AGENDA ITEM: Discussion/authorization to waive the FMLA requirement in Sierra County Code Section 3.090.020 pertaining to the qualifications for use of catastrophic leave by an employee.

SUPPORTIVE DOCUMENTS ATTACHED: □ Memo □ Resolution □ Agreement □ Other

Memo, Current Code

BACKGROUND INFORMATION: See attached memorandum

FUNDING SOURCE:
GENERAL FUND IMPACT: No General Fund Impact

OTHER FUND:
AMOUNT: $ N/A

ARE ADDITIONAL PERSONNEL REQUIRED?
[ ] Yes, -- --
[ ] No

IS THIS ITEM ALLOCATED IN THE BUDGET? [ ] Yes [ ] No

IS A BUDGET TRANSFER REQUIRED? [ ] Yes [ ] No

Resolution 2019- __________
Agreement 2019- __________
Ordinance __________

Vote:
Ayes:
Noes:
Abstain:
Absent:
[ ] By Consensus

COMMENTS:

________________________________________________________
CLERK TO THE BOARD

Date
MEMO

Re: Catastrophic Leave Policy

The County established a Catastrophes leave policy in the early 2000’s. After some abuses the policy was tightened significantly on how the leave could be used. One change was the requirement that the employee be of FMLA leave. This preclude the use of the Catastrophic leave for care of house hold members that are not child, parent or a spouse.

A new situation has arisen in the life of a County employee where a significant other and longtime resident of the same home has been severely injured. The County Code does allow for the use of regular sick leave in a situation like this but not Catastrophic.

The Personnel Department is in the process of recommending modification to our Catastrophic Leave Policy, particularly related to eligibility. Currently, the policy only allowed for sickness or injury to a parent, spouse or child, which is very narrow and does not consider alternative family structures. The Personnel Department will bring forward a formal modification, following meet and confer with the union, but it will take several months to work through the process. In the interim, we are requesting that the Board waive the requirement that the applicant for catastrophic leave be eligible for FCML. This would allow a current employee who is in an emergency situation access the leave bank. It would also eliminate potential liability from having a policy which has a narrow definition of “family member.”

Use of Catastrophic sick leave does not financially impact the county since the donating employee reduced their sick leave balance accordingly.
3.09.020 Sick leave.

A. Eligibility. Permanent full-time and permanent part-time employees are eligible for sick leave with pay.

B. Eligibility – Permanent Part-Time Employees. Work schedules for permanent part-time employees shall be maintained on file with their department heads and with the Auditor's Office. Such employees shall only be eligible for sick leave when time off occasioned by sickness at a time when the permanent part-time employee is otherwise scheduled to work by his or her appointing authority. An employee may not use sick or vacation leave to receive payment for a day or part of a day when the employee was not scheduled to work.

C. Rate of Accrual. Sick leave for permanent full-time or permanent part-time classified employees shall accrue at the rate of 0.0462 hours per hour worked.

   1. Accrual: There shall be no limit on the accrual of sick leave for an employee.
   2. Length of Service Required: Sick leave may be used as accrued.

D. Sick Leave Uses.

   1. For illness, injury or routine medical or dental appointments of the employee, sick leave may be used in any reasonable amount.
   2. For each death of a member of the immediate family, sick leave may be used in an amount not to exceed five days for each death per calendar year.
   3. For illness, injury, routine medical or dental appointments for a member of the immediate family, sick leave may be used by an employee in any reasonable amount up to seven days per calendar year.
   4. For permanent part-time classified employees, sick leave may only be used on those days that are specified on their work schedule on file with the Auditor.

E. Letter from Medical Officer. An employee shall notify such employee's supervisor or their appointing authority as soon as possible that sick leave will be used. An employee taking more than three consecutive days of sick leave for injury or illness shall, at the request of their appointing authority, furnish the appointing authority a letter from a medical officer stating that the employee is not medically fit to return to work, which letter must include a prognosis and reasonable estimate of the date upon which the employee may return to work, if ever. Before returning to work after an absence of five or more consecutive work days, at the request of the employee's appointing authority, the employee must furnish a letter from a medical officer stating that the employee is medically fit to return to work. If the absence from work for nonwork related injury or illness is greater than 20 cumulative work days within a 12-month period or seven consecutive work days within a 12-month period, the appointing authority may require the employee to be examined by a county-appointed medical doctor at county expense. In the event of any work-related injury, giving rise to a workers' compensation claim for which the employee receives medical attention, the employee shall furnish a medical report from a medical officer giving an evaluation of the injury. Further, before returning to work after such work-related injury, the employee shall furnish the County Auditor and the employee's appointing authority with a letter or report from a Medical Officer.
stating that the employee is medically fit to return to work. A medical officer means a duly California- or Nevada-licensed medical doctor, nurse practitioner, or such other medical personnel approved by the county.

