

CITY OF HOBBS

ORDINANCE NO. 1058

AN ORDINANCE AMENDING ARTICLE 8,  
SECTION 2.56 OF THE HOBBS MUNICIPAL CODE  
REGARDING PAID TIME OFF

WHEREAS, the City of Hobbs desires to change its vacation and sick leave policy to a Paid Time Off system;

WHEREAS, this Ordinance amends the current Article 8, Leaves and Benefits to implement a Paid Time Off system.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF HOBBS, NEW MEXICO that Article 8, Leaves and Benefits, Section 2.56 of the Hobbs Municipal Code is hereby amended to read as follows:

**ARTICLE 1. GENERAL PROVISIONS**

**Sec. 2.56.030 Definitions.**

*Shift employee* means an employee who, upon employment, ~~is normally~~ may be required to work holidays and week-ends ~~and whose leave accrual is computed accordingly.~~

**ARTICLE 3. PAY**

**Sec. 2.56.430 Computation of Overtime.**

(e) *Effect of paid leave.* No paid holiday, ~~sick leave, vacation leave~~ Paid Time Off, or compensatory time used, ~~or combined holiday-vacation leave, as defined in Section 21-8-3,~~ shall be counted as working time in determining eligibility for overtime.

**ARTICLE 7. DISCIPLINARY ACTIONS**

**Sec.2.56.715 Grounds.**

- (16) Misuse of ~~sick leave~~; the claim of ~~sickness~~ under false or misleading pretenses.

**ARTICLE 8. LEAVES AND BENEFITS**

**Sec. 2.56.800 Paid holidays designated.**

- (a) *Paid holidays.* The following shall be paid holidays for all ~~regular employees, except as provided in Sections 21-8-3 and 21-8-5:~~

- (1) New Year's Day, January 1.
- (2) Martin Luther King Day, third Monday in January.
- (3) Presidents' Day, third Monday in February.
- (4) Memorial Day, last Monday in May.
- (5) Independence Day, July 4.
- (6) Labor Day, first Monday in September.
- (7) Veteran's Day, November 11.
- (8) ½ day immediately preceding Thanksgiving Day.
- (9) Thanksgiving Day, fourth Thursday in November.
- (10) Day after Thanksgiving Day, Friday after Thanksgiving.
- (11) ½ day immediately preceding the date of observance for Christmas Day.

(12) Christmas Day, December 25.

(b) *Holidays falling on weekends.* Any official city holiday that falls on a Saturday will be observed on the preceding Friday. A holiday falling on Sunday will be observed on the following Monday.

**Sec. 2.56.805. Certain employees excepted from paid holidays.**

All regular employees on a pay status receiving any pay on the scheduled workday immediately prior to and immediately after the holiday shall be accorded holiday leave as listed in Section 2.56.800, ~~with the exception of employees who work in departments where continuous operation is necessary to provide adequate service to the public.~~

An employee who is absent without approval on the workday preceding or following a holiday shall not be paid for the holiday.

**Sec. 2.56.810. Additional Compensation for shift work on paid holidays.**

~~In lieu of official city holidays, shift employees who are required to work holidays shall receive an equivalent number of vacation hours to be taken at times authorized by the department as specified in 2.56.820 (b) or 2.56.820 (c). Any employee who works during a designated city holiday shall be paid 8 hours for general employees and police shift employees and 11.36 hours for fire shift employees his/her normal rate of pay during the specific holiday.~~

**Sec. 2.56.815. Holidays during ~~vacation or sick leave~~ Paid Time Off.**

Holidays that occur during an employee's absence due to ~~vacation or sickness~~ Paid Time Off shall not be counted as ~~vacation or sick leave~~ Paid Time Off, but as holiday leave.

**Sec. 2.56. Paid Time Off.**

All employees shall accrue Paid Time Off beginning January 20, 2013, instead of vacation time and sick leave, as fully set forth herein.

