

**SPECIAL MEETING
COMMITTEE ON HUMAN RESOURCES/INSURANCE**

January 07, 2013

5:00 p.m.

Chairman Shea called the meeting to order.

The Clerk called the roll.

Present: Aldermen Shea, Ludwig, Greazzo, Roy, Levasseur

Mssrs.: J. Gile, D. Chapman, D. Mara

Chairman Shea addressed item 3 of the agenda:

3. Summary of outstanding arbitrations and grievances submitted by the Human Resources Director.
(Note: Provided for informational purposes only; no action required)

No action was required on this item.

Chairman Shea addressed item 4 of the agenda:

4. COMPASS Program summary.
(Note: Provided for informational purposes only; no action required)

No action was required on this item.

Chairman Shea addressed item 5 of the agenda:

5. Updated FMLA Policy, submitted by the Human Resources Director.

On motion of Alderman Roy, duly seconded by Alderman Greazzo, it was voted to discuss this item.

Alderman Roy stated Jane, as I was reading through this, I came to number five and it says that it clarifies and strengthens the City's right to designate any leave that qualifies as FMLA leave, regardless of whether the employee requests FMLA or not. I just wanted to get the section clear in my mind. If I were injured on the job and I was on injury leave, would that be posted against my FMLA?

Ms. Jane Gile, Human Resources Director, replied I don't know if any of you know Dan. Dan has been with the HR Department for the last couple of years and he is the HR analyst and is also the FMLA administrator so he deals with this every day. We have over 200 application in a year's time, so Dan will be able to answer your question more thoroughly.

Mr. Dan Chapman, HR Analyst, stated Alderman Roy, the FMLA does allow employers to determine whether or not they want to designate all absences, all leave, that would normally constitute FMLA eligible leave, all of that type of leave and absences as FMLA. The City of Manchester, in its policy, has chosen to so designate all leave that qualifies as FMLA, including worker's compensation.

Alderman Roy asked we could determine if we wanted to change that if we wanted to? This is where I am going: I get injured on the job, obviously I am going to get time off to recuperate and I'm not going to request FMLA.

Mr. Chapman stated correct.

Alderman Roy stated you are going to say that it qualifies as FMLA, I am going to give you FMLA. I use up my FMLA before I come back and six months down the road my wife gets gravely ill. I can't get any more FMLA. Is that correct?

Mr. Chapman replied that's correct.

Alderman Roy stated through no fault of my own, as an injured employee, I have lost my opportunity to take care of my spouse. I personally don't think that is the way it should be. Now that you have explained that to me, I'm going to vote against this because of that. I just wanted that to be clear in my mind and I didn't know all the information for sure. Thank you for the answer.

Alderman Ludwig stated just to take that a little further. I thought that, and you should answer this, but isn't there a determination made when someone is out ill, on sick leave, as to what the extent of that may be. In other words, you don't immediately start FMLA all the time under every circumstance, right? If someone is out for longer than two days with a cold, someone is out for a week, do you start FMLA immediately, concurrently?

Mr. Chapman replied when a department reports that an employee has been out for more than three days, that triggers the possibility that it may constitute FMLA leave. When we are notified that an employee is out for more than three days and the department hasn't received a request from the employee for FMLA leave then we will communicate with the employee. We will request information regarding the nature of their absence. Again, Alderman Ludwig, this is because the City policy has designated that the City will make a determination as to whether any absence qualifies for FMLA leave.

Alderman Ludwig stated I know there was a time when we weren't always putting the FMLA provision in place maybe soon enough or in a timely fashion and therefore people were out a lot longer. Aren't they exhausting, at that time, all their sick leave? You don't get paid for FMLA. Alderman Roy's question goes to, if I use all my FMLA and then... Don't you exhaust your sick leave or they are at least running concurrently, aren't they?

