

CITY OF SEATTLE
ORDINANCE 168088
COUNCIL BILL 119795

AN ORDINANCE relating to City employment; authorizing the execution of a Memorandum of Understanding for flexibility to respond to the civil emergency declared on March 3, 2020; providing certain benefits and conditions for employees using leave pursuant to the Families First Coronavirus Response Act; temporarily suspending vacation accrual maximums of Seattle Municipal Code 4.34.020; providing for maintenance of medical benefits for unpaid leave; temporarily suspending scheduling change notices to employees required by Seattle Municipal Code 4.20.365; declaring an emergency; and establishing an immediate effective date; all by a 3/4 vote of the Seattle City Council.

WHEREAS, The City of Seattle (“City”) and certain unions entered into bargaining and came to a tentative agreement on a memorandum of understanding to achieve flexibility and other supports for the City workforce to respond to the civil emergency declared on March 3, 2020; and

WHEREAS, the City seeks to extend these same benefits to non-represented employees and legislation is required to do so; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The City Council finds and declares that:

A. On February 29, 2020, Governor Inslee proclaimed a State of Emergency for all counties throughout the State of Washington as a result of the confirmed person-to-person spread of COVID-19 in Washington State.

B. The COVID-19 disease, caused by a virus that spreads easily from person to person and which may cause serious injury and death, has spread throughout Seattle and King County.

C. On March 3, 2020, Mayor Durkan issued a Proclamation of Civil Emergency declaring a civil emergency within Seattle based on the confirmed spread of COVID-19 in King County and resulting deaths.

1 D. In recognition of the danger that hospitals may become overwhelmed with COVID-19
2 patients unless the spread of the disease is slowed, on March 23, 2020, Governor Inslee imposed
3 a stay-home order throughout Washington State prohibiting all people in the State from leaving
4 their homes or participating in gatherings, with only limited exceptions for participating in
5 essential activities or essential business services. The order is currently in effect through May 31,
6 2020.

7 E. Governor’s Proclamation 20-28 prohibits agencies from taking action (as defined in
8 RCW 42.30.020), unless the matter is (1) necessary and routine; or (2) necessary to respond to
9 the COVID-19 public health emergency.

10 F. This legislation is necessary to implement a memorandum of understanding and
11 temporarily waive certain requirements of the Seattle Municipal Code to achieve flexibility and
12 provide support to employees to respond to the civil emergency.

13 G. This legislation is necessary to become effective immediately to timely provide
14 employee benefits, including coordination with federal COVID-19 relief benefits, and to enhance
15 the ability of public servants to preserve the health and welfare of employees and the public.

16 Section 2. As requested by the Seattle Human Resources Director and recommended by
17 the Mayor, the Mayor is authorized on behalf of The City of Seattle (“City”) to execute a
18 memorandum of understanding between the City and signatory unions, substantially in the form
19 attached to this ordinance as Attachment 1 and identified as “Memorandum of Understanding By
20 and Between the City of Seattle and Signatory Unions” for those unions that have ratified or
21 otherwise approved the memorandum of understanding.

22 Section 3. If an employee is eligible for benefits under the Families First Coronavirus
23 Response Act (FFCRA) and emergency paid sick leave (EPSL) or public health emergency leave

1 (PHEL) benefits do not cover an employee’s regular hourly base wage, the employee may use
2 accrued sick or vacation leave to cover any difference between the federal benefit and the
3 employee’s base hourly rate of pay, up to a maximum of the employee’s regularly scheduled
4 working hours, not to exceed a total of 80 paid hours over any two-week period.

5 Section 4. An employee who uses EPSL provided by FFCRA shall have such time
6 counted towards pay step progression, accrual of vacation and sick leave, service credit for layoff
7 purposes, and completion of a trial or probationary period. An employee who uses PHEL
8 provided by the FFCRA shall only have such time counted towards pay step progression, accrual
9 of vacation and sick leave, service credit for layoff, and completion of a trial or service period as
10 allowed for family and medical leave. Both EPSL and PHEL shall be treated as compensable and
11 creditable service time, for purposes of contributions and service credit in the Seattle City
12 Employee Retirement System under Seattle Municipal Code Chapter 4.36.

