

POLICY-HR-3504

See Also: RCW 49.46; WAC 296-128-600 through WAC 296-128-770; RWC 49.76-78; RCW 50A; WAC 192-500.

IAM labor agreement, ATU labor agreement, Human Resources Rules

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USING SICK LEAVE

This policy applies to all employees of Intercity Transit, unless leave specifics are otherwise outlined in a labor agreement, if applicable.

Agency Sick Leave Banks Complies with Laws

A. Washington Paid Sick Leave (WPSL)

Effective January 1, 2018, to facilitate compliance with Washington's paid sick leave law, Intercity Transit will maintain two separate sick leave banks for eligible employees: (1) a Washington Paid Sick Leave (WPSL) bank, that complies with the terms of the law; and (2) a standard sick leave bank.

Sick leave accruals will be divided into the two banks in a manner ensuring each employee will accrue WPSL at the minimum rate required by law, which is 1 hour of WPSL per 40 hours worked. Full-time employees will accrue a combined sick leave total of 8 hours per month. If a full-time employee worked 160 hours in a month, 4 hours of paid sick leave would go into their WPSL bank (160 hours divided by 40 hours = 4 hours WPSL). The remaining 4 hours would go into the standard sick leave bank. Where the employee worked 120 hours during a month, 3 hours of paid sick leave would be placed in their WPSL bank (120 hours divided by 40 hours = 3 hours WPSL) and 5 hours would be placed in their standard sick leave bank. Proceeding in this manner ensures employees continue to accrue leave at the same historical rate.

1. Intercity Transit intends to comply with the minimum requirements of Washington's Paid Sick Leave Law, RCW 49.46.210 and WAC 296-128-600 through WAC 296-128-770. Should any section of this Policy related to WPSL be deemed unlawful, the Policy shall be revised in order to ensure compliance. Laws will always supersede policy.
2. Accrual – Employees earn 1 hour of WPSL for every 40 hours worked. “Hours worked” means actual working time, not paid or unpaid leave. There is no limit on the number of WPSL hours that may be earned.

POLICY-HR-3504

Newly-hired employees begin accruing WPSL immediately upon hire, without any waiting period imposed on using the leave. WPSL applies to all employees, including all full-time, part-time, paid interns and temporary employees.

3. Usage – WPSL may be used in increments of fifteen (15) minutes for any of the following purposes permitted by law:
 - a. The employee’s own illness, injury, or health condition; to accommodate the employee’s need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or an employee’s need for preventive medical care.
 - b. The employee’s care for a family member with an illness, injury, or health condition; care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or care for a family member who needs preventive medical care. Family members include an employee’s child (biological, adopted, foster, step, or a child for whom the employee stands in loco parentis or as a legal guardian), parent, spouse, registered domestic partner, grandparent, grandchild, or sibling.
 - c. When the Employer’s place of business, or a school attended by the employee’s child, is closed by public health officials for health-related reasons.
 - d. Any absence covered by the Domestic Violence Leave Act, RCW 49.76.
4. Notification – For planned absences, employees shall provide the Employer with ten (10) days’ notice of the need for leave. Should this not be possible, an employee shall provide the Employer notice consistent with current call-in procedures, or as soon as possible before the start of the regular work shift, or as soon as possible thereafter in the event of an emergency.
5. Verification – For absences exceeding three (3) working days, the Employer may require an employee to provide medical verification establishing the WPSL was used for an authorized purpose. On a case-by-case basis, an employee may be excused from this requirement if providing verification is determined to be an unreasonable burden or expense.
6. Information to Employees – On a monthly basis, employees will be provided notice of the following: (1) the amount of WPSL accrued since the last notice; (2) the amount of WPSL used since the last notice; and (3) the available WPSL balance.
7. Carryover – Employees may carryover a maximum of 40 hours of unused WPSL to the following calendar year. At the end of each year, any hours beyond 40 will be converted and transferred to the employee’s sick leave bank (as provided below), provided the employee qualifies for standard sick leave and is below the 960 hour sick leave accrual cap.

POLICY-HR-3504

Example: On December 31, 2018, an employee ends the year with 60 hours of unused WPSL and 100 hours of sick leave. The employee is permitted to carryover 40 hours of unused WPSL. The excess 20 hours of unused WPSL is converted and transferred to the employee's sick leave bank. On January 1, 2019 the employee starts the year with 40 hours of unused WPSL and 120 hours of sick leave.

