

Policy: Mandatory Paid Sick Leave (MPSL)

Policy Statement:

Effective January 1, 2018, mandatory Paid Sick Leave (MPSL) applies to all City of Tacoma employees pursuant to RCW Chapter 49.46 and Tacoma Municipal Code Chapter 18.10.

Background:

MPSL Accrual and Availability

Accrual

- State/City paid sick leave requires all employees to accrue 1 hour of MPSL for every 40 hours worked.
- Accruals begin upon date of hire, and for current employees, as of January 1, 2018.
- City of Tacoma employees will continue to accrue sick leave¹ or Personal Time Off (PTO)² leave at current rates because current City sick leave and PTO accruals already exceed the State and City minimum paid sick leave requirements. Two exceptions are:
 - (1) Event and emergency employees and elected officials who do not currently accrue leave will accrue MPSL at the rate of 1 hour per every hour worked; and
 - (2) an employee who works 148 hours or more in a pay period will accrue more sick leave under the 1 hour of leave per 40 hours worked requirement; for example, an employee who worked 148 hours in a pay period would accrue 3.7 hours of sick leave, instead of 3.69.
- Full-time FLSA-exempt employees will accrue 1 hour of MPSL for each week worked. If an FLSA-exempt employee's workweek is less than 40 hours, leave will accrue based on the employee's normal workweek.
- Employees are not entitled to accrue MPSL for hours paid while not working (such as vacation, paid holidays, PTO, or while using MPSL).
- If an employee's sick leave or PTO leave balance falls below the designated MPSL balance, the MPSL balance will also be reduced (i.e. employee must have sufficient sick leave or PTO available to cover the MPSL leave balance). For an employee who is enrolled in PTO and has a frozen sick leave bank, the employee must have sufficient leave in both their PTO and frozen sick leave banks to cover the MPSL leave balance. Employees must still comply with the frozen sick leave requirements.
- MPSL is not an additional bank of leave; has no cash value, and is not eligible for cash out or for use as shared leave.
- MPSL is for tracking purposes only, and is designated as a portion of sick leave or PTO leave.

¹ Under TMC 1.12.230-.231-.232, as applicable

² Under TMC 1.12.248, as applicable

Availability

- Employees may designate MPSL as it is earned, in the same time increments that are currently used.
- Employees cannot designate accrued MPSL in the same pay period in which it is earned.
- Leave types have been created to track employee accrual, designation, and balances of MPSL.
 - Employees will designate MPSL time codes created within existing leave tracking procedures in SAP to designate, track, and report leave under MPSL.

Authorized Uses of MPSL

Care of the Employee or the Employee's Family Member

- Employees may designate their accrued, unused MPSL hours to care for themselves or a *family member* (as defined below) for:
 - Mental or physical illnesses, injuries, or health conditions;
 - The need for medical diagnosis, care, or treatment of mental or physical illnesses, injuries, or health conditions; or
 - The need for preventive medical care.
- For the designation of MPSL for an employee's family member, family member is defined as:
 - "Family Member" means a child, grandchild, grandparent, parent, sibling, or spouse of an employee, and also includes any individual who regularly resides in the employee's home or where the relationship creates an expectation that the employee care for the person, and that individual depends on the employee for care. "Family member" includes any individual who regularly resides in the employee's home, except that that it does not include an individual who simply resides in the same home with no expectation that the employee care for the individual.
 - "Child" means a biological, adopted, or foster child, a stepchild, a child's spouse, or a child to whom the employee stands in loco parentis, is a legal guardian, or is a de facto parent, regardless of age or dependency status.
 - "Grandchild" means a child of the employee's child.
 - "Grandparent" means a parent of the employee's parent.
 - "Parent" means the biological, adoptive, de facto, or foster parent, stepparent, or legal guardian of an employee or the employee's spouse, or an individual who stood in loco parentis to an employee when the employee was a child.
 - "Spouse" means a husband or wife, as the case may be, or state registered domestic partner under state law or City policy.

Family Member Bereavement Leave

Employees may designate their accrued, unused MPSL to take leave for bereavement for the death of a family member. Family member is defined above.

