Columbia Pacific Building and Construction Trades Council

September 6, 2013

RE: Comments on Proposed Rules for Portland's Sick Leave Ordinance

To Whom it May Concern:

The Columbia Pacific Building and Construction Trade Council (CPBTC) has several questions and concerns with the proposed rules for the paid sick leave ordinance. The CPBTC is an organization that represents construction trade craft unions, including: Heat and Frost Insulators, Boilermakers, Brick & Stone Masons, Cement Masons, Electricians, Elevator Constructors, Glaziers, Ironworkers, Laborers, Linoleum & Carpet Layers, Painters & Tapers, Plasterers, Plumbers, Pipe Fitters & Steamfitters, Roofers, Sheet Metal Workers, Sprinkler Fitters and Teamsters.

We are fully supportive of the sick leave ordinance and the goal of providing paid or protected sick leave to workers in Portland. Primarily our questions and concerns relate to applying the ordinance correctly and how it will affect our members whose employers use vacation pay accounts or PTO Policies to provide paid leave to construction trade union members and who often work for multiple employers over the course of a year. We also have suggestions about defining "calendar year" in rule to allow for the use of a fiscal year and how travel in and out of the city limits will be accounted for and documented.

After much discussion, we have tried to be as creative as possible in identifying proposed solutions to the unique issues presented for our industry in complying with this ordinance. We want our employers to be able to comply with both the spirit and intent of this law and we want to help make sure this is technically possible and administratively less burdensome for them.

Vacation Pay Accounts or PTO Policy

We understand that the intent of the ordinance and the proposed rules is to allow our unique model of accruing paid time off count for the accruals required under the sick leave ordinance. We were pleased to have Commissioner Fritz confirm that at the Aug. 22nd public hearing on the draft rules. As drafted, we do not believe the language accomplishes this goal.

Our employers already provide paid time off to the vast majority of our represented members. If our pre-existing paid time off policies are not allowed to count under the ordinance, our employers, who have already been doing the right thing in providing paid time off to their employees, will be put at a competitive disadvantage with our non-union competitors. We want to make sure our employers are not held at a disadvantage for doing the right thing in the first place.

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For most construction trade unions, vacation pay or PTO is provided to employees on an hourly basis. Employers make an hourly contribution to an individual employee's vacation pay account, which is literally a bank account in the employee's name. This system of providing "pay-as-you-go" benefits is necessary in our industry because when an employee has multiple employers over the course of a year, each employer needs to be able to make equal contributions to vacation benefits (and other benefits like pension and health care premiums). The hourly vacation pay amount is determined by the collective bargaining agreement and generally ranges from $1-$3/hour for jobs that pay $30-$60/hour.

Our model of vacation pay is not administered by the union as indicated in the draft rules in SL 1.01(12). We propose that this language be amended to more accurately capture, and allow for, our vacation pay accounts to count as the paid time off policies allowable under the ordinance.

At the rules hearing, we also raised questions about how this ordinance will functionally apply to our industry and employers. Do employees with vacation pay accounts have protected leave available to them in addition to the payment of leave? For example, does an employee who drains their vacation pay account regularly still have protected sick leave available to them? In this scenario, an employee has been paid for time off, but has never actually taken any time off. Is the money provided sufficient under the ordinance or is an employer still required to offer protected time off for sick leave when this time has been paid for in advance? Does the payment for time equate to actual time taken and the employee has no additional time available to them? This is a critical question to answer so that our contractors can ensure they are in compliance with the law.

We would argue that the employee has been pre-paid for their time off and should still have protected leave available to them (up to 40 hours a year, accrued at a rate of 1 hour for every 30 hours worked). We believe that the leave and the payment for that leave can happen at two different points in time. If the city agrees with this interpretation of the ordinance, we propose the following language for the definition of "Paid Time Off" found in SL 1.01(12)):

"Paid Time Off" or PTO means:

a) ***a bank of time provided by an employer to an employee that an employee can use to take paid time off for any reason including the purposes provided in this ordinance; or***

b) ***an hourly contribution made by an employer to a vacation pay account, in the name of a construction trade employee who is represented by a collective bargaining agreement, that can be used by the employee for the purposes provided in this ordinance or for any other purpose, including for vacation pay, sick pay or cash. An employee who depletes their vacation pay account as cash, and does not use it for paid leave, will still be able to accrue up to 40 hours of unpaid sick leave as provided in this ordinance.***

Alternately, if an employee's vacation pay account is interpreted to count as both payment and time taken (and the two cannot be separated), we would suggest clarifying this in the rules as follows:

"Paid Time Off" or PTO means:

a) a bank of time provided by an employer to an employee that an employee can use to take paid time off for any reason including the purposes provided in this ordinance; or

b) an hourly contribution made by an employer to a vacation pay account, in the name of a construction trade employee who is represented by a collective bargaining agreement, that can be used by the employee for the purposes provided in this ordinance or for any other purpose, including for vacation pay, sick pay or cash. Since these funds are made available to the employee for use at their discretion, no additional protected sick leave is provided to these employees.

Another way this issue could be interpreted would be to provide construction trade union employees with protected time off *only if* they have funds available in their account (and the amount of protected sick leave available to an employee would be the equivalent of how much paid time was available to them in their vacation pay bank account, up to 40 hours in a year). We believe that the most complicated way to interpret this requirement and most difficult, if not impossible, for employers to administer. With one individual union members employed by multiple different employers, an individual employer will not be able to know how much money is in an individual's vacation pay bank account and will not know if that employee actually has protected leave available to them. With multiple employers providing and paying for the paid leave, it would be impossible for a single employer to track. We strongly advise against this interpretation. This approach would create more problems than it solves in terms of administering the ordinance for our members and employers.

"Calendar year" vs. "Fiscal Year"

Many of our members' collective bargaining agreements run on a fiscal year, from July 1st-June 30th. However, the provisions set forth in the ordinance require sick leave accruals and use to be based on a "calendar year." Administratively, it would be much simpler if "calendar year" could be defined in the rules to mean whatever year is regularly used by the employer. This would avoid employers having to track two years for purposes of payroll and contractual benefits and for purposes of sick leave accruals and use. Many employers use a fiscal year for payroll purposes and we believe this methodology provides the same yearly benefit to the employee without necessitating two differing years be tracked by the employer.

Travel in and outside city limits

Workers and employers in the construction industry often travel for work and may work in several locations, both inside the city limits and outside the city limits in a single day. We understand that the ordinance requires that sick leave be accrued based only on hours spent working within the city limits, but we agree that it will be difficult for an employer to track exactly how much time is spent working in the city on a particular day. We suggest that employers be given some guidance in how to account for

this time and what acceptable forms of documentation will be to demonstrate how an employer calculates leave accruals.

4. Traveling Through the City

a. Employees who travel through the City, but do not stop in the City as a purpose of their work are not covered by the Ordinance for the time spent traveling through the City.

b. Employees who travel through the City and only make incidental stops **or makes stops for personal business** *[(e.g. purchasing gas, eating a meal, or changing a flat tire)]* are not considered to be making a stop as a purpose of their work.

c. An employer can make a reasonable estimate of an employee's time spent in the city for purposes of leave accrual and use. Documentation of how the reasonable estimate was derived may include but is not limited to, dispatch logs, delivery addresses and estimated travel times, or historical averages.

Thank you for allowing us the opportunity to provide comments on the proposed rules. We appreciate the City's attempts to allow our vacation pay accounts to meet the standards for paid time off set out in the ordinance. We would be happy to answer any additional questions you might have to ensure that appropriate language is included in the rules to accomplish this goal.

Sincerely,

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