

TOWN of BROOKLINE
Massachusetts

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Sandra A. DeBow-Huang, Director
Human Resources Office

September 14, 2015

To: Neil Wishinsky, Chair, Brookline Board of Selectmen
Cc: Melvin Kleckner, Town Administrator
From: Sandra DeBow, Director, Human Relations Director
Re: Paid Sick Leave for Non-benefited positions

On November 4, 2014, Massachusetts voters approved Ballot Question 4, MA Earned Sick Leave Law, with 75% of Brookline voters voting in favor of the law. The law, which mandates employers to provide earned sick time to employees, applies to both private and public employers. However, cities and towns are considered "employers" for the purpose of the law only if the municipal legislative body votes to accept the law. The Sick Leave Law, MGL [as] ch. 149, sec. 148 C was effective July 1, 2015 and the Attorney General's Office published final regulations on June 19, 2015 (940 CMR 33.00).

The HR Director and Town Administrator have considered the impact of this law, seeking the advice of the Town's Labor Counsel, analyzing our various employee groups, current practices, procedures and union contracts. We also considered the interests of the Brookline citizens who strongly supported this law and need for all employees to receive earned, paid sick time. Therefore the HR Director and Town Administrator are recommending that the provisions of the law be incorporated into the current Classification and Pay Plan for those employees who do not currently receive any paid leave benefits. We are not recommending the adoption of the law as it will impact each of our collective bargaining agreements. For unionized employees, we strongly recommend that the Town maintain the integrity of leave benefits in the collective bargaining agreements. On September 8, 2015, the Human Resources Board unanimously adopted this recommendation.

Using the Earned Sick Leave Law as a model, we seek to expand paid sick time for three groups of employees do not currently receive any paid leave benefits due to the limited nature of their employment:

- * Less than Half-Time employees, who regularly work less than 18.5 hours per week,
- * Temporary employees, and
- * "Certified seasonal" employees.

In fact, our proposal is more expansive than the law as we seek to provide these employees with paid personal as well as paid sick leave to ensure consistency with the Town's established work rules and procedures, rules that have been bargained extensively with the various unions.

As approved by the HR Board, the Classification and Pay Plan has been amended to provide part-time employees <18.5 hrs/week, certified seasonal and temporary employees, **working more than 90 days** as follows:

- * Employees accrue 1 hour for every 30 actually worked (applied as a **lump sum**)
- * Employees accrue **paid leave time** to a cap of 40 hours;
- * Permit the carryover of unused **sick leave** into subsequent years
- * Permit the use of sick leave for Domestic Violence leave for the employee and the employee's spouse and children
- * Permit 8 hours of **personal leave** each year (to cover routine well doctor's visits and preventive care consistent with provisions in the Town's collective bargaining agreements, as well as other personal matters)
- * Exempt election workers and student interns from such coverage
- * Allow usage of sick leave in increments of no less than 1/2 work day or as otherwise allowed by the Department

We believe the amendment to the Classification and Pay plan adequately addresses the mandate of the Massachusetts Earned Sick Leave Law and provides an important new benefit to temporary, seasonal and Less than Half-time employees; and, does so in a manner that is consistent with the current sick leave provisions secured by other unionized employees.

The wholesale adoption of MGL ch. 149 sec. 148C will have unintended costs and consequences for the Town as it will effectively re-write many of the rules the Town and Schools have diligently negotiated with each union regarding accrued leaves, as the law trumps any inconsistent provisions in collective bargaining agreements. Therefore, the expansion of these benefits will affect not only an

increase in cost to fund the paid time off for these new groups of employees but also due to increased arbitration costs.

For example, it is unclear how the rights provided by the law would affect our public safety departments, Fire, Police and DPW; departments who must sometimes mandate overtime in public safety emergencies or situations, e.g., marathon day, hurricanes, blizzards. This area will likely be challenged by the unions if the law is adopted if an employee seeks to exercise his right to use his state mandated sick time consistent with the law, rather than the bargained rules of the workplace. Such bargaining has sculpted our rules and procedures to best attend to the interests and needs of each party; the Town (operational needs) and each Union (employee's need for adequate leave time and pay, such a[s] minimum overtime for call backs).

The application of the Earned Sick Leave law to employees who are covered by collective bargaining agreements is fraught with challenges that need to be studied further. Therefore, the HR Director, the Town Administrator and the HR Board are recommending the use of the *[Classification and Pay Plan]* for non-union employees as the preferred route to expand these rights. As we seek to use the "lump sum" method outlined in the law, our existing employees would receive a ready bank of time immediately, rather than waiting months to accrue time.

