

November 23, 2022

TO: County Personnel Policy Board Members

SUBJECT: Personnel Policy Board Meeting
Thursday, December 1, 2022
1:30 p.m., Commissioners Hearing Room
County-City Building, Room 112

A G E N D A

Item 1: Approval of Minutes from the October 6, 2022 meeting.

Item 2: Request to revise and change the pay grade of the following classification:

<u>CLASS CODE</u>	<u>CLASS TITLE</u>	<u>CURRENT PAY GRADE</u>	<u>PROPOSED PAY GRADE</u>
0360	Grant Coordinator	C14 (\$58,864.00 – \$75,397.92)	C20 (\$72,779.20 – \$93,219.36)

Item 3: Request to revise the following classifications:

<u>CLASS CODE</u>	<u>CLASS TITLE</u>	
2450	Imaging Specialist	(A20)
2460	Imaging Clerk	(A18)

Item 4: Request to revise the following classifications by adding the ability to obtain a CDL within 60 days to the current CDL language under NECESSARY SPECIAL REQUIREMENT:

<u>CLASS CODE</u>	<u>CLASS TITLE</u>	
4511	Equipment Mechanic I	(G10)
4512	Equipment Mechanic II	(G14)
4520	Equipment Operator	(G10)
4523	Senior Equipment Operator	(G14)
4524	Traffic Sign Worker	(G11)

4743	Laborer II	(G09)
4745	Labor Supervisor	(G15)
4836	Asbestos Worker II	(A22)
4875	Master Electrician	(C16)
4924	Equipment Mechanic Supervisor	(C17)
4945	Maintenance Supervisor	(C17)
4946	Assistant Maintenance Supervisor	(C13)
4961	Assistant Road Maintenance Superintendent	(C19)
4985	Road Maintenance Superintendent	(C22)
Item 5:	Request to amend County Rule 19.8 – Pregnancy and Parental Leave	
Item 6:	Request to amend the Family and Medical Leave Act Human Resources Policy Bulletin	
Item 7:	Request to amend the Workers’ Compensation Human Resources Policy Bulletin	
Item 8:	Request to create the Protected Family Leave Human Resources Policy Bulletin	
Item 9:	Request for grievance hearing - FOP32 - Caitlin Ostgaard - Matt Waggoner - Modified Duty - Corrections.	
Item 10:	Miscellaneous Discussion	
PC:	Department Heads Tom McCarty Ashley Bohnet Caitlin Ostgaard Matthew Waggoner	

LANCASTER COUNTY GRANT COORDINATOR

NATURE OF WORK

This is responsible professional ~~work in~~ accounting and administrative work coordinating and administering program, grant and resource development for the County Budget and Fiscal Office, maintaining federal, state and local grant monies.

Work involves responsibility for planning and coordinating program, grant and resource development for the County Departments; assisting the Directors in the overall formulation, modification and improvement of program and resource development for the County; seeking and writing grant applications; coordinating and administering County-wide grants; coordinating funding between department and programs. Work also involves independently maintaining a complete set of grant records; collecting and recording detailed records; and preparing and analyzing fiscal reports. An employee in this class exercises considerable independent judgment and initiative within the framework of established County policies, legislative and regulatory requirements. gathering program/project data, forecasting, and completing program budgets and maintaining budget records, grant reporting to ensure progress report time lines are met, and monitoring compliance with grant requirements and all federal funds requirements. Supervision is received from an administrative superior with work being reviewed for adherence to over-all standards of performance and is subject to periodic review in the form of reports, conferences and results achieved.

EXAMPLES OF WORK PERFORMED

Serves as the County-wide facilitator, writer, reporting agent and coordinator of grant applications in order to maximize Federal and State financial assistance to the County.

Coordinates with the County's lobbyists to enhance the County's chance of receiving Federal assistance for specific grants. Assist the Directors in monitoring state and federal legislation and corresponding funds.

Maintain accurate accounting of grant revenues and expenditures; prepare and/or receive grant reports both financial and narrative as required; prepare for annual audits; recommend and assist in the development of policies relating to grants.

Work closely with granting authorities, departments and agencies receiving grants; monitor and document compliance with grant requirements.

Utilize the County's accounting system to properly account for grant and federal funds activity; maintain necessary records related to grants and federal funds; and account for indirect costs and matching funds.

Set up proper accounting procedures for all grants received; supervise and monitor the County's Grants Fund.

Writes grant applications for new grants, emphasizing priority funding areas; provides assistance to Departments not normally or previously involved in seeking grant funding; reviews status of County's current grants and current funding of special projects.

Advises and cooperates with County officials, business, and community leaders in connection with facilitating agreements and negotiations related to program and resource development; coordinates the review and analysis of program development.

~~Work closely with the County Budget and Fiscal Officer, the County Treasurer's Office, and the County Clerk's Office to ensure accuracy of accounting.~~

~~Assist in preparation of grant applications by supplying data and relevant financial information, as necessary.~~

Assist the County Board and Fiscal Officer with accounting reports or other activities as requested.

DESIRABLE KNOWLEDGE, ABILITIES, AND SKILLS

Knowledge of the fundamental principles and practices of grant acquisition and management including direct and indirect cost accounting and matching funds accounting.

Knowledge of governmental accounting procedures.

Knowledge of the Office of Management and Budget (OMB) Compliance Supplement.

Ability to perform in an independent manner under the direction of a superior.

Ability to maintain a variety of accounting records and reports.

Ability to compile, calculate and analyze data necessary for the completion of fiscal reports.

Ability to perform detailed work involving written or numerical data and to make accurate mathematical calculations.

Ability to communicate effectively both orally and in writing with elected and appointed officials, community representatives, co-workers, and the general public.

Ability to maintain comprehensive records and filing systems.

MINIMUM QUALIFICATIONS

Graduation from an accredited four-year college or university with major coursework in public or business administration or accounting plus ~~six months~~two years of experience in grant management and accounting or any equivalent combination of training and experience that provides the desirable knowledge, abilities, and skills.

4/21 12/22

PS0360

LANCASTER COUNTY IMAGING SPECIALIST

NATURE OF WORK

This is responsible work relating to the use of microfilm equipment to provide records management and storage services.

Work involves planning, organizing and supervising all functions related to microfilming of records in a records management and storage services area. Supervision is received from the Records Coordinator with work being reviewed in the form of reports, conferences and the effectiveness of the microfilm services provided.

EXAMPLES OF WORK PERFORMED

Instruct and supervise contracted staff in the use of microfilm equipment including camera, reader, reader/scanner, jacket reader/filler and densitometer; allocate work to optimize microfilming process.

Develop and implement procedures to ensure quality control in the microfilming process.

Direct preparation of and prepare documents for microfilming to include removing staples, arranging in order and writing identifying information on the documents.

Supervise the activities involved in microfilming and storing microfilmed documents.

Develop and duplicate all microfilm; edit all microfilm for correct targeting, density and resolution.

Supervise data entry activities and personnel involved in the data entry of information for microfilm indexes.

Plan and direct the transportation of documents to and from the microfilming operation.

Plan and direct the storage and disposition of records which have been microfilmed.

Confer with staff to resolve problems or initiate new procedures concerning the microfilming process.

Contact equipment companies for repair/maintenance of machines; ensure or maintain inventory control for the microfilming operation.

