

Rule 2-55

LEAVE DONATIONS

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§ 2-55-005 DURING DECLARED EMERGENCY

On March 12, 2020, Chair Deborah Kafoury declared a state of emergency in Multnomah County due to the rapid spread of the COVID-19 novel coronavirus. In support of the County's efforts to curb the spread of infection among employees and members of our community, the following revisions to this Personnel Rule shall be effective until the termination of the Chair's Declaration of Emergency.

§ 2-55-010 PURPOSE

This rule establishes a Catastrophic Leave Sharing Program (program). In order to maintain quality of life for the county's workforce, the program permits county employees to voluntarily donate accumulated vacation or compensatory time off to another employee who exhausts, or is likely to exhaust, accumulated paid leave due to a non-occupational FMLA or OFLA qualifying catastrophic medical condition of the employee or a FMLA/OFLA qualifying family member that would otherwise likely cause the employee to take unpaid leave or terminate employment.

§ 2-55-015 NON-DISCRIMINATION

The county prohibits discrimination on the basis of race, color, sex, age, religion, national origin, political affiliation, marital status, sexual orientation, gender identity, source of income, familial status, physical or mental disability or other protected status in any decisions regarding catastrophic leave program eligibility, and administration.

§ 2-55-020 ELIGIBILITY

Any county employee who has worked in a benefits eligible position, excluding temporary management and executive employees, is eligible to participate in the program as a recipient. Any employee who has vacation or compensatory time available may participate in the program as a donor. Donations may be made between any employees. Donations between employees in different bargaining units or between non-represented and represented employees are permitted as agreed to by the respective bargaining agents.

§ 2-55-030 LEAVE DONATIONS

(A) Employees may voluntarily donate hours of accumulated vacation leave or compensatory time for use by a specified recipient employee. No other type of leave may be donated:

(1) The donor may not donate hours that are above maximums permitted by these rules or the applicable collective bargaining agreement;

(2) Donations must be in increments of whole hours;

(3) Donors must complete and sign a catastrophic leave donation form provided by the Employee Benefits Office containing a declaration that the donation is intended as a gift and has been given voluntarily without coercion, compensation or for other consideration;

(4) The donation must be made irrevocably, with the understanding that the donated leave is lost to the donor forever for all purposes including, but not limited to, use for paid time off, payoff upon termination, seniority and retirement credit;

(5) The recipient employee must be eligible for donations as defined by MCPR 2-55-020 at the time the donation is made;

(B) Employees may make donations to employees in different bargaining units or departments and to employees having a different representation status. Donations between employees in a different bargaining unit or from non-represented to represented, will only be permitted if bargaining agents for any bargaining unit covering the recipient and donor employee have consented to such transfers as required by this rule.

(C) Donated leave will not be credited to a recipient employee's account until that employee has exhausted sick leave, vacation leave, personal holidays, time off in lieu of designated holidays, and compensatory time off following application for donated leave. The only exception is provided in MCPR 2-55-070(C).

§ 2-55-040 VALUE OF DONATED LEAVE

The gross (pre-tax) dollar value to the recipient employee of donated leave will be calculated by multiplying the donor's base hourly straight time wage rate at the time of the donation, including any on-going longevity or achievement incentive pay normally treated as part of base by the number of hours donated. This gross amount will be divided by the recipient employee's base hourly straight time wage rate at the time of the donation, including any on-going longevity or achievement incentive pay normally treated as part of the base under a collective bargaining agreement. This will determine the number of hours of paid leave available to the recipient employee as a result of the donation. The donated leave will be taxed and subject to normal withholding and payroll deductions.

§ 2-55-050 SOLICITATION OF DONATIONS

(A) Solicitations for leave donations will be sent exclusively by the designated central coordinator using countywide e-mail unless an employee requests that a solicitation be sent only within their department or only to specific individuals. Solicitations may not be sent until an employee's application has been approved. A solicitation including the names of recipient employees projected to need additional donations will be sent each pay period. The e-mail will include employees names, departments, work locations and the estimated amount of leave needed by each employee, if available.

(B) County employees may not disclose confidential medical records or information obtained in performance of their county employment duties.

(C) Directors, supervisors, elected officials and other agents, employees, and the bargaining agent must not threaten, coerce, or intimidate employees to either require or prohibit participation in this catastrophic leave program, either as a donor or recipient. Participation or non-participation is purely voluntary.