**Sec. 2.56. Transition from vacation and sick leave to Paid Time Off.**

On January 20, 2013, all current employees transitioning to Paid Time Off shall be entitled to a certain value in their existing vacation and sick leave. All unused vacation leave shall convert to Paid Time Off, hour for hour, subject to Paid Time Off caps. Every employee with sick leave shall receive credit for 50% of accrued sick leave (Sick Leave Credit). One half of the Sick Leave Credit (25% of total sick leave) shall be converted to Paid Time Off, hour for hour, subject to Paid Time Off caps. One half of the Sick Leave Credit (25% of total sick leave) may be cashed in at the employee's regular hourly pay rate (Cash Value), subject to all applicable income tax withholding requirements. An employee may utilize his/her Cash Value to fund his/her existing deferred compensation, subject to all applicable tax regulations. In the alternative, an employee may elect to convert his/her Cash Value to additional Paid Time Off, hour for hour, subject to applicable Paid Time Off caps.

**Sec. 2.56. Paid Time Off caps.**

Paid Time Off cap for all general employees shall be 320 hours. Paid Time Off cap for all fire department shift employees and police shift employees shall be 456 hours. At the end of each calendar year, any employee who is over his/her Paid Time Off cap shall be paid for every hour over his/her Paid Time Off cap (Cap Payment), subject to applicable income tax withholding requirements.

At the time of transition, one time only, an employee may elect to utilize his/her Cash Value pay based upon a 240 hour cap for general employees and police shift employees and a 340 hour cap for fire shift employees. Police shift employees annually may elect to set their cap at either 320 hours or 456 hours.

In the event the city's general fund cash reserve dips below 20% at the end of a fiscal year, the city may elect to increase Paid Time Off Caps until the following year in which the general fund cash reserve is above 20%. Employees shall not forfeit any earned Paid Time Off and shall continue to accrue as designated in Sec. 2.56.820.

**Sec. 2.56. Paid Time Off delayed implementation.**

With City Manager approval, at the City Manager's sole discretion, a current employee with a reasonable basis may delay the implementation of his/her Paid Time Off transition. If the delayed transition occurs before the end of 2013, the employee's Sick Leave Credit shall be calculated at 33 1/3 % of total sick leave. If the delayed transition occurs after 2013 and before the end of 2014, the employee's Sick Leave Credit shall be calculated at 25% of total sick leave.

**Sec. 2.56. Extension of Paid Time Off cap**

With City Manager approval, at the City Manager's sole discretion, any employee with a reasonable basis may extend his/her Paid Time Off cap.

**Sec. 2.56. Short term and long term disability insurance for Paid Time Off employees.**

All employees who receive Paid Time Off shall receive short term and long term disability insurance as part of their benefit package with the city. The city shall pay 100% of the premiums for the disability insurance for the fiscal years 2012-2013 and 2013-2014. After the 2013-2014 fiscal year, the premiums for short term and long term disability shall be determined annually and the employees may be required to cost share if the premiums increase from the fiscal year 2012-2013. The specific terms of the disability insurance shall be negotiated annually to obtain the best value for the city and the employees.

**Sec. 2.56.820. Rate of accumulation of ~~vacation leave~~ Paid Time Off.**

(a) ~~Vacation leave~~ Paid Time Off shall be granted to regular employees and police shift employees, other than fire shift employees, as follows:

Years of Service	Accrual Rate Per Month	Working Days Per Year	Maximum Accrual
Date of Hire through 5 <sup>th</sup> Year	<del>8.00</del> <u>12.00</u> hours	42 <del>18</del> days ( <del>96</del> <u>144</u> hours)	<del>460</del> <u>320</u> hours general & <u>456</u> hours police shift employees
6 <sup>th</sup> year through 15 <sup>th</sup> year	<del>10.00</del> <u>14.00</u> hours	45 <del>21</del> days ( <del>120</del> <u>168</u> hours)	<del>460</del> <u>320</u> hours general & <u>456</u> hours police shift employees
16 <sup>th</sup> year plus	<del>12.00</del> <u>16.00</u> hours	48 <del>24</del> days ( <del>144</del> <u>192</u> hours)	<del>460</del> <u>320</u> hours general & <u>456</u> hours police shift employees