Send eligible microfilm to the State Archives; Locate, check out and deliver requested records to departments and agencies.

DESIRABLE KNOWLEDGE, ABILITIES AND SKILLS

Knowledge of the procedures and methods utilized in maintaining a microfilming service.

Knowledge of modern office and microfilm equipment and supplies.

Ability to plan, organize and direct the operations of a microfilming service while utilizing a work force made up primarily composed of personnel with mental and physical disabilities.

Ability to perform heavy lifting.

Ability to communicate effectively both orally and in writing.

Ability to establish and maintain effective working relationships with co-workers, contract personnel and the general public.

Ability to organize and maintain computerized and written records.

Skill in the operation of microfilm cameras, storage, index and/or retrieval equipment.

MINIMUM QUALIFICATIONS

Graduation from high school or equivalent with six months of experience in the microfilming of records, including six months of experience managing a micrographics operation; or any equivalent combination of training and experience that provides the desirable knowledge, abilities and skills.

~~10/01~~11/22

PS2450

LANCASTER COUNTY IMAGING CLERK

NATURE OF WORK

This is routine technical work in the operation of imaging and microfilming equipment.

Work involves responsibility for the safe and efficient operation of imaging equipment and software under strict confidentiality requirements. Work also includes indexing of documents, preparation of documents, determining equipment settings for scanning and determining the proper destination for scanned images. Supervision is received from an administrative superior with work reviewed for efficiency and accuracy.

EXAMPLES OF WORK PERFORMED

Prepare documents for scanning; edit documents and complete scanning retakes, as necessary.

Configure scanning software, follow operating guidelines in working with scanning software and equipment.

Follow operating guidelines in working with scanning and microfilming equipment; assist with development and update of policies and procedures for imaging and microfilming equipment; maintain production records.

Enter index information for captured images.

Verify that captured images were delivered to their appropriate destination on the network.

Use a county vehicle to perform a daily delivery route; deliver boxes, files and mail to County and City departments, as necessary.

Convert microfilm images to digital images.

DESIRABLE KNOWLEDGE, ABILITIES AND SKILLS

Knowledge of procedures and methods utilized in the operation of imaging and microfilming equipment.

Knowledge of computer applications and office procedures pertaining to the scanning and maintenance of public records.

Ability to maintain clerical records and adhere to prescribed routines.

Ability to perform heavy lifting.

Ability to communicate effectively both orally and in writing.

Ability to establish and maintain effective working relationships with co-workers and the general public.

Ability to identify and follow operating guidelines related to imaging equipment.

Ability to understand and follow complex oral and written instructions.

Skill in the operation of imaging equipment and related computer systems.

MINIMUM QUALIFICATIONS

Graduation from high school or equivalent with six months of experience in imaging software and equipment or any equivalent combination of training and experience that provides the desirable knowledge, abilities and skills.

NECESSARY SPECIAL REQUIREMENT

Employees must possess a valid driver's license.

~~4/22~~11/22

PS2460

19.8 Pregnancy and Parental Leave (Revised ~~8/00~~12/22)

(a) A pregnant employee who is not eligible for FMLA shall request in writing and, if necessary, with ~~a physician's certification~~ medical documentation to the Human Resources Leave Manager, who will facilitate with the Department Head, that leave be granted at any time during the period of pregnancy and the period immediately following the birth. This leave may be with pay if the employee has sufficient ~~accrued sick leave and/or vacation paid~~ leave to be allocated as per the employee's directions. Otherwise, the leave will be without pay. It is the responsibility of the employee to obtain ~~a doctor's statement~~ medical documentation within ~~six (6) four (4)~~ weeks following the birth which certifies the date the employee is physically able to return to work.

(b) Parental Leave for bonding after the birth or adoption of a child may be granted pursuant to the provisions of the Family and Medical Leave Act of 1993.

(c) Protected Family Leave will be available for spouses qualifying for FMLA who both work for Lancaster County and request leave for the birth, placement, care, or bonding of a child within the first year after birth or placement. Each spouse will be eligible for 12-weeks of unpaid job-protected leave, combined between FMLA and Protected Family Leave

Human Resources Policy Bulletin

Number: 2023-1

~~City of Lincoln~~/Lancaster County

Date: February
2023~~September,~~
2022

Reference:	Title:
Family and Medical Leave Act of 1993 (FMLA) and C.F.R. Part 825 Supersedes Personnel Policy Bulletin 2009-1	Family and Medical Leave Act

- Purpose. The purpose of this policy is to provide a general description of the ~~City of Lincoln and~~ Lancaster County's procedure with regard to family and medical leave in accordance with the provisions of the Federal Family and Medical Leave Act (FMLA) of 1993 and the federal regulations pertaining thereto. In addition to all applicable Federal and State regulations, this policy adheres to any additional provisions specifically addressed in relevant County labor contracts.
- Eligibility. Employees who have been employed for at least 12 months, and for at least 1,250 hours during the preceding 12-month leave period.
- Amount of Leave. An eligible employee is entitled to up to 12 workweeks of unpaid FMLA leave per 12-month leave period.
- Twelve-Month Period. The 12-month leave period for taking FMLA shall be defined as a rolling 12-month period measured backward from the date an employee first uses FMLA leave. Each time an employee takes FMLA leave, the Human Resources Leave ~~Manager~~Coordinator will compute the amount of leave time taken in that 12-month period and subtract it from the 12 weeks of available leave. The balance remaining is the amount the employee is entitled to at that time.
- FMLA Qualified Leave Events. Up to 12 weeks of FMLA leave may be granted for the following reasons:
 - The birth and care of the employee's newborn child within one year of birth;
 - Placement with the employee of a child for adoption or foster care within one year of placement;
 - Bonding with a child within one year of child's birth or placement;

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- d. To care for a spouse (legal), child (biological, foster, adopted, step, legal ward); in loco parentis – (assumed parental status and responsibilities) or parent (in-laws excluded) who has a serious health condition; or
- e. To take personal medical leave when the employee is unable to work because of a serious health condition.

6. General Information and Effect on Paid Leaves.

Employees are required to use ~~accrued~~ paid leave in the event of an FMLA leave. The unpaid FMLA leave will run concurrently with other paid leaves (sick leave, personal holidays, vacation (accrued and banked), injury leave, and workers' compensation leave.) ~~—Employees will use accrued sick leave before accrued vacation leave.~~ Accrued sick leave may be used for any FMLA-qualifying events. Following the exhaustion of applicable paid leave, any remaining FMLA leave will be unpaid.

When spouses work for the same employer and each spouse is eligible for FMLA leave, the FMLA limits the combined amount of leave they may take for some, but not all FMLA-qualifying leave events. Eligible spouses who work for the same employer are limited to a combined 12 weeks of leave in a 12-month period for the following FMLA-qualifying events:

- a. The birth of a ~~son or daughter~~ child and bonding with the newborn child.
- b. The placement of a ~~son or daughter~~ child with the employee for adoption or foster care and bonding with the newly placed child.
- c. The care of a parent with a serious health condition.

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The limitation on the amount of leave for spouses working for the same employer does not apply to leave taken for some qualifying reasons. Eligible spouses are each entitled to up to 12 weeks of FMLA leave in a 12-month period for the following FMLA-qualifying events:

- a. The care of a spouse, ~~son or daughter~~ or child with a serious health condition.
- b. A serious health condition that makes the employee unable to perform the essential functions of their job.

