



## ADMINISTRATIVE POLICIES AND PROCEDURES

Policy: Sick Leave and Investigation of Sick Leave Abuse Policy

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Prepared By: HR Department

Approved By: City Manager

Legal Review: Elizabeth Ruhmann

### **POLICY: SICK LEAVE USE AND INVESTIGATION OF SICK LEAVE ABUSE POLICY**

Sick leave is a paid absence from duty. An employee is entitled to use sick leave for personal medical needs and care of a family member with a serious health conditions. All regular and probationary employees shall accrue sick leave in accordance with City rules and regulations.

Sick leave is a privilege, and it is in the employee's best interest to manage their sick leave usage appropriately. It is a common misconception that just because you have a certain amount of sick leave hours accrued, you have the right to take those hours for any reason. However, sick leave can only be used for specific reasons, including doctor's appointments, dental visits, and absences due to illness or injury. Employees are encouraged to carefully consider their use of sick leave. Failure to have a sufficient "bank" of accrued sick leave hours may result in unpaid leave.

As a public agency, the City of El Paso has a responsibility to our citizens to ensure that taxpayer funds are used appropriately, and that we are working as efficiently, effectively, and productively as possible on their behalf. Inappropriate use of sick leave is essentially a misuse of public funds. Public agencies have an obligation to closely monitor and address sick leave usage to ensure that leaves are being used correctly, and that productivity does not suffer as a result of excessive or inappropriate absences from the workplace.

The Human Resources Director or Department Head or his or her designee is authorized to investigate an employee's record of sick leave or emergency leave (collectively referred to as "sick leave") usage when the employee has either a low sick leave balance or seems to have established a pattern of usage.

## **I. GUIDELINES FOR USE OF SICK LEAVE**

- A. Regular attendance is considered to be an essential function of every City employee's job and employees are expected to report to work as scheduled. Eligible employees shall be entitled to accrue sick leave in accordance with the Civil Service Rules and Regulations (the "Rules") and Ordinance 8064, and may use their accrued sick leave pursuant to the Rules, this policy and any applicable department-specific mandates.
- B. Department Heads, when approved by the City Manager or designee, may establish more relaxed or more stringent sick leave regulations as deemed necessary and appropriate based on the nature of the department's operations and needs. Any employee who is aggrieved by such individual department regulations may apply for relief pursuant to the appeal process set forth in this policy.
- C. For absences of three or more working days, an employee will be required to submit a medical certification from the attending healthcare provider upon return to work. It is within the discretion of the employee's Department Head to require documentation concerning illness resulting in absences of less than three days.
- D. No sick leave of three (3) or more consecutive work days will be granted to any person without a certificate verifying that the leave is necessary for medical reasons. Additionally, no sick leave will be granted to any person, without a certification, on the last scheduled work day before a city designated holiday; on the scheduled work day of a city designated holiday; or on the first scheduled work day after a city designated holiday. Such certificate must be from a health care provider, and verifying that the leave is necessary for medical reasons.
- E. Employees with inadequate sick leave balances will be coded Absent-Without-Lie (AWO), and such absences may be considered unexcused for purposes of potential disciplinary action. An employee may appeal to the Department Head the failure or refusal of a supervisor to grant a request for sick leave pay. AWO may be changed to LWO if the employee appeals pursuant to this policy and provides the appropriate medical certification.
- F. Employees on AWO status, or who routinely exhaust their sick leave balances or whose behavior gives rise to the suspicion that sick leave is being used inappropriately, including an attempt to use "vacation in lieu of sick leave" or requesting leave without pay, may be required to submit a medical certification from an attending healthcare provider before paid sick leave is granted and may be subject to having their sick leave usage investigated by the Department Head, as described below.

- G. Employees on Family and Medical Leave Act (FMLA) leave, including FMLA intermittent leave, will be subject to the City's FMLA Leave of Absence Policy.

