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June 26, 2024

Andrew Holbrook
Truckee Police Officer's Association Representatives

Larry Menth, Consultant, Mastagni Holstedt

Re: Amendments to the Town's Personnel Rules

To the Truckee Police Officer's Association Representatives

This side letter memorializes changes to the Town's Personnel Rules necessary to comply with recent State of California legislation. Those legal changes are described below.

There are some changes related to negotiations such as amending the list of holidays to extend Juneteenth to the Truckee Police Officer's Association members.

Additionally, there are some miscellaneous items that the Town would like to clean-up. There are two administrative changes that the Town would like to amend or add to the personnel rules, one for temporary leaves of absence for emergency service workers beyond the State's definition and changing the "day before/day after" criteria for holiday pay to relieve the administrative burden required to track. The largest change is in relation to the Town's Electronic Media policy. While the Town does not feel we are introducing substantive changes to the working conditions, the Town feels that this update is necessary to comply with current technology use and the Town's cyber defense strategies. Lastly there are two typos related to numbering and indentation in the Personnel Rules that need correction to provide better clarity and transparency. The details related to each change are also detailed with each section.

The **red text** indicates a change from the current personnel rules. The **blue text** indicates an addition to the current personnel rules.

LEGAL UPDATES

1. LEAVE FOR REPRODUCTIVE LOSS

SB 848 was signed by the California Governor on October 11, 2023. This new leave law went into effect on January 1, 2024. This law was passed to address reproductive-related losses which were largely unaddressed in the recent changes to California's bereavement leave laws (AB 1949). The following changes would outline the provisions of the law in the Personnel Rules and bring transparency to employees who have a need to utilize these provisions regarding their right to leave following reproductive loss.

Section 15 *Leaves of Absence* shall be amended as follows:

I. REPRODUCTIVE LOSS LEAVE

1. Statement of Policy

All employees who have been employed by the Town during the 30-day period immediately preceding a qualifying reproductive loss event shall be entitled to reproductive loss leave under this policy.

2. Definitions

“Assisted reproduction” means a method of achieving pregnancy through an artificial insemination or an embryo transfer and includes gamete and embryo donation. It does not include any pregnancy achieved through intercourse.

“Failed adoption” means the dissolution or breach of an adoption agreement with the birth mother or legal guardian, or an adoption that is not finalized because it is contested by another party. This event applies to a person who would have been a parent of the adoptee if the adoption had been completed.

“Failed surrogacy” means the dissolution or breach of a surrogacy agreement, or a failed embryo transfer to the surrogate. This event applies to the person who would have been a parent of a child born as a result of the surrogacy.

“Miscarriage” means a miscarriage by a person, by the person’s current spouse or domestic partner, or by another individual if the person would have been a parent of a child born as a result of the pregnancy.

“Reproductive Loss Event” means the day, or for a multiple-day event, the final day of a failed adoption, failed surrogacy, miscarriage, stillbirth, or an unsuccessful assisted reproduction.

“Stillbirth” means a stillbirth resulting from a person’s pregnancy, the pregnancy of a person’s current spouse or domestic partner, or another individual, if the person would have been a parent of a child born as a result of the pregnancy that ended in stillbirth.

“Unsuccessful assisted reproduction” means an unsuccessful round of intrauterine insemination or of an assisted reproductive technology procedure. This event applies to a person, the person’s current spouse or domestic partner, or another individual, if the person would have been a parent of a child born as a result of the pregnancy.

3. Leave

Employees shall be eligible for up to five (5) days of unpaid leave following a reproductive loss event. Employees may use their accumulated paid leave including vacation time, paid sick leave, compensatory time off, or administrative leave during their reproductive loss leave.

Employees are limited to a total of twenty (20) days of unpaid leave for reproductive loss leave within a 12-month period, but employees may not take more than five (5) days per event. A day means an employee's regularly scheduled workday. If an employee is assigned to an alternative work schedule such as a 9/80 or 4/10 work period, the employee shall be eligible for a full day of unpaid leave in accordance with their regularly scheduled workday.

