

**SIDE LETTER AGREEMENT BETWEEN THE CITY OF SAN DIEGO AND
AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, LOCAL 127
TO AMEND ARTICLE 72 OF THE MEMORANDUM OF UNDERSTANDING RELATED TO
PAID SICK LEAVE FOR HOURLY EMPLOYEES**

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 American Federation of State, County and Municipal Employees, Local 127 (Local 127) to amend Article 72 of the Memorandum of Understanding (MOU) between the City and Local 127 that was approved by San Diego Resolution R-314969 (June 12, 2023). The City and Local 127 are collectively referred to as the "Parties."

Article 72 of the MOU provides paid sick leave for hourly employees, regardless of classification, who receive no paid annual leave or other paid leave. This benefit is consistent with the paid sick leave benefit provided under Assembly Bill 1522, which enacted the Healthy Workplaces, Health Families Act of 2014, set forth in the California Labor Code (LC) sections 245 through 249. Under Article 72, eligible employees accrue up to a maximum of 80 hours and may use up to 40 hours of paid sick leave in a fiscal year for diagnosis, care, or treatment of an existing health condition of, or preventative care for, a family member; provide care or assistance to a family member with an illness, injury, medical condition; or for other enumerated reasons.

On October 4, 2023, Governor Gavin Newsom approved Senate Bill (SB) 616, which will be effective on January 1, 2024. SB 616 amended LC sections 245.5, 246, and 246.5 to, among other things, require employers to provide their employees up to 40 hours or five days (whichever is more) of accrued paid sick leave each year or 12-month period, and allow employees to accrue up to a maximum of 80 hours or 10 days (whichever is more) of paid sick leave.

On November 29, 2023, the City provided notice to Local 127 regarding compliance with SB 616. The Parties met and conferred in good faith and reached a tentative agreement to amend the MOU to reflect the new state legislation and proposed changes as indicated.

Therefore, the Parties agree to the following:

1. The Parties have satisfied all obligations under the MMBA, Council Policy 300-06, 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 72 of the MOU, as follows:
 - A. This Article applies to hourly employees, regardless of classification, who receive no paid annual leave or other paid leave. The City intends to provide these employees with a paid sick leave benefit, consistent with the paid sick leave benefit provided by the State of California Assembly Bill 1522 (AB 1522), which enacted the Healthy Workplaces, Health Families Act of 2014, set forth in California Labor Code sections 245 through 249, and codified in SDMC section 23.1112 as amended by Senate Bill 616, effective January 1, 2024. These employees, referred to as Eligible Employees in this Article, are entitled to Earned Sick Leave codified in SDMC 39.0101 through 39.0106. Eligible Employees who receive Earned Sick Leave will not receive additional leave under AB 1522, provided the Earned Sick Leave satisfies the requirements of AB 1522. This paid sick leave benefit for Eligible Employees will be referred to in this Article as "Paid Sick Leave for Hourly Employees" or "Paid Sick Leave."
 - B. Eligible Employees will accrue Paid Sick Leave at a rate of one hour for every 30 hours worked, up to a maximum accrual of 80 hours or 10 days, whichever is more.

SIDE LETTER AGREEMENT BETWEEN THE CITY AND LOCAL 127 TO AMEND ARTICLE 72 OF THE MOU RELATED TO PAID SICK LEAVE FOR HOURLY EMPLOYEES

Page 2

- C. Eligible Employees begin accruing Paid Sick Leave at the commencement of employment, ~~or on July 11, 2016, whichever is later,~~ but may not use the accrued leave until the 90thth calendar day following commencement of employment. After the 90th calendar day of employment, an Eligible Employee may use Paid Sick Leave as it is accrued, up to the maximum number of hours set forth in paragraph E below.
- D. Under this Article, the 12-month period in which an Eligible Employee may accrue and use Paid Sick Leave is defined as the City's fiscal year.
- E. Upon the Eligible Employee's oral or written request, they may use up to 40 hours or five days, whichever is more, of Paid Sick Leave in any fiscal year for any of the following reasons:
 - 1. Diagnosis, care, or treatment of an existing health condition of, or preventative care for, the Eligible Employee or Family Member.
 - 2. If the Eligible Employee is a victim of domestic violence, sexual assault, or stalking, taking time off from work to appear in court to comply with a subpoena or other court order as a witness in any judicial proceeding; obtain or attempt to obtain any relief, including a temporary restraining order, restraining order, or other injunctive relief to help ensure the health, safety, or welfare of the employee or their child; seek medical attention for injuries caused by domestic violence, sexual assault, or stalking; obtain services from a domestic violence shelter, program, or rape crisis center as a result of domestic violence, sexual assault, or stalking; obtain psychological counseling services related to an experience of domestic violence, sexual assault, or stalking, or participate in safety planning and take other actions to increase safety from future domestic violence, sexual assault, or stalking, including temporary or permanent relocation.
 - 3. The Eligible Employee is physically or mentally unable to perform their duties due to illness, injury, or a medical condition of the Eligible Employee.
 - 4. The Eligible Employee's absence is for the purpose of obtaining professional diagnosis or treatment for a medical condition of the Eligible Employee.
 - 5. The Eligible Employee's absence is for other medical reasons of the Eligible Employee, such as pregnancy or obtaining a physical examination.
 - 6. The Eligible Employee is providing care or assistance to a Family Member with an illness, injury, or medical condition, including assistance in obtaining professional diagnosis or treatment of a medical condition.
 - 7. The Eligible Employee's absence is for the Eligible Employee's use of Safe Time. (Safe Time means time away from work that is necessary due to Domestic Violence, Sexual Assault, or Stalking, provided the time is used to allow the Eligible Employee to obtain for the Eligible Employee or the Eligible Employee's Family Member one or more of the following:
 - a. Medical attention needed to recover from physical or psychological injury or disability caused by Domestic Violence, Sexual Assault, or Stalking;
 - b. Services from a victim services organization;

