

SIDE LETTER AGREEMENT BETWEEN THE CITY OF SAN DIEGO AND DEPUTY CITY ATTORNEYS ASSOCIATION OF SAN DIEGO TO AMEND ARTICLE 37 OF THE MEMORANDUM OF UNDERSTANDING REGARDING LEAVE SHARING PLANS

Pursuant to the provisions of the Meyers-Milias-Brown Act (MMBA) and Council Policy 300-06, this Side Letter Agreement (Agreement) is entered into between the City of San Diego (City) and Deputy City Attorneys Association of San Diego (DCAA) to amend the Memorandum of Understanding (MOU) between the City and DCAA that was approved by San Diego Resolution R-314968 (June 12, 2023). The City and DCAA are collectively referred to as the “Parties.”

The Parties established a Catastrophic Leave Bank and Medical Leave Bank which permits City employees to donate their annual leave to other City employees who face extended leaves without pay due to catastrophic occurrences or major health crises. In addition, the Parties established a Child Care Annual Leave Exchange that permits City employees who jointly parent a child to transfer annual leave between them for the birth or adoption of their child or for child care purposes. The Catastrophic Leave Bank, Medical Leave Bank, and Child Care Annual Leave Exchange are collectively referred to as the “Leave Sharing Plans.”

Employees must have at least 160 hours of annual leave (which includes donated Medical Leave) to donate to a Leave Sharing Plan. The City proposes to reduce the number of hours employees must have to be eligible to donate to a Leave Sharing Plan, from 160 hours to 80 hours. The proposed amendments also reflect clarifications in the process to establish a Leave Sharing Plan.

The Parties agree as follows:

1. The Parties have satisfied all obligations under the MMBA, Council Policy 300-006, and other applicable law and regulations to meet and confer in good faith on the subject of this agreement.
2. The Parties agree to amend Article 37, Leave Sharing Plans, as follows:

“A. Catastrophic Leave Plan Program Description

1. Purpose and Scope

Establish a City of San Diego-administered Catastrophic Leave Bank permitting City employees to assist other City employees who face extended leaves without pay due to a catastrophic occurrence in their lives. For the purpose of this plan, a “catastrophic occurrence” is defined as any event that would qualify the employee for a leave under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), Americans with Disabilities Act (ADA), other local, state, or federally protected leave, and other extraordinary circumstances as determined by the Human Resources Director or designee. Although this Program establishes a mechanism for leave transfers, participation is entirely voluntary.

Employees who are entitled to annual leave are eligible to request a Catastrophic Leave Bank from their date of hire. Catastrophic Leave

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determinations are non-grievable.

Catastrophic leave coverage shall be extended to events affecting registered domestic partners provided that a City of San Diego Affidavit of Domestic Partnership has been submitted.

2. Procedures

- a. The Employee initiates a request for a Catastrophic Leave Bank to be established in accordance with this policy.
 - 1) The employee must have exhausted or expect to exhaust their accrued leave, from both the employee's annual leave and Catastrophic Leave – Annual Leave (CatLv-AL) buckets ~~(to be verified by the department Payroll Specialist)~~, as a result of a qualifying event in order to establish a Catastrophic Leave Bank.
 - i. A recipient's total annual leave balance including donated leave cannot exceed 2,080 hours.
 - 2) The employee must receive **advance approval from their Supervisor** for any ~~unpaid~~ leave of absence ~~from their Department Head~~.
- b. Requests to establish a Catastrophic Leave Bank to receive donations will be processed by the Human Resources Department.
 - 1) An eligible employee must submit a completed "Request to Establish Catastrophic Leave Bank" form to the Human Resources Department, accompanied by:
 - i. A signed statement by the employee which includes a brief description of the nature and need for the leave and an estimated time the employee will be out of the workplace, or other appropriate documentation supporting the request. Clarifying documentation may be requested by the Human Resources Department. Any employee who misrepresents information on the signed statement provided to the Human Resources Department may be subject to discipline, up to and including termination.
 - ii. ~~Evidence of the Department Head's approval of the leave of absence.~~ **If an employee is seeking to receive a cash payment of donated Catastrophic Leave, they must indicate how many hours of donated time is needed to meet the employee's financial need.**
 - iii. Employees must also identify, on the Request to Establish Catastrophic Leave Bank Form, the names of individuals or groups that may be informed, upon request, if the Catastrophic Leave Bank has been approved. Employees who include a mailing address on the Request will be notified when the Catastrophic Leave Bank is approved by the Human Resources Department.

