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Career Service Board Meeting #2379

Minutes

Thursday, March 19, 2020, 9:00am

Conference Call

Karen DuWaldt (Co-Chair)

Neil Peck (Co-Chair)

David Hayes

LaNee Reynolds

Patricia Barela Rivera

- I. Opening:** *Meeting was called to order at 9:03am. Bob Wolf, City Attorney to the Board, noted since this was a conference call meeting, a roll call of participants should be stated for the record.*

All members of the Career Service Board were present, as was Mr. Wolf. Other attendees present were:

Karen Niparko, Executive Director, Office of Human Resources

Heather Britton, Director of Benefits & Wellness

George Branchaud, Operations Coordinator

- 1. Approval of the Agenda for the March 19, 2020 Board Meeting.**
The Board unanimously approved the agenda for the March 19, 2020 meeting.
- 2. Approval of the Minutes for the February 20, 2020 Board Meeting.**
The Board unanimously approved the minutes for the February 20, 2020 meeting.

- II. Board Comments:** *Board Member David Hayes asked for an update on the issue of back-pay for the Municipal Public Defenders that was raised in the board meeting held on February 20th. Mr. Hayes noted the Board had asked Mr. Wolf to inquire as to whether the Public Defenders were owed retroactive pay under the "like pay" provisions of the Charter.*

Mr. Wolf responded he consulted with other parties in the City Attorney's Office, who stated the employees in question are not entitled to retroactive pay. Mr. Hayes commented he felt this was the appropriate decision.

- III. Public Comments:** *None*

- IV. Public Hearing:** *No Notices Today*

V. Director's Briefing:

1. Paid Family Leave Proposal – Heather Britton

Heather Britton, Director of Benefits & Wellness, presented a proposal to create a Paid Family Leave benefit for city employees.

Ms. Britton stated the Mayor had requested a paid family leave proposal, which the Office of Human Resources (“OHR”) worked together with the Budget & Management Office (“BMO”) to create options for consideration. BMO presented a complex option to the Mayor’s Office last year, which was put on-hold as the state legislature began debating a mandated paid family leave law. The state’s proposal ultimately failed to gain traction with all of the necessary stakeholders and is suspended at this time.

Ms. Britton noted OHR believes the proposal reflects prevailing practice, which is defined as 50% of surveyed comparators, as more hiring candidates expect a paid family leave policy from potential employers, and city employees have been asking for this benefit for a number of years.

The city modified sick and vacation accruals for employees in 2010, which grandfathered current employees, and provided new hires would receive paid time off (“PTO”) up to a maximum accrual of 400 hours.

The Family Medical Leave Act (“FMLA”) allows employees to take unpaid time off after one year of service and 1,250 hours worked for approved medical reasons, as well as the care of a parent, child, or spouse, up to 460 hours annually. Ms. Britton noted many PTO covered employees exercising FMLA will have some unpaid time off.

Ms. Britton stated approximately 33% of the city’s full-time employees still have separate banks for sick and vacation time, which continues to decrease due to attrition. Employees can donate PTO, sick, or vacation time to fellow employees in their agency who have exhausted their banks while on FMLA. The sick and vacation eligible employees comprise 75% of donated leave, which was approximately 7,500 hours in 2019.

Ms. Britton noted the city provides short-term disability pay (at 70% of salary), through Standard Insurance after a two week waiting period, for employees taking FMLA due to medical conditions. The city provides this benefit at no charge to PTO covered employees, while sick and vacation covered employees have the option to pay for the additional coverage due to having more generous paid leave benefits. Ms. Britton noted PTO covered employees would have to take no time off for three years to build a bank of 400 hours.

Under the most common situation (birth of a child), a female employee is eligible for up to 480 hours of covered leave. The city’s short-term disability policy covers 70% of the employee’s pay for 112 hours for a natural birth, or 168 hours for a c-section birth. A PTO covered employee would need to have 312 to 368 hours available to provide a fully paid FMLA leave, while a sick/vacation covered employee would need 312 to 480 hours, depending on whether they have chosen short-term disability as part of their benefits.

For a personal medical leave, PTO covered employees would receive up to 280 hours of short-term disability coverage, with the balance of 200 hours being covered by their accrued time off. Sick/vacation employees would need 200 to 340 hours in their bank, depending on whether they choose short-term disability coverage, or 480 hours if not.

The new proposal would introduce a new Paid Family Medical Leave bank of hours (“PFML”). Upon qualifying for an approved FMLA leave (continuous or intermittent), and after a two week waiting period, employees could use up to 200 hours per year for self-care (five weeks), or 280 hours for care of a family member (seven weeks).

An employee’s salary could continue to be offset by short-term disability and/or sick, vacation, PTO, or donated leave. The net effect for employees under the new policy would be a maximum of 120 hours (three weeks) available to provide fully paid leave in the event of caring for a family member.

Ms. Britton noted the 280 hours is provided annually on a “use it or lose it” basis and it does not carryover to subsequent years or accumulate. The two week waiting period is mandatory and consistent with FMLA deadlines and short-term disability policy, however, it is only necessary once in a year. This comes into play when employees take intermittent leave, for example, the care of a loved one.

