

ORDINANCE NO. 2007-104

SPONSOR Mr. McCarthy

DATE \_\_\_\_\_

COMMITTEE: Personnel

**An Ordinance amending Section 169.22 of the Codified Ordinances of the County of Summit, entitled "Leaves of Absence" to require County employees on sick leave or leave under the Family and Medical Leave Act to obtain written authorization from their appointing authority prior to working for an outside or supplemental employer while on leave, for the Executive, the Human Resource Commission and the Prosecutor-CSEA, and declaring an emergency.**

WHEREAS, the County Executive and County Council believe that it is reasonable to require County employees who are on sick leave or leave under the Family and Medical Leave Act to obtain written authorization from their appointing authority prior to working for an outside or supplemental employer while on leave; and

WHEREAS, at its December 4, 2006, meeting, the Human Resource Commission issued Order No. 06-10, which is attached hereto as Exhibit A, which approves a proposal by the Child Support Enforcement Agency to amend Section 169.22 of the Codified Ordinances of the County of Summit, entitled "Leaves of Absence" to restrict the ability of County employees to work for an outside or supplemental employer while on leave; and

WHEREAS, Section 825.312(h) of the Code of Federal Regulations provides that an employer policy governing outside or supplemental employment continues to apply to an employee while on leave under Family and Medical Leave Act; and

WHEREAS this Council has determined by reviewing all pertinent information that it is necessary and in the best interest of the County of Summit to amend Section 169.22 to require County employees on sick leave or leave under the Family and Medical Leave Act to obtain written authorization from their appointing authority prior to working for an outside or supplemental employer while on leave;

NOW, THEREFORE, BE IT ORDAINED by the Council of the County of Summit, State of Ohio, that

#### SECTION 1

Section 169.22 of the Codified Ordinances of the County of Summit, entitled "Leaves of Absence," is hereby amended as follows:

##### **"169.22 LEAVES OF ABSENCE.**

(a) Application. All employees requesting a leave of absence shall be required to submit such request as set forth for each type of leave of absence.

(b) Sick Leave.

(1) Crediting sick leave. All full-time employees, as defined in Section 169.05(a)(1), shall be entitled to and credited with four and six-tenths (4.6) hours, with pay, for each completed eighty (80) hours of service, and shall be permitted to accumulate this leave without limit. Hours in excess of eighty (80) in any pay period shall not count. Part time employees shall receive credit, prorated based on hours worked.

SECTION 1 (Cont.)

(2) Charging sick leave. When sick leave is used, it shall be deducted from an employee's credit, or charged for each time increment the employee is absent from previously scheduled work. Sick leave payment shall not exceed the normal scheduled work day or work week earnings.

(3) Uses of sick leave. Sick leave shall be granted to an employee only by approval of the appointing authority and for the following reasons:

A. Illness or injury of the employee or a member of the employee's immediate family.

B. Death of a member of an employee's immediate family. Sick leave usage for this purpose is limited to five (5) working days per occurrence.

C. Medical, dental or optical examinations or treatments of an employee or a member of an employee's immediate family; or

D. If a member of an employee's immediate family is afflicted with a contagious disease and requires the care and attendance of the employee, as certified by a physician, or when through exposure to a contagious disease the presence of the employee at work would jeopardize the health of other employees.

(4) Immediate Family. "Immediate family" for purposes of sick leave set forth in Section 169.22(b)(3) includes:

Spouse	Sister	Grandparent	Son-in-law
Child	Brother	Grandchild	Daughter-in-law
Father	Half-brother	Mother-in-law	Brother-in-law
Mother	Half-sister	Father-in-law	Sister-in-law

A legal guardian or other person who stands in place of a parent.

(5) Notification by employee. When an employee anticipates being absent from work, the employee shall notify the appointing authority of the expected absence according to the procedures established by the appointing authority. If an employee has a prolonged illness or other reason for extended sick leave such as death or illness of the employee's immediate family, the appointing authority shall be made aware of this situation and the employee shall not be required to notify the appointing authority on a daily basis of such leave. If such notification is not made, the employee's absence may be deemed unauthorized and the employee subject to discipline, up to and including, termination and/or the employee's sick leave may be disapproved.