With regard to unions, the more appropriate vehicle for changes to the leave provisions of the collective bargaining agreements is at the bargaining table where change[s] are carefully reviewed, discussed and negotiated by both sides. We are about to start bargaining with the majority of our unions providing an excellent time to review these matters with each of the unions who bring their own interests and priorities.

[??] leave employment on the 16th day or later in the month receive the full calendar month allotment upon termination.

[following information, untitled, apparently shows changes to Classification and Pay Plan]

SECTION 10. SICK LEAVE

Employees who are members of unions should refer to their collective bargaining agreement for specific terms governing their sick leave benefit.

Paid sick leave with pay means is authorized, paid leave absence from work granted to employees when they are unable to perform their duties because of sickness, personal injury, injuries to eligible employees in accordance with the provisions of Chapter 152 of the General Laws, quarantine by health authorities, or serious illness in immediate family or household.

ELIGIBILITY AND DEFINITION OF SICK LEAVE USAGE

Regular full-time and regular part-time employees, as well as less than half-time employees, temporary employees and certified seasonal employees, who are regularly scheduled to work 18.75 hours per week or more are eligible for paid sick leave.

SICK TIME ACCRUAL, REGULAR FULL-TIME EMPLOYEES

Eligible full-time employees of the Town shall be entitled to **sick leave** at the rate of fifteen working days per calendar year.

Employees hired prior to July 1, 2013 shall be credited with fifteen working days per calendar year on January 1st of each calendar year and will accumulate such days without limit.

Any employee hired on or after July 1, 2013 shall be credited with one and one quarter days of sick leave on the first of the calendar month following employment and will accumulate thereafter one and one quarter days for each full calendar month worked.

SICK ACCRUAL, REGULAR PART-TIME EMPLOYEES

Regular part-time employees shall be eligible for sick leave credit in proportion to the relationship of their annual work schedule to that of a full-time employee.

NOTIFICATION, SICK LEAVE

When an employee finds it necessary to be absent because of accident or illness, s/he shall report the fact to his immediate supervisor as soon as possible either in

person or by agent. Such notice should be given, whenever possible, before the starting time of the employee's normal tour of duty or not later than one (1) hour after starting time. Sick leave will not be granted unless such a report is made.

Each Department may have additional processes and procedures for reporting sick leave that furthers the efficiency of staffing that department.

SICK CERTIFICATES

The Department Head may require the presentation of a doctor's certificate or note in connection with the claim for sick leave or any absence alleged to be caused by sickness, illness or injury in excess of four (4) consecutive days or **more than ten (10) days in the prior 12-month period**. Such certificate or note shall state the employee's name, date(s) seen, a brief description of the illness or injury and the expected duration for such illness. If such a certificate or note is not provided to the Department Head when so requested, such absence shall not be chargeable to sick leave but shall be carried as an unpaid, unauthorized leave.

The Department Head retains the authority to request a doctor's certificate when the Department Head or his/her designee believes an employee may be abusing sick leave without regard to the number of absences taken. If it is deemed advisable, the Town, at its expense, may send an employee to a doctor, selected by the Town, to investigate any absence alleged to be caused by an illness or injury.

SERIOUS ILLNESS IN IMMEDIATE FAMILY

In case of serious illness of husband, wife, child, parent of either spouse, the employee may be granted sick leave with pay not to exceed seven (7) working days within a calendar year, at the discretion of the **appointing authority**. These days are charged against the employee's annual sick leave allowance and are carried as "family sick" days.

When an employee is required to provide a doctor's certificate for his or her own use of sick time, the employee also will be required to provide a similar doctor's certificate for his use of family sick time.

SICK ACCRUAL, LESS THAN HALF-TIME, TEMPORARY, CERTIFIED SEASONAL EMPLOYEES

Effective October 1, 2015, part-time employees who work less than 18.75 hrs/week, **certified seasonal** and temporary employees shall accrue one (1) hour of paid sick leave for every 30 hours of time actually worked and shall be eligible to use their earned sick time 90 days after their first date of actual work, should a

qualifying need arise. This provision does not apply to poll-workers and student interns or co-op students.

Hours Worked and Rate of Pay When computing hours to determine [??], all hours actually worked by the employee are counted, regardless of location or department. Further, if the employee receives a different wage rate for different work (e.g., recreation, school), when using a paid sick time, the employee shall be paid the rate the employee would have been paid if the employee had worked during the time in which the employee used accrued sick time. An employee [??].