Leave days may be taken nonconsecutively for each event. Employees must take the time within three (3) months of the reproductive loss event.

If the Town employs multiple individuals who would have been a parent of a child born or adopted, all such individuals shall be eligible for reproductive loss leave.

The currently labeled subsections I through R in Section 15 of the Personnel Rules shall be relabeled as follows:

- ~~I.~~ **J. JURY DUTY AND COURT APPEARANCES**
- ~~J.~~ **K. FAMILY AND MEDICAL LEAVE**
- ~~K.~~ **L. INTERMITTENT LEAVE OR LEAVE ON A REDUCED LEAVE SCHEDULE**
- ~~L.~~ **M. EMPLOYEE NOTICE OF LEAVE**
- ~~M.~~ **N. DONATION OF PAID TIME OFF**
- ~~N.~~ **O. PREGNANCY DISABILITY LEAVE**
- ~~O.~~ **P. TIME OFF FOR VICTIMS OF VIOLENT CRIMES OR DOMESTIC ABUSE**
- ~~P.~~ **Q. WORKERS' COMPENSATION DISABILITY LEAVE**
- ~~Q.~~ **R. SCHOOL-RELATED LEAVES**
- ~~R.~~ **S. LACTATION ACCOMMODATION POLICY**

2. TEMPORARY LEAVES OF ABSENCE FOR EMERGENCY RESCUE PERSONNEL

Under California Labor Code §230.3 and §230.4, an employee who performs duties as a volunteer firefighter, as a reserve peace officer, or as an emergency rescue personnel shall be permitted to take temporary leaves of absence, not to exceed an aggregate of 14 days per calendar year, to engage in fire, law enforcement, or emergency rescue training.

Employees asked the Town to recognize Tahoe Nordic Search and Rescue under this Rule. Although Tahoe Nordic Search and Rescue does not meet the official definition of an agency providing emergency services as defined by Section 1799.107 of the Health and Safety Code, the Town recognizes the importance of these organizations to the community. Below is the Town's proposal.

The following shall be added to Section 15 *Leaves of Absence*:

T. TEMPORARY LEAVES OF ABSENCE FOR EMERGENCY RESCUE PERSONNEL

An employee who performs duties as a volunteer firefighter, a reserve peace officer, or an emergency rescue personnel, as defined in Section 230.3 of the California Labor Code, shall be permitted to take up to 14 days of unpaid leave per calendar year for the purpose of engaging in fire, law enforcement, or emergency rescue training.

At the discretion of the applicable Department Head, employees who are in good standing and who volunteer for the Tahoe Nordic Search and Rescue, Nevada County Search and Rescue, and/or a similar search and rescue organization that has been approved by the Town based in and/or operating in the greater Truckee area shall be eligible for up to five (5) days of unpaid leave per calendar year to complete emergency rescue training, provided that the employee gives reasonable notice to the Town of their proposed absence.

The Town may require employees to provide documentation from the emergency search and rescue organization, within 5 days of the leave, as proof that the employee participated in the rescue training on a specific date and time.

A “day” means an employee's regularly scheduled work day. If an employee is assigned to an alternative work schedule such as a 9/80 or 4/10 work period, they shall be eligible for a full day of unpaid leave in accordance with their regularly scheduled workday.

3. PROTECTIONS FOR OFF-SITE, OFF-DUTY MARIJUANA USE AND UPDATES TO THE TOWNS DRUG & ALCOHOL POLICY

AB 2188/SB 7800 amended the Fair Employment and Housing Act (FEHA) by adding provisions specifically protecting a person’s off-site, off-duty marijuana use. This new law went into effect on January 1, 2024.

This policy applies to all employees of, and to all applicants for, positions with the Town. Employees who are required to participate in the Town’s “Motor Carrier Alcohol and Controlled Substances Testing Policy” and/or the “Drug and Alcohol Policy for Tahoe Truckee Area Regional Transit” are subject to the requirements contained in this policy, as well as those Federally mandated policies.

