

## **Personnel Rule 7.11 - Domestic Violence, Sexual Assault, and Stalking Leave**

### **Authority 7.11.0 Authority**

SMC 4.04.040 and subsequent revisions thereto, Administration.

SMC 4.04.050 and subsequent revisions thereto, Rule-making authority.

RCW 9A.46.110, and subsequent revisions thereto, Stalking.

RCW 26.50.010, and subsequent revisions thereto, Domestic violence prevention, Definitions.

RCW 49.76 Domestic Violence Leave

RCW 49.78.020, Family leave, Definitions.

RCW 70.125.030, and subsequent revisions thereto, Victims of sexual assault act, Definitions.

### **7.11.1 Definitions**

- A. "Appointing authority" shall mean the head of an employing unit authorized by ordinance or City Charter to employ others on behalf of the City, or a designated management representative. The term includes and can be used interchangeably with department head, department director, superintendent, Fire Chief, and Police Chief.
- B. "Dating Relationship" has the same meaning as RCW 26.50.010 and means a social relationship of a romantic nature. Factors to consider in making this determination include:
  - 1. The length of time the relationship has existed;
  - 2. the nature of the relationship; and
  - 3. the frequency of interaction between the parties.
- C. "Domestic Violence" has the same meaning as in RCW 26.50.010 and means:
  - 1. Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, sexual assault, or stalking as defined in RCW 9A.46.110 of one intimate partner by another intimate partner;
  - 2. Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, sexual assault, or stalking as defined in RCW 9A.46.110 of one family or household member by another family or household member.
- D. "Family members" has the same meaning as in RCW 49.76.020 and means any individual whose relationship to the employee can be classified as a child, spouse, parent, parent in law, grandparent, as those terms are defined in RCW 49.12.265, domestic partner as defined in SMC 4.30.20, or person with whom the employee has a dating relationship. Under RCW 49.12.265 a "child" means a biological,

adopted, or foster child, a step child, a legal ward, or a child of a person standing in loco parentis who is (a) under eighteen years of age or (b) eighteen years of age or older and incapable of self-care because of a mental or physical disability; a “parent” means a biological or adoptive parent of an employee or an individual who stood in loco parentis to an employee when the employee was a child; a “parent in law” means a parent of the spouse; a “grandparent” means a parent of a parent of an employee; and a “spouse” means a husband or wife.

- E. "Intermittent leave" means leave taken in separate blocks of time due to a single qualifying reason.
- F. "Intimate partner" has the same meaning as RCW 26.50.010 and means: (a) Spouses, or domestic partners; (b) former spouses, or former domestic partners; (c) persons who have a child in common regardless of whether they have been married or have lived together at any time; (d) adult persons presently or previously residing together who have or have had a dating relationship; (e) persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship; and (f) persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship.
- G. "Reduced leave schedule" means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.
- H. "Sexual Assault" has the same meaning as in RCW 70.125.030 and means one or more of the following:
  - 1. Rape or rape of a child;
  - 2. Assault with intent to commit rape or rape of a child;
  - 3. Incest or indecent liberties;
  - 4. Child molestation;
  - 5. Sexual misconduct with a minor;
  - 6. Custodial sexual misconduct;
  - 7. Crimes with a sexual motivation;
  - 8. Sexual exploitation or commercial sex abuse of a minor;
  - 9. Promoting prostitution; or
  - 10. An attempt to commit any of the aforementioned offenses
- I. "Stalking" has the same meaning as in RCW 9A.46.110 and is when, without lawful authority:
  - 1. A person intentionally and repeatedly harasses or repeatedly follows another person; and
  - 2. The person being harassed or followed is placed in fear that the stalker intends to injure the person, another person, or property of the person or of another person; and
  - 3. The feeling of fear is one that a reasonable person in the same situation would experience under all the circumstances; and
  - 4. The stalker either:
    - a. Intends to intimidate, harass, or frighten the person, or
    - b. Knows or reasonably should know that the person is afraid, intimidated, or harassed even if the stalker did not intend to place the person in fear or intimidate or harass the person "Victim" is a person who has been subjected to domestic violence, sexual assault and/or stalking.

### **7.11.2 Application of this Rule**

- A. The provisions of this Rule apply to regularly appointed employees.
- B. For regularly appointed employees who are represented under the terms of a collective bargaining agreement, this Rule prevails except where it conflicts with the collective bargaining agreement, any memoranda or agreement or understanding signed pursuant to the collective bargaining agreement, or any established and recognized practice relative to the members of the bargaining unit.
- C. This Rule does not apply to individuals who are hired under the terms of a grant that includes provisions that conflict with this Rule. These individuals are subject to all applicable federal, state and City laws.
- D. This Rule does not apply to temporary employees. Temporary employees are governed by Personnel Rule 11 and all applicable federal, state and City laws.
- E. Appointing authorities may establish written policies and procedures for the implementation of this Rule to facilitate the management of the personnel system within their employing units, provided that such policies and procedures do not conflict with the provisions of this Rule.

### **7.11.3 Domestic Violence, Sexual Assault, and Stalking Leave Policy**

The City will comply with State Law, RCW 49.76, which provides for leave from employment for employees who are victims of domestic violence, sexual assault, or stalking, or for employees whose family members are victims, to participate in legal proceedings, receive medical treatment, or obtain other necessary services.

