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Policy 222**

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EMERGENCY BUDGET FURLOUGH POLICY

.1 OVERVIEW

1.1 Intent of Policy

This policy is in addition to the County Administrative Personnel Policies and serves as a general guide to the County's employment practices and procedures. This policy is not intended to be a contract, express or implied, or any type of promise or guarantee of specific treatment upon which you may rely, or as a guarantee of employment for any specific duration.

Employees who are exempt from collective bargaining representation or otherwise deemed executive, managerial or confidential by the County are considered at-will employees and may be terminated from County employment at any time with or without cause and with or without notice. All other employees' employment status shall be governed by the personal employment contract, collective bargaining agreement, civil service, County Administrative Policies, or other written document applicable to the individual case.

1.2 Scope of Policy

In cases where this policy conflicts with any County ordinance, Civil Service rule and regulation, the provisions of a collective bargaining agreement, state or federal law, where the terms of the law or agreement prevail. In all other cases, this policy applies.

1.3 Assignment of Furlough Dates

A significant budget shortfall has been identified for 2013. In order to address the shortfall, program and position cuts have been implemented. In order to preserve remaining services and reduce the need for reductions in force, the County will require mandated leave by all furlough-eligible County employees on the following days during 2013 calendar year:

January 14 and 28

March 11 and 25

April 1 and 8

June 24

July 1, 15, and 22

August 26

September 16 and 23

November 18

December 23 and 30

The majority of furlough-eligible employees will be taking the primary dates designated as furlough days. When needed, designated alternate dates will be used. On the rare occasion when a department must utilize a date other than those above, the date selected must be clearly communicated to payroll. It is the responsibility of each furlough-eligible employee and their supervisor to administer this policy so that all furlough-eligible employees participate fully in the program.

1.4 Definitions

The following definitions are meant to clarify the language used in this policy in reference to the furlough process and eligibility:

“Delayed Furlough Day” means a day off without pay taken in place of a designated furlough day.

“Emergency Budget Furloughs” also referred to as “mandated leave” caused by a financial emergency requiring budget reductions and the placement of employees in a temporary status without duties and without pay. Furloughs will be administered as follows:

- a. Notification of furlough is to be processed in writing when possible; however, any reasonable notice is permissible.
- b. During an emergency budget furlough day, furloughed employees remain County employees.
- c. Outside employment for furloughed employees remains subject to the County’s policies, procedures, collective bargaining agreements, civil service rules and regulations, and other established guidelines.
- d. Furloughed employees may not volunteer to do what the County otherwise pays employees to do.
- e. Health insurance will continue in full for a furloughed benefited-eligible employee provided the employee is in paid status for a minimum of 80 hours per month. Furlough hours shall be reported as eligible hours for benefit purposes.

“FLSA-Exempt Employees” means an individual designated as being employed in a bona fide executive, administrative, or professional capacity, as defined by the Fair Labor Standards Act (FLSA) and the Washington Minimum Wage Act (WMWA), and who is therefore exempt from the overtime pay and minimum wage requirements of the FLSA and the WMWA.

“Furlough Day” means any day in which a furloughed employee is placed in a temporary status without duties and without pay due to a financial emergency requiring budget reductions.

“Furlough-Eligible / Must Report Person” means any position that has been identified as furlough eligible, however, due to job necessity, the employee is required to work on a designated furlough day. In this situation, the employee must take a replacement furlough day at a later agreed upon date.

“Furlough-Ineligible Positions” means positions with assigned duties that must, in the judgment of the County Administrator, be performed on the scheduled furlough day(s). These positions may change throughout the furlough process. Employees working in a furlough-ineligible position are not required to make up furlough days.

“Furloughed Employee” means any employee who is placed in a temporary status without duties and without pay due to a financial emergency requiring budget reductions.

“Hourly” means an employee who is eligible to be paid for all actual hours that s/he is required or permitted to work at either the straight time regular hourly rate for hours worked up to and including 40 in the work week or overtime hourly rate at one and one-half times the hourly employee’s rate of pay for each hour worked in excess of 40 in the workweek.