Reference: Human Resources Policy Bulletin – Protected Family Leave:
<https://www.lincoln.ne.gov/City/Departments/HR/County-PersonnelHuman-Resources-Policy-Information>

~~If both spouses work for the same employer and request leave for the birth, placement, care, or bonding of a child within the first year, the City of Lincoln and Lancaster County will not limit them to a combined 12 weeks of FMLA leave. Each spouse will have up to 12 weeks of unpaid, job protected leave in a 12-month period per a combination of permitted FMLA leave and by County Protected Family Leave, this policy. The additional City/County unpaid, job protected family leave will run concurrently with accrued paid leaves.~~

7. Intermittent/Reduced Schedule Leave. FMLA leave may be taken on an intermittent basis or to work a reduced schedule when (1) medically necessary to care for a seriously ill immediate family member; or (2) because of the employee's own serious health condition. Intermittent or reduced schedule leave may be taken to care for a newborn or newly placed adopted or foster care child *only* with the Human Resources Leave Manager's approval~~Coordinator~~ in conjunction with Department Head notification's approval.

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~~Only the amount of leave actually taken while on intermittent/reduced schedule leave may be charged as FMLA leave. If an employee's schedule varies from week to week to the extent that an employer is unable to determine with any certainty how many hours the employee would otherwise have worked, a weekly average of the hours scheduled over the 12 months prior to the beginning of the leave period would be used for calculating the employee's leave entitlement. — Only the amount of leave actually taken while on intermittent/reduced schedule leave may be charged as FMLA leave.~~

Employees needing intermittent/reduced schedule leave for foreseeable medical treatment must work with their employers to schedule the leave so as not to unduly disrupt the employer's operations, subject to the approval of the employee's health care provider.

8. Serious Health Condition Defined. A serious health condition means an illness, injury, impairment, or physical or mental condition that involves either:

(1) any period of incapacity or treatment connected with inpatient care (i.e. an overnight stay) in a hospital, hospice, or residential medical-care facility, and any period of incapacity or subsequent treatment in connection with such inpatient care; or

(2) continuing treatment by a health care provider which includes any period of incapacity (i.e. inability to work, attend school or perform other regular daily activities) due to:

- A. A health condition lasting more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also includes: (1) treatment two or more times within 30 days of the first day of incapacity, unless extenuating circumstances exist, by or under the supervision of a health care provider; or (2) one treatment by a health care provider with a continuing regimen or treatment;

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(i) The requirements of paragraphs (A)(1) and (2) of this section for treatment by a health care provider means an in person visit to a health care provider. The first (or only) in person treatment visit must take place within seven days of the first day of incapacity; or

- B. Pregnancy or prenatal care. A visit to the health care provider is not necessary for each absence; or
- C. A chronic serious health condition which continues over an extended period of time, requires periodic visits (defined as at least twice a year) to a health care provider, and may involve occasional episodes of incapacity (e.g., asthma, diabetes). A visit to a health care provider is not necessary for each absence; or
- D. A permanent or long-term condition for which treatment may not be effective (e.g., Alzheimer's, a severe stroke, terminal cancer). Only supervision by a health care provider is required rather than active treatment; or
- E. Any absence to receive multiple treatments for restorative surgery or for a condition which would likely result in a period of incapacity of more than three days if not treated (e.g., chemotherapy or radiation treatments for cancer).

9. Health Care Provider Defined. Health care provider means (1) doctors of medicine or osteopathy authorized to practice medicine or surgery by the state in which the doctors practice; or (2) podiatrists, dentists, clinical psychologists, optometrists and chiropractors authorized to practice, and performing within the scope of their practice, under state law; or (3) nurse practitioners, nurse-midwives and clinical social workers authorized to practice, and performing within the scope of their practice, as defined

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under state law; or (4) Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; or (5) any health care provider recognized by the employer's group health care plan manager.

10. Employer Notification of Rights Requirements. ~~City of Lincoln and~~ Lancaster County Human Resources will post an FMLA notice, policy, and application materials on the Intranet for employees. Posters will be displayed in general areas for all employees and applicants.
11. Employee Notice of Leave. All employees must submit an application for FMLA leave to the Human Resources Leave ~~Manager~~Coordinator at least 30 days before leave is to begin. When 30 days' notice is not possible, the employee must provide notice as soon as practicable.
12. Application for Leave.
 - a. Employee initiated leave. In all cases, an employee requesting leave must complete an "Application for Family or Medical Leave" and "Medical Certification Statement" and return both to the Human Resources Leave ~~Manager~~Coordinator. The completed application must state the reason for the leave and the starting and ending dates of the leave. The Human Resources Leave ~~Manager~~Coordinator will provide the employee with the Notice of Eligibility & Rights and Responsibilities form (WH-381) within 5 days of receiving the application for FMLA leave.
 - a.—
 - b. ~~b.~~ Human Resources initiated leave. All qualifying events, including employee absences greater than three consecutive calendar days, should be reported to and confirmed by the Human Resources Leave ~~Manager~~Coordinator. ~~The City of Lincoln~~/Lancaster County may initiate the process of FMLA designation once they learn that an eligible employee has taken leave for a FMLA-qualifying reason.

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13. Medical Certification for Leave. An employee requesting leave based on a serious health condition of the employee or the employee's spouse, child, or parent must have his/her-their health care provider complete a "Medical Certification Statement" form. Copies of the "Medical Certification Statement" forms may be obtained through the Human Resources Leave ~~Manager~~Coordinator. The certification must state the date on which the health condition commenced, the probable duration of the condition, and the appropriate medical facts regarding the condition. If the employee is needed to care for a spouse, child, or parent, the certification must so state along with an estimate of the amount of time the employee will be needed. If the employee has a serious health condition, the certification must state that the employee cannot perform the functions of his-or-her-their job.

When submitting a medical certification for Intermittent Leave, the health care provider will need to specifically clarify the frequency and period of time the employee will need to be absent.

The employee shall have 15 calendar days to provide the completed Medical Certification Form to the Human Resources Leave ~~Manager~~Coordinator. Failure to provide the Medical Certification Form within 15 calendar days of the request for leave may result in denial of FMLA leave.

Within 5 business days after the employee has submitted the completed Medical Certification Form, the Human Resources Leave ~~Manager~~Coordinator will complete and provide the employee and the Department Head with a written FMLA Designation Notice indicating whether or not the FMLA leave is approved.

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In the event the medical certification is incomplete or insufficient (vague, ambiguous, or non-responsive), the employee shall have 7 calendar days to cure any deficiency. Failure to cure the deficiencies may result in the denial of FMLA leave.

~~The City of Lincoln~~/Lancaster County may require employees to provide subsequent recertifications of the employee's continued need for leave, but not more often than every 30 days. ~~The City of Lincoln~~/Lancaster County may require, at its own expense, a second opinion from an independent health care provider. If there is a conflict between the two medical opinions, a third and binding medical opinion may be obtained at the employer's expense.

- 14. Benefits Coverage During Leave.** During a period of FMLA leave, an employee will be retained on the employer's health and dental care plans under the same conditions that applied before leave was commenced. To continue health and dental coverage, the employee must continue to make any contributions that ~~he or she~~they made to the plan before taking leave. Failure of the employee to pay ~~his or her~~their share of the health or dental care monthly cost may result in loss of coverage.