8. Cash-Out – Unused WPSL may be cashed out based on the terms stated below.
9. Unauthorized Usage – Employees proven to have used WPSL for a purpose unauthorized by Washington law shall be denied pay for the leave and may be subject to discipline, if supported by just cause established by the Employer. The list of authorized purposes is stated above in section A.3.
10. Leave Usage Priority – An employee needing sick leave shall first draw from the employee's accrued WPSL bank, unless otherwise required by law. Once an employee exhausts accrued WPSL, the employee will then draw from his/her accrued sick leave bank. Once an employee exhausts both WPSL and sick leave banks, the employee will draw from accrued vacation, and then finally move to unpaid leave status.

B. Standard Sick Leave

1. Effective January 1, 2018, existing sick leave balances shall be maintained in their banks. Employees will accumulate sick leave at a rate ensuring their total leave accrual (both WPSL and sick leave) is equivalent to eight (8) hours for each full month of service.

Example: A full-time employee works 160 hours during the month. The employee would receive 4 hours of WPSL (1 hour per 40 hours worked). An additional 4 hours of leave would be deposited into the employee's sick leave bank. The total leave accrual for that month equals 8 hours.

Employees will only accrue leave benefits per their position classification as defined as full-time at 100%, $\frac{3}{4}$ time at 75%, and $\frac{1}{2}$ time (equivalent to twenty to twenty-nine hours per week) at 50%. Employees working less than twenty hours per week and temporary employees do NOT accrue standard sick leave hours.

Example: A part-time employee works 75% of a full-time schedule, and is therefore entitled to a total monthly sick leave accrual of 6 hours (75% of 8 hours). During a month, the employee works 120 hours and would therefore accrue 3 hours of WPSL. An additional 3 hours of leave would be deposited into the employee's sick leave bank. The total leave accrual for that month equals 6 hours.

2. An employee on an unpaid leave of absence for a full pay period does NOT accrue standard sick leave.

POLICY-HR-3504

An employee will receive prorated sick leave for any pay period in which the employee has more than 40 hours of unpaid leave. A disciplinary suspension is considered unpaid leave. The prorated sick leave is based on the number of paid hours received by the employee for the pay period.

3. Sick leave hours will be credited on a pay period basis. Sick leave accumulated in one (1) year may be carried over to succeeding years to a maximum of nine-hundred sixty (960) hours. Employees with standard sick leave accruals in excess of 960 hours must reduce their accrued standard sick leave to 960 hours at the end of the pay period in which the excess accrual occurs (the anniversary of their hire date); any hours in excess will be forfeited.
4. Standard Sick leave shall be granted for the following reasons:
 - a. Personal injury, illness, or forced quarantine of the employee.
 - b. Inpatient or outpatient medical care, dental care, and medical/dental appointments of the employee.
 - c. Pregnancy, childbirth, or pregnancy-related condition of an employee which prevents the employee from performing her normal job duties.
 - d. To care for an employee's spouse with a health condition that requires treatment or supervision.
 - e. To care for an employee's child nineteen (19) years of age or under, mother or father, or mother-in-law or father-in-law, with a health condition that requires treatment or supervision. The family member term applies equally to natural, step, or adoptive or custodial family relationships.
 - f. In the event of the death of an employee's lawful spouse, or the employee or spouse's father, mother, brother, sister, child, grandparent, grandchild, aunt, or uncle, the employee may be granted sick leave with pay for a maximum of three (3) working days; provided the employee has sufficient sick leave accrued. Additional leave (vacation leave or leave without pay) may be granted where circumstances warrant. Family member terms apply equally to natural, step, or foster family relationships. Verification of death may be required by the Employer. Such verification shall be in the form of a published funeral notice, obituary, or copy of death certificate.
5. When an employee is absent due to illness or disability, they must notify the Employer immediately, prior to the start of the employee's work shift and in accordance with the call-in/reporting procedures established for the department; failure to do so may result in denial of sick leave pay.

Additionally, an employee shall:

- Advise the supervisor of the reason for requesting sick leave;
- Advise the supervisor of the probable duration of absence; and
- Keep the supervisor informed of his/her condition during a sick leave absence.

POLICY-HR-3504

An employee may be required to submit to the Employer medical evidence of their illness or disability from a licensed medical doctor or any other satisfactory evidence, if requested by the Employer, in order to receive sick leave pay.

The Employer will not be liable for any expenses incurred resulting from the verification of illness or disability by a physician or any other satisfactory source of evidence.

