

AGENDA ITEM

May 17, 2022

Subject: Personnel Code – Sick Leave

Department: Administration

I have tasked the Human Resources Department and the Employee Relations Committee to review and suggest updates to our Personnel Code. Collectively, we have been working on this project since 2019.

This Ordinance will amend the current Sick Leave policy removing it from the Code and adding the updated policy to the Personnel Manual.

Manager Notes:

- Attached Exhibits:
 - Removing Personnel Policies for City Ordinances Opinion Letter – Matthew Gist, Ensz & Jester.
 - Current Sick Leave Policy
 - Revised Sick Leave Policy.

BILL NO. 2022-045

ORDINANCE NO.

A GENERAL ORDINANCE OF THE CITY OF NEVADA, MISSOURI, AMENDING SECTION 25-4.104 OF THE CODE OF THE CITY OF NEVADA MISSOURI.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEVADA, MISSOURI THAT:

Section 1. Section 25-4.104 of the code of the City of Nevada is hereby amended as:

Sec. 25-4.104. Sick Leave.

The City Manager shall hereby be authorized and directed to prescribe such rules, regulations, policies and procedures ("regulations") not inconsistent with the provisions of this article as the City Manager deems suitable and necessary to provide for employee benefits, including without limitation regulations concerning sick and/or personal leave, and special leaves of absence, with or without pay, or with reduced pay, and the accumulation of sick and/or personal leave.

Section 2. Effective Date. This ordinance will be in full force and effect upon its passage and approval.

PASSED, APPROVED and ADOPTED by the City Council of the City of Nevada, Missouri, this _____ day of June, 2022.

CITY OF NEVADA, MISSOURI

**(SEAL)
ATTEST**

George Knox, Mayor

Stephanie M. Martin, City Clerk

December 20, 2019

Mr. Mark Mitchell
Interim City Manager
City of Nevada
110 S. Ash Street
Nevada, Missouri 64722

Re: Removing Personnel Policies for City Ordinances

Dear Mr. Mitchell:

Recently, I was informed that the City was contemplating removing the City's personnel code from the City's ordinances in favor of an Employee Handbook. As part of the City's consideration, I was asked to provide advice as to the advisability of that course of action. It is my opinion that removing the personnel code from the City's ordinances in favor of an Employee Handbook or Manual would benefit the City.

First, having personnel policies within municipal ordinances makes it difficult for City Managers to adapt policies based on changes in technology, workplace issues, or any number of unanticipated occurrences requiring revision to the policies. In the event a policy needs to be changed, it requires the action of the governing body, which often requires a significant amount of time to accomplish.

Second, no City official—whether an employee, supervisor, or elected official—is perfect and, as a result, whether intended or not, policies will not always be completely known, understood, and/or followed. If the policies are also City ordinances and, therefore, the law, the failure to follow them *may* create more significant problems than if the same policies were in an Employee Handbook or Manual. This is particularly true as it relates to disciplinary actions, and the procedure relating to discipline.

Instead of having the policies within the City's ordinances, I would recommend one ordinance authorizing the City Manager and/or Mayor to create and approve an Employee Manual/Handbook. This provides the flexibility for policies to be changed without the need for a vote of the governing body. But, if the governing body takes issue with a policy that has been implemented, the same could be addressed the governing body's oversight of the City Manager.

Mr. Mark Mitchell
Interim City Manager
December 20, 2019
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Should you have any questions, please feel free to contact me at 816.474.8010.

Sincerely,

/s/ Matthew J. Gist

Matthew J. Gist

MJG/

Sec. 25-4.104. Sick leave.