If the employee fails to return to work after the expiration of the leave, the employee will be required to reimburse ~~the City of Lincoln~~/Lancaster County for payment of health/dental care monthly costs incurred during the FMLA leave, unless the reason the employee fails to return is the presence of the serious health condition which prevents the employee from performing ~~his or her~~their job, or other circumstances beyond the control of the employee.

- 15. Restoration to Employment.** Unless the employee is a "key employee", as defined by the Act, at the end of the FMLA leave, an employee will be restored to ~~his or her~~their

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Supersedes Personnel Policy Bulletin 2009-1	

old position or to a position with equivalent pay, benefits, and other terms and conditions of employment. ~~The City of Lincoln~~/Lancaster County cannot guarantee that an employee will be returned to ~~his or her~~their original job. A determination as to whether a position is an "equivalent position" will be made by the Human Resources Leave ~~Manager~~Coordinator. A "key employee" is a salaried FMLA-eligible employee who is among the highest paid ten percent of all the employees employed by the ~~County~~in respective employer.

16. Return From Leave. An employee must complete a "Notice of Intention to Return to Work" form before ~~he or she~~they can be returned to active status. These forms may be obtained from the Human Resources Leave ~~Manager~~Coordinator. If an employee wishes to return to work prior to the expiration of a FMLA leave of absence, notification must be given to the Human Resources Leave ~~Manager~~Coordinator in conjunction with the Department Head at least 2 working days prior to the employee's planned return.
17. Failure to Return From Leave. The failure of an employee to return to work upon the expiration of FMLA leave will be considered a resignation unless an extension is granted, other leave is required by applicable law, or other paid leave is available and approved for use. An employee who has requested less than 12 weeks of FMLA leave may request an extension of FMLA leave by submitting a written request to the Human Resources Leave ~~Manager~~Coordinator setting forth the reasons for the extension, along with a new "Medical Certification Statement" form. This written request should be made as soon as the employee realizes that he or she will not be able to return at the expiration of the leave. In no circumstances will an extension beyond the 12-week period authorized pursuant to the FMLA be granted, unless other leave is required by applicable law or other paid leave is available and approved for use. However, ~~the City of Lincoln~~/Lancaster County will review business considerations and the individual circumstances involved to determine if additional unpaid leave is available pursuant to the Americans with Disabilities Act of 1990, as amended.

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18. Unlawful Acts. It is unlawful for any employer to interfere with, restrain, or deny the exercise of any right provided by the FMLA. It is also unlawful for an employer to discharge or discriminate against any individual for opposing any practice, or because of involvement in any proceeding related to the FMLA.

Barb McIntyre, Director of Human Resources

Date

County Board Chair~~Leirion Gaylor Baird, Mayor~~

Date

[HRDept-HRStaff/Shared Documents/HRStaff/BLTNS/FMLA/COUNTY/COUNTY FMLA.docx](#)

Human Resources Policy Bulletin

Number: 2023-2-2013-4

Lancaster County

Date: February 2023,

December, 2013

Reference:	Title:
Supersedes <u>Supersedes</u> Personnel Policy Bulletin 2013-405-2	WORKERS' COMPENSATION POLICY

WORKERS' COMPENSATION POLICY

I. Purpose. To insure fair, equitable and consistent treatment of all County employees, the Lancaster County Risk Management Division complies with the Nebraska Workers' Compensation Act, Union Bargaining Agreements, Lancaster County Personnel Policies, Nebraska Workers' Compensation Court Rules, Human Resources Policy Bulletins and other applicable policies.

II. Workers' Compensation Defined. Workers' Compensation benefits are provided to eligible employees who sustain injury by accident or occupational disease arising out of and in the course of their employment, and who are not willfully negligent at the time of the injury.

III. Reporting Requirements. Any job related injury or disease shall be immediately reported to the employee's department head or available supervisor as soon as possible. The department shall immediately report the incident to the County Risk Manager. A "First Report of Alleged Occupational Injury or Illness", completed by the employee and an "Employee Injury or Illness Report", completed by the injured employee and his/her supervisor, shall ~~be~~ forwarded to the County Risk Management Officer in all cases. ~~If the employee has a minor injury and did not seek medical treatment, then the "Report of Minor Employment Injury" form shall be completed by the employee and the supervisor and sent to the County Risk Management Office.~~ (See attached sample forms). The employee will have the burden of proof to document the claim by submitting an injury report and medical evidence to support his or her ~~claim.~~

~~County Risk Management will investigate the claim to determine if it should be approved as a workers' compensation injury. During this investigation the employee may elect to use other leave options such as sick leave, vacation or personal holiday. If the claim is approved by Risk Management the injured employee's department will convert any sick leave, vacation or personal holiday hours paid to the employee, to injury leave, for hours missed during the first 10 working days. If sick leave, vacation, or holiday pay is paid during a period of Temporary Total Disability beyond 10 working days the employee will be credited for two-thirds (.6667) of all such hours used during the period of disability.~~

IV. Medical Documentation. Employees requesting time off work due to a work-related injury or disease must provide medical documentation that states he/she is unable to perform his/her normal work duties. All medical documentation must be provided to the Risk Manager. Prior to returning to duty, the employee must provide a ~~full~~ medical release from a medical provider which specifies all restrictions, if any, upon the employee's ability to perform his or her full range of duties. Modified Duty ~~may~~ will be allowed only as specified in Paragraph VIII herein.

V. Injury Leave. All probationary or status classified employees who are off of work for a compensable injury shall receive injury leave benefits pursuant to County Rule 19.4 - Injury Leave,

Human Resources Policy Bulletin

Lancaster County
December, 2013

Number: 2023-2-2013-4

Date: February 2023,

Reference:	Title:
Supersedes Personnel Policy Bulletin 2013-405-2	WORKERS' COMPENSATION POLICY

or the employee's applicable labor contract. Such injury leave shall not be deducted from vacation or sick leave credits and will be listed as injury leave on the employee paycheck.

Failure to immediately report an accident which resulted in an injury may cause forfeiture of injury leave~~this additional benefit.~~

Unclassified employees, other than sheriff deputies, are not entitled to injury leave but are entitled to workers' compensation benefits provided in the Nebraska Workers' Compensation Act.

County Risk Management will investigate the claim to determine if it should be approved as a workers' compensation injury. During this investigation the employee may elect to use other leave options such as sick leave, vacation or personal holiday. If the claim is approved by Risk Management the injured employee's department will convert any sick leave, vacation or personal holiday hours paid to the employee, to injury leave, for hours missed during the first 10 working days. If sick leave, vacation, or holiday pay is paid during a period of Temporary Total Disability beyond 10 working days the employee will be credited for two-thirds (.6667) of all such hours used during the period of disability.

V.VI. Temporary Total Disability Benefits. If injury leave has expired and the employee still requires time off work, the employee is eligible to receive Temporary Total Disability workers' compensation benefits (TTD) administered by Risk Management. TTD is based on two-thirds (.6667) of the employee's Average Weekly Wage (AWW) at the time of the injury, with a maximum benefit set each year by the Nebraska Workers' Compensation Act. AWW is established from a wage history covering the time period 26 weeks prior to the date of the injury.

All employees have the option of supplementing the amount of TTD benefits received with sick, vacation or personal holiday hours so that the benefit equals the employee's normal salary for the pay period. It is the employee's responsibility to inform his/her department head that he/she intends to supplement workers' compensation benefits with paid leave. No employee shall receive a salary (workers' compensation plus regular pay or paid leave) in excess of his/her normal wage.