The new policy would not apply to sworn employees (police, fire, sheriff) who are covered by a collective bargaining agreement governing their paid leave benefit, or on-call employees as they are not eligible. Ms. Britton noted next steps were to bring the proposal before the City Council for approval in April, with a desired implementation of July 1st, however, with the current crisis, it may be delayed to later in the year.

Board Member David Hayes asked if employees are able to use the new paid leave to supplement the 70% short-term disability pay, bringing them to full pay, to which Ms. Britton replied in the affirmative. Ms. Britton also noted employees will be able to use the paid medical leave hours first, before using their PTO, sick, or vacation time accrued.

Mr. Hayes asked if there are any concerns with the additional administration burden of the new leave in terms of tracking requirements and compliance.

Karen Niparko, Executive Director of OHR, replied they were clear with BMO an additional headcount would be necessary on the Leave Team and in Payroll to administer the new benefit, particularly with regard to intermittent leave, as this generally doubles the workload versus monitoring a long-term leave.

Mr. Hayes asked for an estimate of how the new leave would impact future utilization. Ms. Britton said it was hard to predict, however, it was reasonable to expect an increase in the use of FMLA for the care of a loved one as employees are currently making choices to try and minimize the amount of unpaid time off. Ms. Niparko also noted one of the goals in offering additional paid leave was to help employees who are caring for aging parents, which is a common challenge.

Mr. Hayes asked whether there were concerns about the financial cost of providing additional leave. Ms. Britton replied the main cost would be to backfill positions temporarily, particularly at DIA, Public Works, and Parks & Rec, as well as overtime, but it remains to be seen if there is a significant cost attached.

Board Member LaNee Reynolds, asked if the short-term disability benefit is taxable to employees. Ms. Britton responded it is a taxable benefit to PTO covered employees since the city pays the full-cost, but it is tax-free for sick/vacation covered employees since they are paying the premiums with after-tax payroll deductions.

Ms. Reynolds clarified this means sick/vacation covered employees are actually getting paid more for short-term disability, however, Ms. Britton pointed out the coverage is expensive at over \$100 per month. Ms. Niparko noted sick and vacation employees also accrue far more time in their banks every month versus the PTO covered folks, to which Ms. Britton commented in far more favorable.

Bob Wolf, City Attorney to the Board, asked if employees are required to use their accrued time off first before using the new paid medical time, to which Ms. Britton answered in the negative as the goal is to enable them to use the medical paid time first. Mr. Wolf asked if the City Council would need to pass supplemental funding for the benefit, to which Ms. Britton replied in the negative.

Mr. Wolf asked what monitoring will be in-place to ensure employees do not abuse the new benefit, noting the city traditionally has a large number of employees on FMLA. Ms. Britton stated Suzanne Iversen, HR Director of Leave & Compliance, identifies a small percentage of actual abuse each year.

Ms. Reynolds commented, in her experience, it is the “80/20 rule”, in which less than 20% of employees may be abusing FMLA, and the administrative burden in tracking abuse is extremely costly. Ms. Britton stated the two week waiting period will discourage potential abuse.

Ms. Reynolds asked if the donated leave is paid on hours only, or the rate of pay of the donor. Ms.

Britton answered it is based on rate of pay, converted into the equivalent hours for the person receiving it (i.e. a lower paid employee would receive more hours donated).

Board Co-Chair Neil Peck clarified that today's proposal does not require any specific action from the Board, to which Ms. Britton replied in the affirmative. Mr. Peck thanked Ms. Britton for her presentation and for all the hard work that went into creating this proposed new benefit.

VI. Pending Cases:

1. Wayne Jochem vs. Denver Sheriff's Department, Appeal No. 25-15 (On Remand)
The Career Service Board affirmed the Hearing Officer's decision, written order to follow.
2. Steven Crews vs. Denver Sheriff's Department, Appeal No. 79-18
The Career Service Board affirmed the Hearing Officer's decision, written order to follow.
3. Abbey Ellis vs. Denver Sheriff's Department, Appeal No. 10-19
The Career Service Board affirmed the rule violations set forth in the Hearing Officer's decision while remanding the matter for review of the penalty determination, consistent with the written order to follow.
4. David Niemeyer vs. Office of Economic Development, Appeal No. 037-19
The Career Service Board granted the Agency's Motion to Dismiss the Appeal, written order to follow.
5. Meleaha Glapion-Pressley vs. Denver Human Services, Consolidated Appeal Nos. 73-18, 76-18 & 80-18
The Career Service Board affirmed the Hearing Officer's decision, written order to follow.
6. Carlos Hernandez and Bret Garegnani vs. Denver Sheriff's Department, Consolidated Appeal Nos. 25-17 & 26-17 (On Remand)
The Career Service Board affirmed the Hearing Officer's decision, written order to follow.
7. Doug Gomez vs. Denver Sheriff's Department, Appeal No. 42-19
The Career Service Board granted the Agency's Motion to Dismiss the interlocutory appeal and directed the Hearing Officer to recommence the hearing, written order to follow.
8. Thomas Trujillo vs. Denver Sheriff's Department, Appeal No. 26-19
The Career Service Board affirmed the Hearing Officer's decision, written order to follow.

VII. Executive Session:

The Board entered executive session at 9:43am and discussed an HR matter.

VIII. Adjournment: *Adjournment was at 9:48am.*