(6) Evidence required for sick leave usage. The employee shall complete, sign and return the required application for leave form. If absence due to illness is three (3) consecutive working days, the employee shall be required to furnish a certificate from a licensed physician stating that the employee was under said physician's care. During prolonged periods of illness, the employee or the employee's family may be required to submit every pay period, a written signed statement to justify payment of sick leave. At the conclusion of prolonged periods of sick leave, the employee shall submit a certificate from a licensed physician stating the employee is able to perform the essential functions of the employee's position.

A. The appointing authority may require a "fitness for duty examination by a physician selected by the Department of Human Resources before an employee returns to work from a prolonged illness. If such examination is ordered, the County of Summit will pay the cost of said examination.

SECTION 1 (Cont.)

- B. Sick leave may be denied or revoked for the following reasons:
- i. Continual requests for sick leave not evidenced by a bona fide physician's certificate;
  - ii. Abuse or patterned usage of sick leave; and/or
  - iii. Failure to provide subsequent physician's certifications for an approved sick leave for medical treatment.

C. The appointing authority may investigate to determine if an application for sick leave is for a bona fide illness. Requests may be denied or allowed depending on results of such investigation.

(7) Overpayment. If an employee fails to submit a physician's certificate or a written, signed statement verifying illness, or if an application for sick leave is denied and as a result the employee has been overpaid, the employee will be responsible for the repayment of the overpayment.

(8) Abuse of sick leave. Any employee failing to comply with sick leave rules and regulations shall not be entitled to sick leave pay. Application for sick leave with intent to defraud may result in disciplinary action, up to and including termination.

(9) Transfer of Accumulated Sick Leave From Prior Public Employer. An employee who separates from another public employer and becomes employed with the County of Summit, shall be credited with the unused balance of accumulated sick leave up to the maximum of sick leave accumulation permitted by the County of Summit. Such re-employment must occur within ten (10) years following the date on which the employee was last separated from the prior public employer.

(10) Sick leave conversion at retirement/death. Employees at the time of retirement from active service with the County or death shall be paid one-half (1/2) of the value of their accrued but unused sick leave credit; however, the maximum of such payment shall not exceed ninety (90) days.

To qualify for such payment, employees shall have had, prior to the date of retirement or death, ten (10) or more years of service with the County, the State or any of its political subdivisions and meet all requirement criteria as established by the Public Employees Retirement System of the State of Ohio. Such payment shall be based on the employee's rate of pay at the time of retirement or death, and shall eliminate all sick leave credit accrued by the employee.

(11) Continuation of outside or supplemental employment while on sick leave. An employee shall not work for an outside or supplemental employer while on sick leave from the County except upon the written authorization of their appointing authority. Employees who violate Section 169.22(b)(11) shall be subject to discipline, up to and including termination.

(c) Leave Donation Program.

(1) Purpose. The purpose of the leave donation program is to allow Summit County Employees to voluntarily provide assistance to their co-workers who are in critical need of leave due to serious illness or injury of the employee or the employee's spouse, child or parent.

(2) Summit County employee paid by warrant of the Fiscal Officer, except employees of judicial offices, General Health District, Board of Elections, Alcohol, Drug Addiction & Mental Health Services Board, Board of Mental Retardation & Developmental Disabilities, Children Services Board, Metro Parks Serving Summit

SECTION 1 (Cont.)

County, Port Authority, or Veteran Services Commission, may donate accumulated sick leave to another employee who is also paid by warrant of the Fiscal Officer and (1) may donate accumulated sick leave pursuant to this Section, (2) who is otherwise eligible to accrue and use sick leave, and (3) is eligible to receive donated leave.