Accrual of Sick Time

Less than half-time, temporary and seasonal employees shall receive a lump sum amount of paid sick leave, no earlier than 90 days of employment, in accordance with the following schedule. For employees working an average of:

- 1) 37.5-40 hours per week, provide 8 hours per month for 5 months.
- 2) 30 hours per week, provide 5 hours per month for 8 months.
- 3) 24 hours per week, provide 4 hours per month for 10 months.
- 4) 20 hours per week, provide 4 hours per month for 9 months.
- 5) 16 hours per week, provide 3 hour per month for 10 months.
- 6) 10 hours per week, provide 2 hours per month for 10 months.
- 7) 5 hours per week, provide 1 hour per month for 10 months.

Once an employee possesses a bank of 40 hours of unused earned sick time, the employee shall not continue to accrue more hours of earned sick time regardless of the additional hours worked. Once the employee draws down on the bank, below 40 hours the employee may receive [d?] additional hours consistent with this policy.

Carry over

Such hours may be carried over from year to year up to a maximum of 40 hours.

Use of Hours

An employee may use earned sick use for a qualifying purpose in accordance with the rules described herein. In addition, less than half-time, temporary and seasonal employees may also use up to a maximum of 8 hours of the employee's accrued sick time, during each calendar year, as personal time for purposes of:

- * professional medical diagnosis or care, or preventative medical care;
- * attend a routine medical appointment or a routine medical appointment for the employee's child, spouse, parent, or parent of spouse;

* address the psychological, physical or legal effects of domestic violence; or
* travel to and from an appointment, a pharmacy, or other location related to the purpose for which the time was taken.

When personal time is used, as described herein, it shall not be regarded as use of sick time for purposes of analyzing sick time abuse. Such personal time is also available for personal matters, consistent with personal time described herein, Section 11, Other Leave.

Non-regular part-time, temporary and seasonal employees may use accrued sick time for Leave for Victims and Family Members of Abuse, as provided herein, and the use of such time shall not be regarded as use of sick time for purposes of analyzing sick time abuse.

Sick leave, for any purpose, may be used in increments of no less than **half (1/2) of a regularly scheduled work day** or as otherwise allowed by the Department, based on its operational needs. Further, an employee may not use earned sick time if the employee is not scheduled to be at work during their period of use.

Break in service

Following a break in service of up to four months, an employee shall maintain the right to use any unused earned sick time accrued before the break in service.

Following a break in service of between four (4) and twelve (12) months, an employee shall maintain the right to use earned sick time accrued before the break in service if the employee's unused bank of earned sick time equals or exceeds 10 hours.

Following a break in service of up to twelve months, employees maintain their vesting days from the employer and do not need to restart the 90-day vesting period.

EXTENDED SICK LEAVE BANK

All regular full-time and regular part-time employees who are not a member of a union shall be eligible to participate in an extended sick leave bank as administered by the Human Resources Office.

Eligibility

To be eligible for membership an employee must have completed his/her initial six (6) month probationary period and must have voluntarily donated one (1) sick day

per year to the extended sick leave bank ("Bank"). These donated days shall be deducted from accumulated sick leave but shall not be considered sick leave for the purposes of monitoring sick leave usage or personal leave. The Bank shall contain no more than 500 days at any one time regardless of donations made to the Bank.

Regular, part-time employees receive their allotment of extended sick leave bank days based on the proportion of work hours in their schedule as measured against full-time service.

Enrollment

Enrollment in the Bank will be open from November 1 to November 30 of each year for participation in the Bank in the following calendar year. The Human Resources Office will have information and authorization forms available for employees at least thirty (30) days prior to the enrollment period.

Requests for Use of Sick Leave Bank

The Human Resources Office will be responsible for the review of requests for Bank days to be withdrawn from the Bank. A grant of sick leave shall be up to thirty (30) days to an employee per calendar year (Jan. 1 to Dec. 31). In rare circumstances the Human Resources Office may grant up to an additional thirty (30) days to an employee but in no event shall the total of such grant(s) to an employee exceed sixty (60) days in total per calendar year. Decisions to grant or deny days from the Extended Sick Leave Bank shall be final.

Any application for Bank days must be submitted in writing to the Human Resources Office along with a signed statement from the employee's doctor which indicates the employee or a member of the employee's family has a serious illness or serious injury, which prevents the employee's immediate return to work. The Office of Human Resources may request additional medical information from the employee's medical provider and may consider information from the employee's department, which may be relevant to review of the request. The Human Resources Office shall at all-time safeguard and treat as confidential the medical information concerning employees who have applied for extended sick leave bank days.

Break in service

Following a break in service of up to four months, an employee shall maintain the right to use any unused earned sick time accrued before the break in service.

Following a break in service of between four (4) and twelve (12) months, an employee shall maintain the right to use earned sick time accrued before the break in service if the employee's unused bank of earned sick time equals or exceeds 10 hours.