F. **Disability.** An employee who is entitled to temporary disability indemnity under the [Labor Code](https://www.labor.ca.gov/呦/on/呦abella.html) may elect to take as much of the accumulated sick leave or accumulated vacation leave after accumulated sick leave becomes exhausted as, when added to the disability indemnity, will result in a payment of the full salary or wage.

G. **Sick Leave Incentive Plan.** Any employee who has worked for the county for 15 years or more, upon retirement through PERS or death, shall be eligible to receive, payable to the employee, or their estate or designated beneficiary, a sum equal to 40 percent of their unused sick leave up to a maximum credit of 120 days of compensation computed on the basis of the hourly equivalent of such employee's monthly salary as of the time of retirement or death.

H. **Donation of Sick Leave for Catastrophic Use.** Notwithstanding any other provision of this code relating to the accumulation and use of sick leave, a permanent employee shall, subject to the provisions below, be allowed to donate and transfer sick leave from his or her sick leave account to a blind catastrophic leave account for use by permanent county employees. Any such donation and use of transferred sick leave shall only be made subject to the following provisions:

1. The receiving employee must have exhausted all other leave balances, including sick and vacation leave and compensatory time and all time accrued while on leave; shall currently be on FMLA – CFRA and/or pregnancy leave and shall incur a minimum of five full days of unpaid leave immediately in advance of the time off for which the employee is requesting use of donated sick leave. A receiving employee must not be eligible for compensation for time off from work from any other source including without limitation, disability insurance.

2. The donating employee must have a minimum sick leave in his or her account following the donation of 120 hours. An employee may not make a donation of more than 40 hours within two months of his or her separation from county employment.

3. To qualify for use of donated/transferred of sick leave, a permanent employee must use of the leave for:
   a. Leave to care for a child, parent, or spouse who has a serious health condition attested to by a physician licensed by the appropriate state board of medical examiners (“licensed physician”); or
   b. Leave because of a serious health condition attested to by a licensed physician that makes the employee unable to perform the functions of his or her position;
   c. Absences for a full day or days;
   d. Absences for less than a full day as part of ongoing medical treatment or the phasing of the employee resuming work after a qualifying injury or illness which phasing plan should result in resuming of full duties within 90 days from the initial date of return. (Nothing herein is intended to require the county to accept an employee back to work if the employee is otherwise unable to perform the essential duties of his or her position.)
4. All donations will be made to a blind pool and shall not identify or specify an intended recipient. Donations are to be made in writing on a form to be provided by the County Auditor's Office. Any donation, which fails to comply with the provisions of this section, will be rejected.

5. Use of the sick leave from the donated pool will be applied for on a pay period basis. All requests meeting the qualifications set forth above will be approved to the extent that the pool contains sufficient donations of sick leave. In the event that there are multiple requests and insufficient leave exists within the pool, the approval and allocation of the available sick leave will be made on a prorated basis, without regard to any other factors or considerations.

Except as may be required for accounting purposes the county shall attempt to keep confidential the identity of parties donating sick leave to the blind pool.

I. A department head or other supervisor of an employee may order an employee to leave work if the employee reasonably appears to be ill and is displaying symptoms that could spread his or her illness to other employees or members of the public. An employee ordered to leave work shall use his or her accrued sick leave or vacation leave or compensatory time off when absent from work due to any such illness; provided, however, if the employee does not have sufficient accrued leave balances or CTO, the employee shall be allowed to accrue a negative leave balance not to exceed 16 hours. Any such negative balance shall be offset against the subsequent accrual of any such leave and/or CTO prior to the employee gaining a positive balance in any such accounts.

If the employee disputes the need to be removed from the work place due to illness the employee shall promptly see a doctor to determine if the employee is ill and potentially contagious and a report shall be provided by the doctor to the county on a form to be provided by the county. If the doctor determines that the employee is not ill and potentially contagious, then the county shall be responsible for the expense of the visit to the doctor.

J. Any employee that is receiving workers' compensation pending his or her return to employment shall have their compensatory time off, then sick leave, then vacation leave balances used as necessary to provide the employee with full compensation (at his or her normal rate of pay) during the period of time that the employee is off on workers' compensation. The Auditor shall make automatic deductions from such CTO or leave balances so as to provide the employee with full compensation during any such pay period. (Ord. 1028, eff. 1/6/11)