

1 BEFORE THE BOARD OF COUNTY COMMISSIONERS
2 FOR MULTNOMAH COUNTY, OREGON

3
4 ORDINANCE NO. 873

5
6 An ordinance establishing a catastrophic leave sharing program for county employees and
7 declaring an emergency.

8 Multnomah County ordains as follows:

9 Section 1. Findings. The Board of County Commissioners finds as follows:

10 A. County employees, their spouses, domestic partners or other household members
11 occasionally experience catastrophic medical conditions which deplete their accrued leave while
12 the employees are simultaneously without other income derived from their employment.

13 B. Fellow employees sometimes wish to donate vacation time or accumulated
14 compensatory time off to such employees to alleviate their financial burdens while they cope
15 with a catastrophic medical condition, but no means exists for such leave sharing.

16 C. Such leave sharing would not involve substantial additional County costs.

17 D. Reducing employee financial burdens during a catastrophic medical event through a
18 leave sharing program would improve the morale of both employee donors and recipients, while
19 relieving some of the recipient's financial and emotional burdens and permitting recipients to
20 concentrate on resolving the catastrophic medical condition.

21 F. Improved morale and employee health serve the County's interests as an employer.

22 G. The bargaining agents representing County employees have been consulted, involved
23 in the development of and support adoption of the program set forth in this ordinance.

1 Section 2. Title. This ordinance shall be known as the Employee Leave Sharing Ordinance.

2 Section 3. Definitions. For purposes of this ordinance, the below listed terms shall be
3 accorded the denoted meaning unless the context in which they appear clearly indicates a
4 different intent:

5 A. “Applicable elected official” means the Chair of the Board, District Attorney,
6 Auditor, or the Sheriff, whichever has administrative authority at law over the recipient
7 employee under this program.

8 B. “Board” means the Multnomah County Board of County Commissioners.

9 C. “Bargaining Agent” means the labor organization certified or recognized as the
10 exclusive bargaining agent of a bargaining unit of County employees.

11 D. “Catastrophic medical condition” means a medical or psychiatric condition which
12 would constitute a “serious medical condition” within the meaning of the federal Family Medical
13 Leave Act or the Oregon Family Medical Leave Act, whichever would permit broader use of
14 donated leave under this program.

15 E. “Confidential medical records or information” means all medical records and
16 information in the County’s possession which the County is obligated to maintain in confidence
17 pursuant to the Americans With Disabilities Act, ORS 433.045(3), or other applicable law.

18 F. “County” means Multnomah County, Oregon.

19 G. “Donated leave” means hours of accumulated vacation leave or compensatory time
20 off donated by an employee to another employee under this program.

21 H. “MCSO” means Multnomah County Sheriff s Office.

1 I. "Payroll Unit" means the Finance Division's Central Payroll Unit or other operational
2 unit within the Chair's administrative authority and designated by the Chair to perform the
3 administrative functions assigned by this ordinance to the Central Payroll Unit or, for actions
4 required of MCSO employees, the MCSO Payroll Unit or other operating unit within the
5 Sheriff's administrative authority if so designated by order of the Sheriff.

6 J. "Program" means the Catastrophic Leave Sharing Program established by this
7 ordinance.

8 Section 4. General Purpose. The purpose of this ordinance is to establish a Catastrophic
9 Leave Sharing Program which may be hereafter modified in accordance with Section 21 below.
10 The purpose of the program is to permit County employees to voluntarily donate accumulated
11 vacation or compensatory time off to another employee who exhausts, or is likely to exhaust, his
12 or her accumulated paid leave due to a non-occupational catastrophic illness or injury to the
13 employee or a member of his or her immediate household that would otherwise likely cause the
14 employee to go on unpaid leave or terminate.

15 Section 5. General Eligibility To Participate In Program. Any County employee who, under
16 the applicable collective bargaining agreement or ordinance, is eligible to accrue vacation leave
17 when in pay status, shall be eligible to participate in the program as a recipient or donor;
18 provided, that notwithstanding any provision of ordinance 740 or its successors eligibility shall
19 not extend to an employee temporarily appointed to an exempt position unless that employee is
20 working temporarily out of his or her regular county classification.

