locked except for designated times where staff monitors the unit
- Organizations providing services during the day:
  - • Alternative Wellness
  - • Shalom
  - • Bayside Health Partners
  - • Portland Fire Department
  - • Public Health
  - • SARSM
  - • Through These Doors (Formerly Family Crisis Services)



- • Maine DHHS
- • Frannie Peabody Center
- 74 Housing Placements (48 men and 26 women with 28 being Long Term Stayers)
- New Position has had 123 Outreach Activities Since March
- Night Shelter: 234 Average in February is going down to 220
- New Shelter: Still looking for land

Councilor Ali asked how partner agencies and service providers connect to the shelter; does OSS staff solicit services? OSS solicits services and providers reach out directly. OSS relies on the providers' programs such as the meals at Preble Street.

Councilor Batson asked if there has been an uptick in housing placements since starting day services. There has not been one yet, however the individuals that the outreach staff is cultivating relationships with are the most vulnerable and deep in their substance use.

Chair Ray asked if there are financial agreements with day shelter service providers. OSS provides space and does not have formal financial agreements. Chair Ray then asked if there is a concern for programs that rely on grant funding continuing to provide services. There is not but agencies want waiting lists to demonstrate need.

Housing retention is at 90%, Chair Ray asked what the duration of follow up is. It is case by case. When a property manager or landlord is having issues, they will call shelter staff.

Mayor Strimling asked the status of the bathrooms and lockers; ground is broken and instillation will occur as soon as possible. How OSS staff determine where individuals have connections to Portland:

- Individuals self-report connections to Portland at intake.

What are preventing numbers from going down:

- Lack of affordable housing
- Lack of Medicaid expansion

Chair Ray asked if there are vouchers that being unused because of a lack of vacancies. There are less available vouchers and some people working on their own may not be able to find a unit their voucher can afford, but individuals working with housing councilors are largely successful once they've secured a voucher.

Dave explained that the Coordinated Entry System could alleviate service centers like Portland. Coordinated Entry is a no-wrong-door approach to implementing the homelessness system across the state, starting with initial diversion and triage to appropriate resources using 2-1-1 and where people physically present for services.

Dave explained the GA aspect where individuals are screened to see if they have attempted to access GA. The system will help people stay where they are and where they want to be.



Councilor Batson asked how the City sends people back to municipalities who come to Portland who want to stay in their home municipalities using their local GA offices. That process is not fleshed out yet because it is currently too difficult to prove municipality of responsibility.

Councilor Ali asked which housing resources asylum seeking families entering the shelter are eligible for. Asylum seekers do not qualify for federal assistance so the only available housing assistance option is General Assistance.

Chair Ray asked if GA is billing other municipalities. With the difficulty in proving municipality of responsibility, Portland is not attempting to bill anymore. Instead, certain communities are taking their residents back and granting emergency housing assistance: South Portland, Westbrook and Sanford.

### **AGENDA ITEM 3 – Portland Opportunity Crew**

General Assistance Program Manager Aaron Geyer shared [highlights from the program](https://www.portlandmaine.gov/AgendaCenter/ViewFile/Item/6048?fileID=33220):  
<https://www.portlandmaine.gov/AgendaCenter/ViewFile/Item/6048?fileID=33220>

- POC employed 17 individuals for varying lengths of time.
- Picked up 316 bags of trash
- 214 Needles were removed from open spaces such as trails.
- Program ended on November 9<sup>th</sup>.
- Will start when the ground dries at the end of the month
- Funding through June
  - Donations through *Text CREW to 91999*
  - Applied to grants from Harvard and United Way
  - Reaching out to business community seeking sponsors; signs are placed around the crew's worksites that could be used to thank sponsors.

Councilor Ali asked if there are possibilities to link people to jobs? Six participants have found employment aided by the POC staff's case management and the work experience gained from participating.

\$43,000 was set aside from the budget last year: from the sale of City-owned land, CDBG and some text to donate and direct donations. The City did not fund the program in the FY19 budget. Social Services is looking for \$45,000 for FY19; the program costs about \$1,300 a week. Social Services is exploring weekly sponsorship by local businesses.

Councilor Batson asked if after enrollment with PeopleReady, are spots reserved for participants. Spots are not reserved. Aaron explained that the POC staff member helps participants obtain IDs and pass the pre-employment tests required by PeopleReady. Capacity opens up organically as individuals accept other jobs through PeopleReady.



Of the 47 who had barriers, what happened? Some were disabled or failed the PeopleReady test; individuals who fail the test cannot test again for one calendar year. People who failed were referred to Complete Labor, a staffing agency near Social Services.

The City pays for the program staff. The \$1,300 is all the stipends, breakfast and lunch, and gas for the van. Mayor Strimling asked about year-round services; Winter would be a challenge logistically. There has room for expansion in terms of participation.

#### **AGENDA ITEM 4 – Public Health Update**

Dr. Bankole recapped some activities from public health week; his goal is to connect Public Health with each department of the City.

Needle Exchange Program (NEP) – Zoe Odlin-Platz and Lizzie Garnatz

The NEP report is [available here](#):

< <https://www.portlandmaine.gov/AgendaCenter/ViewFile/Item/6046?fileID=33094> >

- Seeing an increase of people from outside of Portland including Northern Maine; Lewiston's closed.
- Majority of people are uninsured (85%)
- 35% are experiencing homelessness
- The clinic started giving out Narcan (Naloxone) in 2015
- 2017: data collection improved:
  - Kits given out
  - Reporting reversals including location of overdose, how many doses it took to reverse, what they took, and if 911 was called
- Donation Only: Vaccine like dosing, auto-injectors, and some nasal deliveries.
- Information gathered from data collection and outreach were used to train agencies servicing drug using populations
  - Trainings help the clinic advertise their other services
- 291 overdosed were reversed by participants last year.
- When the Lewiston needle exchange closed there was an increase; some do larger exchanges to bring them back to their communities.
- Mobile outreach to the shelter does education on where sharps boxes are.
- The program does a Biohazard training at the start of neighborhood clean-ups.
- Only 30% of people are calling 911; there is no Good Samaritan law in the State of Maine.
- Most people report using what people believe to be heroin or fentanyl.
  - Polysubstance use where people use multiple substances is common
  - Mostly opioids and some prescription drugs and stimulants



Councilor Ali asked if they had done trainings in the immigrant community. The Exchange has not due to outreach difficulties. Substance use is heavily stigmatized. Materials are being translated into Spanish and French. Councilor Ali suggested they work with community leaders and will send list of individuals to Dr. Bankole. Dr. Bankole clarified that while the NEP has not done outreach to immigrant communities but the Minority Health Program has.

Chair Ray asked if the reversal numbers in the naloxone distribution report could be lower and asked about the doses distributed. Each naloxone kit has two doses and one person can take more than the normal two doses per person. Chair Ray asked how location is tracked. NEP tracks by county and can provide those statistics.

Chair Ray asked how which drugs people use is captured. When people enroll there is a form that lists substances and are recorded in case notes. Chair Ray asked why no one reported marijuana where alcohol is. Alcohol is an overdose risk with opioids and its use is asked on the naloxone form. The NEP focuses on injectable drugs which is why marijuana is not asked about.

If people called 911 more, would fewer doses be used? When reversing a fentanyl overdose there is paraphernalia and color change in the face; it is scarier leading to using more than is necessary. EMS will stabilize first.

Switch from an auto injector to syringe:

- Who is the 2ml appropriate for?
- There was no testing done at the pharmaceutical level when the decision was made.
- A 2ml auto injector (about 5 times the previous amount) is only appropriate for a non-regular user. For that reason, NEP chose not to give them out except to recovery houses as it would be appropriate for someone in a relapse.

Councilor Batson asked if they see any barriers moving back to injectable naran. Some users prefer injectable. This preparation is specifically for NED participants, not for community trainings. Councilor Batson asked if there are different reactions to the ways to administer naran: nasal naloxone kits are available by prescription and over the counter.

Councilor Batson would like to see a connection with the business community. NEP trained the Portland Food Coop on reversing overdoses using nasal naloxone and installed sharps boxes in their bathrooms.

Councilor Batson asked about the naloxone donations; is it just product or financial donations too? Most are product donation grants. NEP would like to have nasal naran available to community members in stock but there are no donation programs for product and it is prohibitively expensive. Councilor Batson asked if there are supply and demand issues where participants ask for naloxone with none available. That sometimes occurs where individuals must be referred to a pharmacy.

Mayor Strimling asked if there are financial challenges. It is fully funded but acquiring more naloxone and nasal naloxone is a challenge.



Mayor Strimling asked about the Good Samaritan Law:

- There is a medical Good Samaritan Law that protects someone intervening in a medical emergency and that person injures the person experiencing the emergency while making a good faith effort to save them.
- An Overdose Good Samaritan Law does not exist;
  - someone who calls 911 for someone experiencing an overdose or the person experiencing an overdose can be arrested for possession.
  - Most arrests occur due to open warrants.

Mayor Strimling asked about safe injection sites. Chair Ray clarified that public health is putting together information on that type of program.

STD Clinic – Dr. Dematteo

- Partnership between Maine Medical Center and the India Street Clinic
- STDs are rising in the state and across the nation
  - Chlamydia
  - Gonorrhea
  - Syphilis
- Clusters of outbreaks of syphilis has been observed in the Portland community
- HIV rates are low
- Non-HIV STD funding has diminished; Portland is the last clinic.
- High risk individuals are tested for free; the rest pay a flat fee of \$60
- Tuesday and Thursdays have walk-in clinics from 3:00-5:30
- Provider outreach to educate on extra genital testing. 80% of gonorrhea cases would not have been found with urine testing alone.
- The Maine CDC has a staff member who offers intimate partner services and will interview individuals who test positive for HIV, Gonorrhea and syphilis and then anonymously contact their sexual partners for them.
- Outreach to lower barriers to care; self-collect orally and anally. Outreach to the jail, youth, and is partnered with the Preble street learning collaborative to provide a full STD clinic.
- PrEP program (Pre-exposure Prophylaxis), a daily pill which reduces the risk of HIV infection.

Councilor Batson asked for clarification; the India Street Clinic is the only dedicated STD testing clinic that provides free testing and treatment to high risk individuals. Councilor Batson asked how expensive PrEP is. It is very expensive but is very affordable if you have or do not have insurance. The manufacturer has programs to make it free or affordable.



Chair Ray asked what they attribute to the increase in STIs. The increased use of online apps and social media to meet people as well as condom use falling with the fear of HIV. People are less afraid acquiring HIV and may use condoms less. There is also better and increased testing and substance use, both could add to an increase.

Perfect storm of people who have multiple partners who are not comfortable talking about sex and are not getting tested extra-genitally; infections are being missed.

There used to be 7 disease intervention specialists, now 2 people cover the entire state.

Councilor Ali asked about what Massachusetts is doing with apps and what Maine is doing. MA has public health profiles on Grindr that can contact partners. Maine can only make phone calls and send letters; disease intervention specialists cannot send text messages.

Next meeting:

April 24<sup>th</sup> in Room 24.

Meeting adjourned

**Human Resources Department**Gina M. Tapp, SPHR  
Director

TO: HHS Committee

FROM: Gina Tapp, Director of Human Resources

DATE: May 7, 2018

RE: Responses to Questions on Paid Sick Leave for City Employees

This memo is being prepared to describe the current practices related to paid sick leave for the City of Portland workforce. Currently, we employ over 1, 400 employees in the following categories:

Non-union	163
Department Directors	13
Council Appointees	3
Elected Officials	9
Pro-Tech unit	130
CEBA unit	468
Labor & Trades unit	163
Supervisors unit	38
Fire unit	219
Police unit	115
Police Superior Officers unit	31
Telecommunicators unit	32
Contracted employees	12
Interns & Temp Workers	7
Seasonal Workers	40
<b>Total</b>	<b>1434</b>

In addition to the above, we also have 861 employees who serve in on-call positions for various functions including Elections Workers, Concessions Workers, Event Staff, Shelter Attendants, and Custodial Workers. Included in this group are a large number of Per Diem direct care nursing staff at the Barron Center.

**Who is eligible for paid sick leave, and who is not?**

Employees who are eligible for paid sick leave include all permanent full-time and part-time employees who are regularly scheduled to work at least 18.75 hours per week or more. Project employees (those working on a project of limited duration) are eligible for paid sick leave in the same manner as permanent employees. Permanent part-time employees who are regularly scheduled to work less than 18.75 hours per week are not entitled to any fringe benefits - including paid sick leave - other than those mandated by State Law.

Other employees who do not receive paid sick leave are some contracted employees, interns and temporary workers, seasonal workers, and on-call workers. Elected Officials are not included in this employee count, however the Mayor receives paid sick leave in the same manner as the non-union employees.

**How much sick leave do we provide?**

Employees eligible for paid sick leave accrue twelve (12) days per year, earned on a weekly basis.

**What is our Sick Leave Policy?**

Attached to this memo is the City's sick leave policy from our Personnel Policies and Procedures, page 24 - 28 which includes the details, along with sections from our collective bargaining agreements with our eight unions that detail sick leave provisions.

**How much Sick Leave to employees actually use in a year?**

Attached to this memo is a copy of the memo that I send out each year in February to all Department Directors that reports the actual sick leave usage of employees for the prior calendar year. As you can see, the average number of days of sick leave used for calendar year 2017 was 6.01 days, with a total cost of \$1,487,608.39. Please note that this amount includes both hourly paid employees and salaried, exempt employees. I have not yet been able to pull out the salaried, exempt pay from this total, as was requested. I will need more time to be able to provide that calculation.

**How will the new Paid Sick Leave Ordinance impact the City of Portland's workforce?**

Currently, we have a large number of employees who do not accrue sick leave to use when they are not able to come to work due to illness. If the ordinance were passed as written, we would need to start providing paid sick leave which raise the following concerns:

- 1) The nature of "On-Call" and "Per Diem" staffing is such that there is a list of available employees who are to be called to fill a shift when there is a need for them to work. This need usually is the result of another employee being out on some type of leave, a vacancy, or an increase in work which requires additional staff. We also call these types of employees to work "Events" such as concerts at Merrill Auditorium or sports games at The Expo. If the person called in to work declines to take the assignment, the next person on the list is called. If these types of employees decline to work the shift - for any reason - they do not have the option of using any type of paid leave to cover the shift, as they are not eligible for any type of paid leave. In the future, if the Ordinance were to pass, any of these employees might actually have accrued sick leave, and if they decline to work a shift due to a covered reason, the potential exists for us having to pay more than one employee for a shift (the employee who uses their sick leave, and the employee to fill the shift). While this situation happens on a fairly regular basis with benefit eligible employees who have sick leave to use, it doesn't happen at all now with these types of employees. This will potentially have an added cost to the City.
- 2) Currently, since we do not provide sick leave to all our employees, we have set sick leave accruals based on regular schedules for our benefit eligible employees. A new tracking system would need to be developed to provide one hour of sick leave for every 30 hours worked. While it is certainly not impossible to do this, I'm simply pointing out that it would be a different way of accounting for employees' time worked (and time taken) than we are currently set up for. Currently, we base accruals on a set schedule and many of our employees do not have set schedules.

**What are the leave laws that the City of Portland follows related to sick leave (paid and unpaid)?**

Because some of the questions and discussions around the issue of sick leave relate to other leave laws for employees, I am also attaching to this memo a comparison chart from the U.S. Department of Labor titled "Federal vs. Maine Family and Medical Leave Laws". Please note that it contains the definition of "health care provider" that we follow in our leave management practices.

**What is the City's practice on following up on use of paid sick leave for family members?**

If an employee uses sick leave accruals to be paid for time off to care for a family member, we do not currently make them "prove it", but rather take their word that they are using their sick leave for family members. If we were to receive information that suggests there was abuse of this provision, we might ask the employee for additional information. In general, we have not

found this to be a problem, and we try to allow as much flexibility as we can so that people can take care of their family members as required with the benefits we provide. That said, we have incentives in place that encourage employees not to use sick leave unless they really need it, such as being able to convert it to additional vacation time. As you can see by the average number of days being 6 per year when we provide an accrual that equates to 12 days, we believe we have a good benefit that is not being abused.

2. Funeral Leave

An employee may be excused for one (1) day for attendance at the funeral of an aunt, uncle, niece, and nephew.

Employees shall be granted the same bereavement or funeral leave for the death of a domestic partner or family member of a domestic partner as that provided for a spouse or family member of a spouse.

3. Sick Leave

The philosophy underlying the City's sick leave benefits is that sick leave is a type of insurance program for the employee based upon years of service, and it is designed to encourage employees to accumulate sick leave credits and to use them only when necessary. When so used, accumulated sick leave can provide an employee with substantial protection should he have a major medical problem. In light of this underlying philosophy, the City requires that employees request sick leave only in case of actual illness, and the City may at any time request the employee to obtain a certificate of illness from an attending physician or City physician. An employee's abuse of sick leave is grounds for disciplinary action, and if not corrected may be grounds for dismissal. As a matter of policy, the City will require a doctor's certificate prior to paying an employee for sick leave taken after the employee has submitted his resignation from City service. This requirement may be waived by the Department Head.

a. **Accrual**

Permanent fulltime employees are granted twelve (12) days of sick leave per year earned on a weekly basis.

b. **Use of Sick Leave**

Sick leave may be used only in the following cases:

- (i) Personal illness or physical incapacity of such a degree as to render the employee unable to perform the work of the assigned position or other work in the department.
- (ii) Attendance upon members of the employee's immediate household, including domestic partner, who are ill and require care by the employee, if approved by the employee's Department Head. Sick leave used for this

purpose is not to exceed twelve (12) days per year.

- (iii) Employees who wish to use sick leave to care for a domestic partner in accordance with subparagraph (ii) above must satisfy the City's eligibility requirements for claiming an individual as a domestic partner.

Absence for a fraction of a day that is chargeable to sick leave is charged proportionately in an amount not smaller than one (1) hour. The Department Head, if he deems it in the best interest of the City and with the concurrence of the Director of Human Resources, may authorize an extended disability leave with no pay upon recommendation of the employee's attending physician. Such leave will be granted and governed by the provisions below for disability leaves of absence.

c. **Unused Sick Leave Credits**

(i) Upon Retirement

When an employee retires from City service or is laidoff, the employee will be paid onehalf of his accumulation but the maximum payment shall not exceed ninety days. When an employee retires, he/she must have an accumulation balance of at least sixty days and ten years service in order to receive any payment under this section.

(ii) Upon Death

If an employee dies before retirement, onehalf of the employee's accrued sick leave will be paid to the persons below in the following order:

- a) first, to the surviving spouse of the employee;
- b) if there is no surviving spouse and the employee leaves a minor child (including adopted children), then to the guardian of such minor;
- c) if there is no surviving spouse or minor child, then payment will be made to the employee's estate. In the event of death arising out of and in the course of employment with the City, the City will pay one hundred percent (100%) of the accrued sick leave to the surviving spouse, minor child, or estate of

said employee as outlined above.

(iii) Upon Resignation

An employee with three or more but less than ten years of continuous service who resigns in good standing will be paid one-fifth of his accumulation; however, the maximum payment shall not exceed twenty-four days.

An employee with ten or more years of continuous service who resigns in good standing will be paid one-half of his accumulation; however, the maximum payment shall not exceed forty-five days.

A good standing resignation requires at least a two-week notice.

(iv) Conversion to vacation leave

Any permanent employee working the standard work week who uses the equivalent of two or fewer sick days within any consecutive 12-month period may elect to convert six days (45 hours) of accrued sick leave to five days (37.5 hours) of vacation leave.

Alternatively, an employee who has 12 or more years of permanent City service and a sick leave balance of no less than 720 hours, may elect to convert six days (45 hours) of accrued sick leave to five days (37.5 hours) of pay at their regular hourly rate.

Employees may make one of the above elections only once for any consecutive 12-month period, and only once during any 12-month period.

The conversion of sick leave to vacation leave shall not be permitted if doing so would result in exceeding the maximum permitted vacation accumulation.

(v) Conversion to Personal Leave

Any permanent employee working the standard work week who has been employed

by the City for twelve (12) consecutive months as of the beginning of the fiscal year is eligible to convert up to two (2) days of previously earned sick leave to an equivalent amount of personal leave. Employees are given the opportunity to elect conversion of sick leave to personal leave during the month of July. Employees who reach their one (1) year anniversary during the fiscal year may make their election during their anniversary month for that year only.

Sick leave will be converted to personal leave at the time the conversion is elected. The personal leave balance will change as personal leave time is used. At the end of the fiscal year, each employee may elect one of the following options: (1) convert unused personal leave to sick leave; or (2) retain unused personal leave for use in the next fiscal year; or (3) convert additional sick to personal leave, but in no event shall the employee's personal leave balance exceed two (2) days at any time. Neither conversion of sick leave to personal leave or subsequent use of personal leave under this section shall be considered to be use of sick leave for purposes of determining an employee's eligibility for converting sick leave to vacation leave.

The employee will give the Department Head or designee as much advance notice of the use of personal leave as the circumstances permit, and in any case the employee will notify the Department Head or designee of the use of the personal leave in the same manner as required for sick leave. When using personal leave time, the employee is not required to give the reason for use of such time. Personal leave is intended to be used for personal needs (including home emergencies, religious observances and pre-scheduled appointments that are not medical related) and is not to be used to circumvent department procedures for processing vacation requests.

Personal leave balances are not payable at separation from employment. However, any employee shall have the option at separation to convert unused personal leave to sick leave.

(vi) Alternate Work Schedule

The Director of Human Resources shall determine the rates applicable for the conversion in Subsection (iv) above for permanent employees working other than the standard "5/7.5" work week, e.g. those working a "4/10" week or a "224" schedule. In addition, the Director of Human Resources shall determine the proration of the above conversion rates for parttime employees.

4. Jury/Witness Duty Leave

Any employee shall be excused from work when required to respond to a summons for jury duty, to serve as a juror, or to attend court for prospective jury service. The City encourages employees to fulfill such duties, and agrees to pay the employee the difference between his regular pay and juror's pay, pursuant to the following conditions:

- a. The employee continues to be paid his regular weekly wages during the time he is fulfilling his obligations as a juror.
- b. The employee provides the City with an official statement of his juror's pay as soon as possible.
- c. If such juror's pay is less than the employee's regular pay for the period served as juror, the employee submits the entire amount of the juror's pay to the City.
- d. If such juror's pay is equal to or greater than the employee's regular pay for the period served as juror, the employee refunds to the City that amount of the juror's pay which is equal to the amount paid to him by the City for the period served as juror.

An employee required to appear as a witness in private litigation unrelated to City employment will be given time off as leave without pay for such attendance. In the event that the City requires an employee to attend a court proceeding, the employee shall suffer no loss in regular pay as a result of such attendance, and hours required to be spent at court at the City's request shall be considered "hours actually worked for the City" for purposes of overtime eligibility. Employees who are compensated by the City for attendance at court are required to turn over any witness or other fees received for such appearances upon the same terms as outlined in subsections (c) and (d) above.

stipend for all hours worked.

