

## PILOT Citywide Sick Leave Bank Guidelines

**\*During the PILOT period of this program, the option to deposit a lump sum of 600 hours is suspended and open enrollment will occur between July 1, 2018 and October 15, 2018, as opposed to occurring during benefits open enrollment.**

### I. PURPOSE:

The Sick Leave Bank (hereinafter the “Bank”) grants paid sick leave to certain City of Memphis (hereinafter the “City”) employees, with the exception of employees assigned to the Memphis Police Department, who have exhausted all of their personal sick, vacation, and bonus leave balances and who are either (1) medically certified as unable to perform the duties of their jobs as a result of a personal illness, injury, accident, disability, quarantine, mental illness, or other medical condition, and it is reasonably anticipated that the employee will be able to return to full duty, or (2) the essential care giver for an immediate family member, as defined by the Family & Medical Leave Act (hereinafter “FMLA”), who is suffering from a personal illness, injury, accident, disability, quarantine, mental illness, or other medical condition.

In cases where an employee is granted sick leave from the Bank for the illness of an immediate family member, the number of hours granted shall not exceed the number of hours approved under FMLA, when combined with the employee’s personal sick, vacation and bonus leave.

The Bank is administered by the Committee of the City of Memphis Sick Bank (the “Committee”) as established in Section IV.

### II. ELIGIBILITY FOR ENROLLMENT AND MEMBERSHIP:

1. Employees meeting all of the following criteria are eligible to enroll in and receive grants of sick leave from the Bank:
  - a. Employed full-time with the City for at least twelve (12) continuous full months; and
  - b. Entitled to accrue sick leave; and
  - c. Currently accruing sick leave; and
  - d. Has a sick leave balance of at least 48 hours as of the date of the beginning of the City’s benefits open enrollment period.
2. Employees enrolled in the Bank, who have exhausted all of their personal sick, vacation, and bonus leave balances and are approved for qualifying leave under the FMLA or the Americans with Disabilities Act Amendments Act (“ADAAA”) are eligible to receive grants of sick leave from the Bank. Employees assigned to the Fire Division must exhaust catastrophic leave in addition to the leaves listed above before becoming eligible to receive grants of sick leave from the Bank. An enrolled employee receiving payments under a grant at the time that new vacation leave hours are awarded will not be required to exhaust those newly acquired vacation leave hours to continue receiving the current grant. Subsequent grants will require the exhaustion of all leave hours to trigger eligibility.
3. Employees electing to join the Bank must do so during the City’s benefits open enrollment period, as set by the City’s Human Resources Division. Employees may obtain an application in the process prescribed by the Human Resources Division from year to year.
4. Any employee who is approved to join the Bank (hereinafter “Bank Member”) will initially have sixteen (16) hours of sick leave deducted from his or her personal accumulation and donated to the Bank. Employees assigned to the Fire Division will initially have twenty-four (24) hours of sick leave deducted from his or her personal accumulation and donated to the Bank, in a manner consistent with Fire Division’s sick leave conversion. Additionally, upon initial enrollment, or at any time during membership in the Bank, an employee may elect to

donate up to a lifetime maximum amount of six hundred (600) hours to the Bank. Thereafter, for Bank Members who do not elect to donate the lifetime maximum amount of six hundred (600) hours to the Bank upon initial enrollment, eight (8) hours of sick leave will be assessed to each Bank Member's personal sick leave balance on January 1 of each year. For employees assigned to the Fire Division who do not elect to donate the lifetime maximum amount of six hundred (600) hours to the Bank upon initial enrollment, twelve (12) hours of sick leave will be assessed to each Bank Member's personal sick leave balance on January 1 of each year, in a manner consistent with Fire Division's sick leave conversion. The Committee reserves the right to waive the assessment in any year. In the event of a waiver, the Committee will provide written notice to all Bank Members.

5. If at any time the number of days in the Bank is less than eight (8) hours per Bank Member, or at any time deemed necessary, the Committee may specially assess each Bank Member, with the exception of Bank Members who elect to donate the lifetime maximum amount of six hundred (600) hours to the Bank upon initial enrollment, one or more days of accumulated sick leave. Bank Members will receive written notice prior to a special assessment.
6. A Bank Member who accrues leave the month immediately preceding any assessment but fails to hold the required sick leave for the assessment will be removed from the Bank, unless a qualifying illness or injury is the reason for the lack of available leave.
7. For a Bank Member who does not accrue leave in the month prior to any assessment, the first earned sick day(s) will be assessed upon accrual by the Bank Member. **The Bank Member must notify the Human Resources Division upon accrual, and hold the sick leave in his or her sick leave balance for assessment.** Failure to meet any annual or special assessment within one (1) year constitutes refusal to honor an assessment as outlined in Paragraph VI.1 below.
8. Initial, annual, and special donations/assessments to the Bank are nonrefundable and nontransferable.