(b) ~~Vacation leave~~, which includes eleven annual holidays, shall be granted to shift employees, other than fire shift, as follows:

Years of Service	Accrual Rate Per Month	Working Days Per Year	Maximum Accrual
Date of Hire through 5 <sup>th</sup> Year	<u>15.33</u> hours	23 days ( <u>184</u> hours)	248 hours
6 <sup>th</sup> year through 15 <sup>th</sup> year	<u>17.33</u> hours	26 days ( <u>208</u> hours)	248 hours
16 <sup>th</sup> year plus	<u>19.33</u> hours	29 days ( <u>232</u> hours)	248 hours

(e) ~~b~~ Regular employees of the fire department working a shift schedule shall be granted ~~combined holiday and vacation leave~~ Paid Time Off as follows:

Years of Service	Accrual Rate Per Month	Working Days Per Year	Maximum Accrual
Date of Hire through 5 <sup>th</sup> Year	<del>21.75</del> <u>17.04</u> hours	<del>40.76</del> <u>8.52</u> shifts ( <del>261.05</del> <u>204.48</u> hours)	<del>351.85</del> <u>456</u> hours
6 <sup>th</sup> year through 15 <sup>th</sup> year	<del>24.60</del> <u>19.89</u> hours	<del>42.17</del> <u>9.95</u> shifts ( <del>295.25</del> <u>238.68</u> hours)	<del>351.85</del> <u>456</u> hours
16 <sup>th</sup> year plus	<del>27.40</del> <u>22.69</u> hours	<del>43.56</del> <u>11.35</u> shifts ( <del>328.85</del> <u>272.28</u> hours)	<del>351.85</del> <u>456</u> hours

(d) ~~Annual vacation leave accumulation in excess of the limitations in this section shall be subject to forfeit except upon 90 day formal notification of official retirement, when the maximum accrual level shall be removed.~~

**Sec. 2.56.825. Incremental use, scheduling of ~~vacation leave~~ Paid Time Off.**

~~Vacation leave~~ Paid Time Off may be taken in increments of not less than one-half hour, but the employee may only take ~~vacation leave~~ Paid Time Off if it has been accumulated. Any ~~vacation leave~~ Paid Time Off must be approved by the supervisor. The department head or designee shall be the final authority in allowing the scheduling and amount of ~~vacation leave~~ Paid Time Off taken.

**Sec. 2.56.830. ~~Vacation and sick leave~~ Paid Time Off for part-time regular employees.**

Part-time regular city employees working between 20 to 29 hours weekly shall accrue 50 percent of the normal rate accrued by a full-time employee and shall have a 50 percent cap of a full-time employee. Part-time regular employees working 30 to 39 hours weekly shall accrue 75 percent of the normal rate accrued by a full-time employee and shall have a 75 percent cap of a full-time employee.

**Sec. 2.56.835. Vacation leave Paid Time Off accumulation paid upon termination.**

Any vacation leave Paid Time Off accumulated by an employee but not taken at the time of termination shall be paid in full, subject to applicable income tax wage withholding requirements.

**Sec. 2.56.840. — Grounds for authorization of sick leave.**

~~Paid sick leave shall be authorized for the following purposes only: any sickness, injury, doctor's appointment, maternity disability, or any medical treatment or hospitalization not compensated under disability or workers' compensation programs. Sick leave may be utilized for the employee or the employee's immediate family member. As used in this section, the term "immediate family" shall be defined as husband or wife, child, stepchild, brother or sister, stepbrother, stepsister, parent, stepparent, father-in-law, mother-in-law, grandfather, grandmother and grandchild.~~

**Sec. 2.56.845. Family and Medical Leave Policy.**

Family and medical leave will be granted to eligible employees pursuant to the Family and Medical Leave Act. Should an employee have accrued Paid Time Off, during a Family and Medical Leave event, Paid Time Off shall be utilized.

