

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE EVERGREEN STATE COLLEGE
AND
WASHINGTON FEDERATION OF STATE EMPLOYEES**

House Bill 1434 modified RCW 41.04 to include shared leave eligibility for Parental Leave and Pregnancy Disability Leave effective July 1, 2018. The Parties agree to modify Article 13, Shared Leave, of the classified employees' Collective Bargaining Agreement to incorporate changes in the law, effective July 1, 2018, as follows:

**ARTICLE 13
SHARED LEAVE**

13.1 Shared Leave

A. The purpose of the leave sharing program is to permit state employees, at no significantly increased cost to the State, of providing leave to come to the aid of another state employee who is:

1. ~~has been e~~Called to service in the uniformed services; ~~who is~~
2. ~~R~~esponding to a state of emergency anywhere within the United States declared by the federal or state government; ~~who is~~
3. Taking parental leave to bond with their newborn, adoptive or foster child;
4. Sick or temporarily disabled because of pregnancy;
5. ~~a~~A-victim of domestic violence, sexual assault, or stalking; ~~or who is~~
6. ~~s~~Suffering from or has a relative or household member suffering from an extraordinary or severe illness, injury, impairment, or physical or mental condition, ~~which has caused or is likely to cause the employee to take leave without pay or terminate his or her employment. For purposes of the leave sharing program, the following definitions apply:~~

B. For purposes of the leave sharing program, the following definitions apply:

- 1.A. "Domestic violence" means physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault, between family or household members as defined in RCW 26.50.010; sexual assault of one family or household member by another family or household member; or stalking as defined in RCW 9A.46.110 of one family or household member by another family or household member.

- 2B. "Employee" means any employee who is entitled to accrue sick leave or vacation leave and for whom accurate leave records are maintained.
- 3C. "Employee's relative" normally will be limited to the employee's spouse, state registered domestic partner as defined by RCW 26.60.020 and RCW 26.60.030, child, stepchild, grandchild, grandparent, or parent.
- 4D. "Household members" is defined as persons who reside in the same home who have reciprocal duties to and do provide financial support for one another. This term will include, but is not limited to, foster children and legal wards. The term does not include persons sharing the same general house when the living style is primarily that of a dormitory or commune.
5. "Parental leave" means leave to bond and to care for a newborn child after birth or to bond and care for a child after placement for adoption or foster care, for a period of up to sixteen (16) weeks after the birth or placement.
6. "Pregnancy disability leave" means leave for pregnancy-related medical condition or miscarriage.
- 7E. "Service in the uniformed services" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time national guard duty including state-ordered active duty, and a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty.
- 8F. "Severe" or "extraordinary" condition is defined as serious or extreme and/or life threatening.
- 9G. "Sexual assault" has the same meaning as in RCW 70.125.030.
- 10H. "Stalking" has the same meaning as in RCW 9A.46.110.
- 11I. "Uniformed services" means the armed forces, the army national guard, and the air national guard of any state, territory, commonwealth, possession, or district when engaged in active duty for training, inactive duty training, full-time national guard duty, or state active duty, the commissioned corps of the public health service, the coast guard, and any other category of persons designated by the President of the United States in time of war or national emergency.
- 12J. "Victim" means a person ~~that~~against whom domestic violence, sexual assault, or stalking has been committed ~~against~~ as defined in this Article.

13.2 Shared Leave Receipt

An employee may be eligible to receive shared leave if the Employer has determined the employee meets any of the following criteria:

- A. The employee suffers from, or has a relative or household member suffering from, an illness, injury, impairment, or physical or mental condition which is of an extraordinary or severe nature;
- B. The employee has been called to service in the uniformed services;
- C. A state of emergency has been declared anywhere within the United States by the federal or any state government and the employee has the needed skills to assist in responding to an emergency or its aftermath and volunteers his or her services to either a governmental agency or to a nonprofit organization engaged in humanitarian relief in the devastated area, and the governmental agency or nonprofit organization accepts the employee's offer of volunteer services; or
- D. The employee is a victim of domestic violence, sexual assault, or stalking; or

E. The employee is taking parental leave and/or pregnancy disability leave.

~~FE~~ The illness, injury, impairment, condition, call to service, emergency volunteer service, ~~or~~ consequence of domestic violence, sexual assault, or stalking or parental and/or pregnancy disability leave has caused, or is likely to cause, the employee to:

- 1. Go on leave without pay status; or
- 2. Terminate state employment.

