

Town of Windham

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MEMORANDUM

To: Barry Tibbetts
From: Phyllis Moss *P. Moss*
Date: December 18, 2020
Re: Earned Paid Leave Act

On May 28, 2019, Governor Janet Mills signed into law a groundbreaking new statute requiring most Maine employers to provide paid time off beginning January 1, 2021.

This law requires that

- any employer, public or private, with more than 10 employees, full-time, part-time, temporary, or per diem, in the “usual and regular course of business for more than 120 calendar days in any calendar year” to provide paid leave to all employees¹.
- employees begin to accrue leave when employment begins at a rate of one leave hour for every 40 hours worked and the employer must allow employees to accrue up to 40 hours of leave in “one year of employment;”
- employees must be able to use the leave for any reason;
- absent “emergency, illness or other sudden necessity,” an employee must give “reasonable notice” to his or her supervisor of the intent to use paid leave. Employees must schedule leave to prevent “undue hardship” on the employer, as “reasonably determined by the employer;”
- employers must compensate employees for paid leave at “the same base rate of pay received immediately before taking leave;” and
- employees receive the same benefits provided under the employer’s established policies pertaining to other types of paid leave when taking paid leave under the Earned Leave Act.

Employers *may* impose a waiting period of 120 days before an employee may use accrued leave.

¹ Employees exempt from the Earned Leave Act, include, but are not limited to, seasonal employees. The law also does not apply to employees covered by a collective bargaining agreement in effect on January 1, 2021 until the expiration of the agreement.

The Town currently provides

- vacation and sick time accruals only to full or part-time employees – defined as those employees who work 30 or more hours per week; and
- any remaining accrued vacation time is to be paid out upon separation at the compensation rate the employee is currently being paid.

The Town also imposes a waiting period of six months before vacation time can be used.

I have drafted and attached a new proposed Earned Paid Leave section to replace Section 4 (Vacation) within the Personnel Policy Handbook. This language changes “vacation” time to Earned Paid Leave (EPL); adds in the provision for employees working less than 30 hours per week to accrue paid leave time; and removes the waiting period for the use of paid leave time.

This proposed policy also provides that

- employees working less than 30 hours per week begin to accrue leave when employment begins at a rate of one leave hour for every 40 hours worked up to 40 hours of leave in “one year of employment;”
- employees will be compensated for paid leave at “the same base rate of pay received immediately before taking leave;”
- employees may use EPL for any reason once it has been accrued; and
- employees must give reasonable notice (at least 4 weeks) of the intent to use paid leave except for an emergency, illness, or other sudden necessity.

The Town’s current Vacation Policy is also attached for comparison.

I respectfully request that the Town Council vote to adopt this policy at the January 12, 2021 meeting to take effect January 1, 2021.

Section 4 **Earned Paid Leave¹**

Accrual

Earned Paid Leave (EPL) privileges are available as they are earned to all non-union regular full-time and regular part-time employees working thirty hours or more per week. Each employee shall earn EPL with pay on the following basis:

- (a) **3.0769** EPL hours shall be earned per pay period from the regular date of hire until the sixth (6) anniversary is reached.
- (b) **4.6154** EPL hours shall be earned per pay period from the sixth (6) anniversary of their regular date of hire until they reach their eleventh (11) anniversary.
- (c) **6.1538** EPL hours shall be earned per pay period from the eleventh (11) anniversary of their regular date of hire going forward.

All non-union regular full-time and regular part-time employees working thirty hours or more per week may accrue up to twice the applicable annual accrual rate.

Per-diem employees and employees working less than thirty (30) hours per week shall earn EPL pay on the following basis:

- a) One (1.0) hour shall be accrued per every forty (40) hours worked up to a maximum of forty (40) hours.
- b) Any unused EPL may carryover into the next year, but the maximum benefit remains at forty (40) hours and in no event may an employee have more than forty (40) hours available in a one year period.

Exceptions

The following are not entitled to EPL:

- (a) Seasonal summer staff (June 15 to September 15); and
- (b) Election workers earning less than \$1,000 in a calendar year.

Scheduling of Earned Paid Leave

- (a) Absent an emergency, illness, or sudden necessity, employees must give reasonable notice (at least four (4) weeks) to the employee's supervisor of the intent to use paid leave. Employees must schedule leave to prevent undue hardship on the Town.²
- (b) Holidays which fall within a full-time employee's scheduled EPL shall be paid as holiday hours and shall not be charged against the employee's accrued EPL.

¹ Formerly known as "vacation time"

² Undue hardship is defined as an unreasonable or disproportionate burden on other employees.

- (c) Per-diem employees taking EPL are not eligible for other hours worked – e.g. training sessions, responding to calls, and/or putting in for an open shift.

Use of EPL Leave

Accumulated EPL may be utilized for any reason.

Termination

- (a) Accrued, unused, and unpaid EPL shall be paid as part of final pay upon termination of employment, subject to final withholding by the Town.
- (b) Accrued EPL leave shall be paid to an employee's estate upon the death of the employee.

Section 4 VACATION.

A. Vacation time shall accrue according to the following schedule:

1. Eighty (80) hours per year, accruing at the rate of 3.0769 hours per bi-weekly pay period, from the date of hire through the completion of six (6) years of continuous employment.
2. One hundred twenty (120) hours per year, accruing at the rate of 4.6154 hours per bi-weekly pay period, after the completion of six (6) years of continuous employment.
3. One hundred sixty (160) hours per year, accruing at the rate of 6.1538 hours per bi-weekly pay period, after the completion of eleven (11) years of continuous employment.

B. Vacation time for any individual employee may accrue up to twice the applicable annual accrual rate.

C. Accrued, unused and unpaid vacation time shall be paid as part of final pay upon termination of employment, subject to any final withholding by the town; however, employees who voluntarily terminate their employment without notice as required by these policies shall forfeit any and all remaining accrued, unused and unpaid vacation time.

D. Probationary employees shall not accrue vacation time during the probation period, but shall be credited with vacation time according to the appropriate schedule upon the successful completion of the probation period.

E. Vacation time shall be scheduled consistent with departmental needs. Employees must request to schedule vacation time with their supervisors with as much advance notice as is practical and possible. Vacation time requests may be refused, or rescheduled, at the discretion of the supervisor.

F. Holidays which fall within an employee's scheduled vacation time shall be paid as holiday hours, and shall not be charged against the employee's accrued vacation time