

MEET AND CONFER SICK LEAVE POLICY CHANGES

[Bolded text is additional language]

§ 7.136

"The purpose of Sick Leave is to provide leave time when employees are ill and cannot do their jobs due to a non-job related illness or injury or it may be used for a reason related to illness/health, such as a medical, dental or optical appointment. An employee may use Sick Leave for illnesses, injuries or health appointments for family members. **For purposes of taking regular sick leave with pay, the following persons are considered to be family members:**

- **An individual who resides in the same household as the employee and is related to the employee by kinship, adoption, or marriage;**
- **A foster child of the employee who resides in the same household as the employee and who is under the conservatorship of the Department of Protective and Regulatory Services; and**
- **A minor child of the employee, regardless of whether the child lives in the same household."**

§ 7.139

"All employees must furnish their Elected Official/Department Head a written physician's statement prior to returning to work when the employee has been on Sick Leave for a period of three (3) or more consecutive business days. A physician's statement is also required for any physical injury, regardless of length, which prevents an employee from performing assigned duties. *When a pattern of abuse is suspected to exist for an individual employee, an Elected Official/Department Head may require, on a case-by-case basis, a written doctor's statement for any illness, regardless of duration, as well as for medical, dental or optical appointments. **The Human Resources Director shall establish guidelines for Elected Officials/Department Heads to follow in determining when a pattern of abuse of sick leave exists."***

§ 7.144

"**Elected Officials/Department Heads shall actively encourage employees to seek timely medical care and preventive care as these practices increase the overall health of employees, strengthen employee morale, and reduce the overall number of days of employee absenteeism. Elected Officials/Department Heads shall not, either directly or indirectly, intimidate or coerce employees into not taking Sick Leave."**

§ 7.217

"A County and/or District employee who retires, resigns, or is terminated from County and/or District employment, whether or not such employee is a member of the Sick Leave Pool, may contribute up to eighty hours of such employee's accrued, but unused, Sick Leave, to the Sick Leave Pool. All departing employees shall be informed both verbally and in writing about their right to donate unused Sick Leave hours to the Sick Leave Pool prior to separation. Upon being informed of this right, departing employees shall have the paperwork needed to make a donation to the Sick Leave Pool be made immediately available to them."

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July 5, 2007

Via Facsimile (956)292-7034

Valde Guerra
Hidalgo County Budget Officer
Budget Office
100 E. Cano St., 2nd Floor
Edinburg, Texas

RE: County Sick Leave Policy

Dear Mr. Guerra:

You asked us to review SEIU-Texas' request that Hidalgo County consider allowing employees to use sick leave for the care of family members.

Currently, Hidalgo County employees are allowed to use sick leave when the employee is ill and cannot do their job due to non-job related illness or for a reason related to illness/health, such as medical, dental or optical appointments. Employees are currently prohibited from using sick leave for illnesses, injuries or health appointments for family members.

Texas Local Government Code Section 152.011 states that the "Commissioners Court, shall set the amount of the compensation, office and travel expenses, and all other allowances for county and precinct officers and employees who are paid wholly from county funds." Sick leave is considered a form of compensation or an allowance within Article III Section 53 of the Texas Constitution (see Atty. Gen. LO. 98-99 (1998) citing *Ward v. City of San Antonio*, 560 S.W. 2d 163 (Tex. Civ. App. – San Antonio 1977, writ ref'd n.r.a.)).

It is our opinion that the Commissioners Court may allow employees to use sick leave for family members by amending the current policy without violating current state law or the Texas Constitution. However, the County's sick leave policy must be consistent with Article III Section 53 of the Texas Constitution, which provides in part, "The Legislature shall have no power to grant, or to authorize any county or municipal authority to grant, any extra compensation, fee or allowance to a public officer, agent, servant, or contractor, after services have been rendered...." As such, the additional benefit or allowance of allowing an employee to use sick leave for the care of a family member would become a term of employment applicable to sick leave accrued only after the new policy is in effect and not prospectively.

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BUDGET OFFICE
HIDALGO COUNTY

July 5, 2007

Page 2

Hence, any sick leave already earned would not qualify for use by an employee for care of a family member.

If the Commissioners Court opts to amend the current policy, the County would also be tasked with defining what constitutes a "family member". Most Texas counties that allow employees to use sick leave for the care of family members have restricted such use for immediate family members defined to include, a spouse, father, mother, child, brother and sister. Some counties have included stepchildren, foster children, stepmothers, stepfathers, stepsisters, stepbrothers, grandparents, grandchildren, in-laws and spouses of employees' children in the definition of "immediate family member".

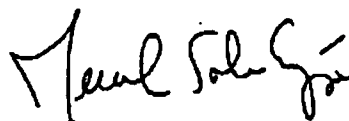
Like other Texas counties Hidalgo County may also wish to consider restricting the number of days that may be taken to care for a family member to 24 hours (3 days) per payroll year or some other increment of time.

If you have any questions, please contact the undersigned.

Sincerely,

ATLAS & HALL, L.L.P.

By:



Mercedes Salinas Espinosa

MSE