~~GF~~. The employee's absence and the use of shared leave are justified.

~~HG~~. The employee has depleted or will shortly deplete ~~his or her~~:

- 1. Vacation leave, sick leave and personal holiday if the employee qualifies under 13.2 A;
- 2. Vacation leave and paid military leave allowed under RCW 38.40.060 if the employee qualifies under 13.2 B; or
- 3. Vacation leave or personal holiday if the employee qualifies under 13.2 C or 13.2 D.
- 4. Personal holiday and compensatory time if the employee qualifies for parental leave and/or pregnancy disability leave. Employees under this qualification can retain and reserve up to forty (40) hours each of vacation and sick leave.

- H. The employee has abided by the Employer's policy regarding:
 - 1. Sick leave use if the employee qualifies under 13.2 A and 13.2 D; or
 - 2. Military leave if the employee qualifies under 13.2 B.
- I. The employee has diligently pursued and been found to be ineligible for benefits under RCW 51.32 if the employee qualifies under 13.2 A.

13.3 Shared Leave Use

- A. The Employer will determine the amount of leave, if any, which an employee may receive. However, an employee will not receive more than five hundred twenty-two (522) days of shared leave during total state employment. The Employer may authorize leave in excess of five hundred twenty-two (522) days in extraordinary circumstances for an employee qualifying for the program because he or she is suffering from an illness, injury, impairment or physical or mental condition which is of an extraordinary or severe nature.
- B. The Employer will require the employee to submit, prior to approval or disapproval:
 - 1. A medical certificate from a licensed physician or health care practitioner verifying the employee's required absence, the description of the medical problem, and expected date of return to work status for shared leave under 13.2 A;
 - 2. [Verification of child birth or placement of adoption or foster care, or a medical certificate from a licensed physician or health care provider verifying the pregnancy disability when the employee is qualified under parental leave and/or pregnancy disability leave.](#)
 - 3. A copy of the military orders verifying the employee's required absence for shared leave under 13.2 B; or
 - 34. Proof of acceptance of an employee's offer to volunteer for either a governmental agency or a nonprofit organization during a declared state of emergency for shared leave under 13.2 C.
- C. The Employer may require the employee to submit, prior to approval or disapproval, verification of the employee's status as a victim of domestic violence, sexual assault or stalking for shared leave under 13.2 D. Such verification will be in accordance with the Domestic Violence Leave Act, RCW 49.76 and may be one or more of the following:
 - 1. An employee's own written statement;
 - 2. A statement from an attorney or advocate, member of the clergy, or medical or other professional; and/or

3. A court order or police report documenting the employee is a victim of domestic violence, sexual assault or stalking.
- D. The Employer should consider other methods of accommodating the employee's needs, such as modified duty, modified hours, flex-time or special assignments in lieu of shared leave usage.
- E. Donated leave may be transferred from employees within the same employer, or with the approval of the heads or designees of both higher education institutions, state agencies or school districts/educational service districts, to an employee of another higher education institution, state agency or school district/educational service district.
- F. Vacation leave, sick leave, or all or part of a personal holiday transferred from a donating employee will be used solely for the purpose stated in this Article.
- G. The receiving employee will be paid his or her regular rate of pay; therefore, the value of one (1) hour of shared leave may cover more or less than one (1) hour of the recipient's salary.
- H. Eight (8) hours a month of accrued and/or shared leave may be used to provide for the continuation of benefits as provided for by the Public Employee's Benefit Board.
- I. The Employer will respond in writing to shared leave requests within fourteen (14) calendar days of receipt of a properly completed request.