§ 2-55-060 USE OF DONATED LEAVE

(A) A recipient employee must exhaust donated leave prior to taking unpaid leave for approved catastrophic medical conditions.

(B) Employees may use donated leave in the following circumstances:

(1) The employee or FMLA/OFLA qualifying family member has a catastrophic medical condition;

(2) The employee has exhausted his or her accrued sick and vacation leave, saved or personal holidays, and compensatory time off;

(3) The employee is not receiving any other income from county employment;

(4) The person with the catastrophic medical condition is unable to work in his or her regular position or another position with his or her employer; and

(5) Alternatively to #1 above, the employee: (a) has been exposed to an individual who has tested positive for COVID-19 (as confirmed by the CDC or other authorized body) and is directed to quarantine by a public health official, (b) the employee has tested positive for COVID-19 (as confirmed by the CDC or other authorized body), (c) a family member in the employee's immediate household has tested positive for COVID-19 (as confirmed by the CDC or other authorized body), or (d) the employee or a member of the employee's immediate household has symptoms of flu-like illness or is recovering from flu-like symptoms.

(C) Intermittent Leave

Recipient employees who have been on approved paid medical leave, using sick, vacation, compensatory, personal or saved holidays or catastrophic leave, for all scheduled work hours for at least one full workweek and who are able to return to work on a part-time basis while continuing to receive medical treatments on an intermittent basis for their catastrophic medical condition, may continue to participate in the program after they return to work. Catastrophic leave may only be solicited and used to the extent it is needed to cover unpaid leave for continuing treatments involving absences related to the condition for which catastrophic leave was initially approved.

§ 2-55-070 RETROACTIVE USE OF DONATED LEAVE

(A) Retroactive application for and use of donated leave time will be allowed if the employee was medically unable to file the necessary forms in a timely manner as determined by the Employee Benefits Office.

(B) After a worker's compensation claim has concluded, including all appeals, an employee may retroactively apply for and use donated leave for that medical condition. The number of hours of catastrophic leave that may be used is limited to those the employee would have used had the worker's compensation claim not been filed. Donated leave may not be used if the employee:

- (1) Received a permanent total disability award,
- (2) Entered into a disputed claims settlement providing any payment for work time lost on the date for which donated leave would otherwise be used;
- (3) Received time loss, sick leave, vacation or other payments for such dates;
- (4) Otherwise fails at the time of application for donated leave to qualify for donated leave.

(C) All retroactive payments will be made on the next regular county pay date following the completion of one full pay period.

§ 2-55-080 RECOVERY OF LEAVE

If a recipient employee uses donated leave and subsequently is paid social security disability, PERS disability retirement, disability retirement through another retirement system to which the county contributes or disability insurance benefits for the same dates, the employee must promptly notify the central payroll unit and the Employee Benefits Office. The employee must repay the county the net payments within fourteen days of receipt of such payments or arrange to repay the overpayment over the same length of time that the leave was initially paid to the employee. Upon the county's receipt of repayment, the recipient employee's vacation or sick leave accounts will be credited, according to the formula set out in MCPR 2-55-100, for hours of donated leave for which repayment is received and for additional hours donated but not used. This applies when donated hours cannot be used for the absence resulting from the catastrophic medical condition for which the employee has received the other benefits.

§ 2-55-090 CAP ON DONATED LEAVE

Employees are allowed to receive sufficient donated leave time to cover their projected unpaid catastrophic leave up to a maximum of 90 calendar days per calendar year. No more than one pay period of leave will be transferred to a recipient employee's catastrophic leave bank at any time.

§ 2-55-100 UNUSED DONATED LEAVE

Unused donated leave and compensatory time off will be disposed of as follows:

(A) If the recipient employee returns to work, any donated leave hours not used will be divided equally between vacation and sick leave and retained by the recipient. The vacation leave credited is limited to the maximum vacation hours the employee could accumulate. Any donated leave hours that exceed this limitation will be credited to the employee's sick leave account.

(B) If the recipient employee terminates from county service for any reason, any unused donated leave hours will be converted to vacation and sick leave under the subsection (A) formula. Donated leave converted to vacation leave will be paid to the recipient, or heirs or estate as other accumulated vacation leave.

(C) After the conversion of donated leave to sick and vacation leave, the hours will no longer be deemed donated leave. The final average salary or pension calculation for the Oregon Public Employee Retirement System or any other county pension will be subject to Oregon law, county law and any applicable collective bargaining agreement.