Closure of the Company or the Employee's Child's School or Place of Care

- Employees may designate their accrued, unused MPSL when their assigned City work location has been closed by order of a public official for any health-related reason; or
- When an employee's child's school or place of care has been closed for such a health-related reason or after the declaration of an emergency by a local or state government agency, or by the federal government.

- The definition of “child” in the previous section applies.

To Address Issues Related to Domestic Violence, Sexual Assault, or Stalking

- Employees may designate their accrued, unused MPSL to:
 - Seek legal or law enforcement assistance or remedies to ensure the health and safety of the employee and their family members including, but not limited to: Preparing for, or participating in, any civil or criminal legal proceeding related to or derived from domestic violence, sexual assault, or stalking;
 - Seek treatment by a health care provider for physical or mental injuries caused by domestic violence, sexual assault, or stalking;
 - Attend health care treatment for a victim who is the employee's family member;
 - Obtain, or assist the employee's family member(s) in obtaining, services from: A domestic violence shelter; a rape crisis center; or a social services program for relief from domestic violence, sexual assault, or stalking.
 - Obtain, or assist a family member in obtaining, mental health counseling related to an incident of domestic violence, sexual assault, or stalking in which the employee or the employee's family member was a victim of domestic violence, sexual assault, or stalking.
 - Participating, for the employee or for the employee's family member(s), in: safety planning; temporary or permanent relocation; or other actions to increase the safety from future incidents of domestic violence, sexual assault, or stalking.
- For purposes of leave related to domestic violence, sexual assault, or stalking, family member³ has the following definition:
 - Any individual whose relationship to the employee can be classified as a child, spouse, parent, parent-in-law, grandparent, or person with whom the employee has a dating relationship.

Reasonable Notice for the Designation of MPSL

Employees must provide reasonable notice of an absence from work for the designation of MPSL to care for themselves or a family member, or because the employee’s child’s school or place of care is closed for a health-related reason or after the declaration of an emergency by a local or state government agency, or by the federal government. Such notice must not interfere with an employee's lawful designation of MPSL. Any medical information provided will be kept confidential. Employees should continue using their department’s absence reporting forms, and designate MPSL leave when applicable.

Note: Verification may be required if an employee designates MPSL for more than three (3) consecutive days for which the employee was required to work.

Reasonable Notice for Foreseeable Designation of MPSL

If an employee’s MPSL absence is foreseeable, the employee must provide notice to the designated representative of their department head at least 10 days, or as early as practicable, before the first day MPSL is designated.

- If possible, notification should include the expected duration of the absence.

³ *In accordance with RCW 49.76.020.*

Reasonable Notice for Unforeseeable Designation of MPSL

If an employee's absence is unforeseeable, the employee must contact the designated representative of their department head prior to the beginning of his or her scheduled workday or such earlier time as required by his or her department or division head.-

- As a best practice, and if circumstances allow, employees should provide notice as soon as the employee learns of the need for MPSL.
- In the event it is not practicable to provide notice of an unforeseeable absence, a person on the employee's behalf may provide such notice.
- If possible, notification should include the expected duration of the absence.

Note: Verification may be required if an employee designates MPSL for more than three (3) consecutive days for which the employee was required to work.

Reasonable Notice for Foreseeable Designation of MPSL (Domestic Violence)

An employee must give advance oral or written notice to the designated representative of their department head as soon as possible for the foreseeable designation of MPSL to address issues related to the employee or the employee's family member being a victim of domestic violence, sexual assault, or stalking.

Reasonable Notice for Unforeseeable Designation of MPSL (Domestic Violence)

If an employee is unable to give advance notice because of an emergent or unforeseen circumstance related to the employee or the employee's family member being a victim of domestic violence, sexual assault, or stalking, the employee or their designee must give oral or written notice to the designated representative of their department no later than the end of the first day that the employee takes such leave, or as soon as practicable. If the employee is normally directed to a recorded call-in line or dispatch number that is not private, no later than the end of the first day the employee takes such leave, the employee may contact the Disability and Leave Management Office in the Human Resources Department at (253) 591-5452 for assistance in reporting a domestic leave-qualified absence.

Note: Verification may be required if an employee designates MPSL for more than three (3) consecutive days for which the employee was required to work.