Section 19 *Drug and Alcohol-Free Workplace Policy* Subsection E. *Employee Responsibilities* will be amended as follows:

An employee must:

- (a) Not report to work or be subject to duty (including but not limited to call-back and/or standby) while ~~their~~ ~~his or her~~ ability to perform job duties is impaired due to on ~~and/or~~ off-duty ~~consumption of alcohol, marijuana, other cannabinoid substances and/or any other lawful or unlawful drug use;~~
- (b) Not possess or use ~~controlled~~-substances ~~that are considered controlled by both the federal Drug Enforcement Administration and the California attorney general,~~ including illegal drugs and prescription drugs without a prescription, at any time, or use alcohol, ~~marijuana, or other psychoactive cannabinoid products,~~ at any time while on Town property, ~~or~~ while on duty for the Town at any location, ~~or are on standby (paid or otherwise);~~
- (c) Not directly or through a third-party manufacture, sell, distribute, dispense, or provide controlled substances to any person, including any employee, at any time, or manufacture, sell, distribute, dispense, or provide alcohol to any employee while either or both employees are on duty or subject to being called to duty; ‘
- (d) Submit immediately to an alcohol, ~~psychoactive marijuana metabolites,~~ or drug test or searches when ~~required~~ by a Town representative;

There shall be no changes to items not included in the above list.

The following changes shall be made to Subsection H *Physical Examination and Procedure*:

The drug and/or alcohol test may test for any substance which could impair an employee’s ability to perform effectively and safely the functions of ~~their his or her~~ job, including, but not limited to, prescription medication, alcohol, heroin, cocaine, morphine and its derivatives, P.C.P., methadone, barbiturates, amphetamines, **and psychoactive metabolites related to medicinal or recreational marijuana and/or cannabinoids. and other cannabinoids.**

The following shall be added to the end of Subsection H *Physical Examination and Procedure*:

No such drug and/or alcohol test shall be used to test for non-psychoactive cannabis metabolites.

The Town also attended a training to ensure ongoing compliance with the Federally mandated drug and alcohol testing requirements imposed by the Department of Transportation and Federal Transit Authority. In the past, Fleet Equipment Mechanics have only been tested under the FTA “Drug and Alcohol Policy for Truckee Area Regional Transit” policy to ensure compliance when they are repairing Transit vehicles. However, in that training, staff learned that Fleet Equipment Mechanics are also subject to the DOT “Motor Carrier Alcohol and Controlled Substances Testing Policy” when they drive any Town vehicle that requires a CDL during the repair process. As a result, our Fleet Equipment Mechanics need to be tested under both federal policies. This may result in increased frequency of testing for those employees. To increase transparency, the Town wishes to make a change to the Personnel Rules to clarify that some employees may be tested under two separate drug and alcohol testing policies.

Section 19 *Drug and Alcohol-Free Workplace Policy* Subsection C. *Application* will be amended as follows:

C. APPLICATION This policy applies to all employees of, and to all applicants for, positions with the Town. Employees who are required to participate in the Town’s “Motor Carrier Alcohol and Controlled Substance Testing Policy” **and/or** the “Drug and Alcohol Policy for Tahoe Truckee Area Regional Transit” are subject to the requirements contained in this policy, as well as those Federally mandated policies.

UPDATES RELATED TO NEGOTIATIONS

The Town proposed extending the Juneteenth holiday to the members of the Truckee Police Officer’s Association to align with the benefits previously provided to the Truckee General Employees Membership Association and the Mid-Management Employees Group. The following changes are needed to accommodate this change.

Section 15 *Leaves of Absence* Subsection G *Holidays* shall be amended as follows:

G. HOLIDAYS

~~Municipal~~ **Town** employees shall be entitled to the following holidays:

New Year’s Day	(January 1)
Martin Luther King Jr. Day	(third Monday in January)
President’s Day	(third Monday in February)
Memorial Day	(last Monday in May)
Juneteenth	(June 19 —department head, mid manager, and general employees only)
Independence Day	(July 4)
Labor Day	(first Monday in September)
Columbus Day	(second Monday in October)
Veterans’ Day	(November 11)
Thanksgiving Day	(fourth Thursday in November)
Day After Thanksgiving	(fourth Friday in November)
Christmas Eve Day	(December 24)
Christmas Day	(December 25)