13 Section 5. For employees in classifications defined as essential in order to perform
14 mission critical functions under departmental Continuity of Operations Plans (COOP), whether
15 working onsite or remotely, and as a result would exceed the maximum accrued allowance of
16 vacation hours that can be accrued by an employee under Seattle Municipal Code Section
17 4.34.020, the employee will be allowed to accrue over the cap for three months after the Mayor’s
18 emergency proclamation on March 3, 2020 ends and normal operations restart. Appointing
19 authorities or their delegates may extend grace periods for continuing vacation accrual (for
20 essential employees as defined above) for this limited purpose.

21 Section 6. The City will maintain medical benefits for employees during unpaid leave for
22 up to three months, beginning from the time employees would otherwise lose benefits because of
23 their unpaid-leave status and ending after three months’ benefits or until termination of the civil

1 emergency proclaimed by the Mayor on March 3, 2020, whichever is sooner. These benefits run
2 concurrently with any benefits provided under Seattle Municipal Code Chapter 4.26 during
3 unpaid family medical leave.

4 Section 7. There shall be no obligation for the City to provide notice of short- and long-
5 term scheduling changes or pay additional overtime wages for failing to provide such notice, as
6 required by Seattle Municipal Code 4.20.365.

7 Section 8. Sections 3 through 7 of this ordinance shall only apply to non-represented
8 employees and to represented employees for whom the City has come to an agreement with their
9 respective union(s).

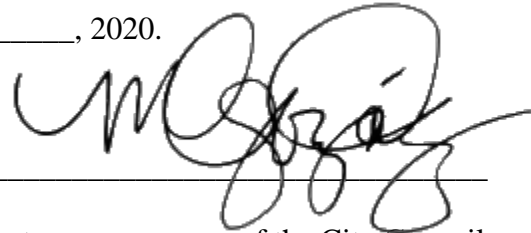
10 Section 9. To the extent provisions of Seattle Municipal Code Sections 4.20.365 or
11 4.34.020 are inconsistent with this ordinance, they are superseded.

12 Section 10. The benefits and changes to working conditions provided in this ordinance
13 shall be retroactive, where practicable, to March 3, 2020, and in effect through September 1,
14 2020 or until termination of the civil emergency proclaimed by the Mayor on March 3, 2020,
15 whichever is sooner. The Seattle Human Resources Director may extend final date of the benefit
16 period for non-represented employees in 30-day increments to the extent that it is consistent with
17 the extension of the Memorandum of Understanding authorized by this ordinance in Section 2.

18 Section 11. Based on the findings of fact set forth in Section 1 of this ordinance, the
19 Council finds and declares that this ordinance is a public emergency ordinance, which shall take
20 effect immediately and is necessary for the protection of the public health, safety, and welfare.

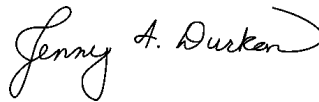
1 Section 12. By reason of the findings set out in Section 1, and the emergency that is
2 hereby declared to exist, this ordinance shall become effective immediately upon its passage by a
3 3/4 vote of the Council and its approval by the Mayor, as provided by Article 4, subsection 1.1 of
4 the Charter of the City.

5 Passed by a 3/4 vote of all the members of the City Council the 26th day of
6 May, 2020, and signed by me in open session in authentication of its
7 passage this 26th day of May, 2020.