A. Eligibility to receive donated leave. An employee may receive donated sick leave upon submission of a written request, supported by proper documentation, to the Executive Director of the Human Resource Commission, or depending on the circumstances, from an immediate family member or other person acceptable to the Executive Director. Following receipt of the request for leave donation by the Executive Director, an employee may receive donated sick leave up to the number of hours the employee is scheduled to work each pay period if the employee who is to receive the donated leave meets all of the following conditions:

1. The employee has a critical need for the donated leave due to an extraordinary or severe illness, injury or impairment or an extraordinary or severe illness, injury or impairment of the employee's spouse, child or parent, and such extraordinary or severe illness, injury or impairment is demonstrated with documentation certified by a medical doctor;
2. The employee has no accrued paid leave;
3. The employee has applied for and exhausted any other paid leave, Worker's Compensation or benefits program for which the employee is eligible; and
4. The employee is not paid from a restricted fund, where legal restrictions would prevent an employee from receiving donated leave pursuant to the leave donation program.

B. For purposes of the Leave Donation Program, extraordinary or severe illness, injury or impairment is one that is life threatening and generally requires surgery with prolonged recovery period, or involves multiple traumatic injuries, or requires in-patient care in a hospital, hospice or residential medical care facility or related out patient follow-up care; *and* has caused, or is likely to cause, the employee to terminate County employment due solely to the absence of any available leave, but shall not include any mental, emotional or stress related medical condition, illness, claims or injuries, except for periods during hospitalization or institutional internment. Examples of extraordinary or severe conditions include heart attack, certain cancer conditions, and organ transplants. Examples of conditions not considered extraordinary or severe include normal pregnancy/delivery, sprained ankle, chicken pox, cold, flu, migraines or elective cosmetic surgery.

(3) Eligibility to donate leave. An employee may donate sick leave if the donating employee meets all of the following conditions:

- A. The employee voluntarily elects to donate sick leave and does so with the understanding that donated leave will not be returned;
- B. The employee donates a minimum number of eight (8) hours of sick leave; and

SECTION 1 (Cont.)

C. The employee retains a sick leave balance of at least eighty (80) hours.

(4) Status of employees on donated leave. Employees using donated sick leave shall be considered in active pay status and shall accrue leave and shall be entitled to all benefits that they are normally entitled to receive. An employee must use all accrued sick leave and donated sick leave before additional donated sick leave may be received. Donated sick leave time shall not be counted toward the probationary period of an employee receiving the donated leave during their probationary period. Donated sick leave shall not be converted to cash as provided in Section 169.22(b)(10).

(5) Collective Bargaining Agreements. Members of a bargaining unit may donate or receive accumulated sick leave pursuant to this Leave Donation Program unless a collective bargaining agreement takes precedence.

(6) Transfer of Leave.

A. The donated leave shall transfer in hours and shall not necessitate any transfer of funds. The hours shall be transferred on an hour-for-hour basis without regard for differences in hourly rate of pay. The donated leave shall be paid by the receiving employee's department at the employee's base rate of pay.

B. Maximum amount of leave an employee may donate or receive through the Leave Donation Program:

1. Donation.

An employee may donate no more than twenty-five percent (25%) or his or her accumulated leave in each calendar year.

2. Receipt.

An employee who otherwise qualifies to receive donated leave pursuant to this Section, may receive no more than two thousand eighty hours (2080) hours of donated leave except upon the approval of the employee's Appointing Authority.

(7) Administration. The Human Resource Commission is hereby directed to adopt policies and procedures to fully implement the purpose of the Leave Donation Program. In adopting policies and procedures, the Human Resource Commission may exclude employees from receiving or donating leave if the employee is paid with restricted funds.

(d) Personal Leave. Each calendar year, employees may elect to use up to three (3) days of accumulated sick leave as personal leave to cover any short-term absence of a personal nature. Personal days must be scheduled and pre-approved by the employee's supervisor and must be in increments of one (1) hour. Unused personal leave shall revert back to accumulated sick leave; cannot be converted to a cash payment; and, does not carry-over to the following calendar year.