“Workweek” means a fixed and regularly recurring period of 168 hours during seven consecutive 24-hour periods.

2. CLASSIFICATION

2.1 Employment Contract Workers

Employment contract workers are limited to the number of hours authorized to work by their agreement. The institution of furlough days for 2013 will not alter the hour limitation for employment contract workers. These workers may not be used to substitute for regular employees who are on furlough days, including situations when regular employees are taking an alternate or make up furlough day. When using the services of an employment contract worker, the worker must be advised in advance by the supervisor that the worker will not report to work on designated furlough days.

2.2 FLSA-Exempt Employees

All FLSA-exempt employees will accept a partial layoff effected as a reduction in hours of work due to insufficiency of County funding to the extent of 16 furlough days in 2013. 29 CFR 541.710(b) provides that with respect to salaried FLSA-exempt employees, reducing pay due to budget-related furloughs does not disqualify the employee from being paid on a salaried basis regardless of whether or not the employee actually works on the designated furlough day; and provided further that the work weeks in which the furlough occurs are for FLSA purposes treated on a non-salaried basis. Therefore the

parties explicitly agree that time worked will necessarily be managed to insure that overtime (that is, hours worked in excess of 40) does not occur in any such furlough workweek.

FLSA-exempt employees will be required to track hours consistent with the standard hourly tracking practices used by the County. During the workweeks when FLSA-exempt employees are furloughed, they must subscribe to standard working hours and all other rules that are required by policy. For example, partial day absences due to medical appointments must be requested in advance and are deducted from the employee's sick leave accrual balance. FLSA-exempt employees must observe the agreed upon starting and ending times to each workday. Such work includes being physically present in the office, working at home, working on-line, working on the telephone or working on a cell phone or other electronic communication device. All work in service to the County for which the individual does not receive compensation through the approval process, including overtime, is prohibited. Attendance at off-hour meetings such as public hearings is compensable and must be recorded during furlough-affected weeks. Employees in violation of the requirement are subject to discipline.

2.3 Regular Part-time / Hourly

Regular part-time and hourly employees will take the furlough days as scheduled. If a regular part-time or hourly employee is working an alternative workweek that provides for a regularly scheduled day off on a scheduled furlough day, an alternate unpaid furlough day will be scheduled preferably within the same week as the standard furlough day. Regular part-time and hourly employees will not be used to substitute for regular-full time employees who are on furlough days. Regular part-time employees' furlough day calculation shall be prorated based upon the fixed percentage of a full time equivalent.

3. PAY AND BENEFITS

Unless otherwise provided for in an applicable collective bargaining agreement, the following applies:

3.1 Adjusted Service Date

An employee's adjusted service date shall not be changed due to unpaid furlough days.

3.2 Probationary Periods

Probationary periods are 12-months in length. With the institution of furloughs, probationary periods will continue to be 12-months. Furlough days will not be considered as a reason to extend a standard probationary period.

3.3 Meal / Rest Periods

There will be no change in meal and rest periods due to furlough days being observed in any workweek. If in a designated furlough workweek, all furlough-eligible employees must observe meal and rest period as follows:

Meal periods must be at least 30-minutes in length and must begin no less than 2-hours or more than 5-hours from the beginning of the shift. For the majority of County employees, a 60-minute meal period is observed. Employees shall be allowed a County paid rest period of not less than 15-minutes for each 4-hours of working time. Rest periods shall be scheduled as near as possible to the midpoint of the 4-hour period.

3.4 Workweek

The definition of "workweek" will consist of 7 consecutive 24-hour periods or 168 consecutive hours. The County has determined that an equivalent of 16, 8-hour furlough days (or 128 hours) will be observed during 2013 reducing the days worked during the weeks under which a furlough day occurs. The County Official shall be responsible for administering workweeks affected by the furlough program.