8 

9 _____
President _____ of the City Council

10 Approved by me this 1st day of June, 2020.

11 

12 _____
Jenny A. Durkan, Mayor

13 Filed by me this 1st day of June, 2020.

14 

15 _____
Monica Martinez Simmons, City Clerk

16 (Seal)

17
18
19 Attachments:
20 Attachment 1 – Memorandum of Understanding By and Between the City of Seattle and
21 Signatory Unions

MEMORANDUM OF UNDERSTANDING

By and Between

THE CITY OF SEATTLE

and

SIGNATORY UNIONS

This Memorandum of Understanding (hereinafter called "Memorandum" or "MOU") is entered into between the City of Seattle ("City") and those individual unions that are signatory to this MOU, including members of the Coalition of City Unions ("Coalition") and other unions not affiliated with the Coalition, including the International Brotherhood of Electrical Workers – Local 77, the International Association of Machinists and Aerospace Workers, and District Lodge 160 - Local 79. Collectively, the City, the Coalition, and other union signatories to this Memorandum shall be known as "the Parties".

WHEREAS, the Mayor has issued a Proclamation of Civil Emergency on March 3, 2020, in response to the COVID-19 pandemic; and,

WHEREAS, the Parties agree that time is of the essence both when responding to the pandemic and in providing necessary services to the public during this time of civil emergency; and,

WHEREAS, the Civil Emergency may create operational impacts to City business which may require employees to be flexible with their work assignments or worksite locations, and

WHEREAS, the Parties entered into negotiations in response to the COVID-19 pandemic; and,

WHEREAS, the Parties agreed to waive or suspend certain contractual obligations contained in the individual collective bargaining agreements,

NOW THEREFORE, the Parties stipulate and agree that the following Employee Leave and Working Conditions shall apply to all signatory unions.

1. Telecommuting and Alternate Work Schedules

To minimize risk of exposure during the civil emergency, managers are encouraged to authorize telecommuting to the greatest extent possible, as well as approving alternative/compressed work weeks that helps limit social interactions. It is within management's sole discretion to determine which employees are essential, and which of those essential employees must continue to physically report to their work locations. As soon as the declaration of emergency is lifted, employees may be returned to their previous work schedules and/or work locations with a minimum of forty-eight (48) hour notice.

2. Families First Coronavirus Response Act (HR6201)

In the event an employee is eligible for benefits under FFCRA and when Emergency Paid Sick Leave (EPSL) or the Public Health Emergency Leave (PHEL) do not cover an employee's regular hourly base wage, the employee may use accrued sick or vacation leave to cover any difference between the federal benefit and the employee's base hourly rate of pay, up to a maximum of the employee's regularly scheduled working hours not to exceed a total of eighty (80) paid hours over any 2-week period.

3. Vacation Accrual Cap

For employees in classifications defined as essential in order to perform mission critical functions under departmental Continuity of Operations Plans (COOP), whether working

onsite or remotely, and as a result would exceed the maximum accrued allowance of vacation hours that can be accrued by an employee under Personnel Rule 7.5.3(D), the employee will be allowed to accrue over the cap for three (3) months after the City's Emergency Proclamation ends and normal operations restart. Contractual grace periods for continuing vacation accrual (for essential employees as defined above) may be extended for this limited purpose.

5. Maintenance of Medical Benefits

The City will maintain medical benefits for all currently covered employees during unpaid leave for up to three months, beginning from the time employees would otherwise lose benefits because of their unpaid-leave status and ending after three months' benefits or until the termination of the March 3 Mayoral Proclamation, whichever is sooner. In the event of a medical claim funding shortfall during this time, NB and NC Health Care Subfund funds can be used immediately to cover costs for the respective populations. Monthly employee- and employer-paid premium contributions for these employees will be paid immediately from Health Care Fund rate stabilization reserves, commonly referred to as NB and NC, for the respective Health Care Coalition and non-Health Care Coalition member populations. These benefits would run concurrently with any benefits provided under Personnel Rule 7.1.3(D) during unpaid Family Medical Leave.