Ms. Gile replied that's correct, yes. In the event that someone does qualify for FMLA, there is the use of paid leave that is substituted for the unpaid leave. That is the City's policy. So in the event that someone is out sick, the person would exhaust their sick leave if it is for a serious health condition. If it is for another purpose it might not trigger the use of sick time, but in most cases it would trigger the use of paid sick leave. There is a rationale behind using the FMLA leave, the 12 weeks and triggering that. In the event of someone who might be abusing sick time and so forth, at least we know that after the end of that 12 weeks it is job protected leave. That is the period of your job protected leave. If someone is abusing it or whatever, then the employer has the right to look at that after the 12 weeks and make a determination whether or not that person should continue to be an employee, basically.

Alderman Ludwig stated I think that if we went back to what the intent of the Family Medical Leave Act... Maybe I am not understanding what the intent was. I always thought that the intent was, again, not for the employer to end up paying the person, but strictly for job protection for the person who was unfortunately out of work. Is that not the intent?

Mr. Chapman replied yes, the intent is really, primarily for job protection. The FMLA act itself does give employers some options in terms of how they want to implement the FMLA. One is an employer can choose as to whether they want to require the employee to use paid time off. Again, the City of Manchester has made that decision to require that all paid time off be used first before the employee goes on unpaid FMLA leave.

Alderman Ludwig asked that is in place right now?

Mr. Chapman replied that is in place right now.

Alderman Ludwig asked so they don't run concurrently? I was under the impression that we could say, so and so broke his leg skiing. He is going to be out for an extensive period of time. He is drawing sick leave and start FMLA immediately, so they are running concurrently, so that the 12 weeks doesn't start at the end. He used all his sick leave and the sick has to wait another 12 weeks.

Ms. Gile stated no, they are run concurrently.

Mr. Chapman stated if an employee is injured, the first day that they are out, because they are injured and they are getting paid sick leave, the FMLA has also started. We start counting the 12 weeks of FMLA from the first day out.

Ms. Gile stated which is a typical policy. It is not unusual the way that the City does it.

Alderman Ludwig stated I have a question for Alderman Roy. Could you explain to me one more time your scenario so I can understand that?

Alderman Roy replied my scenario is I get injured on the job, I am not skiing, I am doing my job function and I get injured, I'm throwing a rubbish barrel or whatever I'm doing, whether it is police, fire or highway. I am injured on the job and let's say I broke my leg but this is different because I broke my leg on the job and now I have to recoop. As soon as I go out on injury leave, which is a legitimate leave because I hurt myself working for the City of Manchester, I am going to start using up my FMLA. If I come back to work, after I have rehabbed, and I am a good employee, again, six months down the road, my wife gets gravely

ill, I can't take care of my wife because my FMLA is gone. I don't think that is right and I think that should be changed.

Alderman Ludwig asked is that true?

Mr. Chapman replied yes. The City has chosen the option of designating any leave that would normally qualify as FMLA leave, which in some cases would include worker's compensation. Just as some background, the reason I believe, for that provision in the act, is so that an employer can make the determination and not have employees choosing when something is going to be considered FMLA leave or not. For that reason, Alderman Roy, even if it wasn't worker's comp, some employees would prefer, if they have an illness and they are going to be out for two weeks, I don't want that counted as FMLA leave because I want to make sure I still have my 12 weeks. The City could end up being somewhat inconsistent and having to decide, on a case by case basis, when is something going to be FMLA and when is it not? Again, the City has made the determination that it will designate any leave that qualifies as FMLA leave.

Chairman Shea asked this is an updating of our current policy?

Mr. Chapman replied that's correct.

Chairman Shea asked under the present policy, in terms of Alderman Roy, does that change or does that actually benefit someone? In other words, how does this updating affect the present policy?

Mr. Chapman replied in terms of Alderman Roy's question...

Chairman Shea interjected in other words, under the present policy there is nothing that would actually affect the way that he is reasoning?

Mr. Chapman stated under the policy that is in effect right now, that has been the practice of the City ever since FMLA was put into law. The City has reserved the right to designate.

Chairman Shea stated under the updating, it does actually help out in terms of helping people who may require someone to look after them. It is sort of like an adjunct to the present policy. Is that correct? It is not making the current policy any different other than adding this to it. Is that what you are saying?