#### **Qualifying Reasons and Entitlement**

- A. An employee may take reasonable amount of leave from work, intermittent leave, or leave on a reduced leave schedule, with or without pay, to:
  - 1. Seek legal or law enforcement assistance or remedies to ensure the health and safety of the employee or employee's 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;
  - 2. Seek treatment by a health care provider for physical or mental injuries caused by domestic violence, sexual assault, or stalking, or to attend to health care treatment for a victim who is the employee's family member;
  - 3. Obtain, or assist a family member in obtaining, services from a domestic violence shelter, rape crisis center, or other social services program for relief from domestic violence, sexual assault, or stalking;
  - 4. 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; or
  - 5. Participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members from future domestic violence, sexual assault, or stalking.

- B. An employee who is absent from work pursuant to this Rule may elect to use the employee's accrued sick leave, vacation leave, personal holiday, compensatory time, executive leave, merit leave, or unpaid leave time.
- C. The taking of leave under this Rule shall not result in the loss of any pay or benefits to the employee that accrued before the date on which the leave commenced. Upon an employee's return from leave under this Rule, the appointing authority shall either:
  - 1. Restore the employee to the position of employment held by the employee when the leave commenced; or
  - 2. Restore the employee to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.This section does not apply if an employee was hired for a specific term or only to perform work on a discrete project, the employment term or project is over, and the appointing authority would not otherwise have continued to employ the employee.
- D. Coverage under the City's health insurance plan must be maintained for the duration of the leave at the level and under the condition's coverage would have been provided if the employee had not taken the leave.

#### Notice and Certification Requirements

- E. The appointing authority or designated management representative shall conspicuously post an employment poster on the premises where notices to employees and applicants for employment are customarily posted setting forth excerpts from, or summaries of, the pertinent provisions of this chapter and information pertaining to the filing of a charge.
- F. As a condition of taking leave for any purpose described in this Rule, an employee shall give as much advance notice of the employee's intention to take leave as practicable. When advance notice cannot be given because of an emergency or unforeseen circumstance due to domestic violence, sexual assault, or stalking, the employee must give notice no later than the end of the first day that the employee takes such leave.
- G. When an employee requests leave under this Rule the appointing authority may require that the request be supported by verification that:
  - 1. The employee or employee's family member is a victim of domestic violence, sexual assault, or stalking; and
  - 2. The leave taken was for one of the purposes described in this Rule.If verification is required, it 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 circumstance due to domestic violence, sexual assault, or stalking, and verification is required, it must be provided within a reasonable time period during or after the leave.
- H. An employee may satisfy the verification requirement of this section by providing the department with one or more of the following:
  - 1. A police report indicating that the employee or employee's family member was a victim of domestic violence, sexual assault, or stalking;
  - 2. A court order protecting or separating the employee or employee's family

member from the perpetrator of the act of domestic violence, sexual assault, or stalking, or other evidence from the court or the prosecuting attorney that the employee or employee's family member appeared, or is scheduled to appear, in court in connection with an incident of domestic violence, sexual assault, or stalking;

3. Documentation that the employee or the employee's family member is a victim of domestic violence, sexual assault, or stalking, from any of the following persons from whom the employee or employee's family member sought assistance in addressing the domestic violence, sexual assault or stalking: An advocate for victims of domestic violence, sexual assault, or stalking; an attorney; a member of the clergy; or a medical or other professional; or
  4. An employee's written statement that the employee or the employee's family member is a victim of domestic violence, sexual assault, or stalking and that the leave taken was for one of the purposes described in this Rule.
- I. If the victim of domestic violence, sexual assault, or stalking is the employee's family member, verification of the familial relationship between the employee and the victim may include, but is not limited to, a statement from the employee, a birth certificate, a court document, or other similar documentation.

#### Employee Protections

- J. The department shall not require disclosure of information other than the verification described in this Rule and shall maintain the confidentiality of all information provided by the employee under this Rule including the fact that the employee or employee's family member is a victim of domestic violence, sexual assault, or stalking, that the employee has requested or obtained leave under this Rule and any written or oral statement, documentation, record or corroborating evidence provided by the employee unless disclosure is requested or consented to by the employee, ordered by a court or administrative agency, or otherwise required by applicable state or federal law.
- K. The appointing authority may not:
1. Refuse to hire an otherwise qualified individual because the individual is an actual or perceived victim of domestic violence, sexual assault, or stalking;
  2. Discharge, threaten to discharge, demote, suspend or in any manner discriminate or retaliate against an employee with regard to promotion, compensation, or other terms, conditions, or privileges of employment because the employee is an actual or perceived victim of domestic violence, sexual assault, or stalking;
  3. Refuse to make a reasonable safety accommodation requested by an employee who is a victim of domestic violence, sexual assault, or stalking, unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the employer. For the purposes of this section, an "undue hardship" means an action requiring significant difficulty or expense. A reasonable safety accommodation may include, but is not limited to, a transfer, reassignment, modified schedule, changed work telephone number, changed work email address, changed workstation, installed lock,

implemented safety procedure, or any other adjustment to a job structure, workplace facility, or work requirement in response to actual or threatened domestic violence, sexual assault, or stalking.

4. Discharge, threaten to discharge, demote, deny a promotion to, sanction, discipline, retaliate against, harass, or otherwise discriminate against an employee with respect to compensation, terms, conditions, or privileges of employment because the employee:
  - Exercised rights under RCW 49.76.030 or 49.76.115.
  - Filed or communicated to the employer an intent to file a complaint under RCW 49.76.070 or 49.76.100; or
  - Participated or assisted, as a witness or otherwise, in another employee's attempt to exercise rights under RCW 49.76.030, 49.76.115, 49.76.070, or 49.76.100.