



Legislation Details (With Text)

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|------------------------|--|----------------------|---|
| File #: | 2013-0196 | Version: | 1 |
| Type: | Ordinance | Status: | Lapsed |
| File created: | 4/22/2013 | In control: | Government Accountability and Oversight Committee |
| On agenda: | | Final action: | 2/3/2014 |
| Enactment date: | | Enactment #: | |
| Title: | AN ORDINANCE providing for additional leave benefits to care for a same-sex spouse; and amending Ordinance 12014, Section 21, as amended, and K.C.C. 3.12.220. | | |
| Sponsors: | Joe McDermott | | |
| Indexes: | | | |
| Code sections: | 3.12.247 - . | | |
| Attachments: | | | |

| Date | Ver. | Action By | Action | Result |
|-----------|------|----------------------------------|-------------------------|--------|
| 4/22/2013 | 1 | Metropolitan King County Council | Introduced and Referred | |

Clerk 04/16/2013

AN ORDINANCE providing for additional leave benefits to care for a same-sex spouse; and amending Ordinance 12014, Section 21, as amended, and K.C.C. 3.12.220.

PREAMBLE:

1. To attract the best employees, King County seeks to offer robust workplace benefits and fair treatment for all of its employees.
2. Studies have found that benefits packages, especially health-care and retirement benefits, are a direct contributor to employee loyalty, and that satisfied and engaged workers are more productive and perform better than less-satisfied colleagues.
3. The federal Defense of Marriage Act forces employers to consider the gender of the spouses of lawfully married employees when determining the scope and manner of benefits that may be extended to those spouses and the children of those spouses.

4. The Defense of Marriage Act provides discriminatory treatment in times of family illness. If an employee's different-sex spouse becomes seriously sick or injured, federal law permits him or her up to twelve work weeks of unpaid, protected leave to care for his or her spouse; an employee with a same-sex spouse is not entitled to receive the same protection under federal law.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. Ordinance 12014, Section 21, as amended, and K.C.C. 3.12.220 are each hereby amended to read as follows:

A. Except for employees covered by subsection G. of this section, employees eligible for leave benefits shall accrue sick leave benefits at the rate of 0.04616 hours for each hour in pay status exclusive of overtime up to a maximum of eight hours per month; except that sick leave shall not begin to accrue until the first of the month following the month in which the employee commenced employment. No adjustment to reduce sick leave accruals for furloughed employee shall be made as a result of a budgetary furlough. The employee is not entitled to sick leave if not previously earned.

B. During the first six months of service, employees eligible to accrue vacation leave may, at the appointing authority's discretion, use any accrued days of vacation leave as an extension of sick leave. If an employee does not work a full six months, any vacation leave used for sick leave must be reimbursed to the county upon termination.

C. For employees covered by the overtime requirements of the Fair Labor Standards Act, sick leave may be used in one-half hour increments, at the discretion of the appointing authority.

D. There shall be no limit to the hours of sick leave benefits accrued by an eligible employee.

E. Separation from or termination of county employment except by reason of retirement or layoff due to lack of work, funds, efficiency reasons or separation for nondisciplinary medical reasons, shall cancel all sick leave accrued to the employee as of the date of separation or termination. Should the employee resign in good

standing, be separated for nondisciplinary medical reason or be laid off, and return to county employment within two years, accrued sick leave shall be restored, but the restoration shall not apply where the former employment was in a term-limited temporary position.

F.1. Except for employees covered by subsection G. of this section, employees eligible to accrue sick leave and who have successfully completed at least five years of county service and who retire as a result of length of service or who terminate by reason of death shall be paid, or their estates paid or as provided for by Title 11 RCW, as applicable, an amount equal to thirty-five percent of their unused, accumulated sick leave multiplied by the employee's rate of pay in effect upon the date of leaving county employment less mandatory withholdings. This provision is predicated on the requirement that, except with the written approval of the executive, the position, if vacated by a nonrepresented employee, shall not be filled until salary savings for the position are accumulated in an amount sufficient to pay the cost of the cash out. For the purposes of this subsection F.1, "retire as a result of length of service" means an employee is eligible, applies for and begins drawing a pension from the Law Enforcement Officers and Firefighters (LEOFF), Public Employees' Retirement System (PERS), Public Safety Employees' Retirement System (PSERS) or the city of Seattle Retirement Plan immediately upon terminating county employment.

2.a. In lieu of the remuneration for unused sick leave at retirement, the manager of the human resources division, or the manager's designee, may, with equivalent funds, provide eligible employees with a voluntary employee beneficiary association plan that provides for reimbursement of retiree and other qualifying medical expenses. Under K.C.C. 3.12.190.H., in lieu of the remuneration for fifty percent of unused vacation leave at retirement, the manager may also fund the voluntary employee beneficiary association plan.

b. The manager shall adopt procedures for the implementation of all voluntary employee beneficiary association plans. At a minimum, the procedures shall provide that:

(1) each group of employees hold an election to decide whether to implement a voluntary employee beneficiary association plan for a defined group of employees. The determination of the majority of voting

employees in a group shall bind the remainder. Elections for represented employees shall be conducted by the appropriate bargaining representative. Elections for nonrepresented employees shall be conducted in accordance with procedures established by the manager;

(2) the manager has discretion to determine the scope of employee groups voting on whether to adopt a voluntary employee beneficiary association plan. The manager shall consult with bargaining representatives and elected officials in determining the scope of voting groups;

(3) any voluntary employee beneficiary association plan implemented in accordance with this subsection F.2. complies with federal tax law. Disbursements in accordance with this subsection F.2. shall be exempt from withholdings, to the extent permitted by law; and

(4) employees shall forfeit remuneration under subsections F.1. and 2. of this section if the employee belongs to a group that has voted to implement a voluntary employee beneficiary association plan and the employee fails to execute forms that are necessary to the proper administration of the plan within twelve months of retirement by reason of length of service, as defined in subsection F.1. of this subsection.