3.5 Recordkeeping Requirements

Under the FLSA, the County is required to keep records on employee time. For FLSA overtime-eligible employees, this means that records must be kept for hours worked each day and the total hours worked each work week. Recordkeeping requirements also apply to FLSA-exempt employees who are identified as furlough-eligible because they are converted to hourly employees in a week in which a furlough day occurs. During such weeks, FLSA-exempt employees will be required to conform to all of the policies normally observed by hourly employees. Attendance at off-hour meetings such as public hearings, are compensable and must be recorded during a week in which a furlough occurs.

3.6 Overtime / Compensatory Time

Those terms and conditions describing overtime and compensatory time contained in collective bargaining agreements, County administrative policy, or any other recognized guideline will continue to apply. When FLSA-exempt employees are converted to an hourly status during a workweek when a furlough occurs, hourly terms and conditions will apply to them. For example an FLSA-exempt employee who, due to business conditions such as an emergency call out, works more than 40-hours in a workweek while in an hourly status, will earn overtime payment or compensatory time.

Mandatory unpaid leave (furloughs) will not count as hours worked toward the overtime threshold. For daily overtime, the collective bargaining agreements will prevail. Non-represented hourly employees are paid overtime after 40-hours in one week. During a workweek including a furlough day, FLSA-exempt employees will be converted to hourly status.

3.7 Medical, Dental, Vision Benefits

Medical, dental, vision and other insurance benefits will be unaffected by the mandated leave (furlough) except when an employee is on unpaid status for other than a furlough reason which renders them unqualified based upon the Teamster Trust rules.

3.8 Retirement

Retirement benefits are based on earnings, the resulting contributions to the retirement system, and the number of service credits one has earned. Since benefits are based in part on earnings, compensation forgone by employees by virtue of furlough shall be certified by the County as the result of reduced hours, mandatory leave without pay, or reductions to current pay as appropriate so that the employee's final average salary is calculated for retirement purposes as contemplated and directed by Washington law (that is, House Bill 2070, enrolled as Ch. 5, WA Laws 2011, eff. 07/01/11 filed 06/01/11).

4. ALTERNATE WORK WEEKS

Individuals working a compressed workweek will be required to observe unpaid furlough days regardless of whether the furlough day occurs on their regularly scheduled day off. The amount of unpaid furlough hours shall be converted proportionate to the total hours of the workweek; i.e., a 20-hour workweek equals 4-hours, a 40-hour equals 8. Individuals must work collaboratively with their County Official to establish a 2013 schedule of observed unpaid furlough days consistent with the County furlough days.

5. LEAVE ADMINISTRATION

5.1 Vacation and Leave Accruals

The accrual of vacation and sick leave will not be affected by the 2013 scheduled furlough days.

5.2 Vacation

Employees may not use their paid vacation benefit on a day they would not normally be paid. Emergency budget furlough days are not paid.

5.3 Sick Leave

Employees may not use their paid sick leave benefit on a furlough day they would not normally be paid.

5.4 Family Medical Leave (FMLA & FLA)

Employees will continue to have 12-weeks of protected Family Medical Leave as allowed under the Family Medical Leave Act (FMLA), the Washington Family Leave Act (FLA) and Pregnancy Disability. Employees will not have a right to be paid on any day for which they would not normally be paid. In other words, employees on FMLA or FLA are not entitled to be paid on a furlough day. Employee leave as defined herein will have the equivalent number of protected days for each furlough day added to the end of the 12-weeks of protected leave.

5.5 Washington Family Care Act (WFCA)

The emergency budget furloughs should have no impact to WFCA leaves of absence. The WFCA provides that an employee may use paid leave accruals when caring for a qualifying family member with a serious health condition. The WFCA does not overrule a collective bargaining agreement or County policy regarding use of paid leaves. As a result, employees are not entitled to paid leave under the WFCA on an emergency budget furlough day.

5.6 Pregnancy, Childbirth, or Pregnancy Related Conditions (PCPRC)

Emergency furlough days do not impact PCPRC leave. The County will continue to treat female employees on PCPRC in the same manner as other employees on leave for sickness or other temporary disability. PCPRC may be taken the day before and the day following an unpaid furlough day but not on the unpaid furlough day.