- 19.10 If the Public Works Director assigns a Public Works employee in the Administration Division higher level technical and/or training responsibilities that are not part of their normal job function, that employee will receive a \$1.00 per hour stipend.
- 19.11 Effective November 1, 2003 the Associate Engineer assigned to the Traffic Section of Public Works assumed additional traffic duties and began receiving a \$1.00 per hour stipend. This stipend payment will continue as long as she is required to perform these additional duties.
- 19.12 If the City Assessor assigns Office Assistant staff duties relating to personal property and/or real estate mapping that assists the appraisers in the performance of their duties, those employees will receive a \$.50 per hour stipend.
- 19.13 Effective July 4, 2005 Animal Control Officers will receive a \$1.00 per hour stipend for being primary responders for picking up dead animals, domestic and wild, during their regular work shift.
- 19.14 An employee in the title of Surveyor (Grade 17) who is certified as a Land Surveyor In Training (LSIT) shall receive an additional 3% per hour for having this license.
- 19.15 **An employee who is certified as a Master Electrician or Master Plumber shall receive an additional three percent (3%) per hour for having this certification.**

**20. SICK LEAVE**

- 20.1 Sick leave shall accrue at the rate of 1.85 hours per week beginning with the first payroll week of service with unlimited accumulation (1.73 hours per week for employees whose standard hours are 37.5 per week) except as modified below for Barron Center employees. The weekly earnings rate shall be adjusted in the final week of the calendar year in accordance with the annual accrual amount of 96 hours (90 hours for employees whose standard hours are 37.5 hours per week). The year end adjustment for employees who have not been employed as a permanent employee for the full calendar year will be based on a pro-ration of the appropriate annual amount.
  - 20.1.1 **Barron Center employees: Sick leave shall accrue at the rate of .92 hours per week with unlimited accumulation (.87 hours for employees whose standard hours are 37.5 per week). The weekly earnings rate shall be adjusted in the final week of the calendar year in accordance with the annual accrual amount of 48 hours (45 hours for employees whose standard hours are 37.5 per week). Barron Center employees with 25 or more years of continuous service for the**

**City of Portland shall accrue sick leave at the rate of 1.73 hours per week with unlimited accumulation. The yearend adjustment for employees who have not been employed as a permanent employee for the full calendar year will be based on a pro-ration of the appropriate annual amount.**

**20.1.2 The provisions of the collective bargaining agreement pertaining to unused sick leave upon retirement shall be prorated consistent with the terms of language for the Barron Center.**

**20.1.3 The provision for conversion of sick leave to vacation in Article 20.3 is modified as follows: a Barron Center employee is eligible for conversion if (s)he uses the equivalent of one or fewer sick days within a twelve (12) consecutive month period and the sick leave balance requirements listed in 20.3.2 are amended to 384 hours for employees whose standard hours are 40 per week and 360 hours for employees whose standard hours are 37.5 per week.**

20.2 Sick leave may be used only in the following cases:

20.2.1 Personal illness or physical incapacity, including pregnancy or related disabilities (including, but not limited to, miscarriage, abortion, childbirth, child-rearing, and recovery there from) which is defined as a condition of such a degree as to render the employee unable to perform the duties of his or her assigned position, or of any other work the employee is capable of doing and to which he or she is assigned, provided the employee accepts such other assignments. If requested, the employee shall furnish the Department Head a certificate from the attending physician.

20.2.2 Attendance upon members of the family within the household of the employee, including domestic partner, when their illness requires care by such employee, not to exceed twelve (12) days per year. If requested, the employee shall furnish the Department Head a certificate from the attending physician.

20.2.3 Attendance upon members of the immediate family not living within the household when the provisions of Article 21.3 are met. Such requests will be processed as Family Medical Leave requests and all provisions of Article 21.3 will apply to such requests.

20.2.4 Employees who wish to use sick leave to care for a domestic partner in accordance with 20.2.2 above must satisfy the City's eligibility requirements for claiming an individual as a domestic partner.

20.2.5 Sick leave may be utilized to keep appointments with licensed health care

professionals where an employee's normal work schedule conflicts and appointments cannot be reasonably scheduled.

20.3 Conversion to Vacation Leave

20.3.1 Any permanent employee who is benefit eligible for the previous twelve (12) month period and who has used the equivalent of two or fewer sick days during that consecutive twelve (12) month period may elect to convert six days of accrued sick leave to five days of vacation leave. A day for permanent part-time employees is defined as standard hours divided by five (5) days per week.

20.3.2 As an alternative to the conversion described in 20.3.1 above, any permanent full-time employee who has 12 or more years of permanent City service who uses the equivalent of two or fewer sick days within any consecutive twelve (12) month period and who has a sick leave balance of no less than 768 hours (720 hours for employees whose work week is 37.5 hours) may elect to convert six days of accrued sick leave to five days of pay at their regular hourly rate.

20.3.3 Employees may make one of the above elections only once for any consecutive twelve month period beginning July 1, 1994, and only once during any twelve month period.

20.4 Conversion to Personal Leave

Any permanent employee who is benefit eligible and who has been employed by the City for twelve (12) consecutive months is eligible to convert up to two days of previously earned sick leave to an equivalent amount of personal leave. Full-time employees may convert the equivalent of two (2) days based on their regular work day. Part-time employees may convert two (2) days with a day calculated as follows: standard hours divided by five (5) days per week.

Sick leave will be converted to personal leave at the time the conversion is elected. Beginning in July 2002 employees with twelve (12) consecutive months of City service at the beginning of the fiscal year must elect their conversion for the fiscal year during the month of July. Employees who reach their one (1) year anniversary may make their election during their anniversary month for that fiscal year only. The personal leave balance will change as personal time is used. At the end of each fiscal year, each employee may elect one of the following options: (1) convert unused personal leave to sick leave; or (2) retain unused personal leave for use in the next fiscal year; or (3) convert additional sick to personal leave. In no event shall the employee's total amount (by carry-over and/or conversion) or total usage exceed two (2) days per fiscal year. Neither conversion of sick leave to personal leave or the subsequent use of personal

leave under this section shall be considered to be use of sick leave for purposes of Section 20.3.

The employee will give the Department Head or designee as much advance notice of the use of personal leave as the circumstances permit. When using personal leave time, the employee is not required to give the reason for use of such time; however, personal leave may not be used on holidays on which the employee is scheduled to work or on other days previously requested off and denied by the Department Head or designee.

Personal leave balances are not payable at separation from employment. However, an employee shall have the option at separation to convert unused personal leave to sick leave.

**21. LEAVES OF ABSENCE**

**21.1 Short-Term Leave of Absence**

21.1.1 An employee may be granted a leave of absence without pay by a Department Head when approved by the Director of Human Resources, for a period deemed necessary by the employee for the purpose of the leave, but not in excess of sixty (60) days. The employee requesting such leave must make written request at least two weeks in advance of the date leave is requested to begin, unless the reason for such a leave is of such an emergency nature as to preclude this requirement.

**21.2 Special Leaves (Long-Term)**

21.2.1 The City Manager, upon the recommendation of the Department Head and the Director of Human Resources, may authorize special leaves of absence with or without pay for any period or periods not to exceed one calendar year for the following purposes: attendance at college, university or business school, trade school or internship for the purpose of training in subjects relating to the work of the employee and which will benefit the employee and the City service; urgent personal business requiring the employee's attention for an extended period, such as settling an estate, liquidating a business; or for purposes other than the above that are deemed beneficial to the City service. The employee requesting such special leave must make written request at least two weeks in advance of the date leave is requested to begin, unless the reason for such a leave is of such an emergency nature as to preclude this requirement.

**21.3 Family Medical Leave**

between employees and shall be under no financial obligation to substitute for his duty as a substitution.

16.1.3 Substitutions will not ordinarily be permitted for more than three (3) consecutive shifts.

16.1.4 The substitutions are made between equally or greater qualified employees. It is the responsibility of the employee making the substitution to make sure that the shift being swapped is eligible to be paid back according to the staffing needs of the PRCC when the leave slip is signed. With regard to qualifications needed, it is understood that the swap on employee who agrees to the substitution will be responsible for covering the shift.

**17. SICK LEAVE:**

17.1 Sick leave shall accrue at the rate of 1.85 hours per each full payroll week with unlimited accumulation. The weekly earnings rate shall be adjusted in the last week of the calendar year in accordance with annual accrual amounts of 96 hours.

17.2 Sick leave may be used only in the following cases:

17.2.1 Personal illness or physical incapacity of such a degree as to render the employee unable to perform the duties of his position, unless the Department Head or his designee determines that the employee is capable of other work in the Department. If requested, the employee shall furnish the Department Head or designee a certificate from his attending physician. Alternatively, the City may require the employee to submit to an examination by a physician of the City's choosing, said expenses to be borne by the City.

17.2.2 Attendance upon members of the family within the household of the employee when the illness requires care by the employee, including domestic partner and his/her relatives who live within the household of the employee not to exceed twelve (12) days per year, unless such leave qualifies as FMLA leave.

17.2.3 At the discretion of the Department Head or designee, sick leave may be used in the event of the death of an immediate family member as defined in 18.1.2 but in no event for more than three (3) working days.

17.2.4 Employees who wish to use sick leave to care for a domestic partner or member of his/her family in accordance with 17.2.2 above, or in

conjunction with bereavement leave in accordance with 17.2.3 above, must satisfy the eligibility requirements for claiming an individual as a domestic partner under state law or City ordinance.

17.3 Sick leave use shall be evaluated by the Department Head or designee on an individual case-by-case basis and in accordance with established departmental procedure.

17.4 Conversion to Vacation Leave

17.4.1 Any permanent employee working the standard 40 hour work week who uses the equivalent of two or fewer sick days within any consecutive 12 month period may elect to convert 48 hours of accrued sick leave to 40 hours of vacation leave. Two or fewer days is equivalent to a maximum of sixteen (16) hours for employees working a 5/8 schedule or twenty four (24) hours for employees working a combination of two eight (8) hour shifts and two twelve (12) hour shifts.

17.4.1.1 Alternatively, an employee who has 12 or more years of permanent City service and a sick leave balance of no less than 768 hours may elect to convert 48 hours of accrued sick leave to 40 hours of pay at their regular hourly rate.

17.4.1.2 Employees may make one of the above elections only once for any consecutive 12 month period, and only once during any 12 month period.

17.4.1.3 The conversion of sick leave to vacation leave shall not be permitted if doing so would result in exceeding the maximum permitted vacation accumulation.

17.5 Personal Leave

17.5.1 Any permanent employee working a standard work week who has been employed by the City for twelve (12) consecutive months as of the beginning of the fiscal year is eligible to convert up to two (2) days, or sixteen (16) hours, of previously earned sick leave, vacation leave or compensatory time to an equivalent amount of personal leave. Eligible employees may make the personal leave conversion in accordance with the provisions of 17.4.2 only during the month of July.

17.5.2 Sick leave will be converted to personal leave at the time the conversion is elected. The personal leave balance will change as personal leave time is used. At the end of each fiscal year, each employee may elect one of

one day or one night. A maximum of twelve (12) shifts may be approved for any calendar year except in the case of extenuating circumstances approved by the Chief. Union business as defined in Article 28 and time spent furthering personal education shall not be considered in this limitation.

- 16.3 For purposes of this Article, that section of Article 25 entitled "Higher Pay for Higher Classification Work" shall not apply to either the individuals who are party to the swap or the platoon(s) impacted by the swap.
- 16.4 If an employee will miss an EMS required training session due to a substitution, it is the employee's responsibility to make up the training. If the training cannot be made up at a later date at equal cost to the City, the substitution request may be denied.

**17. SICK LEAVE:**

17.1 Sick leave shall accrue at the rate of 2.77 hours per week for each full calendar week of employment with unlimited accumulation for employees working a twenty-four (24) hour schedule. Sick leave shall accrue at the rate of 2.31 hours per week for each full calendar week of employment with unlimited accumulation for employees working a 4-10 schedule. Sick leave shall accrue at the rate of 1.85 hours per week for each full calendar week of employment with unlimited accumulation for employees working a 5-8 schedule.

17.2 Sick leave may be taken by employees only in the following cases:

17.2.1 Personal illness or physical incapacity of such a degree as to render the employee unable to perform the duties of his/her position, unless the employee is found capable of other work in the Department by the Chief and is assigned to such other work. Employees working a 24-hour schedule who call in sick will do so for the first twelve (12) hours or for the full shift and will have their sick leave balance reduced by the hours they did not work. Employees working a 24-hour schedule who become ill mid-shift and book off sick will do so for the remainder of the shift and will have their sick leave balance reduced by the number of hours they did not work. Employees working a 40 hour schedule may book off sick for partial shifts with the approval of the Chief or designee.

17.2.2 Attendance upon members of the family within the household of the employee, including domestic partner and his/her relatives who live within the household of the employee, when their illness requires care by such employee not to exceed twelve (12) days per year (144

hours for employees who work a 24-hour schedule). Such time may be taken in partial shifts subject to the approval of the Chief.

17.2.3 Subject to the discretion of the Chief or designee, sick leave may be used but not in excess of six (6) calendar days in the event of the death of the employee's spouse or domestic partner, child, mother, father, brother, sister, mother-in-law, father-in-law, brother-in-law, sister-in-law, grandmother, grandfather, grandchild, stepmother, stepfather, step child or members of domestic partner's family similarly related.

17.2.4 In exercising his/her discretion to approve sick leave, and the amount thereof, under the foregoing Article 17.2.3, the Chief or his/her designated representative shall give consideration to the closeness of the relative, the circumstances of the death, attendant family conditions, and the time required for travel.

17.2.5 Employees who wish to use sick leave in accordance with the above provisions to care for a domestic partner or member of the domestic partner's family, or in the event of a death of a member of the domestic partner's family, must satisfy the City's eligibility requirements for claiming an individual as a domestic partner.

17.3 Notwithstanding any other provisions of this Article, sick leave charges will be made according to the actual number of hours absent.

17.4 Conversion to Vacation Leave

17.4.1 Any permanent employee working a 40-hour schedule who uses the equivalent of two or fewer sick days or any employee working a 24-hour schedule who uses 24 hours or less of sick leave within any consecutive 12 month period may elect to convert 48 hours of accrued sick leave to the equivalent of one (1) week of vacation leave.

Alternatively, an employee who has 12 or more years of permanent City service and a sick leave balance of no less than 768 hours (1152 hours for 24-hour personnel) may elect to convert 48 hours of accrued sick leave to 40 hours of pay at their regular hourly rate (42 hours for 24-hour personnel).

Employees may make one of the above elections only once for any consecutive 12 month period, and only once during any 12 month period.

17.4.2 The Director of Human Resources shall determine the rates applicable for the conversions outlined above for permanent employees working other than a 40 hour per week or 24-hour schedule, and the proration of the above conversion rates for part-time employees.

17.5 Employees who exceed the City-wide average of sick leave usage will be placed on a "doctor's note" list by the Department. The Department will notify the employee of placement on the list. After placement on the list, any such employee utilizing further sick leave must present a doctor's note to work when next returning to work. If the employee fails to bring a doctor's note upon returning to work, the employee can be sent home without pay. The employee must provide medical documentation for that prior absence prior to the beginning of the employee's next regular shift (or sooner, if the employee works an unscheduled shift.) If the employee's sick leave usage subsequently falls below the City-wide average, the employee's name will be removed from the doctor's note list.

## **18. OTHER LEAVE:**

18.1 Bereavement Leave: In the event of the death of the employee's spouse, child, domestic partner, child of domestic partner, step child, mother, father, brother, sister, mother-in-law, father-in-law, grandmother, grandfather, grandchild, or member of domestic partner's family similarly related, provided the employee meets the eligibility requirements for claiming an individual as a domestic partner, the employee working a 40-hour schedule will be entitled to up to three (3) days leave for the purpose of attendance at the funeral and assisting with the necessary family arrangements; employees working a 24-hour shift will be entitled to one (1) 24-hour shift of bereavement leave for the purpose of attendance at the funeral and assisting with the necessary family arrangements. Additional bereavement leave may be authorized by the Chief for 24-hour personnel depending upon when the death and funeral occurs within the employee's work cycle. Such leave shall be with pay and without any deduction from sick leave.

18.2 Sick leave may be used in conjunction with bereavement leave as provided in Article 17.2.4.

18.3 Funeral Leave: An amount of time determined and pre-approved by the sole discretion of the Chief but in no case to exceed one (1) 24-hour shift will be allowed for attendance at funerals of the following relatives not provided for under 18.1: aunt, uncle, niece, nephew, brother-in-law, sister-in-law, or any other relative living in the same household as the employee. A similar amount of time will be provided for attendance at the

day period. Employees will have their tool allowance frozen upon resignation. Employees who terminate mid-year will have their tool allowance for the year pro-rated and any overpayment will be deducted from their separation pay.

Classification List

Autobody Repair Worker  
Mechanic I  
Mechanic II  
Mechanic III  
1<sup>st</sup> Class Welder  
2<sup>nd</sup> Class Welder  
**3<sup>rd</sup> Class Welder**

- 23.3 Airport Maintenance Workers and Assistant Airport Facilities Technicians will be issued an initial tool pouch upon hire by the Department that will contain the tools necessary to their job. The list of tools that are currently being provided are listed in Appendix J (Jetport). They will be expected to use these tools for work purposes only and to take proper care of them. In the event a tool is damaged during performance of City work, the Department will replace the tool. The employee will be personally responsible for replacement of City issued tools that are used for non-City purposes. All tools will be returned to the City at termination of employment.
- 23.4 The tools purchased in accordance with this article are tools that are used on a regular basis by the employee for their City job. Such purchases are to be pre-approved by the employee's Division Head or designee.

**24. SICK LEAVE**

- 24.1 For full-time employees who work the standard 5-day schedule sick leave shall accrue at the rate of 1.85 hours per week beginning with the first payroll week of service with unlimited accumulation. Full-time permanent employees who work a 3-day or 4-day schedule shall accrue sick leave at the rate of 2.31 hours per week beginning with the first payroll week of service with unlimited accumulation. The weekly earnings rate shall be adjusted in the final week of the calendar year in accordance with the annual accrual amount of 96 hours for employees working a 5-day schedule and 120 hours for employees working a 3-day or 4-day schedule. The year-end adjustment for employees who have not been employed as a permanent employee for the full calendar year will be based on a pro-ration of the annual amount.
- 24.2 Sick leave may be used only in the following cases:
- 24.2.1 Personal illness or physical incapacity, including pregnancy or related disabilities (including, but not limited to, miscarriage, abortion, childbirth, child-rearing, and recovery there from) which is defined as a condition of such a degree as to render

the employee unable to perform the duties of his or her assigned position, or of any other work the employee is capable of doing and to which he or she is assigned, provided the employee accepts such other assignments. If requested, the employee shall furnish the Department Head a certificate from the attending physician.

24.2.2 Attendance upon members of the family within the household of the employee, including domestic partner, when their illness requires care by such employee, not to exceed twelve (12) days per year. If requested, the employee shall furnish the Department Head a certificate from the attending physician.

24.2.3 Employees who wish to use sick leave to care for a domestic partner in accordance with 24.2.2 above must satisfy the City's eligibility requirements for claiming an individual as a domestic partner.

#### 24.3 Conversion of Sick Leave to Vacation

24.3.1 Any permanent employee working the standard work week who uses the equivalent of two or fewer sick days within any consecutive twelve (12) month period may elect to convert six days (48 hours) of accrued sick leave to five days (40 hours) of vacation leave.

24.3.2 Alternatively, an employee who has 12 or more years of permanent City service and a sick leave balance of no less than 768 hours may elect to convert six days (48 hours) of accrued sick leave to five days (40 hours) of pay at their regular rate.

24.3.3 Employees may make one of the above elections only once for any consecutive twelve month period, and only once during any twelve month period.

#### 24.4 Conversion of Sick Leave to Personal Leave

24.4.1 Any permanent employee working the standard work week who has been employed by the City for twelve (12) consecutive months as of the beginning of the fiscal year is eligible to convert up to two (2) days of previously earned sick leave to an equivalent amount of personal leave. Employees with at least twelve months of service on July 1<sup>st</sup> of each fiscal year who wish to make such a conversion will notify the City of their decision during the month of July. Employees who reach their one (1) year anniversary during the fiscal year may make their election during their anniversary month for that year only. Neither conversion of sick leave to personal leave or subsequent use of personal leave under this section shall be considered to be use of sick leave for purposes of determining an employee's eligibility for converting sick leave to vacation.

24.4.2 Sick leave will be converted to personal leave at the time the conversion is elected and the personal leave balance will change as personal leave time is used.

In no event shall the employee's personal leave balance exceed two (2) days in any fiscal year. At the end of the fiscal year, each employee may elect one of the following options: (1) convert unused personal leave to sick leave; or (2) retain unused personal leave for use in the next fiscal year; or (3) convert additional sick to personal leave, providing the total balance of personal leave for the upcoming fiscal year does not exceed two (2) days.

24.4.3 Personal leave is intended to be used for personal needs and is not to be used to circumvent departmental procedures for processing vacation requests. When using personal leave time, the employee is not required to give the reason for the use of such time. However, the employee will give the Department Head or designee as much advance notice of the use of personal leave as the circumstances permit and will comply with the minimum notice requirements listed below. Personal leave requests will not be approved on a retroactive basis.

24.4.3.1 During periods of mandatory overtime, a twenty-four hour notice is required for the use of personal leave. The employee is responsible for contacting the Department Director or designee to request the time off; Dispatch does not have the authority to approve such requests. Failure to provide this notice or failure to contact one of the individuals listed above may result in a denial of the use of personal leave. In the event of a denial, the employee must report to work as scheduled and will be disciplined for failure to do so. The City reserves the right to deny personal leave requests made in compliance with the 24-hour notice request in the event that the employee will be required for emergency operations.

24.4.3.2 In the case of emergencies, personal leave must be requested and approved prior to the start of the employee's shift and will not be approved on a retroactive basis. The City will make every effort to accommodate these requests, even during periods of mandatory overtime; however, requests may be denied during periods of mandatory overtime if the employee is needed for emergency operations.

24.4.4 Personal leave does not count as "hours worked" for the purpose of calculating overtime and personal leave balances are not payable at separation from employment. However, any employee shall have the option at separation to convert unused personal leave to sick leave.

## **25. ON-THE-JOB-INJURIES**

25.1 Employees who have been injured while performing an official duty shall be paid for the time lost on the date of injury. Such pay will not extend beyond the normally scheduled

option shall be applied only to each year of membership service in the Department served after completion of the applicable service conditions for retirement and after April 16, 1980.

- 10.3 The City agrees to provide a listing of all options and benefits which are available to retiring employees.
- 10.4 Any employee hired prior to July 1, 1984 may at their own expense buy back both their total share and the City's total contribution obligation for their initial six (6) months of employment in which they were excluded from membership in the Maine Public Employees Retirement System. The Union acknowledges that the City shall have no financial obligation under this voluntary buy back provision.
- 10.5 The City offers a 457 plan through ICMA. Participation in this plan is voluntary and is in addition to participation in a primary pension plan as outlined in 10.1.
- 10.6 If the Union wishes the City to pursue an alternative pension plan to Maine Public Employees Retirement System during the term of this Agreement, the City agrees to reopen negotiations regarding such a plan.
- 10.7 The City agrees to continue pension deductions on a pre-tax basis as provided by the Internal Revenue Service.