6. Absence for part of a day for reasons in accordance with the sick leave provisions shall be charged against accrued sick leave in an amount not less than fifteen (15) minutes for non-exempt employees. Exempt employees shall take standard sick leave in four hour increments.
7. Probationary employees shall be eligible to accrue and use standard sick leave.
8. Cash Out/Trade Policy
 - a. Cash Out at Separation of Employment or Retirement:

This section applies to both WPSL and standard sick leave. Upon separation of employment or retirement, under non-disciplinary circumstances and with completion of at least five (5) years of employment with the Employer, each employee shall be paid for all accumulated WPSL and sick leave, combined together, at the following rate:

Hours of Accrued WPSL and Sick Leave	Cash Out Rate
1 to 400	1 to 5 for hours 1 to 400
401 to 600	1 to 4 for hours 1 to 600
601 to 1,000	1 to 3 for hours 1 to 1,000

The requirement for the completion of five (5) years of employment with the Employer will be waived if the employee is laid off.

Example: An employee with at least five (5) years of employment separates from the Employer under non-disciplinary circumstances. Assume the employee has 60 hours of accumulated WPSL and 100 hours of accumulated sick leave, for a combined total of 160 hours. All of these hours will be cashed-out on a 1 to 5 basis in accordance with the payout schedule listed above.

- b. Sick Leave Trade Annual Option:

Employees who have accrued in excess of four hundred (400) hours of sick leave may annually in June exercise one of the following options for hours in excess of four hundred (400) hours:

1. Trade four (4) hour increments of sick leave for one (1) hour of vacation.
2. Trade four (4) hour increments of sick leave for one (1) hour of pay.

POLICY-HR-3504

3. Continue to accrue sick leave (in accordance with B.3).

Employees will be allowed to trade up to ninety-six (96) hours of sick leave each year.

- c. All pay for sick leave cash out or trade shall be at the employee's regular, straight-time rate of pay at the time of the cash out or trade.

WPSL may not be traded.

C. Employees Abusing Sick Leave May Receive Discipline

Employees who fail to maintain regular, predictable attendance, which is an essential function of all agency jobs, may become subject to disciplinary action including termination of employment.

D. On-The-Job-Injury (Worker's Compensation)

Intercity Transit will provide Workers Compensation Insurance in accordance with State statutory requirements. If an employee is absent due to illness or injury for which they are receiving payment from the State Industrial Insurance, the employee may elect to also use accrued WPSL/sick leave hours together with payment from the State.

The employee is required to notify the Employer if the employee elects to use accrued WPSL/sick leave to supplement their earnings and elect the percentage of hours to be used. Should the employee elect to use such leave, WPSL shall be drawn from first until exhausted, followed by sick leave. Use of any WPSL/sick leave for an on the job injury will be calculated on a retroactive basis back to the first day in which the employee was off work due to the injury or illness. The employee's available WPSL/sick leave hours will be used until exhausted unless the employee opts to stop the WPSL/sick leave usage. After the initial designation the employee may request such compensation be started or terminated at any time, but such request shall only be made once per injury.

Upon exhaustion of accrued WPSL/sick leave, the employee may elect to use, in the same manner as defined above, other accrued leave hours (vacation leave) retroactive to date of exhaustion of WPSL/sick leave. Such available leave hours will be used until exhausted. The employee may request such compensation to be started or terminated at any time, but such request shall only be made once per injury. Vacation leave hours are not subject to buyback.

Upon return to work from a worker's compensation leave period, an employee may buy back WPSL/sick leave hours. The employee may elect to purchase back all or a portion of the WPSL/sick leave hours used and paid to the employee during the employee's disability period. The employee must notify the Employer of their intent to buy back WPSL/sick leave hours; such notification must be made to the Employer within fourteen (14) days from the date upon which the employee returns to work from the disability.

POLICY-HR-3504

The employee shall make payment to the Employer in the manner prescribed by the Employer for such leave hours. Once the employee has made payment to the Employer for the total amount due based on the number of hours the employee has elected to buy back, the employee's leave hours will be added back to the employee's accrual records.

The Employer will notify the employee of the WPSL/sick leave buyback policy when applicable.