ADMINISTRATIVE UPDATES & CORRECTIONS –

1. “DAY BEFORE/AFTER” CRITERIA TO PAID TIME CRITERIA FOR HOLIDAYS

The Town wishes to change the application of prorated holiday time for employees on protected leaves of absence (excluding a personal unpaid leave of absence). The previous method of requiring employees to have a paid leave day before and after the holiday was creating an administrative challenge that was hard to consistently monitor. While employees were on paid leave, the Town was assisting employees in reporting their paid leave so they could get the maximum holiday paid time and this change simply makes the tracking easier for the Town and the employee.

Section 15 *Leaves of Absence* Subsection G *Holidays* paragraphs 3 and 4 shall be amended as follows:

To be eligible for holiday pay, ~~an employee must have paid time including regular hours worked and/or use of approved paid leave during the pay period encompassing the holiday. an employee must work on a regular workday before and the regular work day after a paid holiday, or be on an approved paid leave of absence the day before and the day after.~~ Approved paid leave of absence is defined as paid sick leave, paid vacation, paid floating holiday, ~~paid compensatory time off, paid administrative leave,~~ or paid authorized leave of absence.

All regular full-time employees who meet the ~~“day before/after”~~ ~~paid time~~ criteria discussed above are eligible for holiday pay whether or not they ~~have completed the Probationary Period for their job classification has been completed.~~ Holiday pay will be eight (8) hours compensation calculated on the employee's straight-time base pay rate (as of the date of the holiday). ~~For employees who work less than 80 hours in the pay period, holiday pay will be prorated based on the total number of hours worked, and/or paid leave hours utilized~~ in the pay period in which the holiday falls. Employees working a flex schedule (i.e., four tens) will be compensated eight (8) hours for a paid holiday.

2. TYPOS

In reviewing the personnel policies, staff discovered two issues that were causing confusion in the way those sections were read.

In Section 4 *Anti-Harassment, Discrimination, and Retaliation Policies* Subsection A. *Policy Against Harassment, Discrimination, and Related Retaliation*, the policies fail to indent to show the types of harassment as defined in part 5 *Definitions Protected Classification*.

This Section will be amended as follows:

5. Definitions ~~Protected Classifications~~: This Policy prohibits harassment or discrimination because of an individual’s protected classification.

“Protected classification” includes perceived or actual race, religion, sex (including gender, gender identity, gender expression), national origin, ancestry, physical or mental disability, medical condition, marital status, age (40 or over), sexual orientation, pregnancy, and breastfeeding, military or veteran status, or any other basis protected by federal, state or local law or ordinance or regulation.

“Discrimination”: ~~This Policy prohibits~~ includes treating individuals differently because of the individuals protected classification as defined in this policy. ~~This policy prohibits discrimination.~~

“Harassment”: ~~Harassment~~ may include, but is not limited to the following types of behavior that are undertaken because of a person’s protected classification:

Verbal: Verbal harassment includes epithets, jokes, comments or slurs that identify a person on the basis of his or her protected classification, intimate or other nicknames, comments on appearance – including dress or physical features – or stores that tend to disparage those on the basis of a protected classification. This may include inappropriate comments on appearance, including dress or physical features, or dress consistent with gender identification, or race-oriented stories and jokes.

Visual: Visual harassment includes gestures, posters, notices, bulletins, cartoons, photography, drawings or images communicated through electronic systems that tend to disparage those with a protected classification or that depict inappropriate content.

Physical: Physical harassment includes the following conduct taken because of an individual’s protected classification: assault, impeding or blocking movement, physically interfering with normal work or movement, pinching, grabbing, patting, propositioning, leering, making express or implied job threats or promises in return for submission of physical acts, mimicking, stalking, or taunting.