21 Section 6. Leave Donations: Authorization, Limitations And Procedures.

1 A. Donations. Employees may voluntarily surrender to the County for use by a specified
2 recipient employee hours of accumulated vacation leave, compensatory time off, or both, and no
3 other type of leave, provided:

4 i. The donor may not donate hours which he or she would otherwise forfeit under
5 ordinance no. 740 or its successor or the applicable collective bargaining agreement;

6 ii. Donations must be in increments of whole donor hours;

7 iii. Donors must complete and sign a catastrophic leave donation form provided
8 by the Payroll Unit containing a declaration that the donation is intended as a gift and has been
9 given voluntarily without coercion, compensation or for other consideration;

10 iv. The recipient employee must be eligible for donations as defined by section 10
11 of this ordinance at the time the donation is made;

12 v. The donation must be made irrevocably, with the understanding that the
13 donated leave is lost to the donor forever for all purposes including, but not limited to, use for
14 paid time off, payoff upon termination, seniority and retirement credit;

15 vi. The donation must be made at a time when the recipient is eligible to receive
16 donations under the limitations set forth in section 13 of this ordinance.

17 B. Crediting of Donated Leave; Return of Excess Donations. Donated leave shall not be
18 deemed credited to a recipient employee's account until the employee has exhausted his or her
19 sick leave, vacation leave, personal holidays, time off in lieu of designated holidays, and
20 compensatory time off following his or her application for donated leave, pursuant to section 16
21 of this ordinance. Donations which would cause a recipient employee's donated leave balance to

1 exceed four hundred hours shall not be accepted, and the Payroll Unit shall so advise the putative
2 donor.

3 Section 7. Value of Donated Leave To Recipient, Taxation And Payroll Deductions. The
4 gross (pre-tax) dollar value to the recipient employee of donated leave will be calculated by
5 multiplying the donor's base hourly straight time wage rate at the time of the donation, including
6 any on-going longevity or achievement incentive pay normally treated as part of base by the
7 number of hours donated. This gross amount shall be divided by the recipient employee's base
8 hourly straight time wage rate at the time of the donation, including any on-going longevity or
9 achievement incentive pay normally treated as part of the base under the County's labor contracts
10 with its Deputy Sheriffs Association or Corrections Officers Association, to derive the number of
11 hours of paid leave available to the recipient employee as a result of the donation. The donated
12 leave shall be taxed and treated as wages to the recipient at the time of its use, or treated and
13 taxed as otherwise required by law, and shall be subject to normal withholding and payroll
14 deductions.

15 Section 8. Interdepartmental Leave Donations. Donations of leave under this program may
16 be made between employees in different bargaining units or departments and between union
17 represented and non-represented employees. However, in the event of a donation to an employee
18 in a different bargaining unit or from non-represented to represented employees, such donation
19 shall be permitted only if bargaining agents for any bargaining unit covering the recipient and
20 donor employee have consented to such transfers in the manner prescribed by section 22 of this
21 ordinance.

1 Section 9. Solicitation of Donations. Solicitation of leave donations shall be governed by
2 the following rules:

3 A. Who May Solicit. Donations may be solicited by the recipient employee, his or her
4 spouse, domestic partner, other family member, co-workers, or the Bargaining Agent. The
5 employer including, but not limited to, managers, supervisors, elected officials, or other agents of
6 the employer, may not solicit donations on the employee's behalf.

7 B. Confidentiality And Release of Medical Information. During the course of
8 administering or otherwise acting pursuant to this program, the employer or employees acting
9 within the scope of their employment may not disclose confidential medical records or
10 information, regardless of how they came into possession of the records or information.
11 Employees shall not in any instance disclose confidential medical records or information that
12 come into their possession solely through performance of their county employment duties.