§ 2-55-110 EMPLOYMENT STATUS, SENIORITY, BENEFITS AND FMLA

(A) The use of donated leave will not bar immediate termination of the employee if termination would otherwise take place by operation of law, rule, regulation or action of the Director or supervisor.

(B) Time spent on donated leave will be treated as paid leave for seniority accrual purposes.

(C) If a recipient is otherwise eligible for county paid health and welfare benefits, the employee will receive those benefits while using donated leave. If the employee's employment terminates, termination of medical and dental benefits will be governed by the same rules applicable in any other termination. An employee does not accrue personal holidays, time off in lieu of designated holidays, vacation or sick leave, or receive holiday or personal leave pay while using donated leave

(D) If donated leave is used for a catastrophic medical condition of an employee or a FMLA/OFLA qualifying family member covered by FMLA/OFLA, time spent on donated leave will count toward the employee's annual entitlement to leave under those laws.

§ 2-55-120 APPLICATION FOR DONATED LEAVE

(A) An employee who wishes to receive donated leave must complete and submit an application to the Employee Benefits Office prior to or during their leave. Retroactive approval is based on specific criteria described in 2-55-070. The application must be on the specified form and contain the information required by the Employee Benefits Office. This includes a statement signed in good faith by the employee of qualification for donated leave under the eligibility criteria. The employee must agree to timely repay the county for donated leave payments received when such repayment is required under the rules. The employee must submit with the application a statement signed by the employee's or FMLA/OFLA qualifying family member's health care practitioner certifying the existence of a qualifying catastrophic medical condition. The county may require that the certification be on a form it provides to certify the initial or continued need for family medical leave under FMLA or OFLA.

(B) An employee may have up to a combined total of 96 hours of unused vacation, sick leave, personal holiday time, time off in lieu of designated holidays, and compensatory time off and apply for donated leave. The employee must reasonably believe it is likely that those hours will be exhausted by the catastrophic medical condition.

(C) An employee who is on leave for his or her own catastrophic medical condition must apply for the county offered short term disability, if available, and long term disability benefits.

§ 2-55-130 VERIFICATION AND NOTICE OF ELIGIBILITY

(A) Upon receipt of a completed application, the Employee Benefits Office will verify the employee's eligibility through such consultation and steps deemed appropriate.

(B) The Employee Benefits Office will give prompt notice of confirmation or denial of eligibility to the employee when the verification process is complete. The Employee Benefits Office will send copies of the notice to the employee's supervisor and department human resources unit. For applications from Sheriff's Office employees, a copy of the request, the confirmation of eligibility and any related donation forms must be received by the Employee Benefits Office before payments may be made to an employee recipient.

§ 2-55-140 DISCONTINUATION OF ELIGIBILITY

The recipient of donated leave will immediately notify the Employee Benefits Office in writing of any change in circumstance that negates the employee's continued eligibility to participate in the program. Departments that receive information from a recipient employee of any such change in circumstances will promptly give such notice to the Employee Benefits Office. For Sheriff's Office employees, the Sheriff's Office HR unit will promptly forward a copy of the notice to the Employee Benefits Office.

§ 2-55-150 RESOLUTION OF DISPUTES

All decisions made or actions undertaken by the county under this catastrophic leave sharing program, including determinations concerning eligibility, calculation of leave values, and in the administration, modification or termination of this program are final and binding on all parties. They may not be grieved or arbitrated under any collective bargaining agreement, or appealed to the Merit Council or any other forum.

§ 2-55-155 PLAN MODIFICATION OR TERMINATION

The county may at its discretion modify or discontinue any or all aspects of this catastrophic leave sharing program, and such modification or discontinuation will not be subject to a duty to bargain either the decision or impact of such decision. However, except when changes are undertaken to ensure prompt compliance with state or federal law, such modifications or termination will take effect only after the employer gives the union notice of the modification or termination and a reasonable opportunity within ten days of the delivery of such notice to meet and confer concerning the change or modifications. If implementation is undertaken prior to such consultations to ensure compliance with law, consultations will occur as soon thereafter as is reasonably possible.

§ 2-55-160 ACCEPTANCE OF CATASTROPHIC LEAVE PROGRAM

This rule will not apply to bargaining unit members unless the bargaining agent for that unit has notified Central Human Resources/Labor Relations in writing that the bargaining unit accepts the catastrophic leave program in entirety without reservation or modification.