5.7 Military Leave

The Washington State legislature changed the number of paid military leave days from 15 to 21 in 2008. The County will continue to grant military leave in accordance with law. The annual leave periods are not to exceed 21 working days during each year. Such leaves are made with pay to the employees eligible for leave benefits for the purpose of taking part in active duty or military training. Employees are not eligible to be paid for military leave on days when they would not normally be paid. Persons taking military leave will continue to receive 21 paid working days per year to take part in active duty or military training. The requirements to submit written request for military leave to the employee's County Official and attached copies of military documents that order the active duty will continue to be required.

5.8 Active Military Duty

USERRA provides that employees on an emergency budget furlough or a leave of absence are to be given the same rights of employees on other types of leave. In the case of a furlough, active duty employees do not have any more rights than other employees to use paid leave accruals while on leave for military service.

5.9 Domestic Violence Leave

Under Washington law, employees who are victims or who are family members of victims of domestic violence, sexual assault, or stalking may take a reasonable period of leave to receive medical treatment, attend legal proceedings, or address safety concerns. The employee may elect to use sick leave, other paid time off, compensatory time or unpaid leave. The County must continue to approve paid or unpaid leave time for domestic violence leave; however, they may not approve the use of paid leave time for those days for which an employee would not normally be paid. The County Official may not approve the use of paid domestic violence leave for scheduled unpaid furlough days.

5.10 Bereavement Leave

Employees eligible for leave benefits are entitled to three working days of bereavement leave for the death of their immediate family. Employees will continue to receive the full three days of bereavement leave; however, employees are not eligible to be paid for bereavement leave on days for scheduled unpaid furlough days.

5.11 Jury Duty

Any employee eligible for leave benefits who is ordered to jury duty shall be entitled to his or her regular County pay, provided that fees for jury duty are returned, exclusive of mileage to the county. Employees are not eligible to be paid jury duty on days when they would not normally be paid. Employees called to jury duty during an emergency budget furlough day are not eligible to receive their regular compensation on that day but may be eligible to keep their court-provided jury duty pay for that day which would otherwise be returned to the County.

5.12 Compensatory Time

The use of previously earned compensatory time must be requested in advance by the hourly employee in writing. Requests to use compensatory time must be approved by the County Official in writing. Use of compensatory time shall be subject to the collective bargaining agreement and County policy. Employees are not eligible to be paid for compensatory time on days when they would not normally be paid. Compensatory time will not be used in place of designated unpaid furlough days.

FLSA-exempt employees who are permitted to earn flextime during a furlough workweek, in which they are designated as hourly, must also use flextime during a furlough workweek in which they are designated as hourly. County Officials must consider very carefully (in advance) whether compensatory time will be approved in lieu of overtime payments. The recommended approach is that all hourly employees work within the 40-hour workweek structure and not incur flextime or overtime during designated furlough weeks. Any furlough-eligible employee incurring unapproved compensatory time or overtime during a designated furlough week will be subject to discipline.

5.13 Holiday Pay

The requirement to be in paid status the day before and the day after a holiday in order to be paid for the holiday will be waived in those circumstances where the unpaid day is a mandated leave day. If an individual is in unpaid status the day before or the day following a holiday, not caused by a mandated furlough day, the employee will not be paid for the holiday.

6. RESCISSION OF APPROVED LEAVES

There are many circumstances under which employees may have requested and have already received approval for vacations falling on what have become furlough days. In general terms, County employees are not eligible to be paid for any days when they would not normally be paid. One may not, for example, request and have approved vacation day payments for the weekend unless the weekend is a normally scheduled workday for the employee. Unpaid furlough days are not normally scheduled workdays. Rescinding leaves, rescheduling leaves or other solutions consistent with County policy, collective bargaining agreements, or other guidelines will be required to address an issue.