(e) Election Judge Leave. An employee who is granted leave by their appointing authority to serve as a judge on the day of a primary or general election shall be entitled to leave with pay, which shall not be charged against the employee's accrued vacation or personal leave. An employee shall only be eligible if they have combined accrued vacation and sick leave of at least forty (40) hours.

An employee requesting leave to serve as an elections judge shall complete an application for leave of absence and submit such with an acknowledgement from the Board of Elections that the employee will be serving as an elections judge. Requests to serve as an

## SECTION 1 (Cont.)

elections judge may be granted at the discretion of the appointing authority based upon seniority in a department, division or section. When multiple requests for leave have been submitted, the appointing authority shall have the discretion to deny leave when it would work a manifest hardship on the appointing authority's operations, another employee or when the employee making the request has not discussed the request with their immediate supervisor or director or administrator if the supervisor is absent.

(f) Court Leave.

(1) Personal. When it is necessary for an employee to appear in court or attend a hearing that is of a personal nature during the employee's regular scheduled hours of work, vacation or personal leave may be used. Such instances would include, but are not limited to, criminal or civil cases, traffic court, divorce proceedings, custody, or appearing as directed as parent or guardian of juveniles.

(2) Non-Personal. The appointing authority shall grant court leave with full pay to an employee who:

A. Is summoned for jury duty by a court of competent jurisdiction; or

B. Is subpoenaed to appear before any court, commission, board or other legally constituted body authorized by law to require the attendance of witnesses, where the employee is not a party to the action.

(3) Compensation. Any compensation or reimbursement for jury duty or for court attendance compelled by subpoena, when such duty is performed during an employee's normal working hours, shall be turned over to the appointing authority or their designee for transmittal to the County Fiscal Officer.

(4) Partial Day. An employee released from jury duty or subpoena prior to the end of the scheduled work day, shall report to work for the remaining hours, unless otherwise specified by the appointing authority.

(g) Military Leave.

(1) Length and Compensation. All employees who are members of the Ohio National Guard, defense corps, naval militia, or members of other reserve components of the armed forces of the United States, are entitled to military leave of absence from their County duties without loss of pay, for such time as they are in the military service on field training or active duty for a period not to exceed twenty-two (22) eight-hour work days or one hundred seventy-six (176) hours within one calendar year. The County of Summit may, by resolution, extend the leave without loss of pay.

(2) Ohio National Guard Emergency Leave. Employees who are members of the Ohio National Guard shall be granted emergency military leave for mob, riot, flood, civil defense or similar duties to assist civil authorities when so ordered by the Governor of the State of Ohio. Such leave shall be without pay if it exceeds authorized military leave for the calendar year. The leave shall be granted for the official period of the emergency and so documented by the employee.

(3) Request for Leave. Employees are required to submit to their supervisor an order or statement from the appropriate military commander as evidence of military duty before military leave with or without pay shall be granted. This evidence shall accompany the standard County leave request form.

(4) Health Insurance. Employees will continue to be covered during an approved leave by the County of Summit's health insurance, if the employee was covered while employed, until such employee is eligible for military health insurance.

SECTION 1 (Cont.)

(h) Military Leave To Enter Active Duty.

(1) Eligibility. All full-time employees, as defined in Section 169.05(a)(1), who have held a position of at least ninety (90) days shall be granted a military leave of absence without pay to be inducted or otherwise enter military duty and shall be considered as a separation from County service with reinstatement rights.

(2) Reinstatement. The terms and conditions of reinstatement are governed by the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301-4333, 5 U.S.C. 8432, as amended, and any other applicable Federal and State of Ohio law, as amended.

(3) Health Insurance. Employees will continue to be covered during an approved leave by the County of Summit's health insurance, if the employee was covered while employed, until such employee is eligible for military health insurance.

(i) Family and Medical Leave.