13 C. Coercion Prohibited. The employer (including but not limited to managers,
14 supervisors, elected officials, or other agents of the employer), employees, and the bargaining
15 agent shall refrain from threatening, coercing, or intimidating employees for the purpose of
16 securing or inhibiting their participation or non-participation in this catastrophic leave program,
17 either as a donor or recipient. Participation or non-participation shall be purely voluntary.

18 Section 10. Eligibility To Receive Or Use Donated Leave And Limitations.

19 A. Donated Leave Must Be Used. An employee must use donated leave for which he or
20 she has applied and which he or she is eligible to use, and may not save such leave by taking an
21 unpaid leave.

1 B. When An Employee Is Eligible To Receive Or Use Donated Leave. Subject to
2 sections 11 and 14[c] below, an otherwise eligible employee may receive or use donated leave if
3 at the time:

4 i. the employee or a member of his or her immediate household has a catastrophic
5 medical condition;

6 ii. the employee has exhausted his or her accrued sick and vacation leave, personal
7 holidays, time off in lieu of designated holidays, and compensatory time off;

8 iii. the recipient employee is not receiving any other income derived from County
9 employment; and

10 iv. the person with the catastrophic medical condition precipitating the proposed
11 use of donated leave is unable to work in his or her regular position or in another position made
12 available by his or her employer.

13 C. Exception to Exhaustion Requirement. Notwithstanding subsection B, paragraph ii of
14 this section, an employee may have up to a combined total of ninety-six (96) hours of unused
15 vacation, sick leave, personal holiday time, time off in lieu of designated holidays, and
16 compensatory time off in his or her account at the time he or she applies for donated leave if the
17 employee reasonably believes it is likely that such hours will be exhausted by virtue of the
18 catastrophic medical condition giving rise to the application.

19 Section 11. Retroactive Use of Donated Leave.

20 A. Authorization By Elected Official. Except as limited by subsection B of this section,
21 the applicable elected official or his or her designee for such purposes may, in writing, authorize

1 retroactive application for and use of up to ninety-six (96) hours of donated leave to cover unpaid
2 time during the pay period in which the employee filed his or her application for donated leave if,
3 in his or her judgment, the purposes of this ordinance would be served by such retroactive use.

4 **B. If Worker's Compensation Claim Filed.** An employee who files a worker's
5 compensation claim in connection with the catastrophic medical condition giving rise to a
6 request for donated leave may, after processing of the worker's compensation claim has
7 concluded (including all appeals), retroactively apply for, receive and use donated leave up to the
8 number of hours that the employee would have used had the employee not filed the worker's
9 compensation claim unless the employee:

- 10 i. received a permanent total disability award,
- 11 ii. entered into a disputed claims settlement providing any payment for work time
12 lost on the specific date(s) for which donated leave would otherwise be used;
- 13 iii. received time loss, sick leave, vacation or other payments for such date(s);
- 14 iv. otherwise fails at the time of application for donated leave to qualify pursuant
15 to section 10 of this ordinance.

16 **C. When Retroactive Payments Made.** All retroactive payments made pursuant to this
17 section shall be made on the next regular county pay date following completion of one full pay
18 period.

19 **Section 12. Recovery of Leave If Other Benefits Retroactively Granted.** If an recipient
20 employee uses donated leave and subsequently is paid social security, PERS disability
21 retirement, disability retirement through another retirement system to which the County

1 contributes, or disability insurance benefits through a County sponsored plan for the same
2 date(s), the employee shall promptly notify the Payroll unit and Employee Services Division and
3 shall, within seven (7) days of receipt of such payments, repay the County the net payments
4 received for the donated leave used on such date(s). Upon the County's receipt of repayment, the
5 recipient employee's vacation or sick leave accounts shall be credited one hour of sick or
6 vacation leave, according to the formula set out in section 14 below, for each hour of donated
7 leave for which repayment is received and for each additional hour which was donated to, but
8 cannot be used by, the recipient employee to cover absence resulting from the catastrophic
9 medical condition for which the employee has received other benefits as described in this
10 section.