Unless an employee has been specified as furlough-ineligible for a mandated leave day, s/he must take the furlough day as time without pay unless an alternative furlough day has been previously arranged with the County Official. In some cases, leave days are pre-approved months in advance. That is especially true if an individual has requested and had approved a lengthy vacation. County Officials should examine all leaves that received approval prior to December 1, 2012. If a paid leave day that had been approved for 2013 is now scheduled to be an unpaid furlough day, the County Official will address the matter and resolve the situation as outlined in this policy. Unpaid furlough days may occur during a multi-day vacation or a multi-day sick leave occurrence.

Employees must be provided information on the furlough schedule. Employees must be informed that the day has been identified as an unpaid furlough day. When rescinding previously approved leaves, the County Official shall make sure that all appropriate steps have

been followed. When rescinding previously approved paid leaves, the employee should receive appropriate written notice.

7. RETIREMENT

Compensation forgone by employees by virtue of furlough days will be certified by the County so that the employee's final average salary is calculated for retirement purposes as contemplated and directed by Washington law (House Bill 2070, enrolled as Ch. 5, WA Laws 2011, eff. 07/01/11, file 06/01/11.)

8. COMMUNICATION

8.1 Employees on Layoff and New Hires

In the event an employee from the Layoff List is recalled to County employment during fiscal year 2013 or in the unlikely event that a new employee is hired, all job offers must include a notification of furlough days. Employees who are furlough-eligible will not be paid for designated furlough days. For those employees who are not furlough-eligible, they must comply with any memorandum of agreement that has been created and agreed to in regard to furloughs and compensation. In addition, 2013 job postings should include the following: "This position may be subject to unpaid furlough leave days."

8.2 All County Communication

Furlough-eligible employees will be notified in broadcast emails or by other forms prior to the onset of mandatory furlough days. This notification will include a statement that all FLSA-exempt employees will be converted to an hourly status for each work week containing a furlough and that during such work weeks, FLSA-exempt employees will be required to conform to all the policies normally observed by hourly employees as detailed in this document.

9. ADDITIONAL

9.1 Grievance Procedures / Timelines

Grievance procedures typically specify the number of days for each step of the grievance. The days are typically specified as "days," "calendar days," or "business days." The terms and conditions of all collective bargaining agreements will be observed unless specifically overridden by a memorandum of understanding. Where a collective bargaining agreement specifies "calendar days," furlough days will generally be considered calendar days. Where a collective bargaining agreement specifies "business days," furlough days will be considered business days if the employee is furlough-ineligible and non-business days if the employee is furlough-eligible. Where a

collective bargaining agreement specifies “days,” the parties will agree on the meaning of the term upon notification of the grievance.

There is no property right to scheduled or substituted furlough days. There is no requirement to hold Loudermill hearings on furloughs for employees who are identified as furlough-eligible.

9.2 Unemployment Compensation

Eligibility is determined by the Washington State Department of Employment Security.

9.3 Emergency Procedure

In those cases where an emergency call out occurs on a furlough day or during a furlough week, employees may be called back to work. Such employees are compensated in accordance with the standard compensation procedures and in conformance with the applicable collective bargaining agreement. FLSA-exempt employees may be called back to work on a furlough day. FLSA-exempt employees are compensated on an hourly basis for all time worked within a furlough week. FLSA-exempt employees are required to track their time during a furlough-affected week consistent with the practices in the County. Overtime pay is paid to such non-represented employees for all hours worked in excess of 40-hours within that week, including weekend days within the same workweek. If such employees are represented, they are paid in accordance with their collective bargaining agreements for calculation of overtime.

In the case of an employee being called to work on an unpaid furlough day due to emergency situations, the employee is not required to make up the furlough day at a later date.

.10 PUBLIC DISCLOSURE ACT

The term “business day” is not defined under the Public Records Act. When considering whether one should count a furlough day as a business day, one should keep in mind that the act is to be liberally construed. Recognizing that some parts of the County will be open on furlough days, the recommended course of action is to regard all furlough days as business days for public disclosure request purposes.