V.VII. Temporary Partial Disability Benefits. If the employee can return to work on a part-time basis and provides the department head written permission from his/her medical provider to do so, the employee will receive injury leave, if not yet expired, or Temporary Partial Disability (TPD) if all injury leave has expired, for the amount of time still spent away from work. TPD is calculated as the Average Weekly Wage at the time of the injury minus salary earned for the week(s) in question

Human Resources Policy Bulletin

Lancaster County
December, 2013

Number: 2023-2-2013-4

Date: February 2023,

Reference:	Title:
Supereedes <u>Supersedes</u> Personnel Policy Bulletin 20 <u>13-405-2</u>	WORKERS' COMPENSATION POLICY

and then multiplied by .6667. Again, employees may opt to supplement their TPD benefits with eligible paid leave benefits in order to equal a full paycheck in the manner described in Paragraph V., above.

VII.VIII. Modified Duty and Recovery Time. A department, based upon operational needs and at the department head's discretion, may offer modified duty to status and probationary employees who have suffered a work-related injury. Prior to modified duty being approved, the employee must provide medical documentation from his/her treating physician which states the employee is unable to perform the essential duties of his/her current position but is able to work a modified duty assignment. Modified duty is considered temporary and will be reviewed three months after the assignment to determine whether it will be extended beyond the initial three-month period.

The maximum amount of recovery time, including modified duty, should not exceed 6 calendar months from the date of injury. If the employee is unable to cannot return to full duty after 6 months from the date of injury, the employee may be separated from employment. However, if the employee provides medical documentation indicating a strong likelihood that the employee can return to full duty within a reasonable time period, the department head may extend the recovery time depending upon business needs and pursuant to the Americans with Disabilities Act (ADA), if applicable. Likewise, if the employee can perform the essential functions of his/her position with some modifications, the department will make reasonable efforts to accommodate the employee. If the employee cannot return to full duty and there are no reasonable accommodations available, the employee may be eligible for workers' compensation benefits such as retraining or vocational rehabilitation.

VIII.IX. Insurance Premiums And Other Benefits. Health insurance, dental insurance and other applicable insurance benefits will continue with the appropriate employer contribution. Employees must continue to pay the employee share of the insurance premiums and are responsible for coordinating payment of said premiums with the County Clerk's Office.

In order to continue accruing vacation and sick leave hours, and to qualify for holiday pay, an employee must be in a pay status. Vacation and sick leave hours will accrue based upon the number of hours the employee is in a pay status. To be in a pay status the employee must request that his/her workers' compensation benefits be supplemented with available paid leave benefits in order to equal a full paycheck in the manner described in Paragraph V. If the employee is not supplementing his workers' compensation benefits with available paid leaves, the employee is in a ~~non-pay~~non-pay status.

In order to qualify for holiday pay an employee must be in pay status on his/her regular ~~work~~dayworkday immediately before and after the holiday. If a holiday occurs during the time period

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injury leave is paid, holiday hours are paid in lieu of injury leave hours. If a holiday occurs after injury leave has expired and the employee is receiving workers' compensation benefits, the employee

will receive holiday pay only if the employee is in a pay status on his/her regular ~~work day~~ workday immediately before and immediately after the holiday. An employee in pay status shall receive enough holiday hours to a figure equivalent to a full ~~work day~~ workday for that day. The employee should not receive the full eight hours of holiday pay. An employee on workers' compensation leave who is not supplementing his/her leave with paid benefits, is not in a pay status and therefore does not qualify for holiday pay.

Pursuant to County Personnel Rule 19.7, the Personnel Officer must be notified in writing when an employee's leave without pay status exceeds thirty (30) calendar days. Additionally, any employee on leave without pay status exceeding thirty (30) calendar days will have their eligibility date adjusted pursuant to County Personnel Rule 19.12.

IX.X. Other Provisions. This policy should be read in conjunction and coordinated with all applicable contract provisions, personnel rules and all state and federal laws including, but not limited to, the Nebraska Workers' Compensation Act, the Americans With Disabilities Act (ADA) and the Family and Medical Leave Act (FMLA).

XI. Family and Medical Leave Act Benefits

~~Employees are required to use all accrued paid leave in the event of an FMLA qualifying leave. The unpaid FMLA leave will run concurrently with other paid leaves including injury leave and workers' compensation. Unpaid FMLA leave will run concurrently with paid leaves (sick leave, personal holidays, vacation (accrued and banked), injury leave, holiday, and workers' compensation leave.~~

Barb McIntyre
Human Resources Director

Date

Chair
Board of County Commissioners

Date

Human Resources Policy Bulletin

Lancaster County

Number: 2023-3

Date: February, 2023

Reference:	Title:
	<u>Protected Family Leave</u>

I. PURPOSE

This purpose of this policy is to provide unpaid job protected leave time for spouses employed by Lancaster County who exhaust Family Medical Leave for the birth, placement, care or bonding of a child within the first year of the child's birth or placement.

II. ELIGIBILITY

Employees who have been employed for at least 12-months and have worked at least 1,250 hours during the preceding 12-month leave period.

III. PROTECTED FAMILY LEAVE

- A. Protected Family Leave. If spouses both work for Lancaster County and request leave for the birth, placement, care or bonding of a child within the first year after birth or placement, each spouse will be eligible for up to 12 workweeks of unpaid job protected leave in a 12-month period. The 12 workweeks will include a combination of approved Family Medical Leave and Protected Family Leave. Family Medical Leave must be exhausted prior to using Protected Family Leave.
- B. Effect on Paid Leaves. Protected Family Leave will run concurrently with paid leaves (sick leave, personal holidays, and vacation, accrued and banked). Following the exhaustion of applicable paid leave, any remaining Protected Family Leave will be unpaid.
- C. Application and Eligibility. The FMLA application each employee submits to the Human Resources Leave Manager will be used to request Protected Family Leave. If each spouse qualifies for FMLA leave, the spouses qualify for County Protected Family Leave.
- D. Types and Duration of Leave. Protected Family Leave may be taken on a continual leave schedule or an intermittent/reduced leave schedule, based on the qualifying employees' family need.
- E. Benefits During Leave. During a period of Protected Family Leave, an employee will be retained on the employer's health and dental care plans under the same conditions

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Lancaster County

Number: 2023-3

Date: February, 2023

Reference:	Title:
	<u>Protected Family Leave</u>

that applied before leave was commenced. To continue health and dental coverage, the employee must continue to make any contributions the employee made to the plan before taking leave. Failure of the employee to pay the employee share of the health or dental care monthly cost may result in loss of coverage.

If the employee fails to return to work after the expiration of the leave, the employee will be required to reimburse Lancaster County for payment of health/dental care monthly costs incurred during the Protected Family Leave, unless the reason the employee fails to return is the presence of the serious health condition which prevents the employee from performing his or her job, or other circumstances beyond the control of the employee.