Mr. Chapman replied primarily, what is involved, in the changes to this policy, is really clarifying, in some cases, what the intent is. The FMLA was changed in 2009 and 2010 and it is really just to reflect those changes, in a more clear and specific manner, but again, in terms of Alderman Roy's question, and his issue with a worker's comp injury being designated also as FMLA, that practice is in place with the present policy and was intended to continue with the change that you have in front of you now. There is no change in that regard to worker's comp injuries.

Alderman Roy stated my response to that is I don't have an issue with the other scenarios we have discussed today about FMLA kicking in after the investigation is done, but to my point, I don't think an employee who is injured on the line of duty should be penalized. I think this is a penalty, if you can't take care of one of your loved ones in the future, because, through no fault of your own, you got injured on the job. I think we should change that.

Alderman Ludwig stated I'm just confused about worker's comp. Alderman Roy, I believe, indicated that if you are out on sick leave, all the time you are out on worker's comp, your FMLA is running as well.

Mr. Chapman stated that's correct.

Alderman Ludwig stated again, I go back to the intent. Wasn't the purpose of FMLA to give someone that 12 week cushion, with no pay at the end of that?

Alderman O'Neil stated I came here to ask a question. An employee grabbed me Friday night and I apologize, I couldn't reach out to the department today because I attended a funeral of a cousin. The question was, do the union contracts have any impact on this? The employee seemed to think that their particular union contract had some language about how the FMLA was approached. Can you answer that? I don't believe it is in every contract from what I was told.

Mr. Chapman responded in my review of all of the union contracts, there is a provision in all of the contracts that the contract will follow the City's FMLA policy.

Alderman O'Neil stated I guess I wasn't clear on our FMLA policy because I always thought that the employee had to initiate the request, but what I am hearing tonight is that the City does. Why are we even approving a form or have approved a form and all that? I agree with Alderman Roy's scenario that he used. Whether you are hurt on the job or not, if you are out for two weeks for a scheduled surgery, you have the sick leave coming to you, to take it, you may not want to use up your FMLA time. Later, if for some reason something else happens to you, or a family member, which is the intent of FMLA, you are now down two less weeks of eligibility. I hope it is something that the Committee on Human

Resources/Insurance takes a look at and reviews the policy to see if it is applicable for today. I honestly don't know if it is, but I am hearing some very good discussion by the committee.

Alderman Levasseur asked could you answer those concerns that were just brought up by Alderman O'Neil? Are those valid concerns that we should be considering? I read faces and I looked at Jane and I think you had a comment. I would like to know what you had to say.

Ms. Gile stated I think one of the dangers, of what you just said, and if I understood you correctly, Alderman O'Neil, is that if an employee makes that decision to use his sick leave rather than FMLA, what can happen during the course of the year is an employee could take 12 weeks of sick leave if they have it in their accrual and then the City would be obligated another 12 weeks on top of that to protect their job. One of the intents of FMLA is that... 24 weeks in a year's period would be excessive. A person needs to be at their job doing their job.

Alderman O'Neil asked are we paying the second 12 weeks of FMLA?

Ms. Gile replied if they have paid leave in their bank we would be paying it.

Alderman O'Neil stated that is going to be an awful lot that someone has 24 weeks in their bank.

Ms. Gile stated if it is a serious health condition and they apply to the sick leave bank then they would get paid for that period of time.

Alderman O'Neil asked what if they need to take care of a spouse or a child who is ill?

Ms. Gile replied that could be at the first part of the first 12 weeks. The scenarios are so different across the City and, as I said, when we prefaced this, I think last year there were 217, maybe 20% of the employees, who applied for FMLA at some point. The year before that was 236. It is a big thing for the City of Manchester so I'm just throwing that out there in terms of costs and so forth.

Alderman O'Neil asked do you have a report on the costs to the City? Of those 200 plus employees, how many exceeded, how many had to go to the sick leave bank?

Ms. Gile replied we probably could do something like that. It would take us a little bit to be able to do that, to see where the money came from to pay them, whether it was sick leave bank or whether it was through their own paid leave bank, whether it is their vacation leave or sick leave or whatever was used to fill that obligation.

Alderman Levasseur moved to approve the updated FMLA policy. The motion was duly seconded by Alderman Shea.