6. Extension of Separation Date for Intermittent Employees

The time for calculating pending the separation status for any intermittent temporary employee shall be tolled from March 3, 2020, through the earlier of (1) the date the Mayor's March 3, 2020, proclamation of civil emergency is terminated, or (2) the date when the

parties mutually agree to terminate this Agreement. Such employees who have their pending separation status tolled under this Agreement shall not be terminated during the civil emergency.

7. Collective Bargaining

- a. The City shall endeavor to provide appropriate notice when possible but there shall be no obligation for the City to provide notice of any changes which may constitute permissive subjects of bargaining with any signatory union prior to implementation of any emergency policy, procedure, work rule or other related matter arising from the City's response to the COVID-19 pandemic.
- b. The City shall provide forty-eight (48) hours notice to any impacted signatory union prior to the reassignment of any employee(s) to other work duties including reassignment to other departments, work units, or classifications or out-of-class assignments.
- c. The City agrees to provide notice to the impacted signatory union or unions at the time of, or as soon as practicable after implementation of any matter which may have impact or effects on a bargaining unit or units.

8. Waiver of General Contractual Notice Requirements

There shall be no obligation by the City to provide advance notice, whether or not such obligation is set forth in any signatory union's current collective bargaining agreement (s), for the following matters while this MOU is in force:

- a. Changes in alternative work arrangements including teleworking, compressed workweeks and alternative work schedules such as 4/10s and 9/80s.

- b. Short and long-term schedule changes (including changes to shifts, scheduled days off, and/or work hours). This suspension to provide notice of schedule changes includes but is not limited to suspension of any penalties for failure to provide notice as set forth in any collective bargaining agreement, memorandum of understanding, or arising from any past practice.
- c. Changes to crew assignments, and rotation of crews.
- d. Changes to all workstation or crew rotations and assignments.
- e. Changes of crew makeup, except where required by law or industry safety standards.
- f. Scheduled and unscheduled overtime, including any language regarding equitable distribution or assignment or penalty pay for lack of notice, including extraordinary overtime. However, the City shall endeavor to equitably distributed overtime whenever the City, at its sole discretion, determines it is possible.
- g. Issuance of RFPs and/or RFQs and blanket contracts.
- h. Any obligation that SDHR Director has to approve intra- or extra-departmental transfers.

9. Timeline/Process

All timeline requirements placed on the City set forth within any signatory union’s collective bargaining agreement(s) are suspended for the duration of the MOU, for both the City and unions, including but not limited to timelines for the following:

- a. Non-disciplinary and disciplinary grievances
- b. Contract interpretation grievances
- c. Reclassification grievances
- d. Grievances based on or arising from investigatory procedures and/or timeline requirements

- e. Investigations
- f. Loudermill meetings
- g. Any and all investigatory timelines or requirements. Further, the suspension of investigations during the declared emergency will not be relied upon as a defense in a grievance if the investigation of an incident(s) or alleged violation(s) of work rule(s), City or department policy, or law that occurred during the emergency is not conducted until after the declared emergency, results in the employee being disciplined.
- h. With the exception of any reinstatement and/or backpay order, the implementation of any remedies ordered by an arbitrator regarding any signatory union's collective bargaining agreement or any court or other order that impacts the relationship between the signatory union and the City.
- i. The tolling of any time requirements for filing a grievance over an alleged violation of a collective bargaining agreement of any matter not identified herein, will end when the MOU is no longer in effect. Any grievance arising from an alleged violation of a collective bargaining agreement not otherwise waived as identified in this MOU during the emergency, may be filed after the emergency has been declared over, and the contractual time period that must be met for filing such grievance will begin the first full business day after the civil emergency is declared over.

