

Staff Summary Report

Council Meeting Date: 06/11/09

Agenda Item Number: 43

SUBJECT: Request approval of a resolution amending the City of Tempe Personnel Rules and Regulations pertaining to requirements for shift differential, hiring of relatives, vacation accrual, Wellness Leave Program, Sabbatical Leave Program, bereavement leave, Family and Medical Leave Act (FMLA) and computer & telephone use.

DOCUMENT NAME: 20090611hrrb01 **PERSONNEL RULES AND REGULATIONS (0301-01)** Resolution No. 2009.61

COMMENTS: Resolution No. 2009.61 amends the City of Tempe Personnel Rules & Regulations; Rule 2, Section 204(D); Rule 3, Sections 301(D); Rule 5 Sections 502(A), 502(H), 503(I), 505(A) and (B) and 512(D); and Rule 6, Section 612(A), (B), (E), (F) and (G).

PREPARED BY: Renie Broderick, Human Resources Manager (350-8407)

REVIEWED BY: City of Tempe Merit System Board on May 15, 2009, pursuant to City of Tempe Charter Section 4.02(c).

LEGAL REVIEW BY: Andrew B. Ching, City Attorney (350-8575)

FISCAL NOTE: N/A

RECOMMENDATION: Recommend adoption of Resolution No. 2009.61

ADDITIONAL INFO: The changes detailed in this resolution have been reviewed by the Merit System Board at the meeting of May 15, 2009 and all employee bargaining units at the Employee Group Meeting of April 29, 2009. The following is a brief synopsis of the rule changes:

The changes to Rule 2, Section 204(D) Shift Differential; Rule 5, Sections 502(A) Vacation Accrual, 503(I) Wellness Leave Program, 505(A) & (B) Bereavement Leave and 512(D) Family Medical Leave Act (FMLA) Leave Entitlement represent current practice and are recommended to bring the Personnel Rules and Regulations up to date.

The change to Rule 3, Section 301(D) concerns relatives reporting to the same supervisor. Currently the rule states that two employees who are related cannot work for the same immediate supervisor. Although it is common practice in many government entities to not allow one relative to directly supervise another, it is not common to restrict two relatives from reporting to the same supervisor.

The change to Rule 5, Section 502(H) Sabbatical Leave Program amends the initial program eligibility requirement of 20 years of full time city service, which was negotiated to 15 years for employees covered by a Memorandum of Understanding (MOU). This change would extend the 15 year eligibility requirement to all non-union employees.

The changes to Rule 6, Section 612(A), (B), (E), (F) and (G) are based on recommendations from the Technology, Economic and Community Development Council Committee. This rule change accommodates the emerging use of social media and subsequent guidelines and registration requirements for employees.

RESOLUTION NO. 2009.61

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AMENDING THE CITY'S PERSONNEL RULES AND REGULATIONS RELATING TO ADDITIONAL COMPENSATION, ORIGINAL EMPLOYMENT, VACATION, WELLNESS PROGRAM, BEREAVEMENT LEAVE, FAMILY AND MEDICAL LEAVE ACT (FMLA) AND COMPUTER & TELEPHONE USAGE.

WHEREAS, the Tempe City Council has the authority to amend the City of Tempe Personnel Rules and Regulations at any time in accordance with Ordinance No. 88.53 and the Charter of the City of Tempe; and

WHEREAS, it is in the best interest of the City of Tempe to amend the Personnel Rules and Regulations;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

That Rule 2, Section 204(D); Rule 3, Section 301(D); Rule 5 Sections 502(A), 502(H), 503(I), 505(A) & (B) and 512(D); and Rule 6, Section 612(A), (B), (E), (F) and (G) of the City's Personnel Rules and Regulations be amended to read as indicated in Exhibit A where deleted language is struck out and new language is underlined and the revisions shall be substantially in the form of the document now on file with the City Clerk's Office.

That revisions be made to the City's Personnel Rules and Regulations, and hereby amends or appeals, as appropriate, any previous actions of the Council insofar as they may conflict with or be superseded by this resolution.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this _____ day of _____, 2009.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

Exhibit A

Rule 2, Section 204: Additional Compensation

D. Shift Differential

A shift differential shall be paid for regularly scheduled work shifts including any hours between 10:00 p.m. and 4:00 a.m. Shift differential is not paid for hours worked over the regular shift when work is a continuation of the regular shift. Employees who are called back and perform work outside their regularly assigned shifts and are receiving premium pay do not receive shift pay.