- (a) Regular employees will earn sick leave at the rate of eight hours per each full calendar month of service. Fifty-six-hour employees will earn 12 hours per each full calendar month of service. Sick leave will accrue from the date of employment as a regular employee, and it may be taken after the first month of service. Sick leave may not be taken before it is earned, except as authorized in unusual situations by the city manager. Twenty calendar days or more of employment, for employees entering or leaving the city service, in the beginning or ending month, will be considered as one full month for sick leave purposes, and less than 20 calendar days will be disregarded.
- (b) Sick leave may be taken only for the following reasons: Personal illness, pregnancy, non-occupational injury, exposure to a contagious disease that might jeopardize the health of others, or illness in the immediate family. For the purposes of these regulations, the term "immediate family" includes only those family members living in the employee's household, except children outside the household will be at the city manager's discretion. Employment-related sickness and injuries may be covered by the state workers' compensation law (RSMo § 287.010 et seq.).
- (c) The employee will notify the appropriate supervisor before taking any sick leave, and provide such reasonable verification during illness as may reasonably be requested. Situations where such notification is not provided shall be considered an unexcused absence (see subsection 25-8.103(a)(22)). An employee who is aware that sick leave will be required in the near future will notify the appropriate supervisor as soon as possible.
- (d) Fifty-six-hour personnel will be charged three days (eight hours each) of such leave for missing one 24-hour shift, but will not be charged more than five days (40 hours) of sick leave during any period of seven calendar days.
- (e) Unless excused by the department head, an employee taking sick leave will be required to furnish a medical certificate verifying illness, if such verification is requested by the appropriate supervisor or department head.
- (f) Improper use of sick days will result in discharge.
- (g) Employees may accumulate up to 1,040 hours of sick leave. Hours accumulated by employees prior to September 17, 1996, will remain as an entitlement.
- (h) Upon retirement as specified in subsections 25-4.109(c)(1)—(6), an employee with at least ten years of continuous service will be compensated at the final rate of pay for one-half of the sick leave earned and not taken, up to a maximum of 480 hours compensation. Hours accumulated by employees prior to September 17, 1996, will remain as an entitlement unless reduced by using sick leave. Upon such reduction, the reduced balance will remain as an entitlement.
- (i) Upon written approval by the city manager, regular, full-time employees may donate accumulated sick leave to other regular full-time employees in an amount

not to exceed 24 hours per year per donor. Employees are eligible after two years of employment to receive donated sick leave not to exceed 40 hours per year per receiver.

- (j) Sick leave and accumulation of sick leave is a gratuity provided by the City of Nevada for its employees to accommodate genuine illness. It is forfeited if not needed for genuine reasons during the period of employment. Payment for accumulated sick leave as allowed by this Code, is authorized as a gratuity when an employee actually retires. No payment for accumulated sick leave is authorized upon any other form of separation from service. Such payment is also considered on the availability of budgeted funds therefore.

(Code 1998, § 25-4.104; Ord. No. 3495; Ord. No. 3850, § 5, 1-19-1993; Ord. No. 3920, § 3, 1-18-1994; Ord. No. 4077, § 1, 10-17-1995; Ord. No. 4146, § 1-3, 9-17-1996; Ord. No. 4228, § 1, 10-21-1997; Ord. No. 7833, § 1, 6-19-2012; Ord. No. 7987, § 7, 7-1-2014; Ord. No. 8077, § 1, 11-17-2015)

Revised
Sick Leave Policy

Sec. 25-4.104. Sick leave.

(a) Permitted Uses

1. Employee's Medical Condition. Sick leave may be taken when an employee is prevented from performing duties because of sickness, injury, or confinement due to pregnancy
2. Care of Immediate Family Who Reside in the Same Household. Sick leave may be taken when an employee needs to care for an immediate family member that lives in the same household of a of the City employee who is actually ill because of sickness, injury, or confinement due to pregnancy.
3. Care of Family Who Do Not Reside in the Same Household. An employee's sick leave used to care for family who do not reside in the same household is strictly limited to the time necessary to provide care to the employee's spouse, child or parent who needs such care.
4. Sick Leave may not be taken before it is earned, except as authorized in unusual situations by the City Manager.
5. Employment-related sickness and injuries may be covered by the state workers' compensation law (RSMo § 287.010 et seq.).
6. The city will comply with the Family and Medical Leave Act and Regulations issued pursuant thereto by the United States Department of Labor (see subsection 25-5.107).
7. An Exception of Policy for the use of sick leave will be at the City Manager's discretion.

