

PUBLIC HEARING MINUTES

METROPOLITAN CIVIL SERVICE COMMISSION

REVISION TO CIVIL SERVICE RULES AND POLICY APPENDIX 3 – Family Medical Leave Act (FMLA) AND REVISIONS TO FMLA LANGUAGE

The Metropolitan Civil Service Commission met for a public hearing on [February 12, 2008](#) in the Civil Service Conference Room, Suite 163, 222 Building, Third Avenue North, Nashville, Tennessee, at approximately 10:11 a.m.

Commission Members present: Chairman William H. Farmer, Vice-Chairman R. Steve Corbitt, Ms. Ervina Jarrett and D. Billy Sanders.

Other Members present: Ms. Dorothy S. Berry, Director of Human Resources – Secretary to the Commission and Ms. Nicki Eke, Metro Legal Department – Attorney to the Commission

Members not present: Mr. Michael Allen was not able to attend.

Chairman Farmer said the Civil Service Rule/Policy changes submitted by the Human Resources Department, would be addressed by Mr. Les Bowron, HR Manager - Labor Relations.

HUMAN RESOURCES

CS RULES/POLICY

Appendix 3 Family Medical Leave Act (FMLA)

Mr. Bowron said the proposal is to revise Metro's FMLA policy. To do so would require amending current CS Rules and Policies, first by eliminating the current Appendix 3 to the Rules and replacing it with the new Metro FMLA Policy Handbook. Additional amendments would revise the Rules and Policies for clarity and to combine as much of the FMLA information for employees into a more central and organized fashion. An additional amendment is required due to the recent passage of the National Defense Authorization Act which required a late addition to the Handbook involving FMLA benefits related to the Armed Services.

Proposed Revisions to FMLA Language

I. Chapter 4.7 Sick Leave

Up to five days in a calendar year may be used for the illness of an employee's spouse, parent, or child who lives in the employee's household or for whom the employee is the primary caretaker. For approved FMLA leave, there shall be a limit of twenty (20) days of paid sick leave, including the five days just described, that an employee may use to care for an employee's spouse, parent, or child, who lives in the employee's household or for whom the employee is the primary caregiver. (see CSC Policy 4.16)

(The limit shall be twenty (20) days if the requested time off for such relative is approved under F.M.L.A.)

Mr. Bowron said there had been questions as to whether the five days of sick leave used to care for a family member were to be included in the twenty days as referenced in the outline of 4.7.

II. Chapter 4.16 Family Medical Leave Act (Old language in italics, new language in BOLD).

Employees who are eligible for leave under the Family and Medical Leave Act (FMLA) may be granted an appropriate form of leave, paid or unpaid, as established in this chapter. It is the employee's option to "hold back" up to 15 vacation days when applying for leave under the 1993 Family Medical Leave Act. The provision of this law are copied in the fact sheet at the end of these rules (appendix 3).

Employees who are eligible may be granted leave pursuant to the Family and Medical Leave Act (FMLA) Policy Handbook (see Appendix 3 to these Rules), provided to employees when hired, available to employees by contacting their supervisor and/or HR Coordinator or available to employees on the Metro website at www.nashville.gov (Human resources sub-site (see Civil Service Policy 4.16).

Mr. Bowron said the current Appendix 3 would be deleted along with the DOL fact sheet from the website and will be replaced with the FMLA Policy Handbook as the new Appendix 3.

III. Chapter 3.8 Outside Employment

An employee may engage in employment with another organization as long as he or she satisfactorily performs his or her job responsibilities with metro Government. Outside employment is any work paid in addition to the Metro salary, including self-employment. Outside employment must be reported in advance, in writing, to the Appointing Authority and must be in accordance with the following guidelines:

- A. *It must not interfere with the employee's duties*
- B. *It shall not involve a conflict of interest or the appearance of or potential for a conflict of interest.*
- C. *No employee shall use the facilities, equipment, personnel or supplies of Metropolitan Government or its agencies for other than officially approved activities, except to the extent that they are lawfully available to the general public.*

An employee eligible for FMLA leave may engage in outside employment provided:

- A. The employee's health care provider approves the outside employment by certifying that the outside employment will not impede the employee's recovery from or treatment for a serious health condition**
- B. The employee's Human Resources Coordinator approves the outside employment as being consistent with this Section. An employee seeking permission to engage in outside employment while on FMLA leave is responsible for having their health care provider submit a separate letter to their HR Coordinator that satisfies these requirements.**

Mr. Bowron said employer groups who have lobbied Congress and Dept. of Labor regarding FMLA, have implemented a blanket prohibition on outside employment as a method of controlling the abuse of FMLA. The proposed language is a compromise between Metro and the unions.

IV. Chapter 7.5 Outside Employment

Police Department employees (Civilian and Sworn) are allowed to hold outside employment in accordance with departmental regulations. Outside employment in police-related activity is limited to twenty (20) hours per week. Employees working extra duty through the Police Department Secondary Employment Unit shall be compensated according to provisions as set out in Police Department Written Directives.

An employee eligible for FMLA leave may engage in outside employment provided:

- A. the employee's health care provider approves the outside employment by certifying that the outside employment will not impede the employee's recovery from or treatment for a serious health condition and;***
- B. the employment as being consistent with Section 3.8. An employee seeking permission to engage in outside employment while on FMLA leave is responsible for having their health care provider submit a separate letter to their HR Coordinator that satisfies these requirements.***

Mr. Bowron said the Police Department did require a repetition of the amendment

V. Chapter 8.5 Outside Employment

All Fire Department Employees who are employed outside the department must comply with Civil Service rules and Fire Department Guidelines and Procedures pertaining to outside employment.