E. Federal Family Medical Leave

Intercity Transit provides for family medical leave. As needed, an employee be eligible to take up to twelve work weeks of leave per year for the following purposes:

The Family Medical Leave Act (FMLA) entitles employees who have been employed by the Employer for 12 months and worked at least 1,250 hours during the preceding 12-month period, to take unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave. Eligible employees are entitled to:

Twelve workweeks of leave in a 12-month period measured from the date the employee uses leave under this section for:

- the birth of a child and to care for the newborn child within one year of birth;
- the placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement;
- to care for the employee's spouse, child, or parent who has a serious health condition;
- a serious health condition that makes the employee unable to perform the essential functions of his or her job;
- any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty;" **or**

Twenty-six workweeks for leave during a single 12-month period measured as a rolling 12-month period going forward to:

- to care for a covered service member with a serious injury or illness if the eligible employee is the service member's spouse, son, daughter, parent, or next of kin (military caregiver leave). FMLA already taken for other FMLA circumstances will be deducted from the total 26 weeks available.

As a matter of courtesy, employees should provide Intercity Transit written notice if they intend to take Family Leave thirty days before the anticipated first day of the leave, unless an "emergency" exists.

While an employee is on FMLA leave, the employee's health benefits during the leave will continue at the same level and under the same conditions as if the employee had continued to work. Under current policy, the employee pays a portion of the healthcare premium. While on paid FMLA leave, the employer will continue to make payroll deductions to collect the employee's share of the premium. While on unpaid FMLA leave, the employee must continue to

POLICY-HR-3504

make this payment. If the employee contributes to other voluntary benefits (e.g. disability plan), the employer will continue making payroll deductions while the employee is on paid FMLA leave. While the employees is on unpaid FMLA leave, the employee will be required to make payment for those benefits.

When an employee is on a FMLA covered absence, the employee is required to report periodically on their status and intent to return to work. When an employee requests FMLA leave due to his or her own serious health condition or a covered family member's serious health condition, the employer may require certification in support of the leave from a health care provider. An employer may also require second or third medical opinions (at the employer's expense) and periodic recertification of a serious health condition.

F. Medical Leave of Absence Without Pay:

1. An employee may be granted a medical leave of absence without pay for medical related reasons.
2. A medical leave of absence without pay shall only be granted to the employee after the employee has used all accrued leave benefits, to include accrued WPSL, standard sick leave hours, and accrued vacation leave hours.
3. A medical leave of absence would be effective from the date of exhaustion of all accrued leave benefits, and shall not exceed one year from the date of incapacity; and may not be extended by modified, light duty, or reduced hours unless extended at the discretion of the employer.
4. If the employee is on a medical related leave of absence and is receiving worker's compensation from the State, the effective date of the medical leave of absence would be figured in the same way as if the employee was not receiving worker's compensation. This would apply whether or not the employee had elected to use paid leave hours to supplement the disability payments the employee was receiving from the State.

G. Washington State Paid Family and Medical Leave

The Washington State Paid Family and Medical Leave (PFML) law (Chapter 50A RCW) and supporting regulations establish a program administered by the Washington Employment Security Department (ESD) to provide paid leave benefits and job protection to eligible employees who need leave for certain family and medical reasons. PFML benefits will be available starting on January 1, 2020. This policy provides a summary of the PFML program. Employees may obtain additional information at www.paidleave.wa.gov. To the extent an issue is not addressed in this policy, the Employer will administer this benefit program consistent applicable statutes and regulations.

1. Payroll Deductions – The PFML program is funded through premiums collected by ESD via payroll deductions and employer contributions. The premium rate is established by law; employees are currently responsible for two-thirds of the total premium amount. Should the

POLICY-HR-3504

State in the future modify the PFML premium rate or the percentage of premiums subject to collection through payroll deduction, the Employer will modify payroll practices to reflect those statutory changes.

2. Eligibility – Under PFML, employees may be eligible for monetary benefits and job protection when taking leave for covered reasons. Eligibility requirements are as follows:
 - a. Monetary Benefits: In order to be eligible for monetary benefits from ESD, an employee must have worked 820 hours in Washington (for any employer or combination of employers) during the year preceding the claim.
 - b. Job Protection: In order to be eligible for job protection under PFML, an employee must meet FMLA eligibility requirements (must have worked for the Employer for at least 12 months and have worked 1250 hours in the last year).

An employee is ineligible for PFML benefits during any period of suspension from employment or during which the employee works for remuneration or profit (*e.g.*, outside employment or contracting).