**11. SICK, BEREAVEMENT, FUNERAL AND PERSONAL LEAVE:**

11.1 Sick Leave

11.1.1 Employees who work a five (5) day, eight (8) hour schedule shall accrue sick leave at the rate of 1.85 hours for each full payroll week of service with unlimited accumulation. Employees who work a four (4) day, ten (10) hour schedule shall accrue sick leave at the rate of 2.31 hours for each full payroll week of service with unlimited accumulation. Peaks Island employees who work a twenty-four (24) hour schedule shall accrue sick leave at the rate of 2.77 hours for each payroll week of service with unlimited accumulation.

11.1.1.a. When an employee uses a sick day they shall have ten (10) hours deducted from their sick leave balance if working a 4/10 schedule, or eight (8) hours deducted from their sick leave balance if working a 5/8 schedule. Peaks Island Officers who use a sick day shall have twenty-four (24) hours deducted from their sick leave balance.

11.1.1.b. Balances of accrued sick leave under the 5/8 or 4/10 schedule will not be converted in the event of a

transfer/promotion of an employee working a 4/10 to a 5/8 schedule, or vice versa. Accrued balances will not be reduced or increased.

11.1.2 Sick leave may be used for the following cases:

- 11.1.2.1 Personal illness or physical incapacity of such a degree as to render the employee unable to perform the duties of his position, unless the Police Chief determines that the employee is capable of other work in the Police Department. If requested, the employee shall furnish the Chief a certificate from his attending physician.
- 11.1.2.2 Attendance upon members of the family within the household of the employee, including domestic partner and relatives of domestic partner, when their illness requires care by such employee, not to exceed twelve (12) days per year. If requested, the employee shall furnish the Chief a certificate from the attending physician.
- 11.1.2.3 In the discretion of the Police Chief, sick leave may be used in the event of the death of an immediate family member (defined hereby as spouse or domestic partner, child, mother, father, brother, sister, mother-in-law or father-in-law).
- 11.1.2.4 Employees who wish to use sick leave to care for a domestic partner or relatives of domestic partner in accordance with 11.1.2.2 above, or in conjunction with bereavement leave in accordance with 11.1.2.3 above, must satisfy the City's eligibility requirements for claiming an individual as a domestic partner.

11.1.3 Conversion to Vacation Leave

- 11.1.3.1 Any permanent employee working the standard work week who uses the equivalent of two or fewer sick days within any consecutive 12 month period may elect to convert 48 hours of accrued sick leave to 40 hours of vacation leave. "Two or fewer days" is equivalent to a maximum of sixteen (16) hours for employees working a 5/8 schedule, twenty (20) hours for employees working a 4/10 schedule, and twenty-four (24) hours for employees working the Peak's Island schedule.
- 11.1.3.2 Alternatively, an employee who has 12 or more years

of permanent City service and a sick leave balance of no less than 768 hours may elect to convert 48 hours of accrued sick leave to 40 hours of pay at their regular hourly rate.

Employees may make one of the above elections only once for any consecutive 12 month period, and only once during any 12 month period.

- 11.1.3.3 The conversion of sick leave to vacation leave shall not be permitted if doing so would result in exceeding the maximum permitted vacation accumulation.

The Director of Human Resources shall determine the rates applicable for the conversions outlined above for permanent employees working other than a 5/8, 4/10, or Peaks Island schedule.

## 11.2 Bereavement Leave

- 11.2.1 An employee shall be excused from work for **forty (40) hours** because of a death in the employee's immediate family, as defined in 11.2.3.

- 11.2.2 Employees working the 5/8 or 4/10 schedule shall be paid their regular rate of pay for the regularly scheduled work hours missed, either eight (8) or ten (10) hours, respectively. Employee's working the Peaks Island schedule shall be paid the regular work hours for the 5/8 schedule (i.e., three (3), eight (8)-hour increments.) A maximum of eight (8) hours of bereavement leave per day shall be paid to employees working the 5/8 or Peaks Island schedule, and a maximum of ten (10) hours of bereavement leave per day shall be paid to employees working a 4/10 schedule. It is intended that this time off be used for the purpose of handling necessary arrangements and attendance at the funeral.

- 11.2.3 Immediate family is defined hereby as spouse or domestic partner, child, child of a domestic partner, mother, father, brother, sister, mother-in-law, father-in-law, step-parents, grandparents, or other relatives living in same household. Immediate family also includes member of domestic partner's family similarly related providing the employee meets the City's eligibility requirements for claiming an individual as a domestic partner.

- 11.2.4 An employee may also use sick leave in addition to bereavement leave in the manner provided in subsection 11.1.2.4 above.

to that plan.

- 10.2 The City shall continue to make available to all eligible employees enrolled in MainePERS for their primary pension plan the additional benefit of the so-called "two percent option" pursuant to the Consolidated Plan, Rule 94-411 Chapter 803, Sec. 8, Subsection 10 to the extent this option continues to be provided in the Maine Public Employees Retirement System Laws and the Consolidated Plan. Such option shall be prospective only, beginning on April 17, 1980. Said option shall be applied only to each year of MainePERS membership service in the Department served after completion of the age and service conditions for retirement and after April 17, 1980.
- 10.3 The City agrees to provide a listing of all options and benefits which are available to retiring employees.
- 10.4 Any employee hired prior to July 1, 1984 may at their own expense buy back both their total share and the City's total contribution obligation for their initial six (6) months of employment in which they were excluded from membership in the Maine Public Employees Retirement System. The Union acknowledges that the City shall have no financial obligation under this voluntary buy-back provision.
- 10.5 The City offers a 457 plan through ICMA. Participation in this plan is voluntary and is in addition to participation in a primary pension plan as outlined in 10.1.
- 10.6 The City agrees to continue pension deductions on a pre-tax basis as provided by the Internal Revenue Service.

**11. SICK, BEREAVEMENT, AND FUNERAL LEAVE:**

11.1 Sick Leave

Sick leave shall accrue at the rate of 1.85 hours for each full payroll week consisting of five (5) eight (8) hour days and accrue at the rate of 2.31 hours for each payroll week consisting of four (4) ten (10) hour days. Sick leave will accrue with unlimited accumulation.

11.1.1 Personal illness or physical incapacity of such a degree as to render the employee unable to perform the duties of his position, unless the Police Chief determines that the employee is capable of other work in the Police Department. If requested, the employee shall furnish the Chief a certificate from his attending physician except as provided in 11.2 below.

11.1.2 Attendance upon members of the family within the household of the

employee, including domestic partner, when their illness requires care by such employee, not to exceed twelve (12) days per year. If requested, the employee shall furnish the Chief a certificate from the attending physician.

11.1.3 In the discretion of the Police Chief, sick leave may be used in the event of the death of an immediate family member (defined hereby as spouse or domestic partner, child or child of domestic partner, mother, father, brother, sister, mother-in-law or father-in-law).

11.1.4 Any permanent employee working a standard work week who has been employed by the City for twelve (12) consecutive months as of the beginning of the calendar year is eligible to convert up to two (2) days or sixteen (16) hours of previously earned sick leave to an equivalent amount of personal leave. Eligible employees may make that election only during the month of February for each year of the contract.

Neither conversion of sick leave to personal leave nor the subsequent use of personal leave under this Section shall be considered to be use of sick leave for purposes of determining eligibility for either the Leave Incentive Plan as described in Appendix **D** or the Chief's Perfect Attendance Program.

The employee will give the Bureau Commander or designee as much advance notice of the use of personal leave as circumstances permit; and in any case the employee will notify the Bureau Commander or designee of the use of personal leave in the same manner as required for sick leave. When using personal leave time, the employee is not required to give the reason for use of such time. Personal leave balances are not payable at separation from employment. However, an employee shall have the option at separation to convert unused personal leave to sick leave.

11.1.5 Employees who wish to use sick leave to care for a domestic partner in accordance with 11.1.2 above, or in conjunction with Bereavement Leave in accordance with 11.1.3 above, must satisfy the City's eligibility requirements for claiming an individual as a domestic partner.

## 11.2 Bereavement Leave

11.2.1 An employee shall be excused from work for **five (5) days or a maximum of forty (40) hours** because of death in his/**her** immediate family, as defined below, and shall be paid his/**her** regular rate of pay for the regularly scheduled work hours missed. Not more than eight (8) hours per day (10 hours per day for employees working a 4/10 schedule) shall be paid under this Article.

Consolidated Plan contribute to that plan.

- 15.1.2 The City currently offers an ICMA 401(a) defined contribution qualified pension plan to new hires and current employees as an alternative to participation in the Maine Public Employees Retirement System (MainePERS) defined benefit plan. Each participant has a plan account to which employee and employer contributions are made. Plan benefits are based on the total amount of money in the participant's account at retirement or eligible event. Maine Revised Statutes Title 5, Section 18252-B sets forth the employee and employer contribution rates.
- 15.2 The City agrees to continue to participate in a qualified deferred compensation plan for permanent part-time employees who work 20 hours or less per week. The deferred compensation plan provides for immediate vesting and optional withdrawal of the account balance upon the employee's termination.
- 15.3 Probationary Buy-Back Option: Any employee hired prior to July 1, 1984 may, at their own expense, buy-back both their share and the City's total contribution obligation for their initial six (6) months of employment in which they were excluded from membership in the Maine Public Employees Retirement System. The Association acknowledges that the City shall have no financial obligation under this voluntary buy-back provision.
- 15.4 The City agrees to continue pension deductions on a pre-tax basis as provided by the Internal Revenue Service.
- 16. SICK LEAVE:**
- 16.1 Sick leave shall accrue at the rate of 1.73 hours for each full payroll week of service accumulative with unlimited accumulation. The weekly earnings rate shall be adjusted in the final week of the calendar year in accordance with the annual accrual amount of 90 hours.
- 16.2 Employees who have been injured while performing an official duty shall be paid for the time lost on the day of injury. Such pay will not extend beyond the normally scheduled work shift, exclusive of compensatory time. Such time lost will not be charged to sick leave.
- 16.3 Sick leave may be used only in the following cases:
- a. Personal illness or physical incapacity, including pregnancy or related disability (including, but not limited to, miscarriage, abortion, childbirth, child-rearing, and recovery therefrom), which is defined as a condition of

such a degree as to render the employee unable to perform the duties of his or her assigned position, or of any other work the employee is capable of doing and to which he or she is assigned, provided the employee accepts such other assignment. If requested, the employee shall furnish the Department Head a certificate from the attending physician.

- b. Attendance upon members of the family within the household of the employee, including relatives of the domestic partner, when their illness requires care by such employee not to exceed twelve (12) days per year. If requested, the employee shall furnish the Department Head a certificate from the attending physician.
- c. Attendance upon members of the immediate family not living within the household, including relatives of the domestic partner, when the provisions of Article 18.7 are met. Such requests will be processed as Family Medical Leave requests and all provisions of Article 18.7 will apply to such requests.
- d. Scheduled medical and/or dental appointments

16.4 Employee who wish to use sick leave to care for a domestic partner or member of his/her family in accordance with 16.3 about must satisfy the City's eligibility requirements for claiming an individual as a domestic partner, including domestic partner and his/her relatives who live within the household of the employee.

16.5 Abuse of sick leave shall be grounds for disciplinary action.

16.6 Conversion to Vacation Leave:

Any permanent employee working the standard work week who uses the equivalent of two or fewer sick days within any consecutive 12 month period may elect to convert six days (45 hours) of accrued sick leave to five days (37.5 hours) of vacation leave. **(For 40 hour work week employees, they may elect to convert 48 hours of accrued sick leave to 40 hours of vacation leave).**

Alternatively, an employee who has 12 or more years of permanent City service and a sick leave balance of no less than **720** hours, may elect to convert six days (45 hours) of accrued sick leave to five days (37.5 hours) of pay at their regular hourly rate. **(For 40 hour work week employees, the sick leave balance must be 768 hours and they may elect to convert 48 hours of accrued sick leave to 40 hours of pay at their regular hourly rate).**

Employees may make one of the above elections only once for any consecutive

12 month period, and only once during any 12 month period.

The conversion of sick leave to vacation leave shall not be permitted if doing so would result in exceeding the maximum permitted vacation accumulation.

The Director of Human Resources shall determine the rates applicable for the conversions outlined above for permanent employees working other than the standard work week of 37.5 hours, and the pro-ration of the above conversion rates for part-time employees.

**16.7 Conversion to personal leave:**

Any permanent employee working the standard work week who has been employed by the City for twelve (12) consecutive months as of the beginning of the fiscal year is eligible to convert up to two (2) days or sixteen (16) hours of previously earned sick leave to an equivalent amount of personal leave. Eligible employees may make that election during the months of July for that fiscal year. Employees who reach their one (1) year anniversary during the fiscal year may make their election during their anniversary month for that year only.

Sick leave will be converted to personal leave at the time the conversion is elected. The personal leave balance will change as personal time is used. At the end of each fiscal year, each employee may elect one of the following options: (1) convert unused personal leave to sick leave; or (2) retain unused personal leave for use in the next fiscal year; or (3) convert additional sick to personal leave, but in no event shall the employee's personal leave balance exceed two (2) days at any time. Neither conversion of sick leave to personal leave or the subsequent use of personal leave under this section shall be considered to be use of sick leave for purposes of Section 16.5.

The employee will give the Department Head or designee as much advance notice of the use of personal leave as the circumstances permit; and in any case the employee will notify the Department Head or designee of the use of personal leave in the same manner as required for sick leave. When using personal leave time, the employee is not required to give the reason for use of such time.

Personal leave balances are not payable at separation from employment. However, an employee shall have the option at separation to convert unused personal leave to sick leave.

**17. LEAVES OF ABSENCE:**

allowance. The tool allowance shall be paid to the employee only upon presentation to the City of proof of purchase of a tool and the cost thereof. Employees will have their tool allowances frozen upon resignation. Employees who terminate mid-year will have tool allowances pro-rated for that year and any overpayment will be deducted from their separation pay.

**Classification List**

Fire Equipment Specialist  
Vehicle Maintenance Foreman  
Machine Shop/Weld Shop Foreman  
Public Works Supervisor, Plow Bay Assignment  
Service Writer

- 20.3 Airport Maintenance Foreman/Supervisors hired into their current position will be issued an initial tool pouch upon hire by the Department that will contain the tools necessary to their job. The list of tools that are currently being provided is listed in Appendix J (Jetport). In the event a tool is damaged during performance of City work, the Department will replace the tool. All tools will be returned to the City at termination of employment.
- 20.4 The tools purchased in accordance with this article are tools that are used on a regular basis by the employee for their City job. Such purchases are to be pre-approved by the employee's Division Head or designee.

**21. SICK LEAVE**

- 21.1 For full-time permanent employees who work the standard 5-day schedule sick leave shall accrue at the rate of 1.85 hours per week beginning with the first payroll week of service with unlimited accumulation. Upon contract execution, full-time permanent employees who work a 3-day or 4-day schedule shall accrue sick leave at the rate of 2.31 hours per week beginning with the first payroll week of service with unlimited accumulation. The weekly earnings rate shall be adjusted in the final week of the calendar year in accordance with the annual accrual amount of 96 hours for employees working a 5-day schedule and 120 hours for employees working a 3 or 4-day schedule. The year end adjustment for employees who have not been employed as a permanent employee for the full calendar year will be based on a pro-ration of the annual amount.
- 21.2 Sick leave may be used only in the following cases:
  - 21.2.1 Personal illness or physical incapacity, including pregnancy or related disabilities (including, but not limited to, miscarriage, abortion, childbirth, child-rearing, and recovery therefrom) which is defined as a condition of

such a degree as to render the employee unable to perform the duties of his or her assigned position, or of any other work the employee is capable of doing and to which he or she is assigned, provided the employee accepts such other assignments. If requested, the employee shall furnish the Department Head a certificate from the attending physician.

21.2.2 Attendance upon members of the family within the household of the employee, including domestic partner, when their illness requires care by such employee, not to exceed twelve (12) days per year. If requested, the employee shall furnish the Department Head a certificate from the attending physician.

21.2.3 Employees who wish to use sick leave to care for a domestic partner in accordance with 21.2.2 above must satisfy the City's eligibility requirements for claiming an individual as a domestic partner.

### 21.3 Conversion of Sick Leave to Vacation

21.3.1 Any permanent employee working the standard work week who uses the equivalent of two or fewer sick days within any consecutive twelve (12) month period may elect to convert six days (48 hours) of accrued sick leave to five days (40 hours) of vacation leave.

21.3.2 Alternatively, an employee who has 12 or more years of permanent City service and a sick leave balance of no less than 768 hours may elect to convert six days (48 hours) of accrued sick leave to five days (40 hours) of pay at their regular hourly rate.

21.3.3 Employees may make one of the above elections only once for any consecutive twelve month period beginning July 1, 1994, and only once during any twelve month period.

### 21.4 Conversion of Sick Leave to Personal Leave

21.4.1 Any permanent employee working the standard work week who has been employed by the City for twelve (12) consecutive months as of the beginning of the fiscal year is eligible to convert up to two (2) days of previously earned sick leave to an equivalent amount of personal leave. Employees with a least twelve months of service on July 1<sup>st</sup> of each fiscal year who wish to make such a conversion will notify the City of their decision during the month of July. Employees who reach their one (1) year anniversary during the fiscal year may make their election during their anniversary month for that year only. Neither conversion of sick leave to personal leave or subsequent use of personal leave under this section shall be considered to be use of sick leave for purposes of determining an employee's eligibility for

converting sick leave to vacation.

21.4.2 Sick leave will be converted to personal leave at the time the conversion is elected and the personal leave balance will change as personal leave time is used. In no event shall the employee's personal leave balance exceed two (2) days at any time and employees may not use more than two (2) personal days in any fiscal year. At the end of the fiscal year, each employee may elect one of the following options: (1) convert unused personal leave to sick leave; or (2) retain unused personal leave for use in the next fiscal year; or (3) convert additional sick to personal leave, providing the total balance of personal leave for the upcoming fiscal year does not exceed two (2) days.

21.4.3 Personal leave is intended to be used for personal needs (including home emergencies, religious observances and pre-scheduled appointments that are not medical related and is not to be used to circumvent departmental procedures for processing vacation requests. When using personal leave time, the employee is not required to give the reason for use of such time. However, the employee will give the Department Head or designee as much advance notice of the use of personal leave as the circumstances permit and will comply with the minimum notice requirements listed below. Personal leave requests will not be approved on a retroactive basis.

21.4.3.1 During periods of mandatory overtime, a twenty-four hour notice is required for the use of personal leave. The employee is responsible for contacting the Department Director or designee to request the time off; Dispatch does not have the authority to approve such requests. Failure to provide this notice or failure to contact one of the individuals listed above may result in a denial of the use of personal leave. In the event of a denial, the employee must report to work as scheduled and will be disciplined for failure to do so. The City reserves the right to deny personal leave requests made in compliance with the 24-hour notice request in the event that the employee will be required for emergency operations.

21.4.3.2 In the case of emergencies. Personal leave must be requested and approved prior to the start of the employee's shift and will not be approved on a retroactive basis. The City will make every effort to accommodate these requests, even during periods of mandatory overtime; however, requests may be denied during periods of mandatory overtime if the employee is needed for emergency operations.

21.4.4 Personal leave does not count as "hours worked" for the purpose of calculating overtime and personal leave balances are not payable at

**CITY OF PORTLAND, MAINE**

**Memorandum**

**TO:** Department Heads

*Gina M. Tapp*

**FROM:** Gina Tapp, Director of Human Resources

**DATE:** February 1, 2018

**RE:** 2017 Sick Leave Usage Report

Attached is the sick leave usage report for calendar year 2017. The report includes personal and family usage but does not include sick leave used with Workers' Compensation or sick leave used with Bereavement Leave.

IT has produced a detailed breakdown of the sick leave usage per employee. The report shows the hours tied to leaves of absence. Those leaves can have a tremendous impact on a department's overall usage. In departments that have a combination of 37.5 and 40-hour employees, we have taken the average of both groups and combined them for the final usage.