Verification for Absences Exceeding Three Days

If an employee has designated MPSL for an authorized purpose for more than three (3) consecutive days during which the employee is required to work, if requested, the employee must provide verification that establishes or confirms that the designation of MPSL is for an authorized purpose.

For care of the employee or the employee's family member, requested verification may include:

- A written or oral statement from the employee indicating that the designation of MPSL is necessary to care for the employee or their family member for an authorized purpose;
- A doctor's note or a signed statement by a health care provider indicating that the designation of MPSL is for care of the employee or their family member for an authorized purpose; or
- Other documentation demonstrating that the employee's designation of MPSL is for care of the employee or their family member for an authorized purpose.

If requested, verification must be provided to the City within 10 calendar days of the first day an employee designates MPSL to care for themselves or a family member.

When an employee or the employee's family member has been a victim of domestic violence, sexual assault, or stalking, the employee's choice of any one or more of the following documents satisfies this verification requirement:

- A written statement that the employee or an employee's member is a victim of domestic violence, sexual assault, or stalking, and that the leave was taken to address related issues;
- A police report indicating that the employee or the employee's family member was a victim of domestic violence, sexual assault, or stalking;
- Evidence from a court or prosecuting attorney showing that the employee or the employee's family member appeared, or is scheduled to appear, in court in connection with an incident of domestic violence, sexual assault, or stalking;
- A court order of protection;
- Documentation from any of the following persons from whom an employee or an employee's family member sought assistance in addressing the domestic violence situation indicating that the employee or the employee's family member is a victim:
 - An advocate for victims of domestic violence, sexual assault, or stalking;
 - An attorney;
 - A member of the clergy; or
 - A medical professional.

If requested, verification must be provided in a timely manner. In the event that advance notice of the leave cannot be given because of an emergency or unforeseen circumstances due to domestic violence, sexual assault, or stalking, requested verification must be provided to the Disability and Leave Management Office in the Human Resources Department at (253) 591-5452 within a reasonable time period during or after the leave.

When Employee's Work Location or Child's School or Place of Care is Closed for a Health-related Reason or after the Declaration of an Emergency by a Local or State Government Agency, or by the Federal Government

- In the event the employee's assigned City work location is closed by order of a public official for any health related reason, or the employee's child's school or place of care is closed for such a health-related reason or after the declaration of an emergency by a local or state government agency, or by the federal government, acceptable verification may include:
- Written notice of closure by order of a public official that the employee received.

If requested, verification must be provided to the City within 10 calendar days of the first day an employee designates MPSL for such purpose.

For any verification required, please note:

- The employee is not required to provide any details concerning the specific nature of the health condition in order to use MPSL, unless otherwise required by law.
- Any private information the employee provides will be kept confidential.

Unreasonable Burden or Expense for Verification

If an employee believes that obtaining verification for the designation of MPSL would result in an unreasonable burden or expense on the employee, the employee must contact their supervisor or manager orally or in writing.

The employee must indicate that the absence is for an authorized purpose, and explain why verification would result in an unreasonable burden or expense on the employee.

- If an employee chooses to put this in writing, options for doing so include, but are not limited to:
 - Sending an e-mail to the employee’s supervisor or manager.

Within 10 calendar days of receiving the employee’s request, the recipient will work with the employee to identify an alternative for the employee to meet the verification requirement in a way that does not result in an unreasonable burden or expense.

The City may choose not to pay an employee for MPSL taken for such absences until verification is provided.

An employee has the right to contact their Department head or designee if the employee believes the proposed alternative still results in an unreasonable burden or expense.

If an employee is not satisfied with the City’s alternatives, they may consult with the Washington State Department of Labor & Industries.

Online: www.Lni.wa.gov/WorkplaceRights

Call (toll-free): 1-866-219-7321

Visit: lni.wa.gov/workers-rights/

Email: ESgeneral@Lni.wa.gov

MPSL Increments

- The City requires employees to designate MPSL in increments consistent with the City’s existing payroll system and practices, in tenths (0.10) of an hour increments.

Rate of Pay for Designation of MPSL

- Employees must be paid their “normal hourly compensation” for each hour of designated MPSL.
 - “Normal hourly compensation” is the hourly rate that an employee would have earned for the time during which the employee designates MPSL.