Shift differential is approved for regular, non-exempt employees and sworn police employees below the grade of ~~commander~~lieutenant. Fire department employees who work fifty-six (56)-hour or forty-eight (48)-hour work weeks and temporary employees are exempt from shift differential.

Shift differential is not paid to employees on paid or unpaid leave. An employee shall be paid a shift differential set by administrative policy when working a shift that ends between the hours of 10:00 p.m. and 12:00 midnight, or when working a shift that includes work between the hours of 12:01 a.m. and 4:00 a.m.

Rule 3, Section 301: Requirements for Original Employment

D. Hiring of Relatives

Regular employees who are related as defined below are not allowed to ~~work for the same immediate supervisor or~~ have reporting authority or administrative responsibility over one another in the chain of command. If such a situation is created by marriage, or by the establishment of a domestic partner relationship, one party shall submit a request to the Human Resources Manager for transfer. If a transfer cannot be made within ninety (90) days, one employee must resign from city service and may choose to be placed on a lay-off list.

Relatives are defined as follows:

Spouse	Uncle
Domestic Partner*	Parent (in-law & step)
Child (in-law & step)	Sister (in-law, half & step)
Grandparent	Brother (in-law, half & step)
Grandchild	Nephew
Aunt	Niece

*Domestic Partner is defined as a person of the same or opposite sex, whom shares your permanent residence and has resided with you for no less than six (6) months, and:

Is no less than 18 years of age,

Is not a blood relative to whom marriage would be prohibited in the state of Arizona, and

Is financially interdependent with you and has proven such by either:

Common ownership of real property

Or two of the following:

Common ownership of a motor vehicle,

Joint bank or credit account,

Designation as a beneficiary for life insurance, retirement benefits, or under your partner's will; or

Assignment of a durable power of attorney.

In order to include a domestic partner in the definition of a relative, the employee must submit to Human Resources a completed Domestic Partner Affidavit.

Rule 5, Section 502: Vacation

A. Accrual Schedule

1. **Regular Full-Time Employees** Regular, full-time employees accrue annual vacation leave as outlined below. (~~See Table 1 (separate document) for conversion rates for Fire department employees working fifty-six (56) hour work weeks and for separate accrual rates for Tempe Officer Association (TOA) employees.~~)

Years of Service	General Employee Hour Conversion	General Hours Earned Monthly	General Hours Earned Annually	48-Hour FD Employee Hour Conversion	FD (48 Hrs.) Hours Earned Monthly	FD (48 Hrs.) Hours Earned Annually
Up to 5 yrs	4	9.33	112	4.2	11.2	134.4
5 to 9 yrs	4	11.33	136	4.2	13.6	163.2
10 to 14 yrs	4	13.33	160	4.2	16.0	192
15 to 19 yrs	4	14.67 16.67	176 200	4.2	17.6 20	211.2 240
20 + yrs	4	16 18	192 216	4.2	19.2 21.6	230.4 259.2

Rule 5, Section 502: Vacation

H. Sabbatical Leave Program

Non-union, regular employees who have completed fifteen years of full-time, regular employment with the City are eligible to apply for a one-time extended four-week sabbatical leave of absence that includes two weeks of the

employees accrued vacation leave and an additional two weeks of City-paid leave. Program guidelines shall be provided on the sabbatical leave request form.

Rule 5, Section 503: Medical Leave

I. Wellness Leave Program

Non-union, regular employees with sufficient medical leave accrual may make an irrevocable election in November of each year to convert either 16 hours or 32 hours of medical leave at a conversion rate of 50% to either 8 hours or 16 hours of Wellness leave. Employees must maintain a minimum of 480 hours of medical leave after the conversion. The wellness leave will be available for use as of January 1 of the following year and shall be utilized under the same guidelines as vacation leave. Wellness leave shall not be converted to any other type of leave and shall not be cashed out. Any unused wellness leave remaining after the last full pay period of that same calendar year will be forfeited. Employees will be responsible for making the election for wellness leave through PeopleSoft self-serve.