- F. Return to Work. Upon an employee's return to work, an employee may be required to complete a "Notice of Intention to Return to Work" form before the employee can be returned to active status. These forms may be obtained from Human Resources. Notification must be given to the Human Resources Leave Coordinator as well as notice to the Department Head least 2 working days prior to the employee's planned return.
- G. Failure to Return From Leave. The failure of an employee to return to work upon the expiration of Protected Family Leave will be considered a resignation unless an extension is granted, other leave is required by applicable law, or other paid leave is available and approved for use. In no circumstances will an extension beyond the 12-week period authorized be granted, unless other leave is required by applicable law or other paid leave is available and approved for use.

IV. CONTINUOUS SERVICE

Any employee on leave without pay status exceeding thirty (30) calendar days will have their eligibility date adjusted pursuant to County Personnel Rule 19.12.

V. SCOPE

Where the provisions of this policy conflict with the Lancaster County Personnel Rules, any Resolutions adopted by the Lancaster County Board of Commissioners, or any labor contracts, the provisions of this policy shall control.

Human Resources Policy Bulletin

Lancaster County

Number: 2023-3

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Reference:	Title:
	<u>Protected Family Leave</u>

VI. DURATION OF POLICY

This policy is effective beginning February 1, 2023 and can be terminated by the County Board of Commissioners at any time.

Barb McIntyre
Human Resources Director

Date

Chair
Board of County Commissioners

_____,
Date

KEATING | O'GARA

Gary J. Nedved	Joel Bacon
Paul J. Peter	Thomas P. McCarty
Anne E. Winner	Tara L. Gardner-Williams
Jefferson Downing	Brenna M. Grasz
Gary L. Young	Braden W. Storer
Joel D. Nelson	

EMERITI:

Con M. Keating
Robert M. O'Gara

September 9, 2022

Barb McIntyre
Lancaster County Human Resources Director
555 South 10th Street
Lincoln, NE 68508
bmcintyre@lincoln.ne.gov

RE: FOP #32 Appeal of Grievance Denial

Dear Ms. McIntyre:

On August 15, 2022, FOP #32 filed a grievance on regarding the County's discriminatory and inconsistent modified duty practices at the Lancaster County Department of Corrections. A true and correct copy of the Grievance is attached hereto. On or about September 1, 2022, Director Brad Johnson denied the grievance. A true and correct copy of Director Johnson's Grievance denial is attached hereto.

FOP #32 hereby appeals Director Johnson's denial of said Grievance to the Lancaster County Personnel Policy Board in accordance with Step 2 of the grievance procedure set forth in the bargaining agreement between FOP #32 and Lancaster County and the Lancaster County Personnel Rules.

Very truly yours,

/s/Thomas P. McCarty

Thomas P. McCarty
FOR THE FIRM

CC: Ashley Bohnet, Deputy Lancaster County Attorney

2022 SEP 9 PM 1:10

Lancaster County

Department of Corrections

3801 West O Street
Lincoln, NE 68528
(402) 441-1900
Fax: 441-8946

Brad Johnson, Director

September 1, 2022

Tom McCarty
Keating, O'Gara, Nedved & Peter, P.C.
200 S. 21st Street, Suite 400
Lincoln, NE 68510

RE: GRIEVANCE OF FOP 32 ON BEHALF OF ALL MEMBERS IMPACTED, INCLUDING
CAITLIN OSTGAARD, MATTHEW WAGGONER AND JOHN HUGHES

Dear Mr. McCarty:

This letter will serve as a response to the grievance received August 15, 2022, regarding an alleged violation of Article 7 and Lancaster County Personnel Rule 2.5.

A. Caitlin Ostgaard Grievance

On July 28, 2021, Caitlin Ostgaard was working as a Corrections Officer at the Lancaster County Department of Corrections when she had a seizure. Based on that seizure, Officer Ostgaard was scheduled for a neurological test to determine if she was able to return to work. A fitness for duty evaluation was also scheduled with Dr. Durand at Company Care. Prior to that evaluation and/or test being completed, Officer Ostgaard had an additional seizure on September 1, 2021. Officer Ostgaard was not able to safely return to work and utilized sick leave, vacation leave, personal holidays, and leave without pay per the instructions of her doctor not to return to work until at least September 10, 2021.

Daisymae Brayton sent a letter to Dr. Whyte on September 9, 2021 stating that Officer Ostgaard needed to have a Fitness for Duty evaluation completed prior to returning to work. Officer Ostgaard emailed Director Johnson on October 28, 2021 and said that she would not be able to return to work in November as planned since her follow up appointment with her medical provider was scheduled for January 4, 2022. She requested additional time for leave without pay until January 8, 2022, which was approved by Director Johnson.

Dr. Durand completed an evaluation on January 19, 2022 of Officer Ostgaard stating that she could return to work but not have any safety sensitive work until evaluated by her personal physician. Dr. Chad Whyte, Officer Ostgaard's medical provider, completed a form on February 1, 2022, stating that Officer Ostgaard could perform 'safety sensitive work' in her job description. As such, Officer Ostgaard returned to work on February 1, 2022.

On June 9, 2022, Caitlin Ostgaard was working as a Corrections Officer at the Lancaster County Department of Corrections. At approximately 2100 hours, Officer Ostgaard had a seizure while

in Lt. Jane Voboril's office. Medical was called to assist Officer Ostgaard. Due to this medical episode, the Department of Corrections directed Officer Ostgaard to complete a fitness for duty evaluation on June 16, 2022. Her doctor, Dr. Chad Whyte, provided documentation on June 28, 2022, stating that Officer Ostgaard could return to work on July 5, 2022. Officer Ostgaard did return to work on July 5, 2022.

In this case, Officer Ostgaard did not work at the recommendation of her medical provider. She had seizures multiple times while working as a corrections officer. Having seizures at her place of employment could result in harm to her, to her coworkers, and to the inmates at the Department of Corrections. The Department of Corrections had a duty to ensure that Officer Ostgaard was able to work and followed the recommendations of her medical provider when she was able to work again. When her medical provider stated she could work, Officer Ostgaard returned to work in February of 2022 and in July of 2022.

B. Matt Waggoner Grievance

Officer Matt Waggoner had a knee injury condition that began on December 31, 2021 according to his medical provider. He was set for surgery on August 8, 2022. Officer Waggoner's medical provider filled out a form stating that his anticipated leave from work under FMLA was August 7, 2022 and his expected date to return to work was September 20, 2022.

On July 26, 2022, Officer Waggoner emailed Elisha Havick, administrator with the Department of Corrections, inquiring about modified duty. Ms. Havick emailed back stating that each situation is different and it would depend on what his doctor said. She responded that the agency needed to know the restrictions Officer Waggoner would have.

Officer Waggoner did not provide additional medical documentation prior to the filing of this grievance regarding his ability to work. Officer Waggoner provided FMLA paperwork dated August 16, 2022, after the grievance was filed. At the time that the grievance was filed, the only documentation the Department of Corrections had for Officer Waggoner was that he was not able to return to work until September 20, 2022.

C. John Hughes Grievance

According to Dr. Byington, John Hughes had a medical condition that began January 2022. This medical condition was a knee injury. Based on this condition, Officer Hughes filed paperwork under both the American Disabilities Act and Family Medical Leave Act.

1. American with Disabilities Act

On May 24, 2022, Officer Hughes provided a work status report stating that he had a left knee medial meniscus tear with a surgery date of September 1, 2022. It noted that he had no limitations, other than no mandatory overtime work.