Mr. Bowron said the Fire Department did not require a repetition of the amendment because it makes reference to the Civil Service Rules.

POLICY 4.16 - Family Medical Leave Act

FMLA will be approved as established by the U.S. Department of Labor according to the Final Regulations, published in April, 1995. Time will be charged to appropriate forms of leave as established in Chapter Four of the Civil Service Rules.

Employees who are eligible may be granted leave pursuant to the Family and Medical Leave Act (FMLA) Policy Handbook, provided to employees when hired, available to employees by contracting their supervisor and/or HR Coordinator, or available to employees on the Metro website at 222.nashville.gov, Human Resources sub-site. NOTE: Also see Appendix three of the Rules for a copy of the Family and Medical Leave Act (FMLA) Policy handbook.

GUIDELINES

The following guidelines shall apply for leave approved under this policy:

1. *The “12 month period” of entitlement is measured forward from the date an employee’s first FMLA leave begins.*

The 12 month period of e entitlement is measured beginning on the first date FMLA leave is taken. An employee’s next period of FMLA leave entitlement would begin the first time FMLA leave is taken after the end of any previous 12 month FMLA period. Example: an employee needs a 23 work week period of leave that began on April 1 of year one. His 12 month period would run from April 1st through march 31st of year two. If the employee did not need leave again until September of year 2, he would be entitled to 12 work weeks through August 31st of Year 3.

2. *Paid leave will be substituted for unpaid leave, so long as accrued time is available according to the rules. This includes sick, vacation, personal injury or administrative leave but not compensatory time. If accrued leave is not sufficient to cover the time requested, it may be interspersed with leave without pay to cover insurance premiums. NOTE: Civil service Rules allow the use of up to 20 days of sick leave for a relative when the leave is approved under FMLA. Such family member must meet the definitions established by the FMLA regulations, including the specifics regarding a minor son or daughter.*

Paid leave including sick, vacation, personal, injury or administrative leave (but not compensatory time) will be substituted for unpaid leave so long as accrued time is available according to the rules pursuant to Civil Service Rules, Chapter 4, section 4.7, for approved FMLA leave, there shall be a limit of twenty (20) days of paid sick leave an employee may use to care for an employee's spouse, parent or child who lives in the employees household or for whom the employee is the primary caregiver. In addition, it shall be the employee's option to "hold back" up to fifteen (15) vacation days from substitution and concurrent counting against their FMLA leave. An employee wishing to hold back vacation days from FMLA leave pursuant to this policy, must enter the number of days they wish to hold back on the requested for Family or Medical Leave form at the time they make application for FMLA leave.

If an employee suffers an injury on duty (IOD) and is placed on In-Line-Of-Duty Injury Leave (see Civil Service Rule – Chapter 4, section 4.8) and the injury qualifies as a serious health condition under the FMLA:

- a. **The employee will receive the paid benefits of IOD leave which will run concurrently with unpaid FMLA leave**
 - b. **Other forms of paid leave (sick, vacation, personal or administrative) will not be substituted, paid or used concurrently with IOD leave.**
 - c. **If available IOD leave is exhausted during a portion of unpaid FMLA leave other forms of accrued paid leave with the exception of sick leave will then be substituted and will run concurrently with unpaid FMLA leave.**
 - d. **The counting of FMLA leave will begin at the time IOD leave is approved and will be counted concurrently with FMLA leave from that date forward.**
3. FMLA and maternity leave allowed by State law will run concurrently.
 4. Eligibility for a husband and wife both employed by Metro, even in different departments, is aggregate (i.e., not 12 weeks each), for time taken for childbirth, placement or the **TO** care for an employee's parent, *but not for other reasons*.

Mr. Bowron said the changes to the policy will result in clear concise guidelines for employees, HR Coordinators and supervisors who are dealing with FMLA leave issues. He also explained the Metro FMLA Policy Handbook and discussed a Frequently Asked Questions section that will be available on the web for the benefit of employees with FMLA issues.

Chairman Farmer thanked Mr. Bowron for his detailed overview and asked if there was anyone from the public that wished to speak on the matter.

The following persons came forward to address concerns with the Commission about Injury on Duty leave (IOD) and Family Medical Leave Act (FMLA) leave.

- Benny Goolsby (SEIU – Local 205)
- Danny Hale (Fraternal Order of Police)
- Deputy Chief Steve Anderson (Police Dept)
- Doug Conquest (Nashville Firefighters Association)
- B.R. Hall (Retired Fire Representative)

Chairman Farmer asked if departments were tracking IOD trends. Mr. Bowron said it is done on the national level. However, Metro is looking into implementing a tracking system for Metro employees. The Commission said that the tracking feature is important.

Vice-Chairman Corbitt asked Mr. Bowron to check Knoxville, Memphis, Chattanooga or any other comparable city to see how they administer the interplay between IOD and FMLA leave.

With no additional questions raised by the Commission or comments from the public, the meeting adjourned at 11:08 a.m.

ATTEST:

APPROVED:

***Ms. Dorothy S. Berry, Director
Human Resources Department
Secretary to Civil Service Commission***

***William H. Farmer, Chairman
Civil Service Commission***