Normal hourly compensation does not include tips, gratuities, service charges, holiday pay, or other premium rates. As used in this section, “premium rate” does not include situations where the rate that the employee would have earned for the time properly designated as MPSL is a differential, or “applied” rate, meaning a different rate paid for the same work performed under differing conditions (e.g., as set forth in TMC 1.12.640, “Application of additional rates”).

- For employees who designate MPSL for hours that would have been overtime hours if worked, the City is not required to apply overtime standards to an employee's normal hourly compensation.

Payment for the Designation of MPSL

- The City must pay MPSL to an employee no later than the payday for the pay period in which the MPSL was designated by the employee.

Note: If verification for absences exceeding three days is required, such payment must be made no later than the payday for the pay period during which verification was provided.

Carryover of Accrued, Unused MPSL to the Next Year

Carryover Requirements

- Accrued, unused MPSL balances of 40 hours or less must carry over to the following year.
 - For example, if an employee has 52 hours of accrued, unused MPSL at the end of the year, 40 hours carry over to the following year.
- If an employee carries over unused MPSL to the following year, accrual of MPSL in the subsequent year would be in addition to the hours accrued in the previous year and carried over.
- Variations may occur based on payroll processing dates.

Definition of Year

- The City's MPSL accrual year is January 1 – December 31

Separation and Reinstatement

Separation

- If an employee separates from employment, there will not be financial or other reimbursement to the employee for accrued, unused MPSL balances available at the time of separation.

Reinstatement of MPSL Leave Hours Upon Rehire

- The City must reinstate an employee's previously accrued, unused MPSL if it rehires an employee within 12 months of separation, except as noted.

Note: MPSL has no cash value. The City will not reinstate any hours of MPSL-designated sick leave or PTO previously provided to the employee through financial or other reimbursement at the time of separation, as long as the value of the leave was paid at a rate that was at least equal to the employee's normal hourly compensation for each hour.

- If the period of time an employee separates from employment extends into the following year (see definition under "Definition of Year"), the City will not reinstate more than 40 hours of accrued, unused MPSL.
- Upon rehire, the City must provide notification to the employee of the amount of accrued, unused MPSL available for use by the employee.

Retaliation Prohibited by Law

- Discrimination or retaliation against an employee for the lawful exercise of mandatory Paid Sick Leave rights is not allowed. The City will not discriminate or retaliate against any employee for the lawful exercise of Washington Minimum Wage Act rights.
- The City may not require, as a condition of an employee designating MPSL, that the employee search for or find a replacement worker to cover the hours during which the employee is on MPSL.
- The City will not enforce any program that has the effect of incentivizing the non-use of MPSL.
- The City will not require employees to designate MPSL. Employees are therefore responsible to code their time appropriately.
- If an employee feels they are being discriminated or retaliated against for exercising their Washington Minimum Wage Act rights, the employee may contact the City's Human Resources Director.
- If an employee is not satisfied with the response, the employee may contact the Washington State Department of Labor & Industries, at:
 - Online: www.Lni.wa.gov/WorkplaceRights
 - Call (toll-free): 1-866-219-7321
 - Visit: lni.wa.gov/workers-rights/
 - Email: ESgeneral@Lni.wa.gov

Required Notification

Initial Notification of Rights

- At the start of employment, or no later than March 1, 2018, for existing employees, the City will provide employees with notice of their MPSL rights. This notice will include information regarding:
 - An employee's entitlement to MPSL;
 - The rate at which the employee will accrue MPSL;
 - The authorized purposes under which an employee may use MPSL; and
 - That retaliation by the City for the employee's lawful use of MPSL and other rights provided under the Minimum Wage Act is prohibited.
- The City will make this information readily available to all employees.

Ongoing Notification

- At least once a month, the City will provide notice to its employees of:
 - The amount of MPSL accrued since notice was last given;
 - The amount of MPSL reductions since notice was last given; and
 - The total amount of unused MPSL available for designation by the employee.

Reference:	RCW 49.46 and Tacoma Municipal Code (TMC) 18.10
Contact Info:	Human Resources Department, Disability and Leave Management Office, 253-591-5452 or by email at DLM@cityoftacoma.org
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Approval:	<i>Shelby Fritz</i> Shelby Fritz, Human Resources Director
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