Following a break in service of up to twelve months, employees maintain their vesting days from the employer and do not need to restart the 90-day vesting period.

[Duplicated paragraphs removed: EXTENDED SICK LEAVE BANK, Eligibility, Enrollment, Requests for Use of Sick Leave Bank (2 paragraphs)]

The following criteria shall be used in awarding Bank days:

- * The employee has contributed to the Sick Leave Bank within the allotted time and has not exceeded 30 days in a calendar year.
- * The employee has exhausted or will soon exhaust all accumulated sick leave and any other paid leave, e.g., vacation leave and personal leave; and
- * The application is accompanied by adequate medical evidence of a serious illness or serious injury, which prevents the employee's immediate return to work.

Bank days which are granted but unused revert to the Bank upon an employee's return to regular work schedule, retirement, resignation or other separation from employment or death whichever occurs first. No employee who is granted Bank days shall be allowed to redeem any unused portion of leave that was granted.

EXTENDED MEDICAL LEAVE PAY

Employees use sick time when they are absent due to sickness, an illness or injury. When an employee continues to be out on an extended leave where they have exhausted all of their accrued sick leave, the Town of Brookline will apply any accrued vacation leave and, when vacation is exhausted, any accrued personal days or any other available leave to ensure the employee does not go into an unpaid leave status.

A similar process applies for employees who are on an extended medical leave to care for a serious illness of a family member as described above. For family illness, an employee may use up to seven family sick days and then the Town will apply any accrued vacation leave and, when vacation is exhausted, any accrued personal days to ensure the employee does not go on unpaid leave until all accrual banks are exhausted.

RETURN FROM WORK FROM EXTENDED MEDICAL LEAVE

Any employee who has been out of work due to a serious illness, injury or other medical leave for an extended period, e.g., thirty (30) consecutive days or more, may be required to submit to a Return to Work evaluation prior to returning to full or modified duty, at the Town's expense. Such a return to work evaluation shall be required for any employee who is returning to safety-sensitive functions or whose condition may cause a risk of harm to self or others.

TERMINATION OF SERVICE, SICK BUYBACK

Accumulated sick leave shall not be taken immediately prior to retirement unless properly chargeable to sick leave under these rules and regulations. Employees or their estates shall be paid on death or separation for any reason except discharge for cause an amount equal to 1/3 of the value of their unused accumulated sick leave, but in no case more than \$5,000. This buyback provision does not apply to sick leave accrued by temporary, seasonal or less than half-time employees.

PRIOR SERVICE

No unused sick leave credit earned in any other municipality or with the Commonwealth will be transferable to the Town of Brookline.

When a temporary employee is later hired as a regular full-time or regular part-time employee into the same position for which he/she was performing temporary service and when the temporary time has been continuous, without a break in service, the employee will earn time in proportion to the relationship of their annual work schedule to that of a full-time employee, as measured in the employee's prior 12-month period.

I WORKERS' COMPENSATION LEAVE

Workers' Compensation program pays for any reasonable and necessary medical treatment related to a job-related injury or illness and provides compensation for lost wages after the first five calendar days of disability in accordance with MGL ch. 152. Workers' Compensation does not cover routine care and maintenance.

An eligible employee who has a work-related injury or illness is eligible for Workers' Compensation under the Massachusetts Workers' Compensation system. The specific details of this insurance system go beyond the scope of this document. Additional materials are available in the Human Resources Office. Generally, an injured employee will receive 60% of his/her average weekly wage. Compensation for lost wages is provided for any days an employee is disabled after the first five full or partial calendar days.

Note: Employees in the T-plan are not covered by Workers' Compensation. When employees in the MMTP-plan *[are?]* have a work-related injury or illness, the Town pays for reasonable and medically related out-of-pocket expenses not otherwise covered by the employee's health care coverage. Such work-related injury or illness must be reported to the employee's supervisor and/or Human Resources, as described below.

WORK-RELATED INJURIES, REPORTING

It is important that employees who experience a work-related injur[y] *[ies?]* or illnesses report the injury/illness to his/her immediate supervisor as soon as possible either in person or by agent. Such notice should be given whenever possible not less than one-half (1/2) hour before the starting time of the employee's normal tour of duty. Employees or their agent[s] are required to complete an employee injury report form available in the Human Resources Office or their Department within 24 hours. Failure to report a work-related injury/illness in a timely manner could result in denial of coverage.

WORK-RELATED INJURIES, MAKE-UP PAY

Employees with sick leave accruals who are injured on the job and are receiving Worker's Compensation shall be granted such sick leave allowance payment as will, when added to the amount of Worker's Compensation, result in the payment to them of their full salary in accordance with the provisions of M.G.L. Ch. 152.