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iv. **A signed attestation from the employee is required which indicates that the employee expects to exhaust all their annual leave before a Catastrophic Leave Bank will be created.**

2) **Term**

i. **A Catastrophic Leave Bank may be established for a term of up to six months. However, an employee may request to extend the term if there is a change in circumstances in the catastrophic occurrence that initiated the Catastrophic Leave Bank. The employee must submit additional supporting documentation for the extension to the Human Resources Department to evaluate for approval.**

- c. Donations of annual leave may be made to an employee eligible for Catastrophic Leave as defined in the Purpose and Scope of this document. The donor's annual leave donation will be deducted from the donor department in the amount donated.
- 1) Donations of leave are strictly voluntary; the City will maintain the identity of Catastrophic Leave Bank donors in absolute confidence.
 - 2) Employees may only donate accrued annual leave.
 - 3) Donations must be made in whole-hour increments.
 - 4) Donation authorization requests that do not contain all requested information will not be processed.
 - 5) Donors must have at least **80** ~~160~~ hours of annual leave (which includes donated Medical Leave) and Catastrophic Leave remaining after the donated time has been deducted.
 - 6) Once donated to the Catastrophic Leave Bank, donated leave cannot be returned to the donor.
 - 7) Employees who wish to donate leave must submit an electronic request through the Leave Administration section of the City's SAP System. Employees without access to the City's Active Directory may complete a "Confidential Authorization for Catastrophic Leave Donation" form and submit it to the Human Resources Department.
- d. Upon receipt of donation authorizations forms, the City's SAP System will:
- 1) Verify that the donating employee has the minimum required leave balance of **80** ~~160~~ hours.
 - 2) Convert the donated dollars as computed above to hours at the recipient's hourly rate. The donor will be taxed for the leave when it is

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donated to the recipient.

- 3) Ensure that all deductions (e.g., health premiums, parking, credit union, union dues, etc.) that have previously been authorized by the recipient are made unless the recipient has notified their Payroll Specialist in writing to cancel deductions.
 - 4) Subtract the donated time from the donor's designated leave category; and
 - 5) Add the donated hours to the recipient's Catastrophic Leave – Annual Leave (CatLv-AL) bucket.
- e. An employee who receives Donated Catastrophic Leave hours under this Catastrophic Leave Plan may either take the Donated Catastrophic Leave as compensated time off or may request to receive a cash payment via SAP of the Donated Catastrophic Leave, but may not re-donate that time to a Catastrophic Leave Bank, Medical Leave Bank, or Child Care Annual Leave Exchange bucket for use by another employee.
 - f. Donated Catastrophic Leave is treated as annual leave accrued by the recipient of the donation, but the recipient will not be taxed on the donated annual leave. Payments up to 80 hours per pay period will be made to the recipient until the donated leave has been exhausted.
 - g. When donated Catastrophic Leave hours are taken as cash payment, the employee may take up to the amount of Catastrophic Leave hours available in their established Catastrophic Leave Bank at the time the employee processes their request for cash payment in the City's SAP System. Catastrophic Leave hours are cashed-out on a prospective basis only.
 - h. When donated Catastrophic Leave hours are taken as annual leave for purposes of taking compensated time off, instead of through a cash payment, the employee may take up to 80 hours per pay period until the donated leave has been exhausted.
 - 1) Donated Leave does not alter the employment rights of the City or the recipient, nor does it extend or alter limitations otherwise applicable to leaves of absence or annual leave, except as noted in this Plan.
 - 2) Employees using donated annual leave hours will continue to accrue annual leave in accordance with Personnel Manual Index Code I-2, Annual Leave.
 - 3) Donated Leave can only be used on a going forward basis.
3. Notification of the creation of a Catastrophic Leave Bank to potential donors is the responsibility of the employee, not the department. An employee may use City e-mail for a one-time notification to other City employees regarding the creation of their Catastrophic Leave Bank. Such e-mail should not contain

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confidential information (e.g., details of their medical condition). All policies and procedures regarding ethical conduct, and the use of e-mail, apply to such notices sent by employees. Employees must receive prior management approval before sending “e-mail blasts” (officewide or citywide e-mails), per Office policy. Employees may work with their recognized employee organizations to disseminate their request for leave donation. If requested by the employee in the Request for Establishing Catastrophic Leave Bank form, the City will publicize on the Leave Administration section of the City’s SAP System, the employee requestor’s name, and the dates the Catastrophic Leave Bank opens and closes. The parties agree to reopen the MOU to negotiate the Office Policy on email use within the first year of this MOU.

