



Office of the City Manager

CONSENT CALENDAR

May 14, 2024

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Aram Kouyoumdjian, Director of Human Resources

Subject: Reinstatement of Sick Leave

RECOMMENDATION

Approve a resolution adopting new Personnel Rule 11.09 – Reinstatement of Sick Leave, which provides that (1) temporary or non-career employees who transition into career positions or at-will positions set forth in Berkeley Municipal Code Section 4.04.120(A)-(C) shall carry over their accrued sick leave banks to their new positions, and (2) consistent with California Labor Code Section 246(g)(2), unused paid sick days shall be reinstated for any employee who separates from the City but is rehired within a year, unless a longer period is specified by an applicable Memorandum of Understanding with the employee's bargaining group.

FISCAL IMPACT

The fiscal impact of this rule will vary, depending on the number of employees who come under the provisions of the rule each year, the number of sick leave hours they have accrued in their bank, and their salary rate. However, the impact is expected to be very modest, affecting only a few employees each year.

CURRENT SITUATION AND ITS EFFECTS

The new rule change ensures that employees who transition from temporary or non-career positions into career positions or at-will positions set forth in Berkeley Municipal Code Section 4.04.120(A)-(C) do not lose their accrued sick leave time during the process of being separated from their temporary or non-career position and being hired back into a career position or at-will position set forth in BMC Section 4.04.120(A)-(C). It is wholly meant to benefit employees in these circumstances and not penalize them for accepting a position with different status within the City.

Moreover, the proposed change is meant to be consistent with California Labor Code Section 246(g)(2), which provides that unused paid sick days shall be reinstated for any employee who separates from an employer but is rehired within a year. However, that

law does not apply to represented employees whose MOUs address paid sick days; therefore, an express change in policy is necessary.

The Personnel Board unanimously approved the new rule at its April 1, 2024 meeting.

#### BACKGROUND

Past practice in the City dictated that temporary or non-career employees who obtained career positions (or at-will positions set forth in Berkeley Municipal Code Section 4.04.120(A)-(C)) would lose their accrued sick time during the process of separating from their former position and being hired into their new one. The proposed rule prevents this loss of accrued time and fosters retention.

Contracts with certain bargaining units provide for reinstatement of sick leave upon rehire, but some do not. The proposed rule provides a standardized baseline policy that would apply to all City employees.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects, climate impacts, or sustainability opportunities associated with the subject of this report.

#### RATIONAL FOR RECOMMENDATION

Temporary or non-career City employees should not suffer the loss of sick leave banks when they transition to career positions (or at-will positions set forth in Berkeley Municipal Code Section 4.04.120(A)-(C)). Moreover, the City should have a standardized baseline policy regarding reinstatement of sick leave time applicable to the entire workforce.

#### ALTERNATIVE ACTIONS CONSIDERED

None.

#### CONTACT PERSON

Aram Kouyoumdjian, Director of Human Resources, (510) 981-6807.

#### ATTACHMENTS

1: Resolution

Attachment 1 – Personnel Rule 11.09

RESOLUTION NO. ##,###-N.S.

REINSTATEMENT OF SICK LEAVE

WHEREAS, past practice in the City dictated that temporary or non-career employees who obtained career positions (or at-will positions set forth in Berkeley Municipal Code Section 4.04.120(A)-(C)) would lose their accrued sick time during the process of separating from their former position and being hired into their new one; and

WHEREAS, California Labor Code Section 246(g)(2) provides that unused paid sick days shall be reinstated for any employee who separates from an employer but is rehired within a year, but does not apply to represented employees whose MOUs address paid sick days; and

WHEREAS, the City's contracts with certain bargaining units provide for reinstatement of sick leave upon rehire, but some do not; and

WHEREAS, the City needs a standardized baseline policy that would apply to all City employees, comply with law, and promote retention;

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that Personnel Rule 11.09, set forth in Attachment 1, is hereby adopted to ensure that employees who transition from temporary or non-career positions into career positions or at-will positions set forth in Berkeley Municipal Code Section 4.04.120(A)-(C) do not lose their accrued sick leave time during the process of being separated from their temporary or non-career position and being hired back into a career position or at-will position set forth in BMC Section 4.04.120(A)-(C).

ATTACHMENT 1

**Personnel Rule 11.09 – Reinstatement of Sick Leave**

Temporary or non-career employees who transition into career positions or at-will positions set forth in Berkeley Municipal Code Section 4.04.120(A)-(C) shall carry over their accrued sick leave banks to their new positions.

Consistent with California Labor Code Section 246(g)(2), unused paid sick days shall be reinstated for any employee who separates from the City but is rehired within a year, unless a longer period is specified by an applicable Memorandum of Understanding with the employee's bargaining group.