G. Uniformed employees covered under the LEOFF Retirement System-Plan I shall apply for disability retirement under RCW 41.26.120.

H.1. An employee must use all of his or her accrued sick leave and any donated sick leave before taking unpaid leave for his or her own health reasons. If the injury or illness is compensable under the county's workers compensation program, then the employee has the option to augment or not augment time loss payments with the use of accrued sick leave. A furloughed employee shall not be eligible to take or be paid for sick leave in lieu of taking a budgetary furlough day.

2. For a leave for family reasons, the employee shall choose at the start of the leave whether the particular leave would be paid or unpaid; but when an employee chooses to take paid leave for family reasons he or she may set aside a reserve of up to eighty hours of accrued sick leave. A furloughed employee who is on county family medical leave as provided for in this section shall retain county benefits during furlough days.

3. An employee who has exhausted all of his or her sick leave may use accrued vacation leave before going on leave of absence without pay, if approved by his or her appointing authority. A furloughed employee shall not be eligible to take or be paid for vacation leave in lieu of sick leave in lieu of taking a furlough day.

Sick leave shall be used for the following reasons:

a. the employee's bona fide illness, but an employee who suffers an occupational illness may not simultaneously collect sick leave and worker's compensation payments in a total amount greater than the net regular pay of the employee;

b. the employee's incapacitating injury, but:

(1) an employee injured on the job may not simultaneously collect sick leave and worker's compensation payments in a total amount greater than the net regular pay of the employee, though an employee who chooses not to augment his or her worker's compensation time loss pay through the use of sick leave shall be deemed on unpaid leave status;

(2) an employee who chooses to augment workers' compensation payments with the use of accrued sick leave shall notify the safety and workers' compensation program office in writing at the beginning of the leave;

(3) an employee may not collect sick leave and workers' compensation time loss payments for physical incapacity due to any injury or occupational illness that is directly traceable to employment other than with the county;

c. the employee's exposure to contagious diseases and resulting quarantine;

d. a female employee's temporary disability caused by or contributed to by pregnancy and childbirth;

e. the employee's medical or dental appointments but only if the employee's appointing authority has approved the use of sick leave for those appointments;

f. to care for the employee's child as defined in this chapter if the child has an illness or health condition which requires treatment or supervision from the employee; or

g. to care for other family members, if:

(1) the employee has been employed by the county for twelve months or more and has worked a minimum of nine hundred ten hours for a thirty-five-hour employee or one thousand forty hours for a forty-hour employee in the preceding twelve months;

(2). the family member is the employee's spouse or domestic partner, the employee's child, a child of the employee's spouse or domestic partner, the parent of the employee, employee's spouse or domestic partner or an individual who stands or stood in loco parentis to the employee, the employee's spouse or domestic partner; and

(3). the reason for the leave is one of the following:

i. the birth of a son or daughter and care of the newborn child, or placement with the employee of a son or daughter for adoption or foster care, if the leave is taken within twelve months of the birth, adoption or placement;

ii. the care of the employee's child or child of the employee's spouse or domestic partner whose illness or health condition requires treatment or supervision by the employee; or

iii. care of a family member who suffers from a serious health condition.

I. An employee may take a total of up to eighteen work weeks unpaid leave for his or her own serious health condition, and for family reasons as provided in subsection H.3.f. and g. of this section, combined, within a twelve-month period. The leave may be continuous, which is consecutive days or weeks, or intermittent, which is taken in whole or partial days as needed. Intermittent leave is subject to the following conditions:

1. When leave is taken after the birth or placement of a child for adoption or foster care, an employee may take leave intermittently or on a reduced leave schedule only if authorized by the employee's appointing authority;

2. An employee may take leave intermittently or on a reduced schedule when medically necessary due

to a serious health condition of the employee or a family member of the employee; and

3. If an employee requests intermittent leave or leave on a reduced leave schedule under subsection I.2. of this section that is foreseeable based on planned medical treatment, the appointing authority may require the employee to transfer temporarily to an available alternative position for which the employee is qualified and that has equivalent pay and benefits and that better accommodates recurring periods of leave than the regular position of the employee.

J. Employees with same-sex spouses shall be entitled to leave and job protection benefits as afforded to opposite-sex married spouses under the federal Family Medical Leave Act.

K. Use of donated leave shall run concurrently with the eighteen work week family medical leave entitlement.

~~((K-))~~ L. The county shall continue its contribution toward health care benefits during any unpaid leave taken under subsection I. of this section.

~~((L-))~~ M. Department management is responsible for the proper administration of the sick leave benefit. Verification from a licensed health care provider may be required to substantiate the health condition of the employee or family member for leave requests.

~~((M-))~~ N. An employee who returns from unpaid family or medical leave within the time provided in this section is entitled, subject to bona fide layoff provisions, to:

- 1.a. the same position he or she held when the leave commenced; or
- b. a position with equivalent status, benefits, pay and other terms and conditions of employment; and
2. The same seniority accrued before the date on which the leave commenced.

~~((N-))~~ O. Failure to return to work by the expiration date of a leave of absence may be cause for removal and result in termination of the employee from county service.

SECTION 2. Section 1 of this ordinance takes effect January 1, 2014.