11 Section 13. Cap On Accumulation of Donated Leave, Draw Down And Future Donations. At
12 no time may a recipient employee's accumulation of donated leave exceed four hundred (400)
13 hours of donated leave, as calculated after conversion at the recipient employee's rate of pay.
14 Beginning when the recipient employee's balance reaches the four hundred (400) hour ceiling or
15 thirty (30) days after the date on which the recipient was notified of his or her eligibility,
16 whichever is earlier, the recipient must draw down and exhaust his or her entire balance before
17 additional donations may be added to the recipient's account. Such additional donations will be
18 confined within a new 30 day period beginning on the date the recipient's account is exhausted
19 or such shorter period as is required to reach the four hundred (400) hour accumulation ceiling.

20 Section 14. Disposition of Unused Donated Leave. Unused donated leave and compensatory
21 time off shall be disposed of as follows:

1 A. Upon return to work. If the recipient employee returns to work, any donated leave
2 hours which were not used by the recipient will be divided equally between vacation and sick
3 leave and retained by the recipient; provided that the crediting of vacation shall in each case be
4 limited to the number of vacation hours the employee would ordinarily accrue, given his or her
5 length of service at the time he or she returns to work, during a two year period under the terms
6 of ordinance no. 740 or its successor governing exempt employee vacation leave or under
7 collective bargaining agreement, whichever determines the employee's vacation accrual rate.
8 Any donated leave hours, which if credited to vacation leave would exceed such limitation, shall
9 be credited exclusively to the employee's sick leave account. EXAMPLE: A full-time employee
10 with one year of service is injured and receives four hundred (400) hours of donated leave. The
11 employee returns to work after using 30 hours of such leave. Upon the recipient's return to
12 work, the remaining 370 hours will be divided equally and converted to 185 hours of vacation
13 and 185 hours of sick leave. However, because the normal accrual allowed for an employee with
14 one year of service is 80 hours per year (accumulating to 160 hours over two years), the
15 employee will be credited with only 160 hours of vacation. The remaining 25 hours that would
16 otherwise be credited to vacation will be credited instead to sick leave. The total credit to sick
17 leave will thus be 210 hours (185 + 25).

18 B. Upon termination. If the recipient employee terminates from county service for any
19 reason, any donated leave hours which remain unused by the recipient shall at termination be
20 converted to vacation and sick leave under the formula set forth in subsection A of this section.

1 Donated leave converted to vacation will then be paid to the recipient or his or her survivors or,
2 absent survivors, estate in the same manner as other accumulated vacation.

3 C. Character after conversion; Application To Final Average Salary. After the
4 conversion of donated leave to sick and vacation leave has been undertaken pursuant to this
5 section, the hours shall no longer be deemed donated leave for purposes of this ordinance. The
6 applicability or inapplicability of donated leave converted to sick leave or vacation under this
7 ordinance with respect to final average salary or pension calculation under the Oregon Public
8 Employee Retirement System or any other pension system in which the County participates shall
9 be subject to such limitations, if any, as are imposed at the time of the recipient employee's
10 retirement by Oregon law, Multnomah County ordinance or an applicable collective bargaining
11 agreement between the County and the applicable Bargaining Agent.

12 Section 15. Effect Of Donated Leave On Employment Status, Seniority, Benefits And FMLA.

13 A. Employment Status. The fact that an employee is using donated leave shall not bar
14 immediate termination of the employee if such termination would otherwise take place by
15 operation of law, rule, regulation or order of the appointing authority. EXAMPLE: if an
16 employee would have otherwise been terminated due to layoff or other reasons, donated leave
17 does not extend employment beyond the stated termination date.

18 B. Seniority. Time spent on donated leave shall be treated as paid leave for seniority
19 accrual purposes.

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1 C. Benefits.