Chairman Shea called for a vote on the motion. The motion failed with Aldermen Ludwig, Roy and Greazzo voting in opposition.

Ms. Gile asked could we have some direction? So is the one that is in place now is the policy? Is that the way...

Chairman Shea replied I would assume that the present policy still would be in existence.

Alderman Roy stated if you would accept it, Mr. Chairman, I would make a motion that we have Human Resources look at this particular section and come up with some wording that protects employees who are on injury leave and FMLA doesn't kick in while they are on injury leave. It just doesn't make any sense to me.

Alderman Roy moved that the Human Resources Department review the FMLA policy and present options that protect employees who are out on sick leave/worker's comp without triggering the start of FMLA. The motion was duly seconded by Alderman Greazzo.

Alderman Levasseur stated my understanding from reading the letter is that these follow federal policies. Can you change that section or is the federal policy that language?

Mr. Chapman replied specifically with regard to the question whether we can change requiring a worker's comp injury to be designed as FMLA, that is the employer option; that is not a requirement of the federal law.

Chairman Shea called for a vote on the motion. There being none opposed, the motion carried.

Ms. Gile stated we should come back with a policy that would reflect...

Chairman Shea interjected that's right; that would address his concern.

Chairman Shea addressed item 6 of the agenda:

6. Communication from David Mara, Chief of Police, requesting the committee review the current policy on military leave for employees.

On motion of Alderman Greazzo, duly seconded by Alderman Roy, it was voted to discuss this item.

Mr. David Mara, Chief of Police, stated the reason I wrote this letter was because Officer Aldenberg submitted his letter and he is a major in the National Guard. He has been deployed a couple of times. He has gone to Afghanistan and Iraq. We have also had several other officers, as well, who are in the National Guard and they go to training and it is not uncommon for them to have to use their own time, which when they signed up they understood that that was going to happen, but I would like to at least give them as many days as other departments give. I understand the issue that you are going to have, that this would be City side and would affect all departments. I would at least like to get the discussion going. When an officer gets deployed, that is not what this is calling for. When an officer gets deployed his military pay takes over so it is not an issue; this ordinance change would not be an issue for that. This is talking about training and when they have to go to required educational classes and things of that nature, not for deployment.

Alderman Levasseur asked why do you believe it will be City wide, Chief?

Mr. Mara replied because it is an ordinance and it would affect all other City departments; Highway, Fire, etc., if they are in the National Guard as well.

Alderman Levasseur asked do we know what that number is?

Mr. Mara replied no, I don't know.

Alderman Levasseur asked do you know what the number is in your staff?

Mr. Mara replied at last count, and I'm talking off the top of my head, around 20. We have a lot of people.

Chairman Shea asked Jane, would you like to comment on that? I think we had discussed that, in terms of the implication. Thank you very much, Alderman Levasseur; that is a very important question.

Ms. Gile stated we just ran a quick report before this meeting. I wasn't aware that this was coming up until I looked at the agenda. Throughout the City I believe last year in 2012... Did you say you had 20 people who were in the reserves?

Mr. Mara replied I might be wrong.

Ms. Gile stated I want to recheck these numbers. People who were paid military leave last year, we have about 13 people, but we could go back and check to verify that that is the number. As the chief said, we would want to be clear that there is a cost related to that; you are doubling the amount of time that people are going to be away, potentially, which has another cost to the departments, in terms of overtime and covering for those people who are gone. In terms of the whole picture, the impact, I have no objection to raising it to 20, but people would have to understand that there is a cost associated with that and it could be double what the cost is now.

Mr. Mara stated the reason I came up with the number 20, I was looking back at officers who served overseas so they might not actively be in the reserves. That is what I was referring to.

Ms. Gile stated as the chief said, this is just for training, it is not for the people who are called up for active duty which is different.

Chairman Shea stated I don't really think that anyone is opposed to this, but we might need some additional information to make sure that all the departments are aware of this. We would have a better handle in terms of what the financial implication would be in that department and whether that obligation is presently being met under the contractual agreements or whether we would have to do something else.

Ms. Gile stated I could probably give you some information as to how many exhausted the ten days last year. That might be something that you would want and whether they had to kick in with their own paid leave.