(1) Eligibility. To be eligible for benefits under the Family and Medical Leave Act (5 U.S.C. §§ 6381-6387, 26 U.S.C. §§ 2601, 2611-2619, 2631-2636, 2651-2654, as amended) ("FMLA"), an employee shall:

- A. Have been employed by the County of Summit for at least twelve (12) months;
- B. Have worked at least 1,250 hours over the previous twelve (12) months period immediately preceding the date when the requested leave would begin;
- C. Submit the request to the Appointing Authority on the appropriate form at least thirty (30) days prior to the requested time off; and
- D. Submit the completed necessary forms from the appropriate health care provider to verify the need in all cases involving a leave for health reasons and childbirth/child care or submit a statement from the appropriate social service or adoption agency for all adoption/foster care requests.

(2) Calculation of the twelve weeks. An employee is entitled to twelve (12) weeks of FMLA leave within a twelve (12) month period during the year beginning on the first date FMLA leave is taken; the next twelve (12) month period would begin the first time FMLA leave is taken after the completion of any previous twelve (12) month period.

(3) Reasons for leave. An eligible employee shall be entitled to FMLA leave for one or more of the following reasons:

- A. The birth or adoption of a child (or foster care placement) within twelve months of the event;
- B. To care for a spouse, child or parent only with a serious health condition; or
- C. A serious health condition that renders the employee incapable of performing the essential functions of the employee's job.

(4) Health benefits. Employees granted FMLA leave shall continue to receive group health insurance coverage for the duration of the leave as long as the employee continues to make the employee's contribution to the plan. However, those persons who fail to return to work, for reasons other than a continued serious health condition, shall be required to reimburse the County for the cost to the County of the insurance premiums paid for the employee's health insurance coverage during the leave period.

SECTION 1 (Cont.)

(5) Reinstatement. Upon return from FMLA leave, the employee shall be returned to the employee's original or equivalent job with equivalent status, pay, benefits and other employment terms and conditions. All other benefits and/or terms and conditions of employment shall remain the same unless superseded by a collective bargaining agreement.

(6) Use of sick leave. FMLA leave shall run concurrently with any sick leave. If an employee has accrued sick leave, that time shall be counted as part of the twelve (12) weeks of FMLA leave. Employees are required to use all accumulated sick leave while the employee is on FMLA leave.

(7) Spouses employed by the County. Spouses employed by the County are entitled only to a combined total of twelve (12) weeks for childbirth, adoption or foster care and can only be taken within twelve months of birth or placement.

(8) Administration of FMLA leave. FMLA leave shall be administered by the Human Resource Commission.

(9) Continuation of outside or supplemental employment while on FMLA leave. An employee shall not work for an outside or supplemental employer while on FMLA leave from the County except upon the written authorization of their appointing authority. Employees who violate Section 169.22(i)(9) shall be subject to discipline, up to and including termination.

(j) Unauthorized Absence.

(1) Periods of absence from County service not covered by authorized leaves shall be considered an unauthorized leave of absence without pay. Examples of unauthorized leave without pay:

- A. Tardiness and leaving prior to the end of the employee's scheduled work day;
- B. Unapproved sick leave; and/or,
- C. Periods of absence in excess of approved vacation leave.

(2) Employees absent without authorized leave shall be subject to discipline, up to and including, termination."

SECTION 2

This Ordinance is hereby declared an emergency in the interest of the health, safety and welfare of the citizens of the County of Summit, and for the further reason of immediately amending Section 169.22 to require County employees on sick leave or leave under the Family and Medical Leave Act to obtain written authorization from their appointing authority prior to working for an outside or supplemental employer while on leave.

SECTION 3

Provided this Ordinance receives the affirmative vote of eight members, it shall take effect immediately upon its adoption and approval by the Executive; otherwise, it shall take effect and be in force at the earliest time provided by law.

ORDINANCE NO. 2007-104

PAGE NINE

SECTION 4

It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

INTRODUCED March 5, 2007

ADOPTED \_\_\_\_\_

\_\_\_\_\_  
CLERK OF COUNCIL

\_\_\_\_\_  
PRESIDENT OF COUNCIL

APPROVED \_\_\_\_\_

\_\_\_\_\_  
EXECUTIVE

\_\_\_\_\_  
ENACTED EFFECTIVE