GMT:kv

cc: Carlene Kessler, Employment Services Manager

## 2017 SICK LEAVE USAGE REPORT

Department	2017 Hour Usage	# of Employees*	2017 Avg. Days	Total Cost Per Dept.
Health and Human Services	18,310.41	373.8	6.53	336,987.32
Parking	1,338.77	29.6	6.03	29,767.17
Fire (12 hr.)	16,271.54	229.2	5.92	415,954.11
Aviation & Transportation	1,746.14	52.5	5.84	46,797.72
Parks, Recreation & Facilities	7,229.21	161.5	5.79	142,226.25
Public Works	7,692.18	172.0	5.78	177,878.80
Planning	927.60	24.0	5.15	29,360.24
Permitting & Inspections	1,022.42	28.0	4.87	24,923.61
Police	8,214.77	232.3	4.57	223,797.87
Information Technology	480.75	17.0	3.77	13,883.99
Executive	281.50	10.0	3.75	13,621.40
Finance	700.75	25.0	3.74	17,339.41
Human Resources	232.00	11.0	2.81	8,385.67
City Clerk	162.75	7.8	2.78	2,993.60
Assessors	47.25	5.9	1.07	1,395.27
Economic Development	41.00	5.8	0.94	1,568.55
Corporation Counsel	19.00	6.0	0.42	727.41
<b>TOTALS</b>	<b>64,718.04</b>	<b>1,391.4</b>	<b>6.01</b>	<b>1,487,608.39</b>

Average Usage: 6.01 days in 2017

Compared to 6.12 days in 2016

6 days x 7.5 = 45 hrs. for a 37.5 hr. ee

6 days x 8.0 = 48 hrs. for a 40 hr. ee

\*Budgeted positions

# United States Department of Labor

## Wage and Hour Division

### Wage and Hour Division (WHD)

#### Federal vs. Maine Family and Medical Leave Laws

	FEDERAL ELEMENTS	STATE ELEMENTS
<b>Employer Covered</b>	<p>Private Employers of 50 or more Employees in at least 20 weeks of the current or preceding year</p> <p>Public agencies, including state, local, and Federal Employers</p> <p>Local education agencies covered under special provisions</p>	<p>Any business entity that employs 15 or more Employees at one location in this State</p> <p>The State, all branches, departments or agencies</p> <p>Any city, town or municipal agency that employs 25 or more Employees</p> <p>Any agent of an Employer, the State or political subdivision</p> <p>No special provision for local education agencies</p>
<b>Employees Eligible</b>	<p>Worked for Employer for at least 12 months - which need not be consecutive; worked at least 1,250 hours for Employer during 12 months preceding leave; and employed at Employer worksite with 50 or more Employees or within 75 miles of Employer worksites with a total of 50 or more Employees</p>	<p>Any Employee employed by same Employer for 12 consecutive months at a permanent worksite with 15 or more Employees</p>
<b>Leave Amount</b>	<p>Up to a total of 12 weeks during a 12-month period; however, leave for birth, adoption, foster care, or to care for a parent with a serious health condition must be shared by spouses working for same Employer</p>	<p>10 weeks during a 2-year period</p> <p>No provision regarding spousal sharing of leave</p>
<b>Type of Leave</b>	<p>Unpaid leave for birth, placement of child for adoption or foster care, to provide care for Employee's own parent (including individuals who exercise parental responsibility under state law), child, or spouse with serious health condition, or Employee's own serious health condition</p>	<p>Similar to Federal provisions, except adoption leave only if child 16 or younger; no foster care provision</p>

<b>Serious Health Condition</b>	Illness, injury, impairment, or physical or mental condition involving incapacity or treatment connected with inpatient care in hospital, hospice, or residential medical-care facility; or, continuing treatment by a health care provider involving a period of incapacity: (1) requiring absence of more than 3 consecutive calendar days from work, school, or other activities; (2) due to a chronic or long-term condition for which treatment may be ineffective; (3) absences to receive multiple treatments (including recovery periods) for a condition that if left untreated likely would result in incapacity of more than 3 days; or (4) due to any incapacity related to pregnancy or for prenatal care	Similar to Federal provisions, but without specificity regarding length of incapacity
<b>Health Care Provider</b>	Doctors of medicine or osteopathy authorized to practice medicine or surgery; podiatrists, dentists, clinical psychologists, clinical social workers, optometrists, chiropractors (limited to manual manipulation of spine to correct subluxation shown to exist by x-ray), nurse practitioners, and nurse-midwives, if authorized to practice under State law and consistent with the scope of their authorization; Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, MA; any provider so recognized by the Employer or its group health plan's benefits manager; and any health provider listed above who practices and is authorized to practice in a country other than the United States	Doctor of medicine or osteopathy who is licensed in State or any other person determined by the Secretary of Labor to be capable of providing health care services; see below regarding certification by practitioner of spiritual healing arts
<b>Intermittent Leave</b>	Permitted for serious health condition when medically necessary. Not permitted for care of newborn or new placement by adoption or foster care unless Employer agrees	No specific provisions
<b>Substitution of Paid Leave</b>	Employees may elect or Employers may require accrued paid leave to be substituted in some cases. No limits on substituting paid vacation or personal leave. An Employee may not substitute paid sick, medical, or family leave for any situation not covered by any Employers' leave plan	If the Employer provides paid family medical leave for fewer than 10 weeks, the additional weeks of leave added to attain the total of 10 weeks may be unpaid
<b>Reinstatement Rights</b>	Must be restored to same position or one equivalent to it in all benefits and other terms and conditions of employment	Similar to Federal provision
<b>Key Employee Exception</b>	Limited exception for salaried Employees if among highest paid 10%, within 75 miles of worksites, restoration would lead to grievous economic harm to Employer, and other conditions met	No specific provision
<b>Maintenance of Health Benefits During Leave</b>	Health insurance must be continued under same conditions as prior to leave	No specific provision
<b>Leave Requests</b>	To be made by Employee at least 30 days prior to date leave is to begin where need is known in advance or, where not foreseeable, as soon as practicable.  If due to a planned medical treatment or for intermittent leave, the Employee, subject to health care provider's approval, shall make a reasonable effort to schedule it in a way that does not unduly disrupt Employer's operation	Made by Employee 30 days in advance unless prevented by medical emergency

<b>Medical Certification May Be Required by Employer for:</b>	Request for leave because of serious health condition To demonstrate Employee's fitness to return to work from medical leave where Employer has a uniformly applied practice or policy to require such certification	From physician to verify amount of leave requested by Employee; may be provided by accredited practitioner relying on prayer or spiritual means No provision regarding fitness to return to work
<b>Executive, Administrative, and Professional Employees</b>	Such individuals are entitled to FMLA benefits. However, their use of FMLA leave does not change their status under the Fair Labor Standards Act (FLSA), i.e., an Employer, does not lose its exemption from the FLSA's minimum wage and overtime requirements.	No specific provision

## MEMORANDUM

**TO:** Health and Human Services and Public Safety Committee  
**CC:** Mayor Strimling  
**FROM:** Anne M. Torregrossa, Associate Corporation Counsel  
**DATE:** May 2, 2018  
**RE:** Paid Sick Time Ordinance Information

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At the November 14, 2017 meeting, the Committee posed a number of questions with respect to the proposed paid sick leave ordinance. In addition, Councilor Ray has passed along some questions, as has Mayor Strimling. This memo attempts to provide some of the information that was requested. I will also attend the May 8, 2018 Committee meeting and would be happy to answer any additional questions with respect to this material.

### **1. Ordinance Revisions.**

The Committee asked me to propose some changes to the proposed ordinance, reflecting points of clarification or concern for the Committee. A redlined version of the proposed ordinance, incorporating those changes is found at **TAB 1**

The Committee also asked for the original version of the proposed ordinance, before I worked with the Mayor to streamline the draft proposal. That original version is found at **TAB 2**.

Finally, the Committee asked for a document comparing the Mayor's original proposal, and the streamlined version that is before the Committee. A redline version showing those changes is attached as **TAB 3**.

### **2. Definition of Employee.**

The Committee and the Mayor had some questions about 1) what types of employees are covered under the current draft of the ordinance, and 2) what other definitions the Committee might consider.

The definition of employee in the proposed ordinance encompasses most types of employees, regardless of the nature of the employment relationship. The current definition mirrors the definition of employee under the City's minimum wage ordinance. That definition includes all employees, including full-time, part-time, seasonal, and temporary workers. It would also include per diem employees. There are a few exceptions that are found in the referenced state law, including agricultural employees; commissioned employees; taxicab drivers; camp counselors; certain employees involved in commercial fishing; certain piece workers; employees who are family members; certain salaried employees; and prisoners in certain types of work programs.

I have enclosed the City Ordinance defining employee, as well as the referenced state statute at **TAB 4**.

With respect to the Committee's question about what types of employees are typically provided benefits, there is no one cookie-cutter answer, and that varies greatly by company. By way of example only, an excerpt from the City's own Personnel Policies and Procedures, addressing which employees are benefits-eligible at the City, is included at **TAB 5**.

Some considerations for defining which employees are eligible for paid sick leave may be:

- Number of hours worked per week (e.g. employees working less than 20 hours per week are excluded);
- Number of hours worked per month or year (e.g. employees working less than 80 hours per calendar year are excluded);
- Nature of employment relationship (e.g. day laborers, or contract, temporary, per diem, on-call, and/or seasonal employees are excluded);
- Nature of position (e.g. camp counselors or tipped employees are excluded);
- Characteristics of the employee (e.g. minors or students are excluded); or
- Presence of a collective bargaining agreement (e.g. employees covered by a CBA that meets certain criteria are excluded).

### **3. Definition of Family Member.**

The definition of family member in the proposed ordinance is quite broad and includes "Any other individual related by blood or affinity . . ." The Committee asked for some context around this definition, and how it might be interpreted.

The definition is certainly broader than any state or federal law that addresses family leave. It is also broader than the City's own policies and CBAs. Excerpts from the City's Personnel Policies and Procedures, and a few CBAs are attached at **TAB 6**. Excerpts from the state and federal medical leave laws, showing the familial relationships that are covered are also included in that tab.

That said, the federal government has a broad definition of family member, similar to the proposed ordinance, that it applies for its own employees. Guidance provided by the federal government in implementing that standard is at **TAB 7**.

### **4. Job Protected Leave Law Requirements Versus Proposed Ordinance.**

Both state and federal laws provide for a wide variety of job-protected leave. The Committee asked for an overview of the difference between the proposed ordinance and existing types of job-protected leave.

Existing job-protected leave includes leave under the FMLA and Maine FMLR; leave for victims of violence; and leave for military service, jury duty, work as a legislator, firefighting duties, and other requirements. The most obvious difference between the existing types of leave and the leave under the proposed ordinance is that no other type of leave is required to be paid. Beyond that, there are differences in who qualifies, the qualifying reasons for leave, the amount of time allowed for leave, and the ability to require documentation.

With respect to who generally qualifies for leave, the proposed ordinance has very few limitations (see Section 2 above). By contrast, the Maine FMLR and federal FMLA require that employees be employed for a certain amount of time and for a certain number of hours in the previous year. They also do not apply to per diem or similar type employees.

As for the qualifying reasons for leave, the proposed ordinance is much broader than any existing state or federal requirements. Again, Maine FMLR and federal FMLA have fairly narrow categories of ailments or events for which an employee would qualify for leave. Generally, these are larger, or longer-term illnesses that require ongoing care, as opposed to a head cold, or transient flu. The statutes also narrowly circumscribe the familial relationships that qualify for an employee to take leave, which is generally related to those in the employee's immediate family. By contrast, the proposed ordinance is much broader and includes those not within an employee's family.

The amount of leave time allowed under the proposed ordinance is calculated based on hours worked. By contrast, most other laws allow a set number of hours, days, or weeks based on an employee's regular schedule.

Finally, the ability to require documentation in the proposed ordinance is narrower than in existing laws. Most statutes allow an employer to require reasonable documentation, including the reasons necessitating the leave. The proposed ordinance would limit employers to requesting documentation only after three consecutive days and would not allow the employer to request the reasons for the leave.

## **5. Enforcement of the Ordinance.**

The Committee asked several questions regarding the enforcement of the proposed ordinance. As written, the ordinance would allow an aggrieved employee to file a complaint with the City, who must respond within 15 days. The City may order an offending employer to pay the employee three times his or her back wages and \$100 per day that a violation occurred. Separately, the City may collect civil penalties that accrue to the City. Either the City or the aggrieved employee may also bring suit in court for this relief.

One challenge with the enforcement of the proposed ordinance would be the intricacies of the ordinance. For example, whether an employee was given enough paid sick time, or whether it was awarded correctly might be a simple calculation. Whether the employee took paid sick leave for a proper purpose, whether an employer retaliated against an employee for taking paid sick leave, or whether an existing paid leave policy is sufficient to meet the requirements of the ordinance are much more difficult questions to answer.

To appropriately enforce this ordinance, even on a complaint-only enforcement basis, City staff anticipates that a new division would be required, as the investigation and enforcement requirements would not fit into any existing department or division. Staff anticipates that at least one investigator would be required, as well as a staff support person. Corporation Counsel's Office also likely could not absorb any additional enforcement work and would require at least the addition of another half-time attorney.

Staff did reach out to a few other municipalities who were already enforcing paid sick leave ordinances. Attached at **TAB 8** is a summary of what other municipalities have experienced with respect to required staffing resources and the volume of investigations. Most have focused on mediated resolutions, and few have collected substantial awards for the municipalities themselves.

In addition to the additional staffing needs, there are some concerns with the proposed enforcement scheme to the extent that the City is involved in collecting enhanced penalties on behalf of private individuals. In traditional enforcement proceedings, the City orders the offender to remedy a violation, but the offender is not required to go above and beyond that remedy. Any civil penalties accrue to the City itself, not to a private party.

#### **6. Miscellaneous Questions.**

- How are per diem employees treated in the ordinance? *Per diem employees would be covered by the ordinance as written.*
- Would the ordinance allow an employer to use their fiscal year for the purposes of calculating leave, as opposed to the calendar year? *Yes, "year" is defined in the ordinance as "any regular and consecutive 12-month period as determined by the employer."*
- The proposed ordinance requires that paid sick leave be made available eight days after it is accrued – is there a grace period? *No, the ordinance as written does not provide for a grace period. Time can be used as soon as it is awarded.*
- Who would be responsible for tracking earned and paid sick time? *Typically, this is done by an employer's payroll service or department. However, that would be in the discretion of the employer.*
- Would a PTO program satisfy the requirements of the ordinance? *It depends on the details of the PTO program. A PTO program would likely be sufficient if the program 1) provided as much leave as required by the ordinance; 2) allowed the employee to take the leave for the same reasons as required in the ordinance (which would be met under most PTO policies); 3) did not require more notice than allowed under the ordinance; 4) allowed a certain amount of unused PTO to roll over (which most PTO policies do not allow); and 5) met any other requirements of the ordinance.*
- What are typical notice requirements for taking paid sick leave? *This would vary from employer to employer. Many require notice at least one hour in advance for emergencies or sudden illnesses. For anticipated absences or appointments, the requirements may vary.*
- What would be included in the out-of-pocket costs that an employer would be responsible for if documentation of the need for sick leave was required? *This would likely include all out-of-pocket costs incurred in connection with obtaining the required documentation, including transportation.*

- Are items other than documents signed by a health care provider considered reasonable documentation? *An employer could certainly agree to accept something less or different than a doctor's note. The ordinance, as written, would simply prohibit an employer from requiring something more burdensome than a doctor's note.*
- Would the current draft preclude an employer from requiring documentation from a mutually agreed upon doctor? *If the choice of doctor is truly mutually agreed upon, the proposed ordinance would not prohibit that. However, often employers will unilaterally choose a provider, and this likely would be prohibited under the ordinance.*
- Would an employer who has a policy that exceeds the requirements of the proposed ordinance be required to post the required notice of rights? *Yes. The ordinance does not "exempt" employers from any of its requirements. It simply provides that an employer who provides the minimum amount of required leave, and for the same reasons, would not have to provide additional leave. The notice requirements would apply to all employers.*
- What are typical record retention requirements? *Typical record retention requirements for other wage and hour statutes at both the state and federal level are three years.*
- Is it legal to require an employer to provide access to their records? *Generally, yes. If the underlying ordinance is legal, then the requirement to provide access for enforcement and auditing would likely be legal. The City might be forced to obtain a warrant if an employer was uncooperative.*

## Definitions

The following definitions shall apply for purposes of this Article:

*Earned paid sick time* shall mean paid sick time accrued and awarded pursuant to section X.

*Employee* shall have the same meaning as in Sec. 33.2 of this Code.

*Employer* shall have the same meaning as in Sec. 33.2 of this Code.

*Family member* shall mean: (A) Regardless of age, a biological, adopted or foster child, stepchild or legal ward, a child of a domestic partner, a child to whom the employee stands in loco parentis, or an individual to whom the employee stood in loco parentis when the individual was a minor; (B) A biological, foster, stepparent or adoptive parent or legal guardian of an employee or an employee's spouse or domestic partner or a person who stood in loco parentis when the employee or employee's spouse or domestic partner was a minor child; (C) A person to whom the employee is legally married under the laws of any state, or a domestic partner of an employee as registered under the laws of any state or political subdivision; (D) A grandparent, grandchild or sibling (whether of a biological, foster, adoptive or step relationship) of the employee or the employee's spouse or domestic partner; (E) A person for whom the employee is responsible for providing or arranging care, including but not limited to helping that individual obtain diagnostic, preventive, routine or therapeutic health treatment; or (F) Any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

*Health care professional* shall have the same meaning as in 26 M.R.S. § 843.

*Year* shall mean a regular and consecutive 12-month period as determined by the employer.

## Accrual of Earned Paid Sick Time

(a) All employees shall accrue a minimum of one hour of earned paid sick time for every 30 hours ~~of worked~~, up to a maximum accrual of 48 hours in one year. Hours worked shall not include vacation, sick, or other time for which an employee is paid but no actual work is performed.

1. Employees who are exempt from overtime requirements under the Fair Labor Standards Act will be deemed to work 40 hours in each work week for purposes of earned paid sick time accrual, unless their normal work week is less than 40 hours, in which case earned paid sick time accrues based upon that normal work week.

**TAB 1**

2. Employees shall begin to accrue earned paid sick time at the commencement of employment or on the date this law goes into effect, whichever is later.
3. Accrued paid sick time shall be awarded and available for use no more than eight days after it is accrued. Alternatively, an employer may award paid sick time in advance of accrual in an amount anticipated to be accrued over a year's time.

(b) Earned paid sick time shall not be automatically forfeited with the passage of time, unless the employer has a policy to pay the employee for any remaining sick time at set intervals of not less than one year.

1. However, employers may set a cap on the amount of earned paid sick time that an employee can accrue, which cap may not be less than X hours.

1.2. ~~N~~However, nothing in this Article shall be construed as requiring financial or other reimbursement to an employee from an employer upon the employee's termination, resignation, retirement or other separation from employment for accrued earned paid sick time that has not been used.

(c) If an employee is transferred to a separate division, entity or location, but remains employed by the same employer, the employee is entitled to all earned paid sick time accrued at the prior division, entity or location and is entitled to use all earned paid sick time as provided in this section. When there is a separation from employment and the employee is rehired within two months of separation by the same employer, previously accrued earned paid sick time that had not been used shall be reinstated. Further, the employee shall be entitled to use accrued earned paid sick time and accrue additional earned paid sick time at the re-commencement of employment.

(d) When a different employer succeeds or takes the place of an existing employer, all employees of the original employer who remain employed by the successor employer are entitled to all earned paid sick time they accrued when employed by the original employer, and are entitled to use earned paid sick time previously accrued.

(e) At its discretion, an employer may loan earned paid sick time to an employee in advance of accrual by such employee.

(f) Any employer that has a paid leave policy that makes available an amount of paid leave sufficient to meet the accrual requirements of this section, and allows that paid leave to be used for the same purposes and under the same conditions as earned paid sick time under this ordinance, is not required to provide additional paid sick time.

## **Use of Earned Paid Sick Time**

- (a) Employees may use earned paid sick time for any of the following:
1. Job protected leave provided pursuant to the Maine Employment Leave for Victims of Violence statute;
  2. Leave for an employee's mental or physical illness, injury, or health condition; an 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 preventative medical care;
  3. Leave for care of a family member's mental or physical illness, injury, or health condition; an 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 preventative medical care; or
  4. Leave to attend a school meeting necessitated by the family member's health condition or disability; or
  - 4.5. Leave to attend a meeting at a place where a family member is receiving care necessitated by the family member's health condition or disability.

(b) Earned paid sick time may be used in the smaller of hourly increments or the smallest increment that the employer's payroll system uses to account for absences or use of other time.

~~(b)~~(c) If an employee uses earned paid sick time for an entire day or shift, earned paid sick time must be paid for the hours the employee was otherwise scheduled to work.

(e)(d) Employees may not use more than 48 hours of earned paid sick time in a year, unless the employer selects a higher limit.

### **Procedures for Taking Earned Paid Sick Time**

- (a) Earned paid sick time shall be provided upon the request of an employee.
1. An employer may not require more than five days' notice for an employee to use earned paid sick time, when the need is foreseeable.
  2. When the need for use of earned paid sick time is not foreseeable, an employee must provide notice to the employer as soon as practicable under the facts and circumstances of the particular case
  3. An employer that requires notice of the need to use earned paid sick time shall

provide a written policy that contains procedures for the employee to provide notice. An employer that has not provided to the employee a copy of its written policy for providing such notice shall not deny earned paid sick time to the employee based on non-compliance with such a policy.

4. When the use of earned paid sick time is foreseeable, the employee shall make a good faith effort to provide notice of the need for such time to the employer in advance of the use of the earned paid sick time and shall make a reasonable effort to schedule the use of earned paid sick time in a manner that does not unduly disrupt the operations of the employer.

(b) An employer may not require, as a condition of an employee's taking earned paid sick time, that the employee search for or find a replacement worker to cover the hours during which the employee is using earned paid sicktime.

(c) For earned paid sick time of three or more consecutive work days, an employer may require reasonable documentation that the earned paid sick time has been used for a purpose covered by Sec. X(a)(2) through (a)(4). An employer may not require that the documentation explain the nature of the reasons for leave. However, nothing in this section shall be construed to limit an employer's rights with respect to documentation of leave allowed under state or federal law.

1. Documentation signed by a health care professional indicating that earned paid sick time is necessary shall be considered reasonable documentation for purposes of this section.
2. If an employer requires documentation of the reasons for taking earned paid sick time, the employer is responsible for paying the employee's out-of-pocket costs for obtaining such documentation.

#### **Section 4. Exercise of Rights Protected; Retaliation Prohibited**

(a) It shall be unlawful for an employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this Article.

(b) It shall be unlawful for an employer or any other person to retaliate against an employee for exercising his or her rights under this Article, including requesting or using earned paid sick time; filing a complaint or otherwise complaining about an employer's alleged violation of this Article; participating in an investigation or other proceeding under this Article; or informing others of their rights under this Article.

(c) It shall be unlawful for an employer's absence control policy to count earned paid sick time taken under this Act as an absence that may lead to or result in discipline, discharge, demotion, suspension, or any other adverse action. However, nothing in this Article

shall be construed to prohibit an employer from taking disciplinary action against an employee who uses earned paid sick time for purposes other than those described in this Article.

(d) Protections of this section shall apply to any person who mistakenly but reasonably alleges a violation of this Article.

### **Notice of Rights**

(a) Employers shall both display a poster notifying employees of their rights under this Article, and give employees written notice at the commencement of employment or the effective date of this ordinance, whichever is later. The poster and notice shall be consistent with this section.

(b) The notice and poster shall contain the following information: that employees are entitled to earned paid sick time and the amount of earned paid sick time; the terms of its use guaranteed under this Act; that retaliation is prohibited; that each employee has the right to file a complaint or bring a civil action if earned paid sick time as required by this Act is denied by the employer or the employee is subjected to retaliatory personnel action for requesting or taking earned paid sick time, and the contact information for the City of Portland where questions about rights and responsibilities under this Act can be answered.

(c) The notice and poster shall be provided in English, Spanish, Somali, Chinese, Vietnamese, Russian, Croatian, French, Arabic, Polish, Acholi, Farsi, Dinka, Khmer, Creole and any language that is the first language spoken by at least 5% of the employer's workforce, provided that such notice has been ~~provided~~created by the City of Portland.

(d) The City of Portland shall create and make available to employers, in all languages spoken by more than 5% of the City's workforce and any language deemed appropriate by the City of Portland, model notices and posters meeting the requirements of this section. This requirement may be satisfied by posting the model notices and posters on the City's website and making them available for download.

(e) The amount of earned paid sick time available to the employee, the amount of earned paid sick time taken by the employee to date in the year and the amount of pay the employee has received as earned paid sick time shall be recorded in, or on an attachment to, the employee's regular paycheck.

(f) An employer who willfully violates this section shall be subject to a civil fine in an amount not to exceed \$100 for each separate offense. Each day that an employer allows a violation of this section to continue shall be a separate offense.

## Recordkeeping Requirements

(a) Employers shall retain records documenting hours worked by employees and earned paid sick time earned and taken by employees for a period of six (6) years.

(b) Employers shall allow the City of Portland access to the records required by this section, with appropriate notice and at a mutually agreeable time.

(c) When an issue arises as to an employee's entitlement to earned paid sick time under this Article, if the employer has not maintained adequate records required by this section, or does not allow the City of Portland reasonable access to such records, it shall be presumed that the employer has violated this Article, absent clear and convincing evidence otherwise.

## Enforcement

(a) Enforcement.