- c. Psychological or other counseling;
 - d. Relocation due to the Domestic Violence, Sexual Assault, or Stalking; or
 - e. Legal services, including preparing for or participating in any civil or criminal legal proceeding related to or resulting from the Domestic Violence, Sexual Assault, or Stalking.)
8. The Eligible Employee's place of business is closed by order of a public official due to a Public Health Emergency. (Public Health Emergency means a state of emergency declared by any public official with the authority to do so, including officials with the City, the County of San Diego, the State of California, or the United States government.)
9. The Eligible Employee is providing care or assistance to a Child, whose school or child care provider is closed by order of a public official due to a Public Health Emergency.
- F. Under this Article, "Family Member" means the Eligible Employee's child (biological, adopted, foster child, stepchild, legal ward, child of spouse, child of domestic partner, or child of Eligible Employee standing in *loco parentis* (i.e., in place of a parent) regardless of age or dependency status of the child); spouse; registered domestic partner; grandparent; grandchild; sibling; parent (biological, adoptive, or foster, stepparent, or parent of spouse or domestic partner); legal guardian of the Eligible Employee or the Eligible Employee's spouse or registered domestic partner, or a person who stood in *loco parentis* when the Eligible Employee was a minor child; or "designated person" per 12-month period for paid sick days as defined under Labor Code section 245.5.

However, if the "designated person" passes away, then the Eligible Employee may identify a new "designated person." If the Eligible Employee wishes to identify a new "designated person" for the remainder of the 12-month period, then they must submit documentation of the death of the "designated person," which includes: death certificate, published obituary; written verification of death, burial, or memorial services from a mortuary, funeral home, burial society, crematorium, religious institution, or governmental agency; employee written attestation; etc. This documentation must be submitted with the Eligible Employee's request for Paid Sick Leave.

- G. The City may require Eligible Employees to provide documentation substantiating the facts justifying the use of Paid Sick Leave, to the extent permitted by California law.
- H. Paid Sick Leave will be paid at the Eligible Employee's ~~current hourly pay rate for regular work hours~~ regular rate of pay at the time the leave is taken. If an Eligible Employee, in the 90 days of employment before using accrued Paid Sick Leave, had different hourly pay rates, then the Eligible Employee will be compensated at the highest hourly pay rate earned, not including overtime premium pay, during the prior 90 days of employment. The City will pay Eligible Employees for accrued, used Paid Sick Leave on the payday covering the payroll period when the leave was used.
- I. Eligible Employees must provide their supervisors with reasonable written or oral advance notice of their request to use Paid Sick Leave when the need for the leave is

SIDE LETTER AGREEMENT BETWEEN THE CITY AND LOCAL 127 TO AMEND ARTICLE 72 OF THE MOU RELATED TO PAID SICK LEAVE FOR HOURLY EMPLOYEES

Page 4

foreseeable. If the need for the leave is unforeseeable, Eligible Employees must provide notice of the need as soon as practicable.

- J. Any unused, accrued Paid Sick Leave will carry over to the following fiscal year of employment, up to a maximum accrual of 80 hours or 10 days, whichever is more.
 - K. Eligible Employees may not cash out Paid Sick Leave at any time.
 - L. If an Eligible Employee separates from employment with the City and is rehired within one year from the date of separation, the City will reinstate previously accrued and unused Paid Sick Leave. Eligible Employees may use the previously accrued and unused Paid Sick Leave and accrue additional Paid Sick Leave immediately upon rehire, under the conditions set forth in this Article. If an Eligible Employee does not return to City service within one year from the date of separation, all accrued and unused Paid Sick Leave will be forfeited.
 - M. If an Eligible Employee moves into a position or status which entitles them to paid annual leave, then the employee will no longer be an Eligible Employee under this Article. However, once in this new position or status, the employee does not forfeit but is entitled to use any unused Paid Sick Leave they accrued under this Article.
 - N. The Paid Sick Leave benefit under this Article accrues concurrently with any additional sick leave benefit authorized by the City or approved by voters in the future, meaning the accumulated leave amounts under this Article and any future ordinance will not be added together to create a more generous benefit, unless a future ordinance specifies otherwise.
 - O. This Article is not intended to waive any rights of Eligible Employees under local, state, or federal law.”
- 3. Unless expressly covered in this Agreement, all wages, hours, and other terms and conditions of employment presently enjoyed by Local 127-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 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.

This Agreement is executed by the following authorized representatives of each party:

For Local 127

By: _____

Tim Douglass
President

Date: 11-29-23

For the City of San Diego

By: _____

Timothy L. Davis
Lead Negotiator

Date: 12/13/23

SIDE LETTER AGREEMENT BETWEEN THE CITY AND LOCAL 127 TO AMEND ARTICLE 72 OF THE MOU RELATED TO PAID SICK LEAVE FOR HOURLY EMPLOYEES

Page 5

By: AS AS
Andres Alva Cardenas
Business Representative

Date: 11/29/23

By: Jed
Jonnabelle Domingo
Supervising Human Resources Officer

Date: 12/13/2023

By: Linda Chambers
Linda Chambers
Senior Human Resources Officer

Approved as to form this 14th day of December, 2023.

MARA W. ELLIOTT, City Attorney

By: [Signature]
Miguel Merrell
Deputy City Attorney