

**MEMORANDUM**

**REVISION 65 SERIES C**

**TO:** Holders of CSA Rule Books

**FROM:** Career Service Board

**DATE:** December 20, 2012

**SUBJECT:** Revision of Career Service Rule 10-45 Donated Leave and related rules

The donated leave rule and the interactive process rule have been revised so that employees who have received additional leave as an accommodation under the ADA will be able to use donated leave during that period.

	<b><u>Page Number</u></b>	<b><u>Issuance Dates</u></b>
<b>Remove:</b>	5-19 10-12 11-1, 11-15	October 14, 2010 September 21, 2010 June 11, 2012
<b>Replace:</b>	5-19 10-12 11-1, 11-15	December 20, 2012

**PLEASE INSERT IN YOUR RULE BOOK AS SOON AS POSSIBLE. THANK YOU.**

12. Disabled Classified Service employees (police officers and fire fighters) are eligible to seek re-assignment to a vacant Career Service position as a form of reasonable accommodation, if they cannot be reasonably accommodated in their Classified Service positions. Should a Classified Service employee with a disability be re-assigned to a vacant Career Service position as a form of reasonable accommodation, the employee will no longer be a Classified Service employee, but instead will be a new Career Service employee. Under this circumstance, the employee will be entitled to the pension given to Career Service employees after the appropriate number of years of service for vesting within the Career Service system. The employee is not entitled to retroactive vesting for this pension for his or her years of service as a Classified Service employee. This rule does not prohibit the employee from purchasing service credits subject to procedures established by the Denver Employees Retirement Plan. The employee's sick and vacation days that he or she accrued as a Classified Service employee will not be carried over to the new Career Service position; however, the employee will be given monetary payment for such leave upon separating from the Classified Service, in accordance with the Police or Fire Department's rules and regulations and collective bargaining agreement then in effect. The employee shall accrue paid time off as a new Career Service employee. (Revised effective January 1, 2010; Rules Revision Memo 42C)
13. If an employee is re-assigned to either an equivalent or demotion position, the employee shall continue to receive the pay rate he or she earned in the former position unless this exceeds the range maximum of the pay range of the new classification, in which case the employee shall receive the range maximum of the pay range of the new classification. (Revised effective October 17, 2010; Rules Revision Memo 47C)

G. ADA leave (Revised effective December 20, 2012; Rules Revision Memo 65C):

1. ADA leave shall be provided:
  - a. During the interactive process if an employee is unable to perform his or her existing job;
  - b. During any period of leave that is provided to the employee as a reasonable accommodation as a result of the interactive process.
2. ADA leave is unpaid leave, unless an employee elects to substitute available paid leave for unpaid ADA leave.

H. Retaliation and coercion:

1. It is a violation of this rule to discriminate against any individual because that individual has opposed any act or practice prohibited by this rule or because that individual filed a grievance or appeal, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing to enforce any provision contained in this rule.

3. A Career Service employee may donate PTO or sick leave to a non-Career Service City employee provided that the recipient employee's department or agency and any applicable collective bargaining agreement allow employees to receive donations of leave from Career Service employees and provided that the applicable donor requirements have been met.
4. A Career Service employee may donate PTO or sick leave to, or receive donated sick leave from, an employee covered by the Undersheriff pay schedule to the extent permitted by the applicable collective bargaining agreement and provided that the donor and recipient requirements applicable to the non-Undersheriff employee have been met.

B. Recipient requirements:

1. Before an employee can receive donated leave, the employee (or the employee's representative) must provide notice to the Department of Finance that the employee anticipates a need for donated leave. Such notice shall estimate how much donated leave the employee expects to use in the current calendar year. Should the employee need more donated leave beyond the original estimate, the employee shall provide notice of this to the Department of Finance before the employee can receive additional donations.
2. In order to use donated leave, an employee must:
  - a. Have exhausted his or her accumulated compensatory time, sick leave and vacation leave or PTO, be absent from work and;
    - i. Be receiving disability leave, or temporary disability benefits under the provisions of the Workers' Compensation Act. In either of these situations, the employee may only use donated leave to make up the difference between the employee's base salary, and the total of other paid leave received and the temporary disability benefits the employee is receiving;
    - ii. Be receiving FMLA leave;
    - iii. Be receiving ADA leave (Revised effective December 20, 2012; Rules Revision Memo 65C); or
    - iv. Have received written notice of a pre-disqualification meeting. The employee may use donated leave until disqualification occurs or until the end of the period in which a decision on disqualification must be issued, whichever occurs first.

or

**RULE 11**  
**UNPAID AND EXTENDED LEAVE**  
(Revised effective January 1, 2010; Rules Revision Memo 42C)

Purpose statement:

The purpose of this rule is to provide guidelines and policies for administering time off through the City's leave programs.

Section 11-10 Leave Defined

(Revised effective June 11, 2012; Rules Revision Memo 63C)

Leave is defined as any absence during regularly scheduled work hours. The following types of unpaid and extended leave are officially established and shall be in effect unless otherwise provided by ordinance:

- A. Military;
- B. Disability leave and Workers' Compensation leave;
- C. Leave without pay;
- D. Unauthorized;
- E. Parental involvement;
- F. Family Medical Leave ("FMLA");
- G. ADA leave (Revised effective December 20, 2012; Rules Revision Memo 65C).

Section 11-15 Designees

Appointing authorities, including the Career Service Personnel Director ("Personnel Director"), may delegate any authority given to them under this rule to a subordinate employee.

(Sections 11-20 through 11-30 reserved for future use)

- B. During any FMLA leave, the City must maintain the employee's coverage under any group health plan on the same conditions as coverage would have been provided if the employee had been continuously employed during the entire leave period.

11-159 Return from FMLA Leave

- A. An employee returning from FMLA leave due to his or her own serious health condition shall provide a certification from the employee's health care provider that the employee is able to resume work. An employee further may be required to report periodically on the employee's status and intent to return to work.
- B. An employee returning from FMLA leave shall be returned to the same position the employee held when leave began or to an equivalent position which is defined by the FMLA regulations as a position that is virtually identical to the employee's former position in terms of pay, benefits and working conditions.
- C. An employee need not be reinstated if the employee would not otherwise have been employed at the time reinstatement is requested.
- D. When an employee returning from FMLA leave is not qualified or able to perform the essential functions of the position to which the employee was returned, the employee shall be given a reasonable opportunity in which to become qualified or seek accommodation so long as such accommodation is required by and consistent with the Americans with Disabilities Act ("ADA").
- E. If the employee is unable to return to work at the conclusion of FMLA leave, the appointing authority shall initiate the interactive process as provided in Rule 5 **APPOINTMENTS AND STATUS**, within twenty (20) days of the expiration of the employee's FMLA leave, unless the employee is also on disability leave or Workers' Compensation leave (Revised effective June 11, 2012; Rules Revision Memo 63C).

11-160 Additional information regarding the FMLA

Appointing authorities shall post information and otherwise provide information regarding the FMLA as required by the FMLA. In addition, information may be found on the United States Department of Labor's website, [www.dol.gov](http://www.dol.gov).

Section 11-170 ADA Leave

- A. ADA leave shall be provided:
  - 1. During the interactive process if an employee is unable to perform his or her existing job;
  - 2. During any period of leave that is provided to the employee as a reasonable accommodation as a result of the interactive process.
- B. ADA leave is unpaid leave, unless an employee elects to substitute available paid leave for unpaid ADA leave.

Page issuance date: December 20, 2012