1. The City Manager or his/her designee shall enforce the provisions of this ordinance.

~~2. The City Manager shall adopt rules and regulations for the proper administration and enforcement of this ordinance.~~

(b) Complaint Process

1. Any Employee, ~~including, but not limited to, a Service Employee,~~ alleging a violation of this ordinance may file a written complaint with the City Manager's office.

2. The City Manager or his or her designee may investigate and issue a response to the complaint within fifteen (15) work days following the receipt of a complaint. The City Manager's or his or her designee's response to the complaint shall be final.

3. If the City Manager finds that a violation of this chapter has occurred, he or she may order any and all appropriate relief including, but not limited to, three times the amount of any back wages withheld and the payment of not less than \$100.00 to the employee as a penalty for each day that a violation of this chapter has occurred. If a violation occurred but did not result in wages being withheld, such as in the case of an employee who worked after being unlawfully denied permission to use earned paid sick time, appropriate relief shall include an additional amount of two times what the employee was paid.

4. A violation of this Ordinance may also be considered a civil violation subject to the general penalty provisions of section 1-15 of this Code.

(c) Private Cause of Action.

1. Any Employee, ~~including, but not limited to, a Service Employee,~~ the City or any person aggrieved by a violation of this ordinance may bring an action in a Court of competent jurisdiction against the Employer for any and all violations of this ordinance, including, but not limited to, wages owed under this ordinance. Such action may be brought by a person aggrieved by a violation of this section without first filing a complaint with the City Manager. Actions brought pursuant to this section may be brought as a class action pursuant to the laws of Maine.
2. Upon a judgment being rendered in favor of any employee(s), in any action brought pursuant to this ordinance, such judgment shall include, in addition to the wages adjudged to be due and any penalties assessed, any and all costs of suit including, but not limited to, reasonable attorney's fees.
3. Where applicable, remedies shall also include equitable relief, including reinstatement and back pay, and injunctive relief.
4. The City of Portland shall annually report on the City of Portland website the number and nature of the complaints received pursuant to this ordinance, the results of investigations undertaken pursuant to this ordinance, including the number of complaints not substantiated and the number of notices of violations issued, the number and nature of adjudications pursuant to this ordinance, and the average time for a complaint to be resolved pursuant to this chapter.

### **Confidentiality and Nondisclosure**

If an employer possesses health information or information pertaining to domestic violence, sexual assault, harassment or stalking about an employee or employee's family member, such information shall be treated as confidential and not disclosed except to the affected employee, with the permission of the affected employee, as required for the administration of the leave, or as otherwise required by law.

### **Encouragement of More Generous Earned Paid Sick Time Policies; No Effect on More Generous Policies or Laws**

(a) Nothing in this Act shall be construed to discourage or prohibit an employer from the adoption or retention of an earned paid sick time policy more generous than the one required herein.

(b) Nothing in this Act shall be construed as diminishing the obligation of an employer to comply with any law, regulation, contract, collective bargaining agreement, employment benefit plan, or other agreement providing more generous paid sick time to an

employee than required herein.

### **Public Education and Outreach**

The City of Portland shall develop and implement a multilingual outreach program to inform employees about the availability of earned paid sick time under this ordinance. This program shall include the distribution of notices and other written materials in English, and well as Spanish, Somali, Chinese, Vietnamese, Russian, Croatian, French, Arabic, Polish, Acholi, Farsi, Dinka, Khmer, Creole to all child care and elder care providers, domestic violence shelters, schools, hospitals, community health centers and other health care providers.

### **Regulations**

The city manager, or his or her designee, shall be authorized to coordinate implementation and enforcement of this Article and shall promulgate appropriate guidelines or regulations for such purposes.

### **Severability**

If any provision of this Act or application thereof to any person or circumstance is judged invalid, the invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared severable.

### **Effective Date**

This Act will take effect on July 1, 2018.

## PORTLAND EARNED PAID SICK DAYS AND SAFE DAYS ORDINANCE

Findings [section to come]

...

### Section 1. Definitions For Purposes of this Act

(1) "Domestic violence" is as defined in Maine statute §207-A.

(2) "Earned paid sick time" means time that is compensated at the same hourly rate and with the same benefits, including health care benefits, as the employee normally earns during hours worked and is provided by an employer to an employee for the purposes described in Section 3 of this Act, but in no case shall this hourly amount be less than that provided under Portland City Code, Chapter 33, Articles I - VIII, Articles 33-1 - 33-12.

(3) "Employee" is, as defined in Maine §591 Title 26, Chapter 7, Subchapter 1, every person who may be permitted, required or directed by any employer in consideration of direct or indirect gain or profit, to engage in any employment. "Employee" includes recipients of public benefits who are engaged in work activity as a condition of receiving public assistance.

(4) "Employer" is as defined in City of Portland Order 297-14/15: any individual, group of individuals, partnership, association, corporation, business trust, or any other entity or group of persons or entities who employs or exercises control over the wages, hours, or working conditions of any Employee and who has a place of business within the City limits. "Employer" shall include but not be limited to the City of Portland.

(5) "Family member" means: (A) Regardless of age, a biological, adopted or foster child, stepchild or legal ward, a child of a domestic partner, a child to whom the employee stands in loco parentis, or an individual to whom the employee stood in loco parentis when the individual was a minor; (B) A biological, foster, stepparent or adoptive parent or legal guardian of an employee or an employee's spouse or domestic partner or a person who stood in loco parentis when the employee or employee's spouse or domestic partner was a minor child; (C) A person to whom the employee is legally married under the laws of any state, or a domestic partner of an employee [as defined under Portland Code of Ordinances Chapter 13.6] as registered under the laws of any state or political subdivision; (D) A grandparent, grandchild or sibling (whether of a biological, foster, adoptive or step relationship) of the employee or the employee's spouse or domestic partner; (E) A person for whom the employee is responsible for providing or arranging care, including but not limited to helping that individual obtain diagnostic, preventive, routine or therapeutic health treatment; or (F) Any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

(6) "Harassment" is as defined in Maine §4651, Title 5, Part 12, Chapter 337-A.

(7) "Health care professional" means any person licensed under Federal or State law to provide medical or emergency services, including but not limited to doctors, nurses and emergency room personnel.

(8) "Retaliatory personnel action" means denial of any right guaranteed under this Act and any threat, discharge, suspension, demotion, reduction of hours, reporting or threatening to report an employee's suspected citizenship or immigration status, or the suspected citizenship or immigration status of a family member of the employee to a federal, state or local agency, or any other adverse action against an employee for the exercise of any right guaranteed herein including any sanctions against an employee who is the recipient of public benefits for rights guaranteed under this Act. Retaliation shall also include interference with or punishment for in any manner participating in or assisting an investigation, proceeding or hearing under this Act.

(9) "Sexual assault" is as defined in Maine §253, Title 17-A, Part 2, Chapter 11.

(10) "Stalking" is as defined in Maine §210-A, Title 17-A, Part 2, Chapter 9.

(11) "Year" means a regular and consecutive 12 month period as determined by the employer; except that for the purposes of sections 6 and 8 of this Act, "year" shall mean a calendar year.

## Section 2. Accrual of Earned Paid Sick Time

(1) All employees shall accrue a minimum of one hour of earned paid sick time for every 30 hours worked. Employees shall not use more than 48 hours of earned paid sick time in a year, unless the employer selects a higher limit.

(2) Employees who are exempt from overtime requirements under 29 U.S.C. § 213(a)(1) of the Federal Fair Labor Standards Act will be assumed to work 40 hours in each work week for purposes of earned paid sick time accrual unless their normal work week is less than 40 hours, in which case earned paid sick time accrues based upon that normal work week.

(3) Earned paid sick time as provided in this section shall begin to accrue at the commencement of employment or on the date this law goes into effect, whichever is later. An employer may provide all paid sick time that an employee is expected to accrue in a year at the beginning of the year.

(4) Employees shall not be entitled to use accrued earned paid sick time until the 15th calendar day following commencement of their employment, or the 15th calendar day after

this ordinance goes into effect, whichever is later, unless otherwise permitted by the employer. On and after the # calendar day of employment, employees may use earned paid sick time as it is accrued.

(5) Earned paid sick time shall be carried over to the following year. Alternatively, in lieu of carryover of unused earned paid sick time from one year to the next, an employer may pay an employee for unused earned paid sick time at the end of a year. In either case, at the beginning of the subsequent year, earned paid sick time shall begin again to accrue, or be awarded in the case of an employer who provides all the paid sick time that the employee is expected to accrue in a year, at the start of the year.

(6) Any employer with a paid leave policy, such as a paid time off policy, who makes available an amount of paid leave sufficient to meet the accrual requirements of this section that may be used for the same purposes and under the same conditions as earned paid sick time under this ordinance is not required to provide additional paid sick time.

(7) Nothing in this section shall be construed as requiring financial or other reimbursement to an employee from an employer upon the employee's termination, resignation, retirement or other separation from employment for accrued earned paid sick time that has not been used.

(8) If an employee is transferred to a separate division, entity or location, but remains employed by the same employer, the employee is entitled to all earned paid sick time accrued at the prior division, entity or location and is entitled to use all earned paid sick time as provided in this section. When there is a separation from employment and the employee is rehired within two months of separation by the same employer, previously accrued earned paid sick time that had not been used shall be reinstated. Further, the employee shall be entitled to use accrued earned paid sick time and accrue additional earned paid sick time at the re-commencement of employment.

(9) When a different employer succeeds or takes the place of an existing employer, all employees of the original employer who remain employed by the successor employer are entitled to all earned paid sick time they accrued when employed by the original employer, and are entitled to use earned paid sick time previously accrued.

(10) At its discretion, an employer may loan earned paid sick time to an employee in advance of accrual by such employee.

### Section 3. Use of Earned Paid Sick Time

Earned paid sick time shall be provided to an employee by an employer for:

(A) An employee's mental or physical illness, injury or health condition; an employee's need for medical diagnosis, care, or treatment of a mental or physical illness, injury or health condition; an employee's need for preventive medical care;

(B) Care of 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; care of a family member who needs preventive medical care; or in the case of a child, to attend a school meeting or a meeting at a place where the child is receiving care necessitated by the child's health condition or disability, domestic violence, sexual assault, harassment or stalking;

(C) Closure of the employee's place of business by order of a public official due to a public health emergency or an employee's need to care for a child whose school or place of care has been closed by order of a public official due to a public health emergency, or care for oneself or a family member when it has been determined by the health authorities having jurisdiction or by a health care provider that the employee's or family member's presence in the community may jeopardize the health of others because of his or her exposure to a communicable disease, whether or not the employee or family member has actually contracted the communicable disease; or

(D) Absence necessary due to domestic violence, sexual assault, harassment or stalking, provided the leave is to allow the employee to obtain for the employee or the employee's family member:

(1) Medical attention needed to recover from physical or psychological injury or disability caused by domestic violence, sexual assault, harassment or stalking; (2) Services from a victim services organization; (3) Psychological or other counseling; (4) Relocation or taking steps to secure an existing home due to the domestic violence, sexual assault, harassment or stalking; or (5) Legal services, including preparing for or participating in any civil or criminal legal proceeding related to or resulting from the domestic violence, sexual assault, harassment or stalking.

(2) Earned paid sick time shall be provided upon the request of an employee. Such request may be made orally, in writing, by electronic means or by any other means acceptable to the employer. When possible, the request shall include the expected duration of the absence.

(3) When the use of earned paid sick time is foreseeable, the employee shall make a good faith effort to provide notice of the need for such time to the employer in advance of the use of the earned paid sick time and shall make a reasonable effort to schedule the use of earned paid sick time in a manner that does not unduly disrupt the operations of the employer.

(4) An employer that requires notice of the need to use earned paid sick time where the need is not foreseeable shall provide a written policy that contains procedures for the employee to provide notice. An employer that has not provided to the employee a copy of its written policy for providing such notice shall not deny earned paid sick time to the employee based on non-compliance with such a policy.

(5) An employer may not require, as a condition of an employee's taking earned paid sick time, that the employee search for or find a replacement worker to cover the hours during which the employee is using earned paid sick time.

(6) Earned paid sick time may be used in the smaller of hourly increments or the smallest increment that the employer's payroll system uses to account for absences or use of other time.

(7) For earned paid sick time of 3 or more consecutive work days, an employer may require reasonable documentation that the earned paid sick time has been used for a purpose covered by subsection (1). Documentation signed by a health care professional indicating that earned paid sick time is necessary shall be considered reasonable documentation for purposes of this section. In cases of domestic violence, sexual assault, harassment or stalking, one of the following types of documentation selected by the employee shall be considered reasonable documentation: (a) a police report indicating that the employee or the employee's family member was a victim of domestic violence, sexual assault, harassment or stalking; (b) a signed statement from a victim and witness advocate affirming that the employee or employee's family member is receiving services from a victim services organization; or (c) a court document indicating that the employee or employee's family member is involved in legal action related to domestic violence, sexual assault, harassment or stalking. An employer may not require that the documentation explain the nature of the illness or the details of the domestic violence, sexual assault, harassment or stalking.

If an employer chooses to require documentation for earned paid sick time and the employer does not offer health insurance to the employee, then the employer is

responsible for paying all out of pocket expenses the employee incurs in obtaining the documentation. If the employee does have health insurance, the employer is responsible for paying any costs charged to the employee by the health care provider for providing the specific documentation required by the employer. The employer is responsible for paying any costs charged to the employee for documentation of domestic violence, sexual assault, harassment or stalking required by the employer.

#### Section 4. Exercise of Rights Protected; Retaliation Prohibited

(1) It shall be unlawful for an employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this Act.

(2) An employer shall not take retaliatory personnel action or discriminate against an employee or former employee because the person has exercised rights protected under this Act. Such rights include but are not limited to the right to request or use earned paid sick time pursuant to this Act; the right to file a complaint with the City of Portland or courts or inform any person about any employer's alleged violation of this Act; the right to participate in an investigation, hearing or proceeding or cooperate with or assist the City of Portland in its investigations of alleged violations of this Act; and the right to inform any person of his or her potential rights under this Act.

(3) It shall be unlawful for an employer's absence control policy to count earned paid sick time taken under this Act as an absence that may lead to or result in discipline, discharge, demotion, suspension, or any other adverse action.

(4) Protections of this section shall apply to any person who mistakenly but in good faith alleges violations of this Act.

(5) There shall be a rebuttable presumption of unlawful retaliatory personnel action under this section whenever an employer takes adverse action against a person within 90 days of when that person: (a) files a complaint with the City of Portland or a court alleging a violation of any provision of this Act; (b) informs any person about an employer's alleged violation of this Act; (c) cooperates with the City of Portland or other persons in the investigation or prosecution of any alleged violation of this Act; (d) opposes any policy, practice, or act that is unlawful under this Act; or (e) informs any person of his or her rights under this Act.

#### Section 5. Notice and Posting

1) Employers shall give employees written notice of the following at the commencement of employment or by **[Date based on when ordinance is passed]**, whichever is later: employees are entitled to earned paid sick time and the amount of earned paid sick time, the terms of its use guaranteed under this Act, that retaliatory personnel action against employees who request or use earned paid sick time is prohibited, that each employee has the right to file a complaint or bring a civil action if earned paid sick time as required by this Act is denied by the employer or the employee is subjected to retaliatory personnel action for requesting or taking earned paid sick time, and the contact information for the City of Portland where questions about rights and responsibilities under this Act can be answered.

2) The notice required in (1) shall be in English, Spanish, Somali, Chinese, Vietnamese, Russian, Croatian, French, Arabic, Polish, Acholi, Farsi, Dinka, Khmer, Creole and any language that is the first language spoken by at least 5% of the employer's workforce, provided that such notice has been provided by the City of Portland.

3) The amount of earned paid sick time available to the employee, the amount of earned paid sick time taken by the employee to date in the year and the amount of pay the employee has received as earned paid sick time shall be recorded in, or on an attachment to, the employee's regular paycheck.

4) Employers shall display a poster that contains the information required in (1) in a conspicuous and accessible place in each establishment where such employees are employed. The poster displayed shall be in English, Spanish, Somali, Chinese, Vietnamese, Russian, Croatian, French, Arabic, Polish, Acholi, Farsi, Dinka, Khmer, Creole, and any language that is the first language spoken by at least 5% of the employer's workforce, provided that such poster has been provided by the City of Portland.

(5) The City of Portland shall create and make available to employers, in all languages spoken by more than 5% of the City's workforce and any language deemed appropriate by the City of Portland, model notices and posters that contain the information required under (1) for employers' use in complying with (1) and (4).

(6) An employer who willfully violates the notice and posting requirements of this section shall be subject to a civil fine in an amount not to exceed \$100 for each separate offense.

#### Section 6. Employer Records

Employers shall retain records documenting hours worked by employees and earned paid

sick time taken by employees, for a period of six (6) years, and shall allow the City of Portland access to such records, with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of this Act. When an issue arises as to an employee's entitlement to earned paid sick time under this section, if the employer does not maintain or retain adequate records documenting hours worked by the employee and earned paid sick time taken by the employee, or does not allow the City of Portland reasonable access to such records, it shall be presumed that the employer has violated the Act, absent clear and convincing evidence otherwise.

#### Section 7. Regulations

The City of Portland shall be authorized to coordinate implementation and enforcement of this Act and shall promulgate appropriate guidelines or regulations for such purposes.

#### Section 8. Enforcement

##### *(1) Administrative Enforcement*

(A) The City of Portland shall enforce this ordinance. In effectuating such enforcement, the City of Portland shall establish a system utilizing multiple means of communication to receive complaints regarding non-compliance with this ordinance and investigate complaints received by the City in a timely manner.

(B) Any person alleging a violation of this ordinance shall have the right to file a complaint with the City of Portland within six (6) years of the date the person knew or should have known of the alleged violation. The City of Portland shall encourage reporting pursuant to this subsection by keeping confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the employee or person reporting the violation, provided, however, that with the authorization of such person, the City of Portland may disclose his or her name and identifying information as necessary to enforce this ordinance or for other appropriate purposes.

(C) Upon receiving a complaint alleging a violation of this ordinance, the City of Portland shall investigate such complaint and attempt to resolve it through mediation between the complainant and the subject of the complaint, or other means. The City of Portland shall keep complainants notified regarding the status of their complaint and any resultant investigation. If the City of Portland believes that a violation has occurred, it shall issue to the offending person or entity a notice of violation and the relief required of the offending person or entity. The City of Portland shall prescribe the form and wording of such notices of violation including any method of appealing the decision of the City of Portland.

(D) The City of Portland shall have the power to impose penalties provided for in this ordinance and to grant an employee or former employee all appropriate relief. Such relief shall include but not be limited to: (1) for each instance of earned paid sick time taken by an employee but unlawfully not compensated by the employer: three times the wages that should have been paid under this ordinance; (2) for each instance of earned paid sick time requested by an employee but unlawfully denied by the employer and not taken by the employee or unlawfully conditioned upon searching for or finding a replacement worker: three times the wages that should have been paid under this ordinance, plus \$250; (3) for each instance of unlawful retaliation not including discharge from employment: three times the wages lost, compensation for any benefits lost, plus an additional amount of \$500 and equitable relief as appropriate; and (4) for each instance of unlawful discharge from employment: three times the wages lost, compensation for any benefits lost, plus \$1,000 and equitable relief, including reinstatement, as appropriate.

(E) Any entity or person found to be in violation of the provisions of this ordinance shall be liable for a civil penalty payable to the City of Portland not to exceed \$100 for the first violation and, for subsequent violations that occur within two years of any previous violation, not to exceed \$500 for the second violation and not to exceed \$1,000 for each successive violation.

(F) The City of Portland shall annually report on the City of Portland website the number and nature of the complaints received pursuant to this ordinance, the results of investigations undertaken pursuant to this ordinance, including the number of complaints not substantiated and the number of notices of violations issued, the number and nature of adjudications pursuant to this ordinance, and the average time for a complaint to be resolved pursuant to this chapter.

## *(2) Civil Enforcement*

(A) The City of Portland, the Corporation Counsel, any person aggrieved by a violation of this ordinance, or any entity a member of which is aggrieved by a violation of this ordinance may bring a civil action in a court of competent jurisdiction against an employer violating this ordinance. Such action may be brought by a person aggrieved by a violation of this section without first filing an administrative complaint.

(B) Upon prevailing in an action brought pursuant to this section, aggrieved persons shall recover the full amount of any unpaid earned sick time plus any actual damages suffered as

the result of the employer's violation of this ordinance plus an equal amount of liquidated damages. Aggrieved persons shall also be entitled to reasonable attorney's fees.

(C) Upon prevailing in an action brought pursuant to this section, aggrieved persons shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation, including, without limitation, reinstatement to employment, back pay and injunctive relief.

(D) Any person aggrieved by a violation of this ordinance may file a complaint with the Corporation Counsel. The filing of a complaint with the Corporation Counsel will not preclude the filing of a civil action.

(E) The Corporation Counsel may bring a civil action to enforce this ordinance. The Corporation Counsel may seek injunctive relief. In addition to injunctive relief, or in lieu thereof, for any employer or other person found to have willfully violated this Act, the Corporation Counsel may seek to impose a fine in accordance with section 8(1)(E) above, payable to the City of Portland.

(F) The statute of limitations for a civil action brought pursuant to this section shall be for a period of six (6) years from the date the alleged violation occurred or the date the employee knew or should have known of the violation.

(G) Actions brought pursuant to this section may be brought as a class action pursuant to the laws of Maine.

(3) Portland officials are hereby authorized to consider, to the maximum extent permitted by law, an employer's record of noncompliance with this ordinance in making decisions on City of Portland contracts, land use approvals and other entitlements to expand or operate within the City. The City of Portland is authorized to either deny approval or to condition approval on the employer's future compliance.

#### Section 9. Confidentiality and Nondisclosure

An employer may not require disclosure of details relating to domestic violence, sexual assault, harassment or stalking or the details of an employee's or an employee's family member's health information as a condition of providing earned paid sick time under this Act. If an employer possesses health information or information pertaining to domestic violence, sexual assault, harassment or stalking about an employee or employee's family

member, such information shall be treated as confidential and not disclosed except to the affected employee or with the permission of the affected employee.

#### Section 10. Encouragement of More Generous Earned Paid Sick Time Policies; No Effect on More Generous Policies or Laws

1) Nothing in this Act shall be construed to discourage or prohibit an employer from the adoption or retention of an earned paid sick time policy more generous than the one required herein.

2) Nothing in this Act shall be construed as diminishing the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous paid sick time to an employee than required herein. Nothing in this Act shall be construed as diminishing the rights of public employees regarding paid sick time or use of paid sick time as provided by collective bargaining agreements or law.

#### Section 11. Other Legal Requirements

This Act provides minimum requirements pertaining to earned paid sick time and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for greater accrual or use by employees of earned paid sick time or that extends other protections to employees.