2 i. Medical & Dental Benefits. If the recipient is otherwise eligible for County-
3 paid medical and dental benefits, but for the fact that he or she is not “in pay status,” the
4 employee will receive those benefits while using donated leave. If the employee’s employment
5 terminates, termination of medical and dental benefits shall be governed by the same rules
6 applicable in any other termination.

7 ii. Other Benefits. An employee who uses donated leave is not in pay status for
8 purposes of and for that period is not credited with and does not accrue personal holidays, time
9 off in lieu of designated holidays, vacation or sick leave, or receive holiday pay while using
10 donated leave. An employee on donated leave at the commencement of the fiscal year who
11 would otherwise be credited at that time with time off in lieu of designated holidays shall, upon
12 return to work from donated leave, be credited with prorated time off in lieu of designated
13 holidays based on the percentage of the fiscal year remaining in the same manner as for new
14 hires after the commencement of the fiscal year.

15 D. Family Leave Treatment. If donated leave is used due to the catastrophic medical
16 condition of the employee or a family member residing in the employee’s household for whose
17 catastrophic medical condition the employee would be entitled to leave under applicable state or
18 federal family medical leave law, time spent on donated leave shall count toward the employee’s
19 annual entitlement to leave under those laws to the extent permitted by those laws.

20 Section 16. Application For Donated Leave. An employee who wishes to receive donated
21 leave must complete and file an application with the Payroll Unit. Such application shall be on

1 such form and contain such information as is required by the Payroll Unit including, but not
2 limited to, a statement signed in good faith by the employee that he or she qualifies for donated
3 leave under the eligibility criteria set out in section 10 (and section 11 if applicable); provided,
4 that the employee may have up to a combined total of ninety six (96) hours of sick leave,
5 vacation leave, personal holidays, time off in lieu of designated holidays, and compensatory time
6 off in his or her account at the time the application is submitted if the employee reasonably
7 believes that he or she will exhaust that leave due to a qualifying catastrophic medical condition
8 in existence at the time of the application. In addition, as part of the application the recipient
9 employee must agree that he or she will timely repay the County for donated leave payments
10 received by the employee when such repayment is required under Section 12 of this ordinance.
11 Further, the employee must submit with the application a statement signed by the employee's
12 health care practitioner certifying the existence of a qualifying catastrophic medical condition.
13 The County may require that such physician certification be on a form it supplies to the applicant
14 for purposes of certifying the initial or continued need for family medical leave under federal or
15 Oregon family medical leave laws.

16 Section 17. Verification And Notice Of Eligibility.

17 A. General Duty To Verify Eligibility. Upon receipt of a completed application, the
18 Manager of the applicable Payroll Unit or his or her designee shall verify the employee's
19 eligibility through such consultation with the employee, his or her supervisor, the Employee
20 Services Division, Risk Management Division, or any other county agency or employee who has
21 information the Payroll Unit Manager or designee reasonably deems is needed for verification.

1 B. Reliance On Representations Of Applicant And Health Care Provider. For purposes
2 of this ordinance, the Payroll Unit Manager or his or her designee shall treat as true those
3 certifications by the employee and his or her health provider made pursuant to section 16 of this
4 ordinance, unless the verifying Payroll Unit Manager or designee is aware of substantial
5 evidence indicating that such certifications may be untrue. In such latter case, the Payroll Unit
6 Manager or designee shall take such further steps as he or she deems advisable to verify
7 eligibility to his or her satisfaction.

8 C. Notice of Acceptance Or Denial Of Application. The Payroll Unit shall promptly
9 give notice of confirmation or denial of eligibility to the employee or mail it to his or her last
10 known address when the verification process is complete. The Payroll Unit shall send
11 contemporaneous copies of the notice to the employee's supervisor and the Employee Services
12 Division and the applicant's immediate supervisor. For requests involving MCSO employees, a
13 copy of the request, the confirmation of eligibility and any related donation forms executed
14 pursuant to section 11 below must be received by the Finance Division's Central Payroll Unit
15 before payments may be made to an employee under this program.