10. General Work Assignments

The City reserves the right to reassign employees. No employee will be reassigned to work that requires licensure or certification where the employee does not have the required license or certification. Based on these principles, employees who meet the requirements of a reassignment and who are offered and then decline such reassignment, will be required to use

applicable leave while at home, including but not limited to leave provided under the Families First Coronavirus Response Act (provided that the employees meets the eligibility requirements set forth in the FFCRA). The City shall continue its current practice regarding higher-risk employees, as established by Mayoral Directives #2 and #3, issued on March 13, 2020, and April 6, 2020, which authorize Department Directors to authorize full or partial payment when specified higher-risk employees cannot telework or be reassigned to appropriate positions. This authorization will continue throughout the effective date of this MOU. The authorization does not restrict any Department's ability to reassign, set up and implement return to work plans, lay off, furlough, or take any other appropriate employment action with respect to individuals who may receive such COVID-19 pay. The following requirements that the City must meet for work assignments which are contained in any signatory union collective bargaining agreement are waived:

- a. Minimum qualification requirements for out-of-class (OOC) assignments whether the employee to be working such assignment is working in a higher or lower level classification, except for those classifications which require certification, licensure, or legal requirements.
- b. Advertising or “Opportunity for Advancement” postings.
- c. Time limits which apply to any OOC work assignments,
- d. Any notice requirements for any OOC assignment(s).
- e. Any time limit which may apply to working OOC in a lower level classification, or where an employee in a higher classification is assigned to perform the work of a lower classification.
- f. Appointment/Selection Process for temporary appointments.

- g. In addition to the enumerated list set forth above, the Parties waive any claim that any body of work and/or any duty or duties performed by an employee in an OOC assignment where the assigned work is part of the OOC assignment, whether working in a higher or lower level classification, shall constitute grounds for the assigned employee to claim any of the work performed as part of such assignment or any portion of work thereof has been converted into a body of work or individual duty of the employee's original classification. This waiver includes, any claim to a compensation or benefit or a grievance, including but not limited to a reclassification grievance, at any time, including any time after the expiration of this Agreement.
- h. Any grievance, complaint or other filing against the City or against another union by any union signatory to this Agreement which claims or otherwise asserts that cross bargaining unit assignments made by the City constitute skimming.
- i. Any grievance, complaint or other filing against the City claiming skimming, where a supervisor or manager or non-represented employee is performing bargaining unit work. The City shall endeavor to limit the assignment of bargaining unit work to non-represented employees, supervisors, and managers whenever possible.
- m. Nothing herein precludes the ability of a grievance being filed when an employee has been assigned out-of-class work but does not receive out-of-class pay for that assignment.
- n. Employees assigned to work in a lower level classification, or who are performing the work of a lower level classification, shall suffer no loss in pay.

11. Contracting Out

The City will make every effort to use all available represented employees to perform required work but reserves the right to employ contractors to perform required work at its

sole discretion during the term of this MOU. The following requirements which the City must meet for the contracting of work are waived:

- a. Consideration by the City of the following guidelines for contracting of work before using subcontractors:
 - i. Whether required expertise is not available within the City workforce.
 - ii. Whether the contract will result in cost savings to the City; or,
 - iii. Whether the contracting is being driven by the occurrence of peak loads.
- b. A signatory union’s ability to file a grievance over the decision or the actual contracting out of work, provided, however, that the work being contracted out is directly related to the City’s emergency response to COVID-19 and/or staffing shortages due to the pandemic.

12. Other Terms and Conditions

- a. For the duration of the Mayoral Proclamation, and as may be extended, no action taken by the City or agreed to by any signatory union in this MOU shall establish any precedent or past practice, or obligation for any Party with regard to any subject herein.
- b. The City, the Coalition of City Unions (“CCU”), and individual non-coalition union signatories of this Agreement may demand to reopen and negotiate the terms of this MOU by mutual agreement. The CCU must negotiate any reopener to this MOU collectively and no individual CCU member unions signatory to this Agreement may individually demand to reopen and negotiate the terms of this MOU.
- c. To the extent that collective bargaining agreements, City ordinances, procedures, rules or guidelines conflict with this MOU, this MOU shall prevail.