#### Section 12. Public Education and Outreach

The City of Portland shall develop and implement a multilingual outreach program to inform employees, parents and persons who are under the care of a health care provider about the availability of earned paid sick time under this ordinance. This program shall include the distribution of notices and other written materials in English, and well as Spanish, Somali, Chinese, Vietnamese, Russian, Croatian, French, Arabic, Polish, Acholi, Farsi, Dinka, Khmer, Creole to all child care and elder care providers, domestic violence shelters, schools, hospitals, community health centers and other health care providers.

#### Section 13. Severability

If any provision of this Act or application thereof to any person or circumstance is judged invalid, the invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared severable.

Section 14. Effective Date

This Act will take effect # days following enactment.

PORTLAND EARNED PAID SICK DAYS AND SAFE DAYS ORDINANCE

Findings [section to come]

iii

**Section 1. Definitions For Purposes**

The following definitions shall apply for purposes of this Act

Article:

(1) "Domestic violence" is as defined in Maine statute §207-A.

(2) "Earned paid sick time" means time that is compensated at the same hourly rate and with the same benefits, including health care benefits, as the employee normally earns during hours worked and is provided by an employer to an employee for the purposes described in Section 3 of this Act, but in no case shall this hourly amount be less than that provided under Portland City Code, Chapter 33, Articles I–VIII, Articles 33-1–33-12.

(3) "Employee" is, as defined in Maine §591 Title 26, Chapter 7, Subchapter 1, every person who may be permitted, required or directed by any employer in consideration of direct or indirect gain or profit, to engage in any employment. "Employee" includes recipients of public benefits who are engaged in work activity as a condition of receiving public assistance.

(4) "Employer" is as defined in City of Portland Order 297-14/15: any individual, group of individuals, partnership, association, corporation, business trust, or any other entity or group of persons or entities who employs or exercises control over the wages, hours, or working conditions of any Employee and who has a place of business within the City limits. "Employer" shall include but not be limited to the City of Portland.

(5) "

*Earned paid sick time* shall mean paid sick time accrued and awarded pursuant to section X.

*Employee* shall have the same meaning as in Sec. 33.2 of this Code.

*Employer* shall have the same meaning as in Sec. 33.2 of this Code.

*Family member* means shall mean: (A) Regardless of age, a biological, adopted or foster child, stepchild or legal ward, a child of a domestic partner, a child to whom the employee stands in loco parentis, or an individual to whom the employee stood in loco parentis when the individual was a minor; (B) A biological, foster, stepparent or adoptive parent or legal guardian of an employee or an employee's spouse or domestic partner or a person who stood in loco parentis when the employee or employee's spouse or domestic partner was a minor child; (C) A person to whom the employee is legally married under the

laws of any state, or a domestic partner of an employee ~~as defined under Portland Code of Ordinances Chapter 13.6~~ as registered under the laws of any state or political subdivision; (D) A grandparent, grandchild or sibling (whether of a biological, foster, adoptive or step relationship) of the employee or the employee's spouse or domestic partner; (E) A person for whom the employee is responsible for providing or arranging care, including but not limited to helping that individual obtain diagnostic, preventive, routine or therapeutic health treatment; or (F) Any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

~~(6) "Harassment" is as defined in Maine §4651, Title 5, Part 12, Chapter 337-A.~~

~~(7) "Health care professional" means any person licensed under Federal or State law to provide medical or emergency services, including but not limited to doctors, nurses and emergency room personnel.~~

~~(8) "Retaliatory personnel action" means denial of any right guaranteed under this Act and any threat, discharge, suspension, demotion, reduction of hours, reporting or threatening to report an employee's suspected citizenship or immigration status, or the suspected citizenship or immigration status of a family member of the employee to a federal, state or local agency, or any other adverse action against an employee for the exercise of any right guaranteed herein including any sanctions against an employee who is the recipient of public benefits for rights guaranteed under this Act. Retaliation shall also include interference with or punishment for in any manner participating in or assisting an investigation, proceeding or hearing under this Act. have the same meaning as in 26 M.R.S. § 843.~~

~~(9) "Sexual assault" is as defined in Maine §253, Title 17-A, Part 2, Chapter 11.~~

Commented [1]: Pending conversation with advocates

~~(10) "Stalking" is as defined in Maine §210-A, Title 17-A, Part 2, Chapter 9.~~

~~(11) "Year" means shall mean a regular and consecutive 12-month period as determined by the employer, except that for the purposes of sections 6 and 8 of this Act, "year" shall mean a calendar year.~~

## ~~Section 2.~~

### ~~Accrual of Earned Paid Sick Time~~

~~(1)~~

~~(a) All employees shall accrue a minimum of one hour of earned paid sick time for every 30 hours worked. Employees shall not use more than of work, up to a maximum accrual of 48 hours of earned paid sick time in a year, unless the employer selects a higher limit in one year.~~

~~(2)~~

1. Employees who are exempt from overtime requirements under ~~29 U.S.C. § 213(a)(1) of the Federal~~ Fair Labor Standards Act will be ~~assumed~~deemed to work 40 hours in each work week for purposes of earned paid sick time accrual, unless their normal work week is less than 40 hours, in which case earned paid sick time accrues based upon that normal work week.

~~(3) Earned paid sick time as provided in this section shall~~

2. Employees shall begin to accrue earned paid sick time at the commencement of employment or on the date this law goes into effect, whichever is later. ~~An employer may provide all~~

~~3. Accrued paid sick time that an employee is expected shall be awarded and available for use no more than eight days after it is accrued. Alternatively, an employer may award paid sick time in advance of accrual in an amount anticipated to accrue in be accrued over a year at the beginning of the year year's time.~~

~~(4) Employees~~

~~Earned paid sick time shall not be entitled to use accrued earned paid sick time until automatically forfeited with the 15th calendar day following commencement passage of their employment, or the 15th calendar day after this ordinance goes into effect, whichever is later time, unless otherwise permitted by the employer. On and after the # calendar day of employment, employees may use earned paid sick time as it is accrued.~~

~~(b) (5) Earned paid sick time shall be carried over to the following year. Alternatively, in lieu of carryover of unused earned paid sick time from one year to the next, an employer may has a policy to pay an the employee for unused earned paid any remaining sick time at the end of a year. In either case, at the beginning of the subsequent year, earned paid sick time shall begin again to accrue, or be awarded in the case of an employer who provides all the paid sick time that the employee is expected to accrue in a year, at the start of the year. set intervals of not less than one year.~~

~~(6) Any employer with a paid leave policy, such as a paid time off policy, who makes available an amount of paid leave sufficient to meet the accrual requirements of this section that may be used for the same purposes and under the same conditions as earned paid sick time under this ordinance is not required to provide additional paid sick time.~~

Commented [2]: Pending advice from National Partnership for Women & Families

~~(7) Nothing~~

~~However, nothing in this section Article shall be construed as requiring financial or other reimbursement to an employee from an employer upon the employee's termination, resignation, retirement or other separation from employment for accrued earned paid sick time that has not been used.~~

~~(8)~~

~~(c) If an employee is transferred to a separate division, entity or location, but remains employed by the same employer, the employee is entitled to all earned paid sick time accrued at the prior division, entity or location and is entitled to use all earned paid sick time as provided in this section. When there is a separation from employment and the employee is rehired within two months of separation by the same employer, previously accrued earned paid sick time that had not been used shall be reinstated. Further, the employee shall be entitled to use accrued earned paid sick time and accrue additional earned paid sick time at the re-commencement of employment.~~

~~(9)~~

~~(d) When a different employer succeeds or takes the place of an existing employer, all employees of the original employer who remain employed by the successor~~

employer are entitled to all earned paid sick time they accrued when employed by the original employer, and are entitled to use earned paid sick time previously accrued.

~~(10)~~

~~(e)~~ At its discretion, an employer may loan earned paid sick time to an employee in advance of accrual by such employee.

~~Section 3.~~

~~(f) Any employer that has a paid leave policy that makes available an amount of paid leave sufficient to meet the accrual requirements of this section, and allows that paid leave to be used for the same purposes and under the same conditions as earned paid sick time under this ordinance, is not required to provide additional paid sick time.~~

#### Use of Earned Paid Sick Time

~~(a) Earned Employees may use earned~~ paid sick time ~~shall be for any of the following:~~

~~1. Job protected leave provided pursuant to the Maine Employment Leave for Victims of Violence statute;~~

~~Leave for an employee by an employer for:~~

~~2. (A) An employee's mental or physical illness, injury, or health condition; an 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/preventative medical care;~~

~~3. (B) Care/Leave for care of a family member with a member's mental or physical illness, injury, or health condition; care of a family member who needs an employee's need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; care of a family member who needs preventive or an employee's need for preventative medical care; or in the case of a child,~~

~~4. Leave to attend a school meeting or a meeting at a place where the child's family member is receiving care necessitated by the child's family member's health condition or disability, domestic violence, sexual assault, harassment or stalking;~~

~~Earned paid sick time may be used in the smaller of hourly increments or the smallest increment that the employer's payroll system uses to account for absences or use of other time. (C) Closure of the employee's place of business by order of a public official due to a public health emergency or an employee's need to care for a child whose school or place of~~

~~care has been closed by order of a public official due to a public health emergency, or care for oneself or a family member when it has been determined by the health authorities having jurisdiction or by a health care provider that the employee's or family member's presence in the community may jeopardize the health of others because of his or her exposure to a communicable disease, whether or not the employee or family member has actually contracted the communicable disease; or~~

~~(D) Absence necessary due to domestic violence, sexual assault, harassment or stalking, provided the leave is to allow the employee to obtain for the employee or the employee's family member:~~

~~(1) Medical attention needed to recover from physical or psychological injury or disability caused by domestic violence, sexual assault, harassment or stalking; (2) Services from a victim services organization; (3) Psychological or other counseling; (4) Relocation or taking steps to secure an existing home due to the domestic violence, sexual assault, harassment or stalking; or (5) Legal services, including preparing for or participating in any civil or criminal legal proceeding related to or resulting from the domestic violence, sexual assault, harassment or stalking.~~

~~(b) (2)~~

~~(c) Employees may not use more than 48 hours of earned paid sick time in a year, unless the employer selects a higher limit.~~

### **Procedures for Taking Earned Paid Sick Time**

~~(a) Earned paid sick time shall be provided upon the request of an employee. Such request may be made orally, in writing, by electronic means or by any other means acceptable to the employer. When possible, the request shall include the expected duration of the absence.~~

~~1. An employer may not require more than five days' notice for an employee to use earned paid sick time, when the need is foreseeable.~~

~~2. When the need for use of earned paid sick time is not foreseeable, an employee must provide notice to the employer as soon as practicable under the facts and circumstances of the particular case~~

~~3. An employer that requires notice of the need to use earned paid sick time shall provide a written policy that contains procedures for the employee to provide notice. An employer that has not provided to the employee a copy of its written policy for providing such notice shall not deny earned paid sick time to the employee based on non-compliance with such a policy.(3)~~

4. When the use of earned paid sick time is foreseeable, the employee shall make a good faith effort to provide notice of the need for such time to the employer in advance of the use of the earned paid sick time and shall make a reasonable effort to schedule the use of earned paid sick time in a manner that does not unduly disrupt the operations of the employer.

~~(4) An employer that requires notice of the need to use earned paid sick time where the need is not foreseeable shall provide a written policy that contains procedures for the employee to provide notice. An employer that has not provided to the employee a copy of its written policy for providing such notice shall not deny earned paid sick time to the employee based on non-compliance with such a policy.~~

~~(b) (5) An employer may not require, as a condition of an employee's taking earned paid sick time, that the employee search for or find a replacement worker to cover the hours during which the employee is using earned paid sick time.~~

~~(6) Earned paid sick time may be used in the smaller of hourly increments or the smallest increment that the employer's payroll system uses to account for absences or use of other time.~~

~~(c) (7) For earned paid sick time of 3three or more consecutive work days, an employer may require reasonable documentation that the earned paid sick time has been used for a purpose covered by subsection (1), Sec. X(a)(2) through (a)(4). An employer may not require that the documentation explain the nature of the reasons for leave. However, nothing in this section shall be construed to limit an employer's rights with respect to documentation of leave allowed under state or federal law.~~

1. Documentation signed by a health care professional indicating that earned paid sick time is necessary shall be considered reasonable documentation for purposes of this section. ~~In cases of domestic violence, sexual assault, harassment or stalking, one of the following types of documentation selected by the employee shall be considered reasonable documentation: (a) a police report indicating that the employee or the employee's family member was a victim of domestic violence, sexual assault, harassment or stalking; (b) a signed statement from a victim and witness advocate affirming that the employee or employee's family member is receiving services from a victim services organization; or (c) a court document indicating that the employee or employee's family member is involved in legal action related to domestic violence, sexual assault, harassment or stalking. An employer may not require that the documentation explain the nature of the illness or the details of the domestic violence, sexual assault, harassment or stalking.~~

2. If an employer ~~chooses to require~~requires documentation ~~of the reasons for taking~~ earned paid sick time and the employer does not offer health insurance to the employee, then, the employer is responsible for paying ~~all the employee's~~ the employee's out-of-pocket expenses the employee incurs in costs for obtaining ~~the such~~ such documentation. ~~If the employee~~

~~does have health insurance, the employer is responsible for paying any costs charged to the employee by the health care provider for providing the specific documentation required by the employer. The employer is responsible for paying any costs charged to the employee for documentation of domestic violence, sexual assault, harassment or stalking required by the employer.~~

#### **Section 4. Exercise of Rights Protected; Retaliation Prohibited-**

~~(a) (1) It shall be unlawful for an employer or any other person to interfere with, -restrain, or deny the exercise of, or the attempt to exercise, any right protected -under this Act. Article.~~

~~(b) (2) An it shall be unlawful for an employer shall not take retaliatory personnel action or discriminate any other person to retaliate against -an employee for exercising his or former employee because the person has exercised her rights protected under this Act. Such rights include but are not limited to the right to request Article, including requesting or use using earned paid sick time pursuant to this Act; the right to file; filing a complaint with the City of Portland or courts or inform any person or otherwise complaining about any employer's an employer's alleged violation of -this Act; the right to participate Article; participating in an investigation, -hearing or other proceeding or cooperate with or assist the City of Portland in its investigations of alleged violations of this Act; and the right to inform any person of his or her potential rights under this Act. Article; or informing others of their rights under this Article.~~

~~(c) (3) It shall be unlawful for an employer's absence control policy to count earned paid sick time taken under this Act as an absence that may lead to or result in discipline, discharge, demotion, suspension, or any other adverse action. However, nothing in this Article shall be construed to prohibit an employer from taking disciplinary action against an employee who uses earned paid sick time for purposes other than those described in this Article.~~

~~(4) Protections of this section shall apply to any person who mistakenly but in good faith reasonably alleges violations of this Act.~~

~~(d) (5) There shall be a rebuttable presumption of unlawful retaliatory personnel action under this section whenever an employer takes adverse action against a person within 90 days of when that person: (a) files a complaint with the City of Portland or a court alleging a violation of any provision of this Act; (b) informs any person about an employer's alleged violation of this Act; (c) cooperates with the City of Portland or other persons in the investigation or prosecution of any alleged violation of this Act; (d) opposes any policy, practice, or act that is unlawful under this Act; or (e) informs any person of his or her rights under this Act this Article.~~

Section 5-

**Notice and Posting of Rights**

(a) ~~1~~ Employers shall both display a poster notifying employees of their rights under this Article, and give employees written notice of the following at the commencement of employment or ~~by [Date based on when the effective date of this ordinance is passed],~~ whichever is later. The poster and notice shall be consistent with this section.

(b) ~~The notice and poster shall contain the following information: that employees are entitled to earned paid sick time and the amount of earned paid sick time; the terms of its use guaranteed under this Act; that retaliatory personnel action against employees who request or use earned paid sick time; that retaliation is prohibited; that each employee has the right to file a complaint or bring a civil action if earned paid sick time as required by this Act is denied by the employer or the employee is subjected to retaliatory personnel action for requesting or taking earned paid sick time, and the contact information for the City of Portland where questions about rights and responsibilities under this Act can be answered.~~

(c) ~~2~~ The notice ~~required in (1) and poster~~ shall be provided in English, Spanish, Somali, Chinese, Vietnamese, Russian, Croatian, French, Arabic, Polish, Acholi, Farsi, Dinka, Khmer, Creole and any language that is the first language spoken by at least 5% of the employer's workforce, provided that such notice has been provided by the City of Portland.

(d) ~~3~~ The City of Portland shall create and make available to employers, in all languages spoken by more than 5% of the City's workforce and any language deemed appropriate by the City of Portland, model notices and posters meeting the requirements of this section.

(e) The amount of earned paid sick time available to the employee, the amount of earned paid sick time taken by the \_\_\_\_\_ employee to date in the year and the amount of pay the employee has received as earned paid sick time shall be recorded in, or on an attachment to, the employee's regular paycheck.

~~4) Employers shall display a poster that contains the information required in (1) in a conspicuous and accessible place in each establishment where such employees are employed. The poster displayed shall be in English, Spanish, Somali, Chinese, Vietnamese, Russian, Croatian, French, Arabic, Polish, Acholi, Farsi, Dinka, Khmer, Creole, and any language that is the first language spoken by at least 5% of the employer's workforce, provided that such poster has been provided by the City of Portland.~~

~~(5) The City of Portland shall create and make available to employers, in all languages spoken by \_\_\_\_\_ more than 5% of the City's workforce and any language deemed appropriate by the City of Portland, model notices and posters that contain the information required~~

~~under (1) for employers' use in complying with (1) and (4).~~

~~(f) (6) An employer who willfully violates the notice and posting requirements of this section shall be subject to a civil fine in an amount not to exceed \$100 for each separate offense.~~

#### ~~Section 6. Employer Records~~

##### ~~Recordkeeping Requirements~~

~~(a) Employers shall retain records documenting hours worked by employees and earned paid sick time earned and taken by employees, for a period of six (6) years, ~~and,~~~~

~~(b) Employers shall allow the City of Portland access to ~~such~~the records; required by this section, with appropriate notice and at a mutually agreeable time, ~~to monitor compliance with the requirements of this Act,~~~~

~~(c) When an issue arises as to an employee's entitlement to earned paid sick time under this ~~section~~Article, if the employer ~~does~~has not ~~maintain or retain~~maintained adequate records ~~documenting hours worked by the employee and earned paid sick time taken~~required by ~~the employee~~this section, or does not allow the City of Portland reasonable access to such records, it shall be presumed that the employer has violated ~~the Act~~this Article, absent clear and convincing evidence otherwise.~~

#### ~~Section 7.~~

~~Regulations~~

~~The City of Portland shall be authorized to coordinate implementation and enforcement of this Act and shall promulgate appropriate guidelines or regulations for such purposes.~~

**Section 8. Enforcement**

~~(1) Administrative~~

~~(a) Enforcement,~~

~~1. The City Manager or his/her designee shall enforce the provisions of this ordinance.~~

~~2. The City Manager shall adopt rules and regulations for the proper administration and enforcement of this ordinance.~~

~~(b) Complaint Process~~

~~1. Any Employee, including, but not limited to, a Service Employee, alleging a violation of this ordinance may file a written complaint with the City Manager's office.~~

~~2. The City Manager or his or her designee may investigate and issue a response to the complaint within fifteen (15) work days following the receipt of a complaint. The City Manager's or his or her designee's response to the complaint shall be final.~~

~~3. If the City Manager finds that a violation of this chapter has occurred, he or she may order any and all appropriate relief including, but not limited to, three times the amount of any back wages withheld and the payment of not less than \$100.00 to the employee as a penalty for each day that a violation of this chapter has occurred. If a violation occurred but did not result in wages being withheld, such as in the case of an employee who worked after being unlawfully denied permission to use earned paid sick time, appropriate relief shall include an additional amount of two times what the employee was paid.~~

~~4. A violation of this Ordinance may also be considered a civil violation subject to the general penalty provisions of section 1-15 of this Code.~~

~~(c) Private Cause of Action.~~

~~1. Any Employee, including, but not limited to, a Service Employee, the City or any person aggrieved by a violation of this ordinance may bring an action in a Court of competent jurisdiction against the Employer for any and all violations of this ordinance, including, but not limited to, wages owed under this ordinance. Such action may be brought by a person aggrieved by a violation of this section without first filing a complaint with the City Manager. Actions brought pursuant to this section may be brought as a class action pursuant to the laws of Maine.~~

~~(A) The City of Portland shall enforce this ordinance. In effectuating such enforcement, the City of Portland shall establish a system utilizing multiple means of communication to receive complaints regarding non-compliance with this ordinance and investigate complaints received by the City in a timely manner.~~

~~(B) Any person alleging a violation of this ordinance shall have the right to file a complaint with the City of Portland within six (6) years of the date the person knew or should have known of the alleged violation. The City of Portland shall encourage reporting pursuant to this subsection by keeping confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the employee or person reporting the violation, provided, however, that with the authorization of such person, the City of Portland may disclose his or her name and identifying information as necessary to enforce this ordinance or for other appropriate purposes.~~

~~(C) Upon receiving a complaint alleging a violation of this ordinance, the City of Portland shall investigate such complaint and attempt to resolve it through mediation between the complainant and the subject of the complaint, or other means. The City of Portland shall keep complainants notified regarding the status of their complaint and any resultant investigation. If the City of Portland believes that a violation has occurred, it shall issue to the offending person or entity a notice of violation and the relief required of the offending person or entity. The City of Portland shall prescribe the form and wording of such notices of violation including any method of appealing the decision of the City of Portland.~~

~~(D) The City of Portland shall have the power to impose penalties provided for in this ordinance and to grant an employee or former employee all appropriate relief. Such relief shall include but not be limited to: (1) for each instance of earned paid sick time taken by an employee but unlawfully not compensated by the employer: three times the wages that should have been paid under this ordinance; (2) for each instance of earned paid sick time requested by an employee but unlawfully denied by the employer and not taken by the employee or unlawfully conditioned upon searching for or finding a replacement worker: three times the wages that should have been paid under this ordinance, plus \$250; (3) for each instance of unlawful retaliation not including discharge from employment: three times the wages lost, compensation for any benefits lost, plus an additional amount of \$500 and equitable relief as appropriate; and (4) for each instance of unlawful discharge from employment: three times the wages lost, compensation for any benefits lost, plus \$1,000 and equitable relief, including reinstatement, as appropriate.~~

**Commented [3]:** Retaliation could take all kinds of forms, some of which include the loss of wages and some of which don't (like being given a worse job assignment). In the latter case, the only monetary penalty would be \$500. There could also be equitable relief, like the removal of the worse job assignment.