Rule 5, Section 505: Bereavement Leave

A. Family Member

Upon the death of a "family" member*, all regular employees in an active pay status shall receive up to ~~three~~ five (3 5) working days leave with pay not chargeable to medical or vacation leave. The number of hours pay per day employees shall receive is based on their normal work schedule. ~~Two (2) additional days shall be granted for out-of-state travel.~~ Fire department employees working hours per day, for a maximum of three (3) working days leave with pay not chargeable to medical or vacation leave. ~~Two (2) additional eight (8) hour days for those working forty-eight (48) hour work weeks shall be granted for out-of-state travel.~~ Bereavement Leave does not have to be used consecutively.

*"Family Member" is defined as:

- Spouse
- Domestic Partner
- Parent, including (in-law and step)
- Child including (in-law and step)
- ~~Brother~~ Siblings including (in-law, half and step)
- ~~Sister~~ (in-law, half and step)
- Aunt
- Uncle
- Niece
- Nephew
- Grandparent including (in-law)
- Grandchild including (step)

~~—~~ **B. “Immediate” Family Member**

~~Upon the death of an “immediate” family member, all regular employees in an active pay status shall receive five (5) working days leave whether in-state or out-of-state. The number of hours per day regular employees shall receive is based on the employee’s normal work schedule. Bereavement Leave does not have to be used consecutively.~~

~~“Immediate” family member is defined as:~~

- ~~—~~ • Father
- ~~—~~ • Mother
- ~~—~~ • Spouse
- ~~—~~ • Domestic Partner
- ~~—~~ • Child (step)
- ~~—~~ • Brother
- ~~—~~ • Sister

Rule 5, Section 512 Family and Medical

D. Family Medical Leave Act (FMLA) Leave Entitlement

4. Any non-union employee and spouse or domestic partner employed by the City are each entitled to utilize a combined total of seventeen (17) weeks of leave if the leave is taken for the birth or adoption of a child or to care for a sick parent.

Rule 6, Section 612: Computer and Telephone Use

A. Guidelines The City provides employees access to the City’s electronic mail system (email), the Internet, and other computer systems (collectively referred to as the “computer system”) and to the City’s telephone equipment (land based and cellular) as necessary to conduct official city business. Oversight of these systems and all equipment is the responsibility of the City’s Information Technology (IT) department. Additional usage rules and guidelines for online electronic behavior can be found on the IT Department Intranet page. Employees should be aware of and adhere to these rules and guidelines and any social media registration requirements.

On a regular basis, when logging on to the computer system, all employees will be asked to consent to the following policy:

This computer and the programs operating upon it are City of Tempe property and you are only authorized to use them in accordance with the City’s Personnel Rules & Regulations, Rule 6, Section 612. All communications are subject to being monitored pursuant to local, state and federal laws. Any unauthorized use or abuse of the equipment or programs may result in disciplinary action up to and including

immediate termination. If you have any questions concerning this policy, please contact your department manager, Human Resources, or the City Attorney's office.

B. Computer System Usage

Employees should have no expectation of privacy in the use of the City's computer system. Accessed internet sites, including, but not limited to social networking sites, email contents, and any documents generated or received on the computer system should not be considered confidential, unless they are covered by the attorney-client privilege, which includes communications between attorneys and employees, or they relate to confidential personnel matters. All data stored within the City's computer system or printed as a document is subject to audit and review by the Information Technology department at any time.

Limited personal use of the computer system may be permitted during authorized work breaks, or before or after work hours. Limited personal use includes scheduling personal appointments, conducting research, preparing educational papers, and similar matters. Personal use shall never include the following, and is strictly prohibited:

1. Intentionally accessing any websites, emails or any other type of material(s) which could be construed as pornographic, sexually explicit, scandalous, discriminatory, defamatory, libelous, illegal or immoral;

NOTE: Employees who inadvertently access any pornographic or inappropriate website, (e.g. when an inappropriate site appears while in the process of conducting a word search in the Internet), shall report this to their supervisor immediately, or to the Information Technology department manager if their supervisor is unavailable.

