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MEMORANDUM

To: Washington Fire Commissioners Association

From: Brian Snure

Re: New Statutory Requirement for Unpaid Holiday Leave

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Chapter 168, Laws of 2014, which became effective June 12, 2014, requires that all fire protection district and regional fire authorities provide employees with two unpaid holidays per calendar year for reasons of faith or conscience or for an organized activity conducted under the auspices of a religious denomination, church, or religious organization.

The new law does not define employee so it will apply to full and part time employees. The law does not specifically include volunteers. The leave is limited to two days per calendar year and unused days do not carry over.

The law provides that the employee may select the two days in “consultation with the employer” pursuant to employer guidelines. The employer must grant the days off unless doing so would create an “undue hardship” on the employer or unless the employee “is necessary to maintain public safety.” The State Office of Financial Management, OFM has issued an emergency regulation providing the definition and guidance on how employers should apply the definition (copy of WAC 82-56-020, 030 attached)

Fire districts and regional fire authorities should modify their holiday leave policies to accommodate this new requirement. Policies should establish a process for employees to request the leave and should establish criteria for what will constitute an undue hardship consistent with the OFM definition. The statute does not provide any specific guidance or definition of what constitutes “a reason of faith or conscience” and employers will likely need to be flexible and interpret such terms broadly on an individual basis.

WAC 82-56-020 Definition of undue hardship

For purposes of chapter 168, laws of 2014, “undue hardship” means an action requiring significant difficulty or expense to the employer. The following factors should be considered in determining whether approving unpaid leave results in an undue hardship to the employer:

- (1) The number, composition, and structure of staff employed by the employing entity or in the requesting employee’s program.
- (2) The financial resources of the employing entity or the requesting employee’s program.
- (3) The number of employees requesting leave for each day subject to such a request.
- (4) The financial impact on the employing entity or requesting employee’s program resulting from the employee’s absence and whether that impact is greater than a de minimus cost to the employer in relation to the size of the employing entity or requesting employee’s program.
- (5) Impact on the employing entity, the requesting employee’s program or public safety.
- (6) Type of operations of the employing entity or requesting employee’s program.
- (7) Geographic location of the employee or geographic separation of the particular program to the operations of the employing entity.
- (8) Nature of the employee’s work.
- (9) Deprivation of another employee’s job preference or other benefit guaranteed by a bona fide seniority system or collective bargaining agreement.
- (10) Any other impact on the employing entity’s operation or requesting employee’s program due to the employee’s absence.

WAC 82-56-030 Application of definition of undue hardship to request

- (1) In determining whether the employee’s absence would result in an undue hardship to the employing entity, the employer must make a case by case determination based on the specific objective facts and circumstances, not assumed information, present at the time of each request.
- (2) (a) The existence of a collective bargaining agreement or bona fide seniority system does not in and of itself relieve the employing entity from determining whether there would be an undue hardship if the request was granted.

(b) When an employee is represented by a union, in determining whether the employee's absence would result in an undue hardship, the request must be reconciled, when feasible, with the provisions of the applicable collective bargaining agreement.

(c) If the employee is covered under a collective bargaining agreement, the employing agency must determine whether the request can be granted without violating that agreement.