## **II. SICK LEAVE USE PROCEDURES:**

- A. To use sick leave with pay, employees must follow the sick leave notification procedure for their respective department. Departmental procedures for notification that sick leave benefits need to be used may vary, so it is the responsibility of the employee to become familiar with the particular procedures of their department.
- B. Employees need to receive approval from their supervisor to charge absences against accumulated sick leave when they have sufficient sick leave balances. "Sufficient sick leave balance" means having enough sick leave hours accumulated to cover the hours the employee is absent.
- C. Employees are responsible for monitoring and being aware of their sick leave balance. If an employee does not have a sufficient sick leave balance to cover all of the hours the employee is absent in a scheduled work day, the employee will be coded AWO for the entire day's absence, even if the employee has sick leave hours to cover a portion of the day's absence.
- D. An employee will not be allowed to use vacation leave in lieu of sick leave if the employee has insufficient sick leave balances. Vacation in lieu of sick leave will be permitted for employees on a protected leave status such as Family and Medical Leave (FMLA) leave, or while absent due to a compensable claim under the Texas Workers Compensation Act.

## **III. APPEAL PROCEDURES:**

- A. Employees who believe they have been improperly denied sick leave may appeal the coding of the AWO to their Department Head in writing within fourteen (14) calendar days from the denial. The employee will be required to provide the appropriate medical documentation demonstrating the medical need for the employee's absence from work. The documentation must state that the employee was medically required to be absent from work and note the time period. A medical appointment alone is not adequate to cover the entire day's absence; only the office visit and reasonable travel time will be allotted. If the employee's appeal is approved, they will be coded accordingly (Sick Leave Pay (SLP or Leave-Without-Pay (LWO)) and the necessary pay adjustments will be made.

- B. If the employee wishes to appeal the Department Head's decision, the employee may appeal to the Human Resources Director within five (5) calendar days of the notification of the denial from the Department Head using the City's "Employee's Appeal of Sick/Vacation Leave Denial" form. The Human Resources Director will make a final decision and communicate this to the employee within ten (10) calendar days of the receipt of the appeal. The decision of the Human Resources Director is final and there are no other appeals.

#### **IV. INVESTIGATION OF POTENTIAL SICK LEAVE ABUSE**

- A. **Reasons and circumstances to inquire into or investigate sick leave use may include, but are not limited to, the following:**

1. Habitual use of sick leave in single or partial day increments, without valid or current medical documentation.
2. Sick leave consistently taken on Monday, Thursday (four-day work week) or Friday (five-day work week).
3. A pattern of using sick leave on the last scheduled work day before or first scheduled work day after a City holiday or a scheduled day off.
4. A pattern of using sick leave to avoid working overtime or holiday work shifts.
5. Sick leave consistently taken the same time of year.
6. Sick leave taken after a vacation request was denied.
7. Sick leave consistently taken when difficult assignments or projects are scheduled or due.
8. Sick leave taken after discipline for a performance matter is issued.
9. Sick leave consistently taken when supervisor is on vacation.
10. Using 40 or more hours of unplanned sick leave during a quarter of a calendar year for two (2) or more consecutive quarters, without current medical documentation.

- B. **Investigation Procedures:**

1. The Department Head or designee with the responsibility of granting sick leave will monitor sick leave usage and identify any detectable patterns or concerns related to sick leave usage.
2. Any known mitigating circumstances will be identified. Mitigating factors may include leave taken under FMLA, medical/dental procedures or miscoded hours.
3. As appropriate, an investigation or inquiry into the use of sick leave will be initiated, which may include a discussion with the employee.
4. After the investigation, the Department Head will determine if there is reason to believe that the employee is abusing or misusing their sick leave accrual benefits.

5. If abuse of sick leave is reflected by the investigation, the employee will be informed in writing of the patterns and specific concerns identified. The employee may be required to provide medical documentation for any subsequent use of sick leave, for a determined period of time. The employee will be advised that his or her sick leave usage will continue to be monitored, and that continued absences may result in disciplinary action up to and including termination.
6. If there is no evidence that the sick leave is being abused, the employee will be informed.

APPROVED BY:

  
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TOMAS GONZALEZ, City Manager

DATE: March 22, 2016