On June 13, 2022, Dr. Byington completed an ADA form stating that Mr. Hughes could perform the essential functions of his position. Elisha Havick called and left a voicemail for Officer Hughes, informing him that he could report to work. That same day, Dr. Byington's office sent over the same paperwork with restrictions on Officer Hughes' ability to work. Specifically, it stated "No mandatory overtime. Voluntary overtime is okay." There were no other restrictions, accommodations or information regarding Officer Hughes' injury. There was no statements or information about how Officer Hughes had a physical or mental impairment that substantially limited one or more of his major life activities.

Officer Hughes was provided paperwork stating that there was not enough information to substantiate that ADA applies to his situation on June 16, 2022. On June 20, 2022, Dr. Byington provided a note that stated Officer Hughes not be required to work mandatory overtime. He stated that "Mr. Hughes may suffer from occasional swelling, discomfort, and debility when he is required to work 8 hours per day." There was no statements or information about how Officer Hughes had a physical or mental impairment that substantially limits one or more of his major life activities.

The ADA defines a disability as "a physical or mental impairment that substantially limits one or more of the major life activities." Working is one of these major life activities, according to the ADA regulations published by the Equal Employment Opportunity Commission (EEOC). Therefore, an inability to work is a protected disability, under the law. But the inability to work overtime is not generally considered a disability. Most federal appellate courts addressing this issue have found that an inability to work overtime is not a substantial limitation on the major life activity of working.

For example, in *Tardie v. Rehabilitation Hospital of Rhode Island*, 168 F.3d 538 (1st Cir. 1999), a human resources director claimed that excessive work hours caused her to experience debilitating symptoms from a heart ailment, necessitating a leave of absence. She asked to return to her job but to be excused from working more than 40 hours per week. Her superiors decided she could not perform the duties of her position with this limitation and refused to reinstate her. The court affirmed the employer's decision, ruling that a 40-hour-per-week limitation was not a disability. "There are vast employment opportunities available which require only 40-hour work weeks," the court opined. Thus, the employee's restriction was not a "substantial" enough limitation on the activity of working to trigger the law's protection. Another court adopted similar reasoning in *Berg v. Norand Corp.*, 169 F.3d 1140 (8th Cir. 1999), where a diabetic was fired from her position as a tax department manager after she asked that her hours be limited to between 40 and 50 per week. The court said she wasn't disabled, observing that it was "... hard to say that being limited to a 40- to 50-hour work week substantially limits one's ability to work." "Employee's request for an eight-hour work day as an accommodation for his disability would have made him unqualified to perform the essential job functions of his job as a package car driver, and thus, his employer, a parcel delivery company, did not violate the ADA or Iowa Civil Rights Act (ICRA) by refusing the request, since working overtime was an essential function of the job, given that daily package car workloads could increase unpredictably..." *Faidley v. United Parcel Serv. of Am., Inc.*, 889 F.3d 933 (8th Cir. 2018).

In this case, Officer Hughes did not have a disability that impacted his one or more major life activities.

2. Family Medical Leave Act

Officer Hughes provided FMLA on June 1, 2022. In that paperwork, Dr. Byington stated the expected date of return to work for Officer Hughes was 8-12 weeks after his post op and that his date of surgery was scheduled for September 1, 2022. Dr. Byington advised that Officer Hughes was able to do the essential functions of his job. The paperwork stated that Officer Hughes should avoid painful activity and not have any mandatory overtime.

Dr. Byington provided another FMLA form dated June 29, 2022. This form stated that Officer Hughes' expected date to return to work was 8-12 weeks post-op with the date of surgery being July 13, 2022. Once again, Dr. Byington stated that Officer Hughes could return to work but would need intermittent FMLA to manage pain. Officer Hughes was contacted by the Department of Corrections on June 30, 2022 and told that he could return to work as the form did not note any restrictions until his surgery scheduled for July 13, 2022. Officer Hughes did not return to work.

Finally, Dr. Byington filled out FMLA paperwork on July 1, 2022 stating that Officer Hughes had a serious health condition. Under the FMLA, a serious health condition 'means an illness, injury, impairment, or physical or mental condition that involves inpatient care... or continuing treatment by a health care provider...' Wage and Hour division, Labor 825.113.

Dr. Byington stated that Officer Hughes had a serious medical condition because he had a period of incapacity of more than three consecutive calendar day that also involved treatment two or more times by a health care provider within 30 days of the first day of incapacity or treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider. When detailing the dates for the treatment as required, Dr. Byington noted the dates of July 13, 2022 and July 18, 2022. Both dates are the date of surgery or after the date of surgery, indicating that the serious health condition starts on the date of surgery rather than the date the condition began in January of 2022.

Furthermore, Dr. Byington stated that Officer Hughes' condition was a chronic condition requiring treatment. Chronic conditions require at least two visits for treatment by a health care provider, continues over an extended period of time, and may cause episodic rather than continuing period of incapacity, such as asthma, diabetes, and epilepsy. Treatment means an examination to determine if a serious health condition exists, evaluations of the condition, and actual treatment by the health care provider to resolve or alleviate the condition. Officer Hughes did not have ongoing treatment for his knee injury. Rather, he had a surgery for that condition which would alleviate the injury.

There was nothing in the paperwork to state that Officer Hughes had a serious health condition prior to his date of surgery. FMLA was approved for Officer Hughes after his surgery as his

condition after surgery would be a serious health condition. Officer Hughes went out on FMLA on July 13, 2022.

On August 3, 2022, Tom McCarty inquired about modified duty for Officer Hughes. It was communicated to Mr. McCarty that the Department of Corrections needed additional documentation from a medical provider since the last documentation was that Officer Hughes could not work 8-12 weeks after his date of surgery on July 13, 2022. As of the filing of the grievance, no additional documentation was provided to the Department of Corrections regarding Officer Hughes' ability to work. Officer Hughes did email the Department of Corrections on August 29, 2022 stating that he was cleared for modified duty, but provided no documentation from his medical provider. At the time the grievance was filed, the only documentation the Department of Corrections had for Officer Hughes was that he was not able to return until 8-12 weeks after his surgery in July of 2022.

D. Ryan Lowe

Officer Ryan Lowe has not filed a grievance but is mentioned in the grievance as receiving preferential treatment. As such, the facts of his case are also outlined in this response:

Officer Lowe was injured on June 21, 2022 and had a work release form that stated he could return to work on June 23, 2022, but only could have desk work. Officer Lowe followed up with the Department of Corrections about working modified duty. With the documentation he initially provided, there was not enough information to determine if Officer Lowe had a disability. As such, additional follow up was requested. Officer Lowe's medical provider completed an additional form on July 15, 2022 stating that he was currently non-weight bearing. Further documentation from his medical provider on July 20, 2022 stated that Officer Lowe was not able to bend, squat, or climb.

The documentation provided by Officer Lowe's medical provider was that Officer Lowe had a physical or mental impairment that substantially limited one or more of his major life activities. Because Officer Lowe was not able to perform his current position because of his disability, he was able to perform a light duty job with or without accommodation, and the reassignment would not impose an undue hardship, Officer Lowe was provided modified duty. Officer Lowe began working modified duty on July 26, 2022, for an expected period of 3-4 months as outlined by the medical provider.

E. Conclusion

The Department did not seek out modified duty for Officer Lowe. Officer Lowe completed ADA paperwork indicating that he had a disability and was unable to perform his current position because of a disability. Unlike Officer Lowe, Officers Ostgaard, Waggoner and Hughes did not file ADA paperwork indicating that they had a disability and needed accommodations prior to the filing of this grievance.