(b) Definitions

1. **Immediate Family Member** is defined as those individuals who live in the same household as the employee with any of the following relationships to the employee:
 - i. Spouse, and parents of spouse thereof;
 - ii. Sons and daughters, and spouses thereof;

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- iii. Parents of employee, and spouses thereof;
 - iv. Brothers and sisters, and spouses thereof;
 - v. Grandparents and grandchildren, and spouses thereof;
 - vi. Domestic partner and parents thereof, including domestic partners of any individual in "I" through "V" of this definition; and
 - vii. Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

2. **Parent** is defined as:

- i. 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;
- ii. 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;
- iii. 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
- iv. A parent (as described in the above subparagraphs) of an employee's spouse or domestic partner

3. **Child** is defined as:

- i. A biological, adopted, step, or foster son or daughter of the employee;
- ii. 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;
- iii. 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
- iv. A son or daughter (as described in the above subparagraphs) of an employee's spouse or domestic partner.

4. **Domestic Partner** is defined as an adult in a committed relationship with another adult, including both same sex and opposite-sex relationships.

5. **Loco Parentis** is defined as a person who has day-to-day responsibilities to care for, or financially support, the child.

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6. **Sickness or Injury**, for purposes of using sick leave, includes an absence required for medical, dental, or optical examination or treatment; or for physical therapy and laboratory work or tests as ordered by a licensed practitioner.
 7. **Family and Medical Leave Act**. The above definitions may not apply to the Family and Medical Leave Act (FMLA). The situations in which an employee is entitled to 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 (see subsection 25-5.107).

(c) Employee Responsibilities

1. The employee will notify the appropriate supervisor before taking any sick leave, and provide such reasonable verification during illness as may reasonably be requested. Situations where such notification is not provided shall be considered an unexcused absence (see subsection 25-8.103(a)(22)).
2. An employee who is aware that sick leave will be required in the near future will notify the appropriate supervisor as soon as possible.
3. Unless excused by the department head, an employee taking sick leave will be required to furnish a medical documentation from a healthcare provider verifying illness.

(d) Accrual and Credit

1. Regular employees will earn sick leave at the rate of eight hours per each full calendar month of service. Fifty-six-hour employees will earn 12 hours per each full calendar month of service. Sick leave will accrue from the date of employment as a regular employee, and it may be taken after the first month of service. Twenty calendar days or more of employment, for employees entering or leaving the city service, in the beginning or ending month, will be considered as one full month for sick leave purposes, and less than 20 calendar days will be disregarded.
2. Fifty-six-hour personnel will be charged three days (eight hours each) of such leave for missing one 24-hour shift, but will not be charged more than five days (40 hours) of sick leave during any payroll week.

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3. Employees may accumulate up to 1,040 hours of sick leave.
 4. Upon retirement as specified in subsections 25-4.109(c)(1)—(6), an employee with at least ten years of continuous service will be compensated at the final rate of pay for one-half of the sick leave earned and not taken, up to a maximum of 480 hours compensation.
 5. Upon written approval by the city manager, regular, full-time employees may donate accumulated sick leave to other regular full-time employees in an amount not to exceed 24 hours per year per donor. Employees are eligible after two years of employment to receive donated sick leave not to exceed 40 hours per year per receiver.
 6. Sick leave and accumulation of sick leave is a gratuity provided by the City of Nevada for its employees to accommodate genuine illness. It is forfeited if not needed for genuine reasons during the period of employment. Payment for accumulated sick leave as allowed by this Code, is authorized as a gratuity when an employee actually retires. No payment for accumulated sick leave is authorized upon any other form of separation from service. Such payment is also considered on the availability of budgeted funds therefore.

(e) Sick Leave Abuse

1. An employee is responsible for the appropriate use of sick leave. Sick leave abuse occurs when an employee uses sick leave for unauthorized purposes or misrepresents the actual reason for charging an absence to sick leave. Abuse may also occur when an employee establishes a pattern of sick leave usage over a period of time such as the day before or after a holiday, on Mondays and Fridays, after paydays, any one specific day, half-day, or a continued pattern of maintaining zero or near zero leave balances. Improper use of sick days will result in discharge.