16 Section 18. Notice of Discontinuation of Eligibility. The recipient of donated leave shall
17 immediately notify his or her immediate supervisor, the Payroll Unit and Employee Services
18 Division in writing of any change in circumstance which negates the employee's continued
19 eligibility to participate in the program (e.g. approval of a disability retirement application, return
20 to work, termination, etc.). The recipient employee's supervisor shall undertake to ensure that
21 such notice is promptly given to the Payroll Unit and Employee Services Division in cases of

1 termination or return to work. In cases involving MCSO employees, the MCSO Payroll Unit
2 shall promptly forward a copy of the notice to the Finance Division's Central Payroll Unit and
3 the Employee Services Division.

4 Section 19. Supplemental Rules. The applicable elected official may create, modify or
5 eliminate such administrative rules, orders and procedures as are consistent with the terms of this
6 ordinance which he or she from time to time deems appropriate to administer this ordinance.

7 Section 20. Resolution of Disputes. All decisions made or actions undertaken as an employer
8 by the County or the applicable elected officials, pursuant to this catastrophic leave sharing
9 ordinance, including but not limited to the County's determinations concerning eligibility,
10 calculation of leave values, and any decision or action made or taken in the administration,
11 modification or termination of this program are final and binding on all parties and shall not be
12 grievable or arbitrable under any collective bargaining agreement or appealable to the County's
13 Merit System Council or in any other forum.

14 Section 21. Plan Modification or Termination. The Board may at its exclusive discretion and
15 at any time prospectively modify or discontinue any or all aspects of this catastrophic leave
16 sharing program, including but not limited to those terms set forth expressly in this ordinance,
17 and such modification or discontinuation shall not be subject to a duty to bargain either the
18 decision or impact of such decision. However, except when changes are undertaken to ensure
19 prompt compliance with state or federal law, such modifications or termination shall take effect
20 only after the employer gives the union notice of the modification or termination and a
21 reasonable opportunity within ten (10) days of the delivery of such notice to meet and confer

1 concerning the change or modifications. If implementation is undertaken prior to such
2 consultations to ensure compliance with law, consultations shall occur as soon thereafter as is
3 reasonably possible.

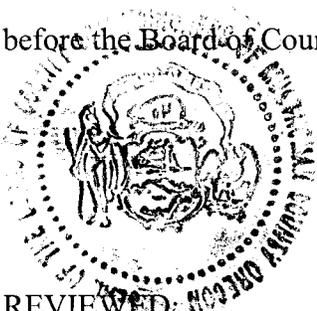
4 Section 22. Application Of This Ordinance To Represented Employees And To Employees

5 Reporting To Elected Officials Other than the Chair. This ordinance shall not be applied to a
6 member of a bargaining unit unless the exclusive agent for that unit has filed with the Labor
7 Relations Division a written notice indicating that the exclusive agent accepts the terms of this
8 ordinance in entirety without reservation or modification. Nothing in this section precludes an
9 exclusive agent from demanding bargaining over mandatory subjects covered by this ordinance
10 during negotiation of a successor to the collective bargaining agreement between the County and
11 that exclusive agent pursuant to the termination clauses of those agreements. In addition, this
12 ordinance shall not apply to employees reporting administratively to an applicable elected
13 official other than the Chair unless the official gives the Labor Relations Division written notice
14 that he or she consents to its application to such employees.

15 Section 23. Emergency Clause. This ordinance, being necessary for the health, safety, and
16 general welfare of the people of Multnomah County, an emergency is declared and the ordinance
17 shall take effect upon its execution by the County Chair, pursuant to section 5.50 of the Charter
18 of Multnomah County.

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1 Approved this 30th day of January _____, 1997 being the date of its first reading
2 before the Board of County Commissioners of Multnomah County, Oregon.



MULTNOMAH COUNTY, OREGON

By *Beverly Stein*
Beverly Stein
Multnomah County Chair

REVIEWED: _____
Office of Multnomah County Counsel

By *Katie Galt*
Assistant County Counsel