**Sec. 2.56.850. — Authorization for sick leave.**

~~Paid sick leave shall be authorized only if the employee has accumulated the requisite hours to cover the absence. If the employee has not accumulated sufficient hours of sick leave, a period of unpaid sick leave may be granted.~~

**Sec. 2.56.855. — Notice of use of sick leave by employee; physical examination.**

~~In the absence of approved family/medical leave, any employee wishing to take sick leave must notify his supervisor or the designated personnel of the illness prior to the time he is expected to report to work or as soon thereafter as possible. If unable to contact the supervisor, the employee must notify the personnel department. The department head may, at the time of the illness or upon the employee's return to work, require a doctor's statement confirming the medical necessity for the employee's absence. An employee may be required to undergo a physical examination conducted by a city-designated physician, to be paid for by the city, specifying the medical reason for the employee's absence. The department head may also require a doctor's statement allowing the employee to return to work.~~

**Sec. 2.56.860. — Accumulation of sick leave.**

~~Regular employees other than shift personnel in the fire emergency services department shall accumulate eight hours of sick leave per month. Shift personnel in the fire emergency services department shall accumulate 11.35 hours of sick leave per month. Such employees may continuously accumulate sick leave for purposes of use if illness occurs.~~

**Sec. 2.56.865. — Sick leave conversion.**

~~Any sick leave accumulated by an employee over 520 hours (737.75 hours for fire shift personnel) may be converted to vacation time at the conversion ratio of three sick days to one vacation day at any time. At retirement, with over five years of service, all unused sick leave over 264 hours (374 hours for fire department shift personnel) will be converted to vacation at the 3:1 ratio of accumulated sick leave. Employees shall not be paid for unconverted sick leave at termination.~~

**Sec. 2.56.870. — Low sick leave use benefit.**

~~The low sick leave use benefit shall be calculated at the end of every payroll calendar year. All regular, full-time employees shall be given consideration under either subsection (1) or (2) of this section as follows:~~

- ~~(1) — For an employee with either less than 600 hours of accumulated sick leave (852 hours for fire shift personnel) at the end of the payroll calendar year or less than nine years of city service as a regular employee:
  - a. — An employee using less than or equal to 32 hours of sick leave (45.4 hours for fire shift personnel) in a payroll calendar year will be entitled to an additional 8 hours of vacation leave (11.35 hours for fire shift personnel).
  - b. — An employee using less than or equal to 24 hours of sick leave (34.08 hours for fire shift personnel) in a payroll calendar year will be entitled to an additional 16 hours of vacation leave (22.7 hours for fire shift personnel).~~
- ~~(2) — For an employee with more than 600 hours of accumulated sick leave (852 hours for fire shift personnel) at the end of the payroll calendar year and more than nine years of city service as a regular employee:
  - a. — An employee using less than or equal to 32 hours of sick leave (45.4 hours for fire shift personnel) in a payroll calendar year will be entitled to his choice of an additional 16 hours of vacation leave (22.7 hours for fire shift personnel) or 16 hours of pay (22.7 hours for fire shift~~

personnel) at his regular hourly rate.

- b. ~~An employee using less than or equal to 24 hours of sick leave (34.08 hours for fire shift personnel) in a payroll calendar year will be entitled to his choice of an additional 32 hours of vacation leave (45.4 hours for fire shift personnel) or 32 hours of pay (45.4 hours for fire shift personnel) at his regular hourly rate.~~

- (3) ~~This benefit shall be pro-rated for part-time, regular employees.~~

**Sec. 2.56.875. Sick Leave Paid Time Off Bank.**

~~An employee governed Sick Leave~~ A Paid Time Off Bank program ~~has been~~ may be developed to provide additional ~~sick leave~~ Paid Time Off days to members of the bank upon exhaustion of accumulated leave balances for qualifying events. Eligibility for and use of the ~~Sick Leave~~ Paid Time Off Bank will be administered according to the procedures set forth in administrative regulation.