Alderman Greazzo stated I read the letter; I'm familiar with the military's policy, of one weekend a month and two weeks a year, so ten days a year is obviously not adequate. I would suggest 15 days a year and leave the other five days to attend funerals as it is in the current ordinance rather than just making it a blanket 20 days.

Mr. Mara stated I can tell you that our military officers that we have would appreciate anything that you do. If you would like, I can make, and he has volunteered, Officer Aldenberg come to one of your committee hearings to explain to you what they go through.

Alderman Levasseur asked have you looked at your budget and how it would affect your budget going forward, Chief, and how you would absorb it?

Mr. Mara replied yes, we could absorb this in our budget.

Alderman Levasseur asked you have no problem with us going from ten to 15?

Mr. Mara replied I don't have any problem with that, no. Just for the record, I feel that, from what I see, these officers sacrifice, I think that we owe it to them. That is the way I feel.

Alderman O'Neil stated I think to get the data would be important because we don't know for sure that it would cost the department money if they are not filling... There may be a spare officer who can fill that slot where it doesn't cost the department money. The majority of these people, I believe, are going to be at the Fire Department or the Police Department. There may be a few scattered in other City departments. They may be able to cover it with other personnel that doesn't cost them money. The other thing, if I may, Mr. Chairman, just to go off subject a little bit, but related to this, wasn't Office Aldenberg one of the officers... There was a question at one time about accruing vacation and/or sick time while they are on active military duty?

Mr. Mara replied that does come up. For instance, he was away for over a year so that does become an issue as well.

Alderman O'Neil stated Mr. Chairman, maybe that is something that the committee looks at, at some point. I remember I spoke to Sergeant Swerkle before he retired and that was an issue for him. When they get activated, they lose, and I

don't understand the whole mechanics of it... Chief, it is both or just vacation or just sick time?

Mr. Mara replied sick time, whenever you max out, regardless of whether you are in the military or not you just don't collect. Vacation time, once you hit a certain point to your vacation time it stops.

Alderman O'Neil stated it is something that I would ask the committee to look at. Hopefully, we are winding down from more being activated for full time service for the Guard or Reserve, but it seems unfair. We all love to stand there and stand with them when they get back, but in all honestly, and I don't think it is anything intentional by the City, but something we never envisioned our personnel being activated for as long as some of them have been activated. I do know that it is an issue for several of them.

Mr. Mara stated I can tell you that from talking with my officers, they really appreciate the way they are treated by the City. There is absolutely no complaint. This is something that during discussion came up.

Chairman Shea stated Jane, you mentioned that there are about 13. Primarily are they in the Police Department?

Ms. Gile stated it is by department number and the majority is department 33 which I think is Police. There are other departments, but it would be Highway, Police and Fire. City Clerk was another one.

Alderman Shea stated but you said primarily Police. If you could, look over the suggestion made by Alderman O'Neil, in terms of the committee, so we can focus on that at a future meeting.

On motion of Alderman Levasseur, duly seconded by Alderman Ludwig, it was voted to table this item.

Chairman Shea addressed item 7 of the agenda:

7. Communication from Kevin Sheppard, Public Works Director, submitting a request for a change in his current complement as follows:
 - Addition of one Financial Analyst I
 - Elimination of one Business Service Officer

On motion of Alderman Levasseur, duly seconded by Alderman Greazzo, it was voted to approve this item.

Chairman Shea stated this will need to be reported out tonight because of the need that Kevin has expressed.

TABLED ITEMS

(A motion is in order to remove any item from the table.)

8. Solicitation policy submitted by Jane Gile, Human Resources Director.
(Note: Tabled 12/4/2012)

This item remained on the table.

9. Draft ordinances for the position of welfare commissioner submitted by Tom Arnold, Deputy City Solicitor.
(Note: Tabled 12/4/2012)

This item remained on the table.

*There being no further business on motion of **Alderman Greazzo**, duly seconded
by **Alderman Levasseur**, it was voted to adjourn.*

A True Record. Attest.

A handwritten signature in black ink, appearing to read "Matthew Normand". The signature is written in a cursive style with a long, sweeping underline.

Clerk of Committee