~~(E) Any entity or person found to be in violation of the provisions of this ordinance shall be liable for a civil penalty payable to the City of Portland not to exceed \$100 for the first violation and, for subsequent violations that occur within two years of any previous violation, not to exceed \$500 for the second violation and not to exceed \$1,000 for each successive violation.~~

~~2. (F) Upon a judgment being rendered in favor of any employee(s), in any action~~

~~brought pursuant to this ordinance, such judgment shall include, in addition to the wages adjudged to be due and any penalties assessed, any and all costs of suit including, but not limited to, reasonable attorney's fees.~~

~~3. Where applicable, remedies shall also include equitable relief, including reinstatement and back pay, and injunctive relief.~~

~~4. The City of Portland shall annually report on the City of Portland website the number and nature of the complaints received pursuant to this ordinance, the results of investigations undertaken pursuant to this ordinance, including the number of complaints not substantiated and the number of notices of violations issued, the number and nature of adjudications pursuant to this ordinance, and the average time for a complaint to be resolved pursuant to this chapter.~~

~~(2) Civil Enforcement~~

~~(A) The City of Portland, the Corporation Counsel, any person aggrieved by a violation of this ordinance, or any entity a member of which is aggrieved by a violation of this ordinance may bring a civil action in a court of competent jurisdiction against an employer violating this ordinance. Such action may be brought by a person aggrieved by a violation of this section without first filing an administrative complaint.~~

~~(B) Upon prevailing in an action brought pursuant to this section, aggrieved persons shall recover the full amount of any unpaid earned sick time plus any actual damages suffered as the result of the employer's violation of this ordinance plus an equal amount of liquidated damages. Aggrieved persons shall also be entitled to reasonable attorney's fees.~~

~~(C) Upon prevailing in an action brought pursuant to this section, aggrieved persons shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation, including, without limitation, reinstatement to employment, back pay and injunctive relief.~~

~~(D) Any person aggrieved by a violation of this ordinance may file a complaint with the Corporation Counsel. The filing of a complaint with the Corporation Counsel will not preclude the filing of a civil action.~~

~~(E) The Corporation Counsel may bring a civil action to enforce this ordinance. The Corporation Counsel may seek injunctive relief. In addition to injunctive relief, or in lieu thereof, for any employer or other person found to have willfully violated this Act, the Corporation Counsel may seek to impose a fine in accordance with section 8(1)(E) above, payable to the City of Portland.~~

~~(F) The statute of limitations for a civil action brought pursuant to this section shall be for a period of six (6) years from the date the alleged violation occurred or the date the employee knew or should have known of the violation.~~

~~1. (G) Actions brought pursuant to this section may be brought as a class action pursuant to the laws of Maine.~~

~~(3) Portland officials are hereby authorized to consider, to the maximum extent permitted by law, an employer's record of noncompliance with this ordinance in making decisions on City of Portland contracts, land use approvals and other entitlements to expand or operate within the City. The City of Portland is authorized to either deny approval or to condition approval on the employer's future compliance.~~

#### ~~Section 9.~~

##### ~~Confidentiality and Nondisclosure~~

~~An employer may not require disclosure of details relating to domestic violence, sexual assault, harassment or stalking or the details of an employee's or an employee's family member's health information as a condition of providing earned paid sick time under this Act. If an employer possesses health information or information pertaining to domestic violence, sexual assault, harassment or stalking about an employee or employee's family member, such information shall be treated as confidential and not disclosed except to the affected employee or, with the permission of the affected employee, as required for the administration of the leave, or as otherwise required by law.~~

#### ~~Section 10.~~

##### ~~Encouragement of More Generous Earned Paid Sick Time Policies; No Effect on More Generous Policies or Laws~~

~~(a) 1) Nothing in this Act shall be construed to discourage or prohibit an employer from the adoption or retention of an earned paid sick time policy more generous than the one required herein.~~

~~2)~~

~~(b) Nothing in this Act shall be construed as diminishing the obligation of an employer to comply with any law, regulation, contract, collective bargaining agreement, employment benefit plan, or other agreement providing more generous paid sick time to an employee than required herein. Nothing in this Act shall be construed as diminishing the rights of public employees regarding paid sick time or use of paid sick time as provided by collective bargaining agreements or law.~~

#### ~~Section 11. Other Legal Requirements~~

~~This Act provides minimum requirements pertaining to earned paid sick time and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law.~~

~~regulation, requirement, policy, or standard that provides for greater accrual or use by employees of earned paid sick time or that extends other protections to employees.~~

### ~~Section 12. Public Education and Outreach~~

The City of Portland shall develop and implement a multilingual outreach program to inform employees, ~~parents and persons who are under the care of a health care provider~~ about the availability of earned paid sick time under this ordinance. This program shall include the distribution of notices and other written materials in English, and well as Spanish, Somali, Chinese, Vietnamese, Russian, Croatian, French, Arabic, Polish, Acholi, Farsi, Dinka, Khmer, Creole to all child care and elder care providers, domestic violence shelters, schools, hospitals, community health centers and other health care providers.

Regulations-

### ~~Section 13.~~

The city manager, or his or her designee, shall be authorized to coordinate implementation and enforcement of this Article and shall promulgate appropriate guidelines or regulations for such purposes.

**Severability-**

If any provision of this Act or application thereof to any person or circumstance is judged invalid, the invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared severable.

**Section 14. Effective Date**

This Act will take effect ~~# days following enactment.~~

\_\_\_\_\_

\_\_\_\_\_ on July 1, 2018.

**WHEREAS**, an estimated 20,000 workers in the State of Maine work for minimum wage, and a substantial number of them are among the City of Portland's more than 65,000 wage and salary earners; and

**WHEREAS**, The Massachusetts Institute of Technology has calculated that, for a single adult to support him- or herself in Portland at the current minimum wage, he or she would need to work over 50 hours a week; and

**WHEREAS**, more than 50 percent of Portland public school students are eligible for free lunch, meaning their families have incomes at between 100 percent and 185 percent of the Federal poverty level, which is higher than what a single parent with one child in school would earn with a full-time minimum wage job; and

**WHEREAS**, rising housing costs, including an increase in the median home price from \$125,200 in 2000 to \$238,400 in 2012, are pushing low wage workers out of the City; and

**WHEREAS**, the Fair Market Rent in the Portland Area for a two-bedroom apartment is \$1,012, and a full-time worker job would have to earn at least \$19.46 per hour to afford that rent;

**WHEREAS**, phasing in the wage increase over time will allow businesses to adjust and result in reasonable annual increases in expenses;

**WHEREAS**, based on the work of the working group (the materials and report of which are incorporated herein by reference) and the aforementioned facts, Mayor Brennan proposed that the minimum wage be increased within the City of Portland;

**NOW THEREFORE**, to promote the health, safety and welfare of its citizens and pursuant to and consistent with 26 M.R.S. §664, the City Council of the City of Portland, Maine hereby establishes the following minimum wage ordinance applicable to all Employers and Employees within the City of Portland:  
(Ord. 297-14/15, 9-9-2015, Effective 1-1-2016)

## **ARTICLE II. DEFINITIONS**

### **Sec. 33.2. Definitions.**

**TAB 4**

Unless the context otherwise indicates, the following words shall have the following meanings.

*City:* City of Portland.

*City limits:* the physical boundaries of the City.

*Consumer Price Index - All Urban Consumers ("CPI-U")* means the national, annual average of the Consumer Price Index for all urban consumers as reported by the United States Bureau of Labor Statistics, with the Series identification number of CUUR0000SA0.

*Employer:* Any individual, group of individuals, partnership, association, corporation, business trust, or any other entity or group of persons or entities who employs or exercises control over the wages, hours, or working conditions of any Employee and who has a place of business within the City limits. "Employer" shall include but not be limited to the City of Portland.

*Employee:* Any person who performs work for an Employer for monetary compensation within the municipal limits of the City. Employee shall include persons who perform work for an employer on a full-time, part-time, seasonal or temporary basis. Employee shall not include any person who is exempted from the definition of Employee under 26 M.R.S. §663(3) of Chapter 7, Employment Practices.

*Minimum wage:* The minimum hourly rate of monetary compensation that an Employer shall legally pay an Employee for work within the City.

*State Minimum Wage:* The minimum hourly wage established by 26 M.R.S. § 664.

*Service Employee:* Any Employee engaged in an occupation in which he or she customarily and regularly receives more than \$30.00 a month or more in tips.

*Tip:* A sum presented by a customer in recognition of services performed by one or more Service Employees, including a charge automatically included in the customer's bill. "Tip" does not include a service charge added to a

customer's bill in a banquet or private club setting by agreement between the customer and the Employer.  
(Ord. 297-14/15, 9-9-2015, Effective 1-1-2016; Ord. No. 105-16/17, 12-19-2016)

**Sec. 33.5 - 33-6 Reserved.**

**ARTICLE III. MINIMUM WAGE**

**Section 33.7. Minimum Wage.**

- (a) *Minimum wage payment required:* Except as provided herein, Employers shall pay all Employees no less than the Minimum Wage established by this ordinance for each hour worked within the City Limits.
  
- (b) *Minimum Wage rate:*
  - (i) Beginning on January 1, 2016, the regular Minimum Wage for all Employees, including, but not limited to, Service Employees, shall be raised to \$10.10 per hour;
  
  - (ii) Beginning on January 1, 2017, the regular Minimum Wage for all Employees, including, but not limited to, Service Employees, shall be raised to \$10.68 per hour; and
  
  - (iii) Beginning on every first day of July following January 1, 2018, and every first day of July thereafter, the Minimum Wage for all Employees, including, but not limited to, Service Employees, shall be increased according to the Consumer Price Index - All Urban Consumers (CPI-U) percentage increase from the prior year, unless the Minimum Wage equals the State Minimum Wage as set forth below. If there is no increase, the Minimum Wage will be unchanged. The percentage increase in the annual CPI-U for the previous calendar year from the annual CPI-U for the calendar year preceding that shall be the percentage by which the Minimum Wage is increased on the first day of July 2018 and every July 1 thereafter.

## Maine Revised Statutes

### Title 26: LABOR AND INDUSTRY Chapter 7: EMPLOYMENT PRACTICES Subchapter 3: MINIMUM WAGES

#### §663. Definitions

Terms used in this subchapter shall be construed as follows, unless a different meaning is clearly apparent from the language or context:

**1. Director.** "Director," the Director of the Bureau of Labor Standards;

[ 1981, c. 168, §26 (AMD) .]

**2. Employ.** "Employ," to suffer or permit to work;

**3. Employee.** "Employee," any individual employed or permitted to work by an employer but the following individuals shall be exempt from this subchapter:

A. Any individual employed in agriculture as defined in the Maine Employment Security Law and the Federal Unemployment Insurance Tax Law, except when that individual performs services for or on a farm with over 300,000 laying birds; [1975, c. 717, §5 (AMD) .]

B. [2007, c. 640, §2 (RP) .]

C. Those employees whose earnings are derived in whole or in part from sales commissions and whose hours and places of employment are not substantially controlled by the employer; [1967, c. 466, §1 (AMD) .]

D. Any individual employed as a taxicab driver;

E. [2007, c. 640, §3 (RP) .]

F. Those employees who are counselors or junior counselors or counselors-in-training at organized camps licensed under Title 22, section 2495 and those employees of organized camps and similar seasonal recreation programs not requiring such licensure that are operated as or by nonprofit organizations who are under 18 years of age; [2009, c. 120, §1 (RPR); 2009, c. 211, Pt. B, §22 (RPR) .]

F-1. [1967, c. 466, §2 (RP) .]

G. Any individual employed in the catching, taking, propagating, harvesting, cultivating or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds or other aquatic forms of animal and vegetable life, or in the first processing, canning or packing such marine products at sea as incident to, or in conjunction with, such fishing operations, including the going to and returning from work and including employment in the loading and unloading when performed by any such employee; [1965, c. 410, §2 (AMD) .]

H. [2017, c. 219, §13 (RP) .]

I. Any home worker who is not subject to any supervision or control by any person whomsoever, and who buys raw material and makes and completes any article and sells the same to any person, even though it is made according to specifications and the requirements of some single purchaser;

J. Members of the family of the employer who reside with and are dependent upon the employer; [2009, c. 529, §1 (AMD) .]

K. A salaried employee who works in a bona fide executive, administrative or professional capacity and whose regular compensation, when converted to an annual rate, exceeds 3000 times the State's minimum hourly wage or the annualized rate established by the United States Department of Labor under the federal Fair Labor Standards Act, whichever is higher; and [2009, c. 529, §2 (AMD) .]

L. A person who is a sentenced prisoner in actual execution of a term of incarceration imposed in this State or any other jurisdiction for a criminal offense, except a prisoner who is:

(1) Employed by a private employer;

(2) Participating in a work release program;

(4) Employed in a program established under a certification issued by the United States Department of Justice under 18 United States Code, Section 1761;

(5) Employed while in a supervised community confinement program pursuant to Title 34-A, section 3036-A; or

(6) Employed while in a community confinement monitoring program pursuant to Title 30-A, section 1659-A. [2013, c. 133, §20 (AMD).]

[ 2017, c. 219, §13 (AMD) .]

**4. Occupation.** "Occupation," an industry, trade or business or branch thereof or class of work therein in which workers are gainfully employed;

**5. Wages.** "Wages" paid to any employee includes compensation paid to the employee in the form of legal tender of the United States and checks on banks convertible into cash on demand and includes the reasonable cost to the employer who furnishes the employee board or lodging. "Wages" also includes compensation paid through a direct deposit system, automated teller machine card or other means of electronic transfer as long as the employee either can make an initial withdrawal of the entire net pay without additional cost to the employee or the employee can choose another means of payment that involves no additional cost to the employee;

[ 2005, c. 89, §1 (AMD) .]

**6. Resort establishment.**

[ 1975, c. 623, §38 (RP) .]

**7. Minimum wage for firemen.** Members of municipal fire fighting departments, other than volunteer or call-departments, who are paid salaries or regular wages, are deemed to be employees within the meaning of this section and are covered by this subchapter. Firemen's wages may be paid by the municipality based upon the average number of hours worked during any one work cycle which is not to exceed 12 weeks in duration. However, 1 1/2 times the hourly rate shall not be paid for all work done over 48 hours under this subsection;

[ 1967, c. 385, (AMD) .]

**8. Service employee.** "Service employee" means any employee engaged in an occupation in which the employee customarily and regularly receives more than \$30 a month in tips.

[ 2011, c. 118, §1 (AMD) .]

**9. Hotel.**

[ 2017, c. 219, §14 (RP) .]

**10. Public employees.** "Public employees" are considered employees within the meaning of this section and include any person whose wages are paid by a state or local public employer, including the State, a county, a municipality, the University of Maine System, a school administrative unit and any other political body or its political or administrative subdivision. "Public employee" does not include any officer or official elected by popular vote or appointed to office pursuant to law for a specified term or any person defined in subsection 7.

[ 1985, c. 779, §69 (AMD) .]

**11. Automobile salesperson.** "Automobile salesperson" means a person who is primarily engaged in selling automobiles or trucks as an employee of an establishment primarily engaged in the business of selling these vehicles to the ultimate purchaser. "Automobile salesperson" includes a person who is primarily engaged in assisting in the financing and providing of insurance products to the ultimate purchaser.

[ 2007, c. 360, §1 (AMD) .]

**12. Automobile mechanic.** "Automobile mechanic" means a person who is primarily engaged in the servicing of automobiles or trucks as an employee of an establishment primarily engaged in the business of selling automobiles or trucks to the ultimate purchaser, as long as the person's annual compensation exceeds 3,000 times the state minimum hourly wage or the annualized rate established by the United States Department of Labor under the federal Fair Labor Standards Act, whichever is higher, except when the employee is paid by the employer on an hourly basis.

[ 2007, c. 360, §2 (AMD) .]

**13. Automobile parts clerk.** "Automobile parts clerk" means a person employed for the purpose of and primarily engaged in requisitioning, stocking and dispensing automobile parts as an employee of an establishment primarily engaged in the business of selling automobiles or trucks to the ultimate purchaser, as long as the person's annual compensation exceeds 3,000 times the state minimum hourly wage or the annualized rate established by the United States Department of Labor under the federal Fair Labor Standards Act, whichever is higher, except when the employee is paid by the employer on an hourly basis.

[ 2007, c. 360, §3 (AMD) .]

**14. Automobile service writer.** "Automobile service writer" means a person employed for the purpose of and primarily engaged in receiving, analyzing and referencing requests for service, repair or analysis of motor vehicles as an employee of an establishment primarily engaged in the business of selling automobiles or trucks to the ultimate purchaser, as long as the person's annual compensation exceeds 3,000 times the state minimum hourly wage or the annualized rate established by the United States Department of Labor under the federal Fair Labor Standards Act, whichever is higher, except that "automobile service writer" does not include an employee who is paid by the employer on a hourly basis.

[ 2007, c. 360, §4 (NEW) .]

**15. Tip.** "Tip" means a sum presented by a customer in recognition of services performed by one or more service employees, including a charge automatically included in the customer's bill. "Tip" does not include a service charge added to a customer's bill in a banquet or private club setting by agreement between the customer and employer.

[ 2011, c. 118, §2 (NEW) .]

#### SECTION HISTORY

1965, c. 399, §§1,2 (AMD). 1965, c. 410, §§2-4 (AMD). 1967, c. 385, (AMD). 1967, c. 466, §§1-4 (AMD). 1971, c. 620, §13 (AMD). 1971, c. 622, §87 (AMD). 1973, c. 504, (AMD). 1975, c. 48, (AMD). 1975, c. 59, §3 (AMD). 1975, c. 92, §3 (AMD). 1975, c. 623, §38 (AMD). 1975, c. 717, §5 (AMD). 1979, c. 516, §§1,2 (AMD). 1981, c. 168, §26 (AMD). 1981, c. 276, (AMD). 1985, c. 76, §1 (AMD). 1985, c. 779, §69 (AMD). 1991, c. 507, §1 (AMD). 1999, c. 465, §7 (AMD). 2005, c. 89, §1 (AMD). 2005, c. 255, §1 (AMD). 2007, c. 22, §§1, 2 (AMD). 2007, c. 360, §§1-4 (AMD). 2007, c. 367, §1 (AMD). 2007, c. 640, §§2, 3 (AMD). 2009, c. 120, §1 (AMD). 2009, c. 211, Pt. B, §22 (AMD). 2009, c. 529, §§1-3 (AMD). 2011, c. 118, §§1, 2 (AMD). 2013, c. 133, §20 (AMD). 2017, c. 219, §§13, 14 (AMD) .

The Revisor's Office cannot provide legal advice or interpretation of Maine law to the public.

If you need legal advice, please consult a qualified attorney.

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**CITY OF PORTLAND, MAINE**

**PERSONNEL POLICIES AND PROCEDURES**

**Approved by Portland City Council**

**Updated: October 2, 2017**

**TAB 5**

2. Non permanent employees, probationary employees and department and division heads (Grades 10-14) are "at-will" employees, serve at the pleasure of the appointing authority as provided by City Charter, and have only those rights accorded them by law and cannot grieve disciplinary actions taken against them.

#### IV. DEFINITIONS OF TYPES OF EMPLOYMENT

##### A. Permanent Employment

1. **Full-time employment** is an appointment to a permanently budgeted position to work a standard work week of no less than 35 hours on a continuing and indefinite basis, i.e., with no pre-set termination date. Such persons receive all benefits provided herein upon completion of the probationary period.
2. **Part-time employment** is an appointment to a permanently budgeted position to work less than the standard work week, but on a continuing and indefinite basis as above. Permanent part-time employees who are regularly scheduled to work at least 18.75 hours per week or more accrue vacation leave and sick leave, holidays and paid health insurance on a pro-rated basis only, normally proportional to a thirty-seven and one half (37.5) hour work week. Permanent part-time employees who are regularly scheduled to work less than 18.75 hours per week are not entitled to any fringe benefits other than those mandated by State Law.

##### B. Non-Permanent Employment

Non-permanent employees are "at-will" employees, serve at the pleasure of the City Manager and are not subject to Administrative Regulation 25. Except as expressly and specifically indicated in this Section IV.B., non-permanent employees are generally not eligible for the benefits provided herein: however, the City will make an offer of affordable health coverage to any non-permanent employee who the City determines, in its sole discretion, is qualified for such an offer under the Patient Protection and Affordable Care Act.

1. **Temporary employment** is an appointment to work a standard work week or less on a regular basis but for a definite limited period of time, usually not to exceed six (6) months. Extensions may be granted by the Director of Human Resources for up to three (3) additional months. All temporary appointments require the prior approval of the Director of Human Resources.

Temporary employees are paid for hours worked, and are eligible for night shift differential and over- time payments where applicable, but they

receive no other benefits except those mandated by the State Workers' Compensation and Unemployment Compensation Laws. (An example of a temporary appointment is an appointment to fill a position of a permanent employee on a leave of absence.)

2. **Seasonal employment** is an appointment to a temporary position in an industry designated by the State of Maine as a seasonal industry. The employee is terminated at the end of the applicable season, and such employees are paid only for hours actually worked and are not eligible for any other benefits, except those mandated by the State Workers' Compensation and Unemployment Compensation Insurance Laws. (Examples of seasonal industries are summer recreation, golf, and cemetery programs.)
3. **On-call employment** is an appointment to work on an intermittent and as-needed basis. Employees who are on call do not have a regular schedule but work as available and as needed. Such employees are paid only for hours worked or by annual stipend and are not eligible for any other benefits, except those mandated by the State Workers' Compensation and Unemployment Compensation Insurance Laws.
4. **Project employment** is an appointment to work on a special project of limited duration. Project employees may work a standard work week or less and are eligible for full or pro-rated benefits, on the same basis as permanent employees except that they are not entitled to life insurance benefits provided by the Maine Public Employees Retirement System. Project employees will be terminated upon completion of the special project for which they were hired.
5. **Contract employment** is employment under a personal services contract between the City and an individual. Such persons receive salaries and benefits as negotiated on each contract and have no claim to the benefits herein, except as specifically negotiated. The City Manager is authorized to enter into such contracts.
6. **Student employment** is employment of students during their enrollment in schools, including summer employment. Students will be paid as determined by the Director of Human Resources and as legally permitted for student compensation. Student employees are not eligible for benefits other than those mandated by the State Workers' Compensation and Unemployment Compensation Insurance laws.

C. Probationary Period

All new permanent City employees and project employees are probationary for the first twelve (12) months of employment. During this period, employees must

**CITY OF PORTLAND, MAINE**

**PERSONNEL POLICIES AND PROCEDURES**

**Approved by Portland City Council**

**Updated: October 2, 2017**

**TAB 6**

certificate prior to paying an employee for sick leave taken after the employee has submitted his resignation from City service. This requirement may be waived by the Department Head.

a. **Accrual**

Permanent full-time employees are granted twelve (12) days of sick leave per year earned on a weekly basis.

b. **Use of Sick Leave**

Sick leave may be used only in the following cases:

- (i) Personal illness or physical incapacity of such a degree as to render the employee unable to perform the work of the assigned position or other work in the department.
- (ii) Attendance upon members of the employee's immediate household, including domestic partner, who are ill and require care by the employee, if approved by the employee's Department Head. Sick leave used for this purpose is not to exceed twelve (12) days per year.
- (iii) Employees who wish to use sick leave to care for a domestic partner in accordance with subparagraph (ii) above must satisfy the City's eligibility requirements for claiming an individual as a domestic partner.