**Sec. 2.56.880. Workers' compensation leave.**

Workers' compensation leave shall be granted to any employee who sustains an injury or occupational disease in the course and scope of his employment with the city.

Should the family/medical leave provisions apply to the use of workers' compensation leave, those provisions shall also apply.

**Sec. 2.56.885. Workers' compensation leave amount, conditions.**

An employee sustaining ~~an~~ a workers' compensation approved, on-the-job injury shall be subject to the following:

- (1) If the injury or occupational disease prevents an employee from returning to work, injury leave shall be granted subject to the following conditions: The first seven calendar days from the day the injured employee leaves work as a result of the injury shall be accounted for as ~~sick leave~~ Paid Time Off ~~under the same terms and conditions as non job related sickness, as defined in Section 2.56.840.~~
- (2) If the period of injury lasts longer than 28 calendar days from the day the injured employee leaves work as a result of the injury, injury leave shall be accounted for from the day the employee first left work, as defined in Section 2.56.890.
- (3) While on workers' compensation leave an employee shall not accrue ~~sick, holiday or vacation leave~~ Paid Time Off.
- (4) No employee shall be otherwise employed or gainfully occupied while he is on workers' compensation leave.
- (5) Any work-related injury which is anticipated to or does result in three or more days of leave shall require the employee to promptly, or at the time of being physically able to do so, submit a form specified by administrative regulation from the treating physician stating the cause and nature of the injury and the probable duration of disability.

Prior to the employee's return to work, the treating physician may be requested to submit a written report, based on the employee's current job description, to the ~~personnel manager~~ Human Resources Director, indicating the date the employee will become able to return to his position.

If the employee returning without a full release from the physician to perform the essential functions of the job, the physician's report should state what, if any, restrictions apply.

It shall be the decision of the department head as to whether or not to allow the employee to return to a light or restricted duty. The department head shall consider what, if any, special projects might be available in allowing a restricted or light duty assignment. However, light or restricted duty shall not extend beyond ~~ninety calendar days~~ 480 hours per occurrence.

**Sec. 2.56.890. Reduction of workers' compensation.**

- (a) Compensation payable under the Workers' Compensation Act shall be reduced by ten percent when an injury is caused by the willful failure of the employee to use safety devices provided by the employer.
- (b) No compensation shall be made to any employee whose injury was caused by the intoxication of the employee or willfully suffered or intentionally inflicted by the employee.
- (c) No compensation shall be made to any employee whose injury was caused solely by the employee being under the influence of a depressant, stimulant or hallucinogenic drug as defined in the New Mexico Drug, Device and Cosmetic Act, or under the influence of a narcotic drug as defined in the Controlled Substances Act unless the drug was lawfully dispensed or administered to the employee by a properly licensed practitioner.

**Sec. 2.56.895. Injuries on job.**

Any employee injured on the job shall immediately report the injury to his supervisor, who shall report the injury to

the ~~personnel office~~ Human Resources Department. An incident report shall be completed by the supervisor and submitted to the ~~personnel division~~ Human Resources Department within 24 hours of the incident.

**Sec. 2.56.900. Workers' compensation leave; eligibility for other leaves.**

- (a) An employee may use accrued ~~sick leave~~ Paid Time Off to supplement workers' compensation leave benefits to receive his normal net salary while on workers' compensation leave until exhausted. Leave shall be deducted at the appropriate rate.
- (b) When ~~sick leave~~ Paid Time Off is exhausted, the employee is eligible to ~~take vacation leave accumulated or to take leave without pay.~~

**Sec. 2.56.905. Temporary disability leave generally.**

Temporary disability leave shall be governed by the terms and conditions of the family and medical leave policy.