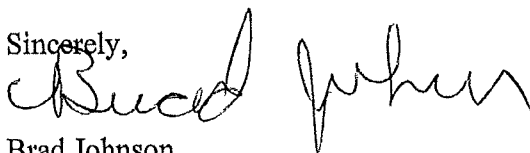
The Department has not violated the bargaining agreement. Specifically, the Department has not violated Article 7 of the FOP #32 bargaining agreement. The Department has treated all these

individuals the same. The difference is the individuals following up with the Department. When there was a need for additional information, some of the individuals followed up and provided that additional information. Others, such as Officer Hughes and Officer Waggoner, did not do so and have only attempted to do so after the filing of this grievance. As such, the Department could not give those individuals modified duty as it was not known whether those individuals could work; there was no information about the physical limitations of those individuals or how long those physical conditions may last. The Department of Corrections treated these individuals the same and has followed the bargaining agreement.

Furthermore, there has been no violation of Lancaster County Personnel Rule 2.5. As previously outlined, the Department of Corrections treated all these individuals the same. The difference was the documentation and follow up by the individuals.

There has been no violation of the bargaining agreement or the personnel rules and as such, the grievance is denied.

Sincerely,

A handwritten signature in black ink, appearing to read "Brad Johnson", written over the word "Sincerely,".

Brad Johnson,
Director, Lancaster County Department of Corrections

cc: Barb McIntyre, Human Resources Director
Ashley J. Bohnet, Deputy County Attorney

IN RE GRIEVANCE OF FOP 32 ON BEHALF) August 15, 2022
OF ALL MEMBERS IMPACTED, INCLUDING)
CAITLIN OSTGAARD, MATTHEW WAGGONER)
AND JOHN HUGHES)

TO: Bradley Johnson, Department Head, or his designated representative

FROM: Fraternal Order of Police Lodge #32, on behalf of all bargaining unit members impacted, including Caitlin Ostgaard, Matthew Waggoner and John Hughes.

COMES NOW Fraternal Order of Police Lodge #32 on behalf of all bargaining unit members affected, including Caitlin Ostgaard, Matthew Waggoner, and John Hughes, for their grievance state as follows:

NATURE OF GRIEVANCE AND ACTS OF COMMISSION OR OMISSION GRIEVED:

Beginning September 1, 2018, the Department implemented its modified duty program, whereby it permitted only employees who suffered work-related injuries to work modified duty.

In 2021, Corrections Officer Caitlin Ostgaard suffered from seizures. CO Ostgaard was forced off work until she was cleared to return for full duty, and she was never offered a modified duty assignment. As a result, CO Ostgaard depleted her FMLA and paid leave banks. She ultimately returned to full duty in 2022 after a significant time off duty without any pay.

In 2022, Corrections Officer John Hughes suffered a knee injury off duty. CO Hughes' physician approved Hughes to work his regular hours—but not mandatory overtime—pending his surgery. Despite this clearance, the Department forced CO Hughes off work because of the MOT restriction and never offered him a modified duty assignment. As a result, CO Hughes depleted his FMLA and paid leave banks, and went into a without pay status.

In 2022, Officer Matt Waggoner suffered a knee injury off duty. Officer Waggoner requested to work light duty on January 24, 2022, but was informed by Elisha Havick that "Modified duty is only available to folks who are on work comp." As a result, Officer Waggoner depleted his FMLA and paid leave banks.

In or about August 2, 2022, FOP #32 became aware that Officer Ryan Lowe suffered a non-work related knee injury. Despite barring other employees—including Officers Ostgaard, Hughes, and Waggoner—from returning to work on a modified duty status, the Department offered and permitted Officer Lowe to return to work on modified duty status on August 2, 2022. As a result, Officer Lowe was *not* required to deplete his FMLA or paid leave banks like the other officers.

On August 4, 2022, FOP #32 counsel inquired about the process for Officer Hughes—who remains on FMLA leave following his knee surgery—to return to work on a modified duty status, given Officer Lowe’s return to work on modified duty despite suffering a non-work-related injury. Assistant Lancaster County Attorney Ashley Bohnet responded: “These situations are different. Officer Lowe was not out on FMLA leave and requested to come back to a modified or lite duty. Officer Hughes is out of FMLA and is wanting to come back. As such, there is no process [for returning to work on modified duty].” Ms. Bohnet stated she would “follow up regarding what would be the impact of being out on FMLA and coming back to a modified situation.” Ms. Bohnet has failed to follow up and Officer Hughes has remained out on FMLA leave despite requesting to return to a modified duty assignment like Officer Lowe.

Under Article 7 of the FOP #32 bargaining agreement, the County agreed not to discriminate against any employees on the basis of “disability.” Similarly, Lancaster County Personnel Rule 2.5 states “Discrimination against any person in . . . compensation and benefits . . . or any other aspect of employment or personnel administration because of . . . disability . . . is prohibited.” Article 8 of the bargaining agreement also permits employees to grieve the lack of “uniform enforcement of express provisions of this Agreement, the Rules, and any and all conditions of employment.”

The Department’s granting of modified duty to Officer Lowe, but refusal to offer or permit Officers Hughes, Osgtaard, Waggoner, and others, is a violation of Article 7 of the FOP #32 bargaining agreement and Lancaster County Personnel Rule 2.5, and represents a failure to apply “uniform enforcement of express provisions of this Agreement the Rules, and any and all conditions of employment” within the meaning of Article 8 of the bargaining agreement.

DATE OF ACTION GRIEVED: FOP #32 became aware of this violation on August 2, 2022.

IDENTITY OF GRIEVING PARTIES: FOP #32 on behalf of all affected unit members, including Officers Ostgaard, Hughes, and Waggoner.

IDENTITY OF PERSONS ALLEGED

TO HAVE CAUSED GRIEVANCE: Director Brad Johnson, Ashley Bohnet, Elisha Havick and other unknown parties.

PROVISIONS OF AGREEMENT

THAT WERE VIOLATED: Articles 7 and 8 of the bargaining agreement and Personnel Policy Bulletin 2013-4, Lancaster County Personnel Rule 2.5.

REMEDY SOUGHT: The Department shall cease and desist from failing to uniformly apply its modified duty program, and to cease and desist barring employees who suffer non-work-related injuries from working modified duty. The Department shall make modified duty available to non-work-related injuries, as it has done with

Officer Lowe, and shall specify the process for doing so. The Department shall stop discriminating against Corrections Officers who have suffered non-work-related injuries and barring them from working modified duty on the basis that their injury was non-work related or FMLA-qualifying.

The Department should restore the leave and FMLA banks of Officers Ostgaard, Hughes, and Waggoner due to the Department's refusal to permit such officers to work modified duty, in violation of Article 7 and Lancaster County Personnel Rule 2.5, and should pay them back for any time they went into a without pay status.

Respectfully submitted this 15th day of August, 2022.

FOP #32, on behalf of its members, including
Officers Ostgaard, Hughes, and Waggoner

BY: /s/Thomas P. McCarty
Thomas P. McCarty, Esq. (#24171)
Keating, O'Gara, Nedved & Peter, P.C.
200 South 21st Street, Suite 400
Lincoln, Nebraska 68501
Ph: (402) 475-8230
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Attorney for the Grievant