### III. ELIGIBILITY FOR APPLICATION AND GRANTS:

1. Application eligibility date ("eligibility date") is the date the Bank Member exhausts all accumulated sick, compensatory and annual leave, and for employees assigned to the Fire Division, the date that the Bank Member exhausts all accumulated sick, compensatory, annual and catastrophic leave. Grant applications must be received within fourteen (14) days of the eligibility date for a Bank Member to qualify for a grant retroactive to eligibility date. If application is not received within fourteen (14) days of the eligibility date, a Bank Member will only qualify for a grant for leave taken from the application date forward. Additional time limits are outlined below in section III.7.c.

Bank Members are eligible to apply for grants of sick leave at any time following enrollment. Application for sick leave grants must be made on a Withdrawal Request Application and Medical Certification form. These forms may be obtained from the City Human Resources website or from the Human Resources Office in the Bank Member's respective division.

2. If an employee sustains a job-related injury or illness, he/she must first submit an on the job injury (hereinafter "OJI") claim and receive a determination prior to receiving grants from the Bank. If the OJI is denied, or if the Bank Member exhausts his/her paid leave prior to receiving a determination, the Bank will consider a request for grants from the bank. If the OJI is approved subsequent to the Bank Member's award of a grant from the Bank, the hours paid under the grant will be credited back to the Bank. The 14-day retroactive application limit outlined in paragraph III.1. will not apply to situations involving denied OJI claims.
3. Employees who received lost time and/or a settlement based on an OJI claim or any other employer-provided benefit(s) for job related injuries or illnesses are not eligible for Bank grants for any claims involving the same injuries or illnesses.
4. Bank Members will not be eligible for grants from the Bank under the following circumstances:

- a. elective surgery;
  - b. while the Bank Member is earning income from other employment;
  - c. during any period the Bank Member is receiving long term disability benefits; or
  - d. if the Bank Member is receiving OJI benefits, or any other employer-provided benefits for job or service-related injuries or illnesses that are also related to the request for grants from the Bank.
5. Application for sick leave grants must be made on Withdrawal Request Application and Medical Certification forms. Employees may obtain these forms as outlined above in Paragraph III.1. All Withdrawal Request Applications must be completed by the Bank Member and forwarded to the City Human Resources Office. If a Bank Member is physically or mentally unable to apply, a family member or agent of the Bank Member may file the request on the Bank Member's behalf.
6. Application for sick leave grants must be submitted no earlier than two (2) weeks prior to, but no later than thirty (30) days after, the eligibility date to receive a bank grant absent extraordinary circumstances. Applications for grants from the Bank received after the expiration of the thirty (30) day period will be denied absent a finding of extraordinary circumstances by the Chief Human Resources Officer. No further applications for sick leave during that period of absence from work for that specific illness/injury will be accepted.
7. Medical Certification:
- a. A Medical Certification form must be submitted with each Withdrawal Request Application. This Medical Certification form must include information resulting from a treatment visit with a medical doctor/surgeon and/or a nurse practitioner/physician's assistant and should occur as close as possible to the Bank Member's eligibility date. Treatment visits may include, but are not limited to, a hospital visit, the date of surgery, a doctor's office visit, etc.
  - b. The initial Medical Certification form must be completed in its entirety by the Bank Member's current attending medical doctor/surgeon and/or nurse practitioner/physician's assistant at the time of application.
  - c. All Medical Certification forms and/or any other medical records or information requested by the Bank or its staff may be forwarded directly to the Bank by the medical office or the official custodian of the medical records or provided by the Bank Member. If medical records are provided by the Bank Member, he/she must sign a HIPAA Release Form so the Committee can confirm the medical records provided by the Bank Member. A copy of the HIPAA form may be obtained from the Administrator.
  - d. For any extension of Bank grants, a subsequent Medical Certification form must be submitted, which must be based on a follow-up treatment visit relating to the same injury or illness. The subsequent Medical Certification form must be completed by either the Bank Member's current medical doctor/surgeon or by a nurse practitioner/physician's assistant working directly under the supervision of the current medical doctor/surgeon.

In the event a Bank Member dies while receiving a grant from the Bank, payments will cease as of the date of death and any leave remaining on the grant will be credited back to the Bank.

#### IV. CITY OF MEMPHIS SICK BANK COMMITTEE:

- 1. The Committee shall consist of five (5) members. The Members shall include two (2) representatives from the City Human Resources Division, selected by the Chief Human Resources Officer; one Committee Member from the City's Finance Division, selected by the Chief Finance Officer; one Committee Member selected by the City's Chief Operating Officer; and a Chair of the Committee who shall be the Chief Human Resources Officer.