**Sec. 2.56.910. Administrative Leave.**

- (a) Administrative leave may be approved by the city manager for the good of the city's service.
- (b) Administrative leave under this section shall not constitute discipline. During the administrative leave, the employee shall not attend his regular work site or any other city facilities, except as designated in the notice of administrative leave, but shall remain available during normal work hours to meet with the department head as requested.
- (c) When it comes to the attention of the city manager that an employee has been charged with a crime which is a felony under the laws of the state wherein the charges are brought, the city manager may, upon determining that it is in the best interests of the city in order to protect and maintain the public's confidence and trust in city government, place the employee on unpaid administrative leave pending the outcome or disposition of the criminal charges.
- (d) The basis for a determination to place an employee on administrative leave shall be documented in writing and shall be submitted to the employee and to the ~~personnel director~~ Human Relations Director either at the time of or within 24 hours of the commencing of the administrative leave.

**Sec. 2.56.915. Court leave.**

An employee shall be granted court leave when required to perform jury duty in any municipal, county, state or federal court or when required to serve as a non-party witness in any such court. Any employee so summoned shall immediately notify his supervisor at the city of the date and time of the impending required attendance. Regular employees shall receive their regular pay based on the hours they are normally scheduled to work during such time of service, provided that they pay to the city any jury duty or witness fees, excluding mileage and parking reimbursement for a personal vehicle, which they receive. Jury duty or witness fees earned during holidays or ~~vacation~~ Paid Time Off shall be retained by the employee. Any employee appearing as a plaintiff or defendant in a personal case not as a result of his capacity as an employee shall not be granted court leave, and any employee appearing as a plaintiff in an action against the city shall not be granted paid leave, unless the employee uses accrued ~~vacation leave~~ Paid Time Off.

**Sec. 2.56.920. Funeral leave.**

If a death occurs in the immediate family of a regular employee, a funeral leave with pay ~~will~~ may be granted up to a maximum of ~~three (3) occurrences per year and~~ five (5) days ~~total~~ dependent upon need, i.e. travel distance, relationship, etc. As used in this section, the term "immediate family" shall be defined as husband or wife, child, stepchild, brother or sister, stepbrother, stepsister, parent, stepparent, father-in-law, mother-in-law, brother-in-law, sister-in-law, grandfather, grandmother, grandfather-in-law, grandmother-in-law and grandchild. The employee may be required to provide valid proof of death upon request and shall notify the immediate supervisor prior to taking funeral leave.

**Sec. 2.56.925. Military leave.**

Military leave shall be allowed in accordance with applicable laws.

**~~Sec. 2.56.930. Military training leave.~~**

~~Employees who are members of organized units of the army or air national guard or army, air force, navy, marine or coast guard reserves shall be given not more than fifteen working days/120 hours (170.40 for fire shift personnel) (a working day equals an employee's normal shift, ie. fire shift employee's day is 24 hours) military leave with pay per federal fiscal year when they are ordered to duty for training. Unused military leave may be carried over to the following year not to exceed a total of thirty leave days/240 hours (340.80 for fire shift personnel) in a federal fiscal year. This military leave is in addition to other leave or vacation time~~ Paid Time Off ~~with pay~~ to which the employee is otherwise entitled.

**Sec. 2.56.935. Unauthorized leave.**

Any unapproved absence from work shall be considered unauthorized and may be subject to disciplinary action, up to and including dismissal. All unauthorized leave shall be originally recorded as leave without pay. Upon investigation

of the unauthorized leave, the department head may change the leave to ~~either sick leave or vacation leave~~ Paid Time Off without losing the right to discipline the employee.

**Sec. 2.56.940. Suspension of paid leave.**

The city manager shall reserve the right to postpone all paid leave for an employee in an emergency, except authorized ~~sick leave~~, workers' compensation leave and family and medical leave.

**Sec. 2.56.945. Leave without pay.**

For the good of the service and at the employee's request, the city manager may grant a period of leave without pay to any regular employee for a period of time not to exceed one year.

PASSED, ADOPTED AND APPROVED this **7<sup>th</sup>** day of January, 2013.

/s/ Sam D. Cobb  
SAM D. COBB, Mayor

ATTEST:

/s/ Jan Fletcher  
JAN FLETCHER, City Clerk