Sexual Harassment: Sexual harassment includes unwelcome sexual advances, requests for sexual favors and other acts of a sexual nature, where submission is made a term or condition of employment, where submission to or rejection of the conduct is used as the basis for employment decisions, or where the conduct is intended to or actually does unreasonably

This indent is not currently included in the Personnel Rules

interfere with an individual's work performance or create an intimidating, hostile, or offensive working environment.

~~Note that H~~arassment is not limited to conduct by Town employees, but can also include conduct by those who are not employees such as elected officials, appointed officials, persons providing services under contracts, volunteers, or members of the public. **This policy prohibits harassment.**

“Retaliation” is ~~A~~any adverse action taken because an applicant, employee, official, officer, volunteer, contractor, or agent has reported harassment or discrimination, or has participated in the Complaint Procedure described below, is prohibited. “Adverse action” includes: taking sides because an individual has reported harassment, spreading rumors about a complaint, shunning and avoiding an individual who reports harassment, or real or implied threats of intimidation to prevent an individual from reporting harassment.

The following individuals are protected from retaliation: those who make good faith reports of harassment or discrimination, and those who associate with an individual who is involved in reporting harassment or discrimination or who participates in the complaint or investigation process. **This policy prohibits retaliation.**

In the section on Serious Health Conditions in Section 15 *Leaves of Absence*, the numbered sections had been incorrectly numbered, which made the definitions confusing. To improve clarity and transparency, staff would like to take this opportunity to correct this oversight now.

Section 15 *Leaves of Absence* Subsection J *Family and Medical Leave* Item 2 *Definitions* shall be amended to read as follows:

“Serious Health Condition” means an illness, injury, impairment, or physical or mental condition that involves:

- (a) Inpatient Care in a hospital, hospice, or residential medical care facility, including Any period of incapacity (e.g., inability to work or perform other regular daily activities due to the serious health condition, treatment involved, or recovery therefrom). A person is considered “inpatient” when a health care facility admits him or her to the facility with the expectation that he or she will remain at least overnight, even if it later develops that such person can be discharged or transferred to another facility, and does not actually remain overnight; or
- (b) Continuing treatment by a health care provider: A serious health condition involving Continuing treatment by a health care provider includes any one or more of the following:
 - a. A period of incapacity (i.e., inability to work, or perform other regular daily activities) due to serious health condition of more than three consecutive calendar days; and
 - i. Any subsequent treatment or period of incapacity relating to the same condition, that also involves:
 - ii. Treatment two or more times by a health care provider, by a nurse or physician’s assistant under direct supervision by a health care provider, or by a provider of health care services (e.g., a physical therapist) under orders of, or on referral by a health care provider; or

- iii. Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider. This includes, for example, a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition. If the medication is over the counter, and can be initiated without a visit to a health care provider, it does not constitute a regimen of continuing treatment.
- b. Any period of incapacity due to pregnancy or for prenatal care. Note that pregnancy is a “serious health condition” only under the FMLA. Under California law, an employee disabled by pregnancy is entitled to pregnancy leave. (See Section P, Pregnancy Disability Leave)
- c. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:
 - i. Requires periodic visits for treatment by a health care provider, or by a nurse or physician’s assistant under direct supervision of a health care provider;
 - ii. Continues over an extended period of time (including recurring episodes of a single underlying condition); and
 - iii. May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.). Absences for such incapacity qualify for leave even if the absence lasts only one day.
- d. A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by health care provider.
- e. Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment.

3. ELECTRONIC MEDIA POLICY

Following the Town’s Cyber Event in 2021, the Town reviewed Section 16 *Comprehensive Electronic Media Policy*. The Town needs to update this section to better reflect the current technology and provide more clarity, completeness and transparency to employees who utilize the Town’s electronic tools. The Town wishes to break this into three major subsections and replace the existing Section 16 with Attachment A.

CERTIFICATION

If this side letter accurately delineates our agreement, please indicate your agreement by signing below. After approval by all three bargaining units, these changes will be presented to Council for final approval and incorporation.

Signatures:

Andrew Holbrook, President, TPOA

Date

Larry Menth, Consultant, Mastagni Holstedt

Date

Jen Callaway, Town Manager

Date

Nicole Casey, Administrative Services Director

Date