B. Medical Leave Sharing Plan Program Description

1. Purpose and Scope

The City of San Diego offers a Medical Leave Sharing Plan and Leave Bank (Medical Leave Bank) to give City employees the ability to assist other City employees who face extended leaves without pay due to a major health crisis, whether their own, or that of a family member. Although this Program establishes a mechanism for leave transfers, participation is entirely voluntary.

Employees who are entitled to annual leave are eligible to request a Medical Leave Bank from their date of hire. Medical Leave Sharing determinations are non-grievable.

For purposes of this plan, a “major health crisis” is defined as: (1) the employee’s own medically certified “serious health condition,” as defined by the federal Family and Medical Leave Act, (2) the medically-certified “serious health condition” of the employee’s spouse, parent, child, sibling, grandparent, or grandchild (or in-law or step-relative in one of these relationships), (3) the medically-certified “serious health condition” of the employee’s registered domestic partner, or (4) the death of the employee’s spouse, parent, child, sibling, grandparent, or grandchild (or in-law or step-relative in one of these relationships), or employee’s registered domestic partner (provided that a City of San Diego Affidavit of Domestic Partnership has been submitted). The determination of whether a major health crisis exists is made by the Human Resources Department Director or designee.

2. Procedures

a. Employee initiates a request for a Medical Leave Bank to be established in accordance with this policy.

- 1) The employee must have exhausted or expect to exhaust their accrued leave, from both the employee’s annual leave and Catastrophic Leave – Annual Leave (CatLv-AL) buckets (~~to be verified by the department payroll specialist~~), as a result of a qualifying event in order to establish a Leave Bank.

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- i. If an employee is diagnosed as terminally ill, a Medical Leave Bank may be established without meeting this requirement. In such cases, the donated leave will be paid out when the employee leaves work due to illness.
 - ii. A recipient's total annual leave balance including donated leave cannot exceed 2,080 hours.
 - iii. A signed attestation from the employee is required which indicates that the employee expects to exhaust all their own leave before accessing donated leave.**
 - 2) The employee must receive **advance approval from their Supervisor** for any ~~unpaid~~ leave of absence ~~from their Department Head~~.
- b. Requests to establish a Medical Leave Bank to receive donations will be processed by the Human Resources Department.
 - 1) An eligible employee must submit a completed "Request to Establish Medical Leave Bank" form to the Human Resources Department, accompanied by:
 - i. A medical statement from the attending physician, including a brief statement describing the nature of the illness or injury and an estimated time the employee will be unable to work, or other appropriate documentation supporting the request.
 - ~~ii. Evidence of the Department Head's approval of the leave of absence.~~
 - ii. Employees must also identify, on the Request to Establish Medical Leave Bank Form, the names of individuals or groups that may be informed, upon request, if the Medical Leave Bank has been approved. Employees who include a mailing address on the Request will be notified when the Medical Leave Bank is approved by the Human Resources Department.
 - iii. A signed attestation from the employee is required which indicates that the employee expects to exhaust all of their annual leave before a Medical Leave Bank will be created.**
- c. Donations of annual leave may be made to an employee eligible for medical leave because of a major health crisis, as defined in the Purpose and Scope of this document. The donor's annual leave donation will be deducted from the donor department in the amount donated.
 - 1) Donations of leave are strictly voluntary; the City will maintain the identity of Medical Leave Bank donors in absolute confidence.
 - 2) Employees may only donate accrued annual leave.

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- 3) Donations must be made in whole-hour increments.
 - 4) Donation authorization requests that do not contain all requested information will not be processed.
 - 5) The donor will not be taxed on the value of the leave they donate, but also cannot claim an expense, loss deduction, or charitable contribution for the donated leave.
 - 6) Donors must have at least **80** ~~160~~ hours of annual leave (which includes donated Medical Leave) and Catastrophic Leave remaining after the donated time has been deducted.
 - 7) Once donated to the Medical Leave Bank, donated leave cannot be returned to the donor.
 - 8) Employees who wish to donate leave must submit an electronic request through the Leave Administration section of the City's SAP System. Employees without access to the City's Active Directory may complete a "Confidential Authorization for Medical Leave Donation" form and submit it to the Human Resources Department.
- d. Upon receipt of donation authorization forms, the City's SAP System will:
- 1) Verify that the donating employee has the minimum required leave balance of **80** ~~160~~ hours.
 - 2) Convert the donated dollars as computed above to hours at the recipient's hourly rate. The recipient will be taxed for the leave when it is taken.
 - 3) Ensure that all deductions (e.g., health premiums, parking, credit union, union dues, etc.) that have previously been authorized by the recipient are made unless the recipient has notified their Payroll Specialist in writing to cancel deductions.
 - 4) Maintain the donation information for each recipient in a summarized spreadsheet (Medical Leave Bank – Donation Spreadsheet) and forward the spreadsheet to the Personnel Department.
 - 5) Add the donated hours to the recipient's annual leave balance.
- e. Donated Medical Leave is treated as annual leave accrued by the recipient of the donation. Payments up to 80 hours per pay period will be made to the recipient until the donated leave has been exhausted.
- 1) Donated Medical Leave does not alter the employment rights of the City or the recipient, nor does it extend or alter limitations otherwise applicable to leaves of absence or annual leave, except as noted in this

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Plan.