2. Using for commercial or financial gain, such as operating a business or posting or selling personal items (other than in the "Information Technology department-approved "For Sale" folder);

3. Soliciting, including charitable campaigns, except as specifically authorized as part of official city sponsored events;

4. Forwarding any websites, issuing or forwarding emails or any other type of material(s) which could be construed as pornographic, sexually explicit, scandalous, discriminatory, defamatory, libelous, illegal, immoral, threatening, slanderous, racially and/or sexually harassing;

5. Issuing or forwarding chain mail, practical jokes, and other frivolous messages or materials that could be construed as being frivolous or in any way offensive;

6. Unauthorized copying of copyrighted material including, but not limited to digitization and distribution of photographs from magazines, books or other copyrighted sources, copyrighted music, and the installation of any copyrighted software for which City of Tempe or the end user does not have an active license;

7. Intentionally propagating a computer worm or virus, or any other program or material which may have a debilitating or disabling affect on the City's computer systems;
8. Using a modem connected to a city supplied telephone line to access a fee-based site where the charges are billed to the line;
9. Disguising or falsifying sources of electronic mail and other electronic communications with the intent of misleading, defrauding or harassing others;
10. Using electronic communication facilities (e.g., email, instant messaging (IM), chat rooms, threaded discussions or systems with similar functions) to send fraudulent, harassing, obscene, threatening, or other messages that are a violation of applicable federal, state or other law; and
11. Sending "spam" email. Spam is email that includes identical or nearly identical messages that are sent to a large number of recipients who have not granted deliberate and explicit permission for the messages to be sent. The transmission and reception of the messages appear to the recipients to give a disproportionate benefit to the sender.

(Note: Sections C thru D intentionally omitted – no changes to those sections.)

E. Security

Every employee is responsible for the security of his or her telephone or computer system account password(s). At no time should employees divulge any account passwords to any other employee or to any other person. Employees should ensure that unauthorized use of their computer system is prevented by logging off while away from their work station. Anonymous email, voicemail, or any other type of message(s) or misrepresentation of identity when using the City's computer system or telephone equipment is a violation of city Personnel Rule 4, Section 406.B, Subsection 9.

An unauthorized attempt or entry into another person's computer or account is called "hacking," and is not permitted. Hacking is a violation of the Federal Electronic Communications Privacy Act (ECPA) 18 U.S.C. §2510.

Information Technology (IT) provides guidelines for computer and network security. It is the responsibility of all employees using the City computer system and/or telephone equipment to read and be familiar with these guidelines which can be found on the IT Department [Intranet page](#) ~~website~~ at:

Employees dialing in or using VPN (virtual private network) to access the City's network from remote are expected to follow the same rules and guidelines as outlined in this section. Prior to accessing the City's network from remote, an employee must fill out and accept the "Remote Access Agreement" located on the [IT Department Intranet Information Technology department page website](#) at: http://www1.tempe.gov/itdworld/security_guidelines.htm

Anonymous messages or misrepresenting yourself as someone else is prohibited.

F. Email Electronic Communication Confidentiality and Public Records

Electronic communications and Eemail is are not secure. All email is sent unencrypted and is easily read. Private and/or confidential information should not be sent using the computer system.

Failure to follow guidelines and rules governing computer system and telephone equipment usage may result in disciplinary action up to and including termination. The City enforces a zero tolerance for intentionally accessing inappropriate internet sites and/or telephonic locations as detailed in this section.

G. Public Record Nature of Email/Confidentiality

~~Email is subject to disclosure pursuant to the public records laws as enacted under Title 39 of the Arizona Revised Statutes. A public record is any document that is made in the course of performing a duty, the immediate purpose of which is to disseminate information to the public, or to serve as a memorial of official transactions for public record.~~

Under Title 39 of the Arizona Revised Statutes (public records law), an e-mail or other electronic employee-generated document will need to be disclosed if it fits under the following three alternative definitions of a public record:

1. a record "made by a public officer in pursuance of a duty, the immediate purpose of which is to disseminate information to the public, or to serve as a memorial of official transactions for public reference."
2. a record "required to be kept, or necessary to be kept in the discharge of a duty imposed by law or directed by law to serve as a memorial and evidence of something written, said or done."
3. "a written record of transactions of a public officer in his office, which is a convenient and appropriate method of discharging his duties, and is kept by him as such, whether required by . . . law or not."

If an email is considered a public record, you may be required to disclose the email upon request. If the context of the email is considered a public record, you must retain the record for the period of time as required by the retention schedule for the record.