13.4 Leave Donation

An employee may donate vacation leave, sick leave, or personal holiday to another employee for purposes of the leave sharing program under the following conditions:

- A. The Employer approves the employee's request to donate a specified amount of vacation leave to an employee authorized to receive shared leave; and
 1. The full-time employee's request to donate leave will not cause his or her vacation leave balance to fall below eighty (80) hours. For part-time employees, requirements for vacation leave balances will be prorated; and
 2. Employees may not donate excess vacation leave that they would not be able to take due to an approaching anniversary date; except when the request for vacation leave was denied and the vacation leave was deferred.
- B. The Employer approves the employee's request to donate a specified amount of sick leave to an employee authorized to receive shared leave. The employee's request to donate leave will not cause his or her sick leave balance to fall below one hundred seventy-six (176) hours after the transfer.

- C. The Employer approves the employee's request to donate all or part of his or her personal holiday to an employee authorized to receive shared leave.
 - 1. That portion of a personal holiday that is accrued, donated as shared leave, and then returned during the same calendar year to the donating employee, may be taken by the donating employee in full-day increment.
 - 2. An employee will be allowed to split the personal holiday only when donating a portion of the personal holiday to the shared leave program.
- D. No employee may be intimidated, threatened, coerced, or financially induced into donating leave for purposes of this program.

13.5 Shared Leave Administration

- A. The calculation of the recipient's leave value will be in accordance with applicable Office of Financial Management policies, regulations, and procedures. The leave received will be coded as shared leave and be maintained separately from all other leave balances. All paid leave accrued must be used prior to using shared leave when the employee qualifies for shared leave under 13.2 A. Accrued vacation leave and paid military leave allowed under RCW 38.40.060 must be used prior to using shared leave for employees qualified under 13.2 B. All paid leave, except sick leave, must be used prior to using shared leave when the employee qualifies for shared leave under 13.2 C and 13.2 D. However, for shared leave qualified under parental leave and/or pregnancy disability leave, the employee is required to deplete their personal holiday and all compensatory time. The employee is also required to deplete vacation leave and sick leave that is over forty (40) hours in each category.
- B. An employee on leave transferred under these rules will continue to be classified as a state employee and will receive the same treatment in respect to salary, wages, and employee benefits as the employee would normally receive if using accrued vacation leave or sick leave.
- C. All salary and wage payments made to employees while on leave transferred under these rules will be made by the agency/institution employing the person receiving the leave.
- D. Where Employers have approved the transfer of leave by an employee of one (1) agency/institution to an employee of another agency/institution, the agencies/institutions involved will arrange for the transfer of funds and credit for the appropriate value of leave in accordance with Office of Financial Management policies, regulations, and procedures.
- E. Leave transferred under this Section will not be used in any calculation to determine an agency's/institution's allocation of full-time equivalent staff positions.

F. Any shared leave no longer needed or will not be needed at a future time in connection with original injury or illness or for any other qualifying condition by the recipient as determined by the Employer, will be returned to the donor(s). Before returning unused leave:

1. The Employer will obtain a statement from the receiving employee's doctor verifying whether the employee's injury or illness is resolved; or
2. The employee must be released to regular employment; has not received additional medical treatment for their current condition or any other qualifying condition for at least six (6) months; and their doctor has declined, in writing, the employee's request for a statement indicating the employee's condition has been resolved.

The remaining shared leave is to be divided on a pro rata basis among the donors and reinstated to the respective donors' appropriate leave balances based upon each employee's current salary rate at the time of the reversion. The shared leave returned will be prorated back based on the donor's original donation.

G. Unused shared leave may not be cashed out but will be returned to the donors per Subsection F, above.

H. An employee who uses leave that is transferred under this Section will not be required to repay the value of the leave that he or she used.

I. If a shared leave account is closed and an employee later has the need to use shared leave due to the same condition listed in the closed account, the Employer must approve a new shared leave request for the employee.

Agreed this _____ day of _____, 2018

The Evergreen State College

Washington Federation of State Employees

Laurel R. Uznanski, Chief Negotiator

Ron Heley, Chief Negotiator