- 2) Employees who are using donated annual leave hours will continue to accrue annual leave in accordance with Personnel Manual Index Code I-2, Annual Leave.
 - 3) Donated Medical Leave can only be used on a going forward basis.
3. Notification of the creation of a Medical Leave Bank to potential donors is the responsibility of the employee, not the department. An employee may use City e-mail for a one-time notification to other City employees regarding the creation of their Medical Leave Bank. Such e-mail should not contain confidential information (e.g., details of their medical condition). All policies and procedures regarding ethical conduct, and the use of e-mail, apply to such notices sent by employees. Employees must receive prior management approval before sending "e-mail blasts" (officewide or citywide e-mails), per Office policy. Employees may work with their recognized employee organizations to disseminate their request for leave donation. If requested by the employee in the Request for Establishing Medical Leave Bank form, the City will publicize on the Leave Administration section of the City's SAP System, the employee requestor's name, and the dates the Medical Leave Bank opens and closes. The automated Catastrophic and Medical Leave Programs will be implemented January 1, 2020. The parties agree to reopen the MOU to negotiate the Office Policy on email use within the first year of this MOU.

C. Child Care Annual Leave Exchange

Annual Leave may be transferred between any city of San Diego employees who jointly parent a child (which includes a biological, adopted, or foster child, a stepchild, or a legal ward, and is under 18 years old or has a mental or physical disability and is incapable of self-care), for the purpose of the birth of the child or joint adoption of the child, or for child care purposes, in accordance with the City's policies, upon the request of both the receiving employee and the transferring employee, and upon approval of the employees' appointing authority, under the following conditions:

1. The receiving employee is required to be absent from work due to the birth of the employee's child or due to the joint adoption of a child, or for child care purposes.
2. Each transfer must be for a minimum of (8) hours and in whole hour increments thereafter.
3. The transferring employee must have at least **80** ~~160~~ hours of annual leave (which includes donated Medical Leave) and Catastrophic Leave remaining after the donated time has been deducted.
4. The total annual leave received by an employee for the purposes of the Child Care Annual Leave Exchange bucket shall normally not exceed 350 hours per fiscal year; however, if approved by the employee's appointing authority, the

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total credits may be up to 700 hours. Total annual leave hours in excess of 700 hours will be considered on a case-by-case basis by the City Attorney.

5. The transfers are irrevocable and will be placed in a separate bucket for Child Care Annual Leave Exchange. The transferred annual leave hours received by the employee for purposes of the Child Care Annual Leave Exchange will not count towards the employee's maximum accumulation of annual leave that is provided for in Personnel Manual Index Code I-2. The transferred annual leave cannot be used for pay-in-lieu cash outs. The transferring employee will be taxed for the leave when it is transferred to the receiving employee.
6. The transfers shall be administered according to the rules and regulations promulgated by the City beginning on January 1, 2020.

D. Any unused annual leave under this Article will be paid out upon the employee's separation from the City."

3. Unless expressly covered in this Agreement, all wages, hours, and other terms and conditions of employment presently enjoyed by DCAA-represented employees, whether stated in an MOU, Personnel Regulation, Administrative Regulation or in any other enforceable document, remain in full force and effect.
4. This Agreement is intended to be read in conjunction with the MOU, and where in conflict on the specific issue covered by this Agreement, this Agreement will control.
5. This Agreement is not binding on the Parties until it is approved by a two-thirds vote of the City Council, in accordance with San Diego Charter section 11.2.

For DCAA



Jim Cunningham
Lead Negotiator

4/29/24

Date



Shelley Webb
President

April 29, 2024

Date


For the City of San Diego



Timothy Davis
Lead Negotiator

6/5/2024

Date



Abby Jarl-Veltz
Deputy Director

June 5, 2024

Date

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Abegaile Serafico
Senior Human Resources Officer

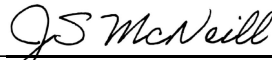
June 5, 2024

Date

Approved as to form this 7th day of June, 2024.

MARA W. ELLIOTT, City Attorney

By:



Jim McNeill
Assistant City Attorney