The Committee will also maintain one (1) non-voting member from the City's Legal Division, selected by the Chief Legal Officer. All Committee Members must be employed by the City of Memphis. When necessary, a Committee Member may designate an alternate to act on the Committee Member's behalf.

2. Each appointed Committee Member will serve for a term of two (2) years.
3. The Committee may meet as deemed necessary by the Chairperson upon 48 hours' notice. Additional meetings of the Committee will be contingent upon the number of cases to be considered, and will be held as necessary to maintain the integrity of the Bank.

#### V. GRANTS FROM THE BANK:

1. Sick leave grants from the Bank shall not consist of more than 640 consecutive hours in a rolling twelve (12) month period for which the individual Bank Member would have otherwise lost pay. The rolling 12-month period starts on the date the Bank Member's sick leave grant payments begin and extends 12 months forward from that date.
2. In the event a Bank Member exhausts 1040 hours of leave time from the Bank in a rolling twelve (12) month period, that Bank Member will be ineligible for additional grants for twelve (12) months from the date upon which the 1040<sup>th</sup> hour of Bank leave is paid to the Bank Member.
3. Once a Bank Member's leave under the FMLA has been exhausted, nothing herein shall prevent the Bank Member from seeking an Accommodation pursuant to the ADAAA to retain eligibility for grants from the Bank.
  - a. If a Bank Member is the essential care giver for an immediate family member, as defined by FMLA, suffering from a personal illness, injury, accident, disability, quarantine, mental illness, other medical condition or a condition related to, resulting from, or recurring from a previously diagnosed condition for which the Bank granted sick leave, the Bank Member may receive a grant of up to 480 total hours for any single illness or injury of the immediate family member. Any grant from the Bank for illness of a family member combined with the Bank Member's personal sick, vacation and bonus leave shall not exceed the number of hours approved under FMLA.
4. Notwithstanding any other provisions hereof, grants of sick leave from the Bank shall not exceed 1040 hours for any single illness/injury to a member in a rolling 12-month period, beginning upon approval.
5. Grants from the Bank terminate as of the date the Bank Member is either 1) released to return to work with or without restrictions or 2) determined to be permanently unable to return to work.
6. Bank Members in good standing may appeal a decision to deny his or her application for a grant from the Bank to the Chief Human Resources Officer. All appeals to the Chief Human Resources Officer must be filed with the Sick Bank Administrator within fifteen (15) calendar days from the date of the denial letter. Decisions by the Chief Human Resources Officer are final.
7. Nothing herein shall be subject to any grievance procedure outlined under the existing Memorandums of Understanding between the City and recognized Labor Associations. Additionally, any decisions related to Bank are not subject to review by the Civil Service Commission.
8. The ability to award donated hours from the Bank is dependent upon available hours donated by Bank Members.

#### VI. WITHDRAWAL, REMOVAL OR LOSS OF MEMBERSHIP:

1. Membership and grants will terminate immediately upon:

- a. any separation of full-time employment with the City;
  - b. a Bank Member submitting a written request during open enrollment to the Committee to cancel Membership. Regardless of the date of receipt, all cancellations of a Bank Member's Membership are effective on January 1 of the following year.
  - c. a determination that the Bank Member will not be able to return to work; or
  - d. a Bank Member's submission of an application for retirement while receiving a grant from the Bank.
2. In the event of said termination of Membership for any of the enumerated reasons above, any unused donated leave balance will be retained in the Bank. Bank Members shall not be entitled to payment of awarded, but unused, Bank hours, nor shall Bank Members be entitled to payment of donated Bank hours. The estate of a deceased employee shall not be entitled to payment of donated, and/or awarded but unused Bank hours.
  3. Upon a finding by the Bank Administrator of any intentional material misrepresentation of fact(s) by a Bank Member in making application for use of sick leave from the Bank, the Committee may vote to expel and/or deny grants of sick leave to the Bank Member. Any Bank Member expelled from the Bank by the Committee shall lose all present and future rights to Membership, grants of sick leave, and re-enrollment in the Bank. Additionally, the Bank Member may be subject to discipline as deemed appropriate.
  4. Any Bank Member who receives grants from the Bank using any intentional material misrepresentation of fact(s) will be liable for the reimbursement of all salary and benefits received from the Bank. **ALL BANK MEMBERS CONSENT TO PAYROLL DEDUCTION FOR THE REIMBURSEMENT OF GRANTS FROM THE BANK PAID BECAUSE OF ANY MATERIAL MISREPRESENTATION OF FACTS.**

## VII. REPORTING AND COMPLIANCE:

1. The Committee will provide general quarterly status reports to the Healthcare Oversight Committee.
2. The Bank will operate in a manner to ensure compliance with all applicable laws.
3. Sick leave from the Bank will count toward the grant recipient's creditable service for pension accrual.