3. Leave Entitlement – Eligible employees are entitled to take up to 12 weeks of medical **or** family leave, **OR** a combined total of 16 weeks of family and medical leave per claim year; an additional two weeks of leave may be available in the event the employee's leave involves incapacity due to her pregnancy. The claim year begins when the employee files a claim for PFML benefits or upon the birth/placement of the employee's child. PFML leave may be taken for the following reasons:

Medical Leave: Medical Leave may be taken due to the employee's own serious health condition, which is an illness, injury, impairment or physical or mental condition that involves inpatient care or continuing treatment by a health care provider, as those terms are defined under the FMLA and RCW 50A.05.010. However, an employee is not eligible for PFML benefits if the employee is receiving time loss benefits under the workers compensation system.

Family Leave: Family Leave may be taken to care for a covered family member with a serious health condition; for bonding during the first 12 months following the birth of the employee's child or placement of a child under age 18 with the employee (through adoption or foster care); or for qualifying military exigencies as defined under the FMLA. For purposes of family leave, covered family members include the employee's child, grandchild, parent (including in-laws), grandparent (including in-laws), sibling, or spouse.

PFML runs concurrently with FMLA where an absence is covered by both laws (PFML absences that are not also usually FMLA-covered absences are underlined in the above section). PFML leave may be taken intermittently, provided that there is a minimum claim requirement of eight consecutive hours of leave in a week for which benefits are sought.

POLICY-HR-3504

4. **PFML Application Process** – An employee must submit an application to ESD in order to seek PFML benefits. For guidance on the application process, please refer to the ESD website (www.paidleave.wa.gov). Eligibility determinations will be made by ESD. If approved, the employee will need to file weekly benefit claims with ESD to continue receiving benefits.
5. **Notification Requirements** – An employee must provide written notice to the Employer of the intent to take PFML leave. If the need for leave is foreseeable, notice must be given at least 30 days in advance of the leave. For unforeseeable leave, notice must be given as soon as practicable. The employee's written notice must include the type of leave taken (family or medical), as well as the anticipated timing and duration of the leave. If an employee fails to provide this required notice to the Employer, ESD will temporarily deny PFML benefits. After receiving the employee's notice of the need for leave, the Employer will advise the employee whether the employee is eligible for job protection under PFML or FMLA or both.

If leave is being taken for the employee's or family member's planned medical treatment, the employee must make a reasonable effort to schedule the treatment so as not to unduly disrupt Employer operations.

If taking leave intermittently, an employee must notify the Employer each time PFML leave is taken so that the Employer may properly track leave use.

6. **PFML Monetary Benefits** – If ESD approves a claim for PFML benefits, partial wage replacement benefit payments will be made by ESD directly to the employee. The amount of the benefit is based on a statutory formula, which generally results in a benefit in the range of 75-90 percent of an employee's average weekly wage, subject to a maximum of \$1,000 per week. ESD's website is expected to include a benefits calculator to assist employees in estimating their weekly benefit amount.

With the exception of leave taken in connection with the birth or placement of a child, monetary PFML benefits are subject to a seven-day waiting period. The waiting period begins on the Sunday of the week in which PFML leave is first taken. The waiting period is counted for purposes of the overall duration of PFML leave, but no monetary benefits will be paid by ESD for that week. Employees may use available accrued leave to cover absences during the waiting period.

Paid leave accruals (vacation or sick leave) are not supplemental to PFML. Although, an employee may elect to use Washington Paid Sick Leave while on a PFML-covered absence or use their choice of other accrued leave (vacation or sick leave) under the Family Care Act if they are out to care for a family member. An employee may elect to use such accrued leave during a PFML-covered absence, although the receipt of accrued leave must be reported to ESD as part of the PFML claims process and will result in a pro-rated weekly PFML benefit. **Important note:** failure to report the receipt of accrued leave may result in an overpayment by ESD, which ESD may recoup from the employee.

POLICY-HR-3504

7. **Coordination with Other Benefit Programs** – When an employee is on leave and only receiving PFML benefits, the employee is deemed to be in unpaid status for purposes of Employer policies and benefit programs. Insurance coverage will be handled in the same manner as other unpaid leaves of absence, pursuant to Employer policy and subject to any FMLA or other legal requirements requiring continuation of coverage.

8. **Job Restoration; Return to Work Recertification** – An employee who is eligible for job-protected leave will be restored to the same or equivalent position at the conclusion of PFML leave, unless unusual circumstances have arisen (*e.g.*, the employee's position or shift was eliminated for reasons unrelated to the leave). The Employer may require a return-to-work certification from a health care provider before restoring the employee to work following PFML leave where the employee has taken leave for the employee's own serious health condition. If an employee taking PFML leave chooses not to return to work for any reason, the employee should notify the Employer as soon as possible.