Absence for a fraction of a day that is charge-able to sick leave is charged proportionately in an amount not smaller than one (1) hour. The Department Head, if he deems it in the best interest of the City and with the concurrence of the Director of Human Resources, may authorize an extended disability leave with no pay upon recommendation of the employee's attending physician. Such leave will be granted and governed by the provisions below for disability leaves of absence.

c. **Unused Sick Leave Credits**

(i) Upon Retirement

When an employee retires from City service or is laid-off, the employee will be paid one-half of his accumulation but the maximum payment shall not exceed ninety days. When an employee retires, he/she must have an accumulation

**AGREEMENT BETWEEN**  
**THE**  
**CITY OF PORTLAND**  
**AND**  
**THE CITY EMPLOYEES' BENEFIT ASSOCIATION**  
**AFSCME LOCAL 1373**

**July 1, 2016 – June 30, 2019**

City of Portland shall accrue sick leave at the rate of 1.73 hours per week with unlimited accumulation. The yearend adjustment for employees who have not been employed as a permanent employee for the full calendar year will be based on a pro-ration of the appropriate annual amount.

**20.1.2** The provisions of the collective bargaining agreement pertaining to unused sick leave upon retirement shall be prorated consistent with the terms of language for the Barron Center.

**20.1.3** The provision for conversion of sick leave to vacation in Article 20.3 is modified as follows: a Barron Center employee is eligible for conversion if (s)he uses the equivalent of one or fewer sick days within a twelve (12) consecutive month period and the sick leave balance requirements listed in 20.3.2 are amended to 384 hours for employees whose standard hours are 40 per week and 360 hours for employees whose standard hours are 37.5 per week.

**20.2** Sick leave may be used only in the following cases:

**20.2.1** Personal illness or physical incapacity, including pregnancy or related disabilities (including, but not limited to, miscarriage, abortion, childbirth, child-rearing, and recovery there from) which is defined as a condition of such a degree as to render the employee unable to perform the duties of his or her assigned position, or of any other work the employee is capable of doing and to which he or she is assigned, provided the employee accepts such other assignments. If requested, the employee shall furnish the Department Head a certificate from the attending physician.

**20.2.2** Attendance upon members of the family within the household of the employee, including domestic partner, when their illness requires care by such employee, not to exceed twelve (12) days per year. If requested, the employee shall furnish the Department Head a certificate from the attending physician.

**20.2.3** Attendance upon members of the immediate family not living within the household when the provisions of Article 21.3 are met. Such requests will be processed as Family Medical Leave requests and all provisions of Article 21.3 will apply to such requests.

**20.2.4** Employees who wish to use sick leave to care for a domestic partner in accordance with 20.2.2 above must satisfy the City's eligibility requirements for claiming an individual as a domestic partner.

**20.2.5** Sick leave may be utilized to keep appointments with licensed health care

professionals where an employee's normal work schedule conflicts and appointments cannot be reasonably scheduled.

### 20.3 Conversion to Vacation Leave

20.3.1 Any permanent employee who is benefit eligible for the previous twelve (12) month period and who has used the equivalent of two or fewer sick days during that consecutive twelve (12) month period may elect to convert six days of accrued sick leave to five days of vacation leave. A day for permanent part-time employees is defined as standard hours divided by five (5) days per week.

20.3.2 As an alternative to the conversion described in 20.3.1 above, any permanent full-time employee who has 12 or more years of permanent City service who uses the equivalent of two or fewer sick days within any consecutive twelve (12) month period and who has a sick leave balance of no less than 768 hours (720 hours for employees whose work week is 37.5 hours) may elect to convert six days of accrued sick leave to five days of pay at their regular hourly rate.

20.3.3 Employees may make one of the above elections only once for any consecutive twelve month period beginning July 1, 1994, and only once during any twelve month period.

### 20.4 Conversion to Personal Leave

Any permanent employee who is benefit eligible and who has been employed by the City for twelve (12) consecutive months is eligible to convert up to two days of previously earned sick leave to an equivalent amount of personal leave. Full-time employees may convert the equivalent of two (2) days based on their regular work day. Part-time employees may convert two (2) days with a day calculated as follows: standard hours divided by five (5) days per week.

Sick leave will be converted to personal leave at the time the conversion is elected. Beginning in July 2002 employees with twelve (12) consecutive months of City service at the beginning of the fiscal year must elect their conversion for the fiscal year during the month of July. Employees who reach their one (1) year anniversary may make their election during their anniversary month for that fiscal year only. The personal leave balance will change as personal time is used. At the end of each fiscal year, each employee may elect one of the following options: (1) convert unused personal leave to sick leave; or (2) retain unused personal leave for use in the next fiscal year; or (3) convert additional sick to personal leave. In no event shall the employee's total amount (by carry-over and/or conversion) or total usage exceed two (2) days per fiscal year. Neither conversion of sick leave to personal leave or the subsequent use of personal

**AGREEMENT BETWEEN**

**THE CITY OF PORTLAND, MAINE**

**AND**

**THE COMMUNICATIONS EMPLOYEES ASSOCIATION**

**July 1, 2016 to June 30, 2018**

between employees and shall be under no financial obligation to substitute for his duty as a substitution.

16.1.3 Substitutions will not ordinarily be permitted for more than three (3) consecutive shifts.

16.1.4 The substitutions are made between equally or greater qualified employees. It is the responsibility of the employee making the substitution to make sure that the shift being swapped is eligible to be paid back according to the staffing needs of the PRCC when the leave slip is signed. With regard to qualifications needed, it is understood that the swap on employee who agrees to the substitution will be responsible for covering the shift.

**17. SICK LEAVE:**

17.1 Sick leave shall accrue at the rate of 1.85 hours per each full payroll week with unlimited accumulation. The weekly earnings rate shall be adjusted in the last week of the calendar year in accordance with annual accrual amounts of 96 hours.

17.2 Sick leave may be used only in the following cases:

17.2.1 Personal illness or physical incapacity of such a degree as to render the employee unable to perform the duties of his position, unless the Department Head or his designee determines that the employee is capable of other work in the Department. If requested, the employee shall furnish the Department Head or designee a certificate from his attending physician. Alternatively, the City may require the employee to submit to an examination by a physician of the City's choosing, said expenses to be borne by the City.

17.2.2 Attendance upon members of the family within the household of the employee when the illness requires care by the employee, including domestic partner and his/her relatives who live within the household of the employee not to exceed twelve (12) days per year, unless such leave qualifies as FMLA leave.

17.2.3 At the discretion of the Department Head or designee, sick leave may be used in the event of the death of an immediate family member as defined in 18.1.2 but in no event for more than three (3) working days.

17.2.4 Employees who wish to use sick leave to care for a domestic partner or member of his/her family in accordance with 17.2.2 above, or in

conjunction with bereavement leave in accordance with 17.2.3 above, must satisfy the eligibility requirements for claiming an individual as a domestic partner under state law or City ordinance.

17.3 Sick leave use shall be evaluated by the Department Head or designee on an individual case-by-case basis and in accordance with established departmental procedure.

17.4 Conversion to Vacation Leave

17.4.1 Any permanent employee working the standard 40 hour work week who uses the equivalent of two or fewer sick days within any consecutive 12 month period may elect to convert 48 hours of accrued sick leave to 40 hours of vacation leave. Two or fewer days is equivalent to a maximum of sixteen (16) hours for employees working a 5/8 schedule or twenty four (24) hours for employees working a combination of two eight (8) hour shifts and two twelve (12) hour shifts.

17.4.1.1 Alternatively, an employee who has 12 or more years of permanent City service and a sick leave balance of no less than 768 hours may elect to convert 48 hours of accrued sick leave to 40 hours of pay at their regular hourly rate.

17.4.1.2 Employees may make one of the above elections only once for any consecutive 12 month period, and only once during any 12 month period.

17.4.1.3 The conversion of sick leave to vacation leave shall not be permitted if doing so would result in exceeding the maximum permitted vacation accumulation.

17.5 Personal Leave

17.5.1 Any permanent employee working a standard work week who has been employed by the City for twelve (12) consecutive months as of the beginning of the fiscal year is eligible to convert up to two (2) days, or sixteen (16) hours, of previously earned sick leave, vacation leave or compensatory time to an equivalent amount of personal leave. Eligible employees may make the personal leave conversion in accordance with the provisions of 17.4.2 only during the month of July.

17.5.2 Sick leave will be converted to personal leave at the time the conversion is elected. The personal leave balance will change as personal leave time is used. At the end of each fiscal year, each employee may elect one of

**AGREEMENT BETWEEN**  
**CITY OF PORTLAND**  
**AND**  
**LOCAL 740, INTERNATIONAL ASSOCIATION**  
**OF FIREFIGHTERS, AFL-CIO**  
**JANUARY 1, 2014 – DECEMBER 31, 2017**

one day or one night. A maximum of twelve (12) shifts may be approved for any calendar year except in the case of extenuating circumstances approved by the Chief. Union business as defined in Article 28 and time spent furthering personal education shall not be considered in this limitation.

16.3 For purposes of this Article, that section of Article 25 entitled "Higher Pay for Higher Classification Work" shall not apply to either the individuals who are party to the swap or the platoon(s) impacted by the swap.

16.4 If an employee will miss an EMS required training session due to a substitution, it is the employee's responsibility to make up the training. If the training cannot be made up at a later date at equal cost to the City, the substitution request may be denied.

## **17. SICK LEAVE:**

17.1 Sick leave shall accrue at the rate of 2.77 hours per week for each full calendar week of employment with unlimited accumulation for employees working a twenty-four (24) hour schedule. Sick leave shall accrue at the rate of 2.31 hours per week for each full calendar week of employment with unlimited accumulation for employees working a 4-10 schedule. Sick leave shall accrue at the rate of 1.85 hours per week for each full calendar week of employment with unlimited accumulation for employees working a 5-8 schedule.

17.2 Sick leave may be taken by employees only in the following cases:

17.2.1 Personal illness or physical incapacity of such a degree as to render the employee unable to perform the duties of his/her position, unless the employee is found capable of other work in the Department by the Chief and is assigned to such other work. Employees working a 24-hour schedule who call in sick will do so for the first twelve (12) hours or for the full shift and will have their sick leave balance reduced by the hours they did not work. Employees working a 24-hour schedule who become ill mid-shift and book off sick will do so for the remainder of the shift and will have their sick leave balance reduced by the number of hours they did not work. Employees working a 40 hour schedule may book off sick for partial shifts with the approval of the Chief or designee.

17.2.2 Attendance upon members of the family within the household of the employee, including domestic partner and his/her relatives who live within the household of the employee, when their illness requires care by such employee not to exceed twelve (12) days per year (144

hours for employees who work a 24-hour schedule). Such time may be taken in partial shifts subject to the approval of the Chief.

17.2.3 Subject to the discretion of the Chief or designee, sick leave may be used but not in excess of six (6) calendar days in the event of the death of the employee's spouse or domestic partner, child, mother, father, brother, sister, mother-in-law, father-in-law, brother-in-law, sister-in-law, grandmother, grandfather, grandchild, stepmother, stepfather, step child or members of domestic partner's family similarly related.

17.2.4 In exercising his/her discretion to approve sick leave, and the amount thereof, under the foregoing Article 17.2.3, the Chief or his/her designated representative shall give consideration to the closeness of the relative, the circumstances of the death, attendant family conditions, and the time required for travel.

17.2.5 Employees who wish to use sick leave in accordance with the above provisions to care for a domestic partner or member of the domestic partner's family, or in the event of a death of a member of the domestic partner's family, must satisfy the City's eligibility requirements for claiming an individual as a domestic partner.

17.3 Notwithstanding any other provisions of this Article, sick leave charges will be made according to the actual number of hours absent.

#### 17.4 Conversion to Vacation Leave

17.4.1 Any permanent employee working a 40-hour schedule who uses the equivalent of two or fewer sick days or any employee working a 24-hour schedule who uses 24 hours or less of sick leave within any consecutive 12 month period may elect to convert 48 hours of accrued sick leave to the equivalent of one (1) week of vacation leave.

Alternatively, an employee who has 12 or more years of permanent City service and a sick leave balance of no less than 768 hours (1152 hours for 24-hour personnel) may elect to convert 48 hours of accrued sick leave to 40 hours of pay at their regular hourly rate (42 hours for 24-hour personnel).

Employees may make one of the above elections only once for any consecutive 12 month period, and only once during any 12 month period.

Cornell Law School



CFR › Title 29 › Subtitle B › Chapter V › Subchapter C › Part 825 › Subpart A › Section 825.112

## 29 CFR 825.112 - Qualifying reasons for leave, general rule.

### § 825.112 Qualifying reasons for leave, general rule.

(a) ***Circumstances qualifying for leave.*** Employers covered by FMLA are required to grant leave to eligible employees:

- (1) For birth of a son or daughter, and to care for the newborn child (see § 825.120);
- (2) For placement with the employee of a son or daughter for adoption or foster care (see § 825.121);
- (3) To care for the employee's spouse, son, daughter, or parent with a serious health condition (see §§ 825.113 and 825.122);
- (4) Because of a serious health condition that makes the employee unable to perform the functions of the employee's job (see §§ 825.113 and 825.123);
- (5) Because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on covered active duty (or has been notified of an impending call or order to covered active duty status (see §§ 825.122 and 825.126); and
- (6) To care for a covered servicemember with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the covered servicemember. See §§ 825.122 and 825.127.

(b) ***Equal application.*** The right to take leave under FMLA applies equally to male and female employees. A father, as well as a mother, can take family leave for the birth, placement for adoption, or foster care of a child.

(c) ***Active employee.*** In situations where the employer/employee relationship has been interrupted, such as an employee who has been on layoff, the employee must be recalled or otherwise be re-employed before being eligible for FMLA leave. Under such circumstances, an eligible employee is immediately entitled to further FMLA leave for a qualifying reason.

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## Maine Revised Statutes

### Title 26: LABOR AND INDUSTRY

#### Chapter 7: EMPLOYMENT PRACTICES

##### Subchapter 6-A: FAMILY MEDICAL LEAVE REQUIREMENTS

#### §843. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [1987, c. 661, (NEW).]

**1. Employee.** "Employee" means any person who may be permitted, required or directed by an employer in consideration of direct or indirect gain or profit to engage in any employment but does not include an independent contractor.

[ 1987, c. 661, (NEW) .]

**2. Employee benefits.** "Employee benefits" means all benefits, other than salary and wages, provided or made available to employees by an employer and includes group life insurance, health insurance, disability insurance and pensions, regardless of whether benefits are provided by a policy or practice of an employer.

[ 1987, c. 661, (NEW) .]

**3. Employer.** "Employer" means:

A. Any person, sole proprietorship, partnership, corporation, association or other business entity that employs 15 or more employees at one location in this State; [1999, c. 127, Pt. D, §2 (AMD).]

B. The State, including the executive, legislative and judicial branches, and any state department or agency that employs any employees; [1987, c. 661, (NEW).]

C. Any city, town or municipal agency that employs 25 or more employees; and [1987, c. 661, (NEW).]

D. Any agent of an employer, the State or a political subdivision of the State. [1987, c. 661, (NEW).]

[ 1999, c. 127, Pt. D, §2 (AMD) .]

**4. Family medical leave.** "Family medical leave" means leave requested by an employee for:

A. Serious health condition of the employee; [1997, c. 546, §1 (AMD).]

B. The birth of the employee's child or the employee's domestic partner's child; [2007, c. 261, §1 (AMD).]

C. The placement of a child 16 years of age or less with the employee or with the employee's domestic partner in connection with the adoption of the child by the employee or the employee's domestic partner; [2007, c. 261, §1 (AMD).]

**D. A child, domestic partner's child, parent, domestic partner, sibling or spouse with a serious health condition;** [2007, c. 519, §1 (RPR) .]

**E. The donation of an organ of that employee for a human organ transplant; or** [2007, c. 388, §4 (AMD) .]

**F. The death or serious health condition of the employee's spouse, domestic partner, parent, sibling or child if the spouse, domestic partner, parent, sibling or child as a member of the state military forces, as defined in Title 37-B, section 102, or the United States Armed Forces, including the National Guard and Reserves, dies or incurs a serious health condition while on active duty.** [2007, c. 519, §2 (AMD) .]

[ 2007, c. 519, §§1, 2 (AMD) .]

**4-A. Health care provider.** "Health care provider" means:

**A. A doctor of medicine or osteopathy who is licensed to practice medicine or surgery in this State;** or [1997, c. 546, §2 (NEW) .]

**B. Any other person determined by the Secretary of Labor to be capable of providing health care services.** [1997, c. 546, §2 (NEW) .]

[ 1997, c. 546, §2 (NEW) .]

**4-B. Reduced leave schedule.** "Reduced leave schedule" means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.

[ 2007, c. 233, §1 (NEW) .]

**5. Serious illness.**

[ 1997, c. 546, §3 (RP) .]

**6. Serious health condition.** "Serious health condition" means an illness, injury, impairment or physical or mental condition that involves:

**A. Inpatient care in a hospital, hospice or residential medical care facility; or** [1997, c. 546, §2 (NEW) .]

**B. Continuing treatment by a health care provider.** [1997, c. 546, §2 (NEW) .]

[ 1997, c. 546, §2 (NEW) .]

**7. Domestic partner.** "Domestic partner" means the partner of an employee who:

**A. Is a mentally competent adult as is the employee;** [2007, c. 261, §2 (NEW) .]

**B. Has been legally domiciled with the employee for at least 12 months;** [2007, c. 261, §2 (NEW) .]

**C. Is not legally married to or legally separated from another individual;** [2007, c. 261, §2 (NEW) .]

**D. Is the sole partner of the employee and expects to remain so;** [2007, c. 261, §2 (NEW) .]

**E. Is not a sibling of the employee; and** [2007, c. 261, §2 (NEW) .]

**F. Is jointly responsible with the employee for each other's common welfare as evidenced by joint living arrangements, joint financial arrangements or joint ownership of real or personal property.**

[2007, c. 261, §2 (NEW) .]

[ 2007, c. 261, §2 (NEW) .]

**8. Sibling.** "Sibling" means a sibling of an employee who is jointly responsible with the employee for each other's common welfare as evidenced by joint living arrangements and joint financial arrangements.

[ 2007, c. 519, §3 (NEW) .]

#### SECTION HISTORY

1987, c. 661, (NEW). 1997, c. 546, §§1-3 (AMD). 1999, c. 127, §D2 (AMD). 2001, c. 684, §§1-3 (AMD). 2007, c. 233, §1 (AMD). 2007, c. 261, §§1, 2 (AMD). 2007, c. 388, §§3-5 (AMD). 2007, c. 519, §§1-3 (AMD).

The Revisor's Office cannot provide legal advice or interpretation of Maine law to the public.

If you need legal advice, please consult a qualified attorney.

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## U.S. OFFICE OF PERSONNEL MANAGEMENT

## PAY &amp; LEAVE LEAVE ADMINISTRATION

# Fact Sheet: Definitions Related to Family Member and Immediate Relative for Purposes of Sick Leave, Funeral Leave, Voluntary Leave Transfer, Voluntary Leave Bank, and Emergency Leave Transfer

On June 14, 2010, the U.S. Office of Personnel Management issued final regulations to modify its definitions of *family member* and *immediate relative*, and add related definitions (75 FR 33491), in response to Section 1 of the President's June 17, 2009, [Memorandum for the Heads of Executive Departments and Agencies on Federal Benefits and Non-Discrimination](#). The purpose of these changes is to promote consistent application of policy across the Federal Government and to help the Federal Government compete with the private sector to recruit and retain the best and the brightest employees.

These new and revised definitions modify the regulations at 5 CFR part 630, subparts B, H, I, J, and K, related to the use of sick leave, funeral leave, voluntary leave transfer, voluntary leave bank, and emergency leave transfer and expand the categories of individuals for whom an employee may use these types of leave.

## Family Member

An individual with any of the following relationships to the employee:

1. Spouse, and parents thereof;
2. Sons and daughters, and spouses thereof;
3. Parents, and spouses thereof;
4. Brothers and sisters, and spouses thereof;
5. Grandparents and grandchildren, and spouses thereof;
6. Domestic partner and parents thereof, including domestic partners of any individual in 2 through 5 of this definition; and
7. Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

## Immediate Relative

An individual with any of the following relationships to the employee:

1. Spouse, and parents thereof;
2. Sons and daughters, and spouses thereof;
3. Parents, and spouses thereof;
4. Brothers and sisters, and spouses thereof;
5. Grandparents and grandchildren, and spouses thereof;
6. Domestic partner and parents thereof, including domestic partners of any individual in 1 through 5 of this definition; and
7. Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

**TAB 7**

## Parent

1. A biological, adoptive, step, or foster parent of the employee, or a person who was a foster parent of the employee when the employee was a minor;
2. A person who is the legal guardian of the employee or was the legal guardian of the employee when the employee was a minor or required a legal guardian;
3. A person who stands in *loco parentis* to the employee or stood in *loco parentis* to the employee when the employee was a minor or required someone to stand in *loco parentis*; or
4. A parent (as described in the above subparagraphs) of an employee's spouse or domestic partner.

## Son or Daughter

1. A biological, adopted, step, or foster son or daughter of the employee;
2. A person who is a legal ward or was a legal ward of the employee when that individual was a minor or required a legal guardian;
3. A person for whom the employee stands in *loco parentis* or stood in *loco parentis* when that individual was a minor or required someone to stand in *loco parentis*; or
4. A son or daughter (as described in 1-3) of an employee's spouse or domestic partner.

## Domestic Partner

An adult in a committed relationship with another adult, including both same sex and opposite-sex relationships.

## Committed Relationship

A relationship in which the employee, and the domestic partner of the employee, are each other's sole domestic partner (and are not married to or domestic partners with anyone else); and share responsibility for a significant measure of each other's common welfare and financial obligations. This includes, but is not limited to, any relationship between two individuals of the same or opposite sex that is granted legal recognition by a State or by the District of Columbia as a marriage or analogous relationship (including, but not limited to, a civil union).

## Note:

The new definitions do not apply to the Family and Medical Leave Act (FMLA). The situations in which an employee can invoke FMLA leave and the individuals for whom an employee can provide care under FMLA are specified in law and the Department of Labor (DOL) Administrator's Interpretation No. 2010-3, which clarifies the definition of "son or daughter" under FMLA as it applies to an employee standing "in loco parentis" to a child. (See [CPM 2010-15](#).)

## References:

- 5 CFR 630.201, 630.803, 630.902, 630.1002, and 630.1102

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<b>Municipality</b>	<b>Responsible Department (new/existing)</b>	<b>Staff Requirements</b>	<b>Average investigations per year</b>
San Francisco, CA	Office of Labor Standards Enforcement (existing)	5.5 FTE for paid sick time and minimum wage	33
Emeryville, CA	Economic Development and Housing Division (existing)	1 FTE plus two consultants	6
Trenton, NJ	Health Department (existing)	2 FTE	Few investigations dictated by lack of resources
Tacoma, WA	Employment Standards Office (new)	2.5 FTE for paid sick time and minimum wage	28
Seattle, WA	Office of Labor Standards (new)	12 FTE for paid sick time, minimum wage, wage theft, fair chance employment, and secure scheduling	50