- d. Where conflicts may exist or arise between provisions of this MOU and provisions of a collective bargaining agreement between the City and a signatory union, the provisions of this MOU will prevail.
- e. Should any dispute arise regarding the application of this Agreement, the Parties agree, upon receipt of written notice, to discuss the issue as soon as possible.

13. TERM OF AGREEMENT

This MOU shall be valid from the March 3, 2020 Mayoral Proclamation until September 1, 2020, or until the Mayoral Proclamation is ended, whichever is sooner. The City may choose to extend this MOU for up to sixty (60) days without the obligation to reopen and negotiate terms, after providing at least seven (7) calendar days’ notice. This MOU may further be extended, by mutual agreement, with or without negotiated revisions, and in no less than thirty (30) day increments.

SIGNED this _____ day of May 2020.

FOR THE CITY OF SEATTLE

Jenny A. Durkan, Mayor

Bobby Humes, SDHR Director Date

Jana Sangy, LR Director Date

FOR CITY UNIONS

Chris Winters, Business Rep. Date
IU Painters and Allied Trades, DC #5
(Coalition of City Unions)

Mark Watson, Union Rep. Date
WSCCCE Locals 21, 21C, 21Z
(Coalition of City Unions)

Jacob Adams, President Date
Seattle Police Dispatchers' Guild
(Coalition of City Unions)

Shaun Van Eyk, Union Rep. Date
ProTec17, Sr. Professional & Sr. Business
(Coalition of City Unions)

Brian Self, Business Rep. Date
Boilermakers Union, Local 104
(Coalition of City Unions)

Ed Stemler, Gen. Counsel Date
WSCCCE Local 21PA
(Coalition of City Unions)

Greg Heidal, Business Rep. Date
IAMAW, Dist. Lodge 160, Local 289
(Coalition of City Unions)

Kal Rhode, Business Rep. Date
Sheet Metal Workers, Local 66
(Coalition of City Unions)

Peter Hart, Regional Director Date
Inland Boatmen's Union of the Pacific
(Coalition of City Unions)

Ian Gordon, Business Manager Date
PSIE Local 1239
(Coalition of City Unions)

Scott A. Sullivan, Sec-Treas. Date
Teamsters, Local 763
(Coalition of City Unions)

Brandon Hemming, Business Rep. Date
IAMAW, Dist. Lodge 160, Local 79

Alisha Gregory-Davis, Union Rep. Date
ProTec17, PTA
(Coalition of City Unions)

Natalie Kelly, Union Rep. Date
HERE Local 8
(Coalition of City Unions)

Janet Lewis, Business Rep. Date
IBEW Local 46
(Coalition of City Unions)

David Quinn, Business Rep. Date
PNW Regional Council of Carpenters
(Coalition of City Unions)

John Scearcy, Sec-Treas. Date
Teamsters, Local 117, JCC, Admissions
Evidence Warehouse and CSOs
(Coalition of City Unions)

Tracey A. Thompson, Gen. Cnsl. Date
Teamsters, Local 117, JCC, Admissions,
Evidence Warehouse, and CSOs
(Coalition of City Unions)

Mike Bolling, Business Rep. Date
IU of Operating Engineers, Local 320
(Coalition of City Unions)

Jennifer Bacon, President Date
IATSE, Local 15
(Coalition of City Unions)

Kurt Swanson, Business Rep. Date
UA Plumbers & Pipefitters, Local 32
(Coalition of City Unions)

Steve Kovac, Business Rep. Date
IBEW Local 77

MUNICIPAL COURT BARGAINING UNITS

Hon. Willie Gregory, Presiding Date

Mary Keefe, Business Rep. Date
Teamsters, Local 763, Municipal Court
Non-Supervisory and Supervisor Units
(Coalition of City Unions)

Scott Fuquay, President Date
Municipal Court Marshall’s Guild
(Coalition of City Unions)

Shaun Van Eyk Date
ProTec17, Probation Counselors
(Coalition of City Unions)