

**SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**  
**ATU/LOCAL 1555 and SEIU/LOCAL 1021 GENERAL NEGOTIATIONS**

**TENTATIVE AGREEMENT – SICK LEAVE**

**April 7, 2016**

The San Francisco Bay Area Rapid Transit District ("BART") and SEIU/Local 1021 ("SEIU"), and ATU/Local 1555 ("ATU") have negotiated and reached a tentative agreement on this provision of the Collective Bargaining Agreement ("CBA"). No tentative agreement shall be a final agreement except as a part of a total package agreement between the parties. All parties agree that final approval of the tentative collective bargaining agreement is subject to ratification by SEIU membership, ATU membership and the BART Board of Directors.

The parties agree to revise Section 9.1 as follows:

9.1 SICK LEAVE

**A. Accrual:** Covered employees shall accrue one (1) day of sick leave for each full month of employment. Sick leave credits may be accumulated to a total of two hundred fifty (250) working days.

**B. Incentives For Sick Leave Accrued And Unused On Or After October 19, 2009**

To encourage employees to maintain maximum attendance and to improve performance, the District offers employees the following two (2) incentives beginning October 19, 2009:

1. **PERS Retirement Service Credit For Sick Leave:** The District will amend its contract with CalPERS to provide the California Government Code Section 20965 option for service credit for unused sick leave for eligible CalPERS members in the bargaining unit, with an effective date of October 19, 2009. The Public Employees Retirement Law (PERL) and CalPERS rules will govern the eligibility of unused sick leave earned on or after October 19, 2009 for service credit. Those rules presently grant 0.004 years of service credit for each certified unused day of sick leave accrued by the member during the normal course of his/her employment. For employees whose effective date of retirement is within four months of separation from employment with the District, the District shall certify to CalPERS all such unused days of sick leave that were accrued by the employee on or after October 19, 2009. For purposes of Government Code Section 20965, leave accrued prior to October 19, 2009 shall not be considered "unused" sick leave and the District will not certify such sick leave to CalPERS, unless the employee has made the one-time election to convert such pre-October 19, 2009 sick leave to PERS credit eligible sick leave pursuant to Paragraph C below.

2. **Annual Buy-Back Or MPPP Incentive:** The District shall give employees the option each year to make an irrevocable election on the schedule indicated below to buy-back or to deposit into their Money Purchase Pension Plan (MPPP) accounts, the dollar value of the sick leave earned within the annual accrual period indicated in paragraph B(2)(a) below, less sick leave taken during that same period, on an after tax basis.

a. **Sick Leave Accrual/Election Periods:** The maximum sick leave which may be earned for each accrual period is ninety-six (96) hours for employees on a 5-8 or 9/80 Work Plan and one hundred twenty (120) hours for employees on a 4-10 Work Plan. Sick leave for which such an election has been made shall not be included by the District in the certification to CalPERS under the retirement service credit plan described above.

<b>Election Period</b>	<b>Accrual Period</b>
9/2/13 – 9/16/13	9/30/13– 9/28/14
9/1/14 – 9/15/14	9/29/14 – 9/27/15
9/7/15 – 9/21/15	9/28/15 – 9/25/16
9/5/16 – 9/19/16	9/26/16 – 9/24/17
<u>9/4/17 – 9/18/17</u>	<u>9/25/17– 9/23/18</u>
<u>9/3/18 – 9/17/18</u>	<u>9/24/18 – 9/22/19</u>
<u>9/2/19 – 9/16/19</u>	<u>9/23/19 – 9/20/20</u>
<u>9/7/20 – 9/21/20</u>	<u>9/21/20 – 9/19/21</u>

b. **Buy-Back/MPPP Deposit Amounts:** An election to “buy-back” or to deposit into the MPPP must also include an election as to the percentage amount of the ‘buy-back”, based on the percentage increments and maximums provided below. The maximum Buy-Back percentage that will be allowed is based on the employee’s attendance record during the accrual period.

<b>Days</b>	<b>Eligible Percentage of Unused Earned Sick Leave</b>
0	5% up to 50% (in 5% increments)
1-3	5% up to 40% (in 5% increments)

Buy-Back and MPPP amounts shall be calculated at the employee’s base rate of pay at the end of the accrual period, less applicable tax withholding.

c. **Impact Of Buy-Back/MPPP Election:** Employees may select only one option (Buy-Back or MPPP) for each accrual period.

Once the buy-back or MPPP Incentive election is made for any accrual period it may not be changed. Employees will receive the buy-back checks or MPPP credit no later than December 1 following the end of the accrual period.

Unused sick leave hours for which an election to buy-back or transfer into the MPPP is not made shall be carried over to the next year, subject to maximum accumulation limits, and will no longer be available for any future Annual Buy-Back/MPPP incentive election.

**C. One Time Election To Convert Sick Leave Accrued Prior To October 19, 2009 To PERS Creditable Sick Leave**

During the month of October 2009, employees will be given a one-time opportunity to convert unused sick leave that has been accrued prior to October 19, 2009 to pers-credit-eligible sick leave (described in paragraph B(1) above). This election shall be irrevocable, and will include all of the employee's unused sick leave, including banked sick leave pursuant to D(1), and/or unbanked sick leave pursuant to D(3) below. If an employee makes this election, such accrued leave will no longer be eligible for pay-out at termination/retirement (previously banked leave) or at retirement (unbanked leave). All leave converted pursuant to this paragraph C will be subject to calPERS rules for service credit eligibility. Leave converted under this paragraph will thereafter be considered, for purposes of disposition at the end of employment only, to have been accrued on or after October 19, 2009.

**D. Sick Leave Accrued Prior To October 19, 2009**

Sick leave accrued prior to October 19, 2009, which is not converted to pers creditable sick leave pursuant to paragraph c above, shall be preserved in accounts separate from sick leave accrued on or after October 19, 2009, and shall be used pursuant to the terms of this paragraph D, including subsections (1) – (3).

**1. Banked Sick Leave (Under Previously Exercised Option)**

This section refers to sick leave which has been 'banked' in accordance with Labor Agreement Section 9.1B(2) as it was in effect on June 30, 2009, or banked pursuant to Agreements previously in effect. It excludes sick leave electively converted to PERS-creditable sick leave pursuant to paragraph C above. It includes sick leave for which a banking election was made during the 2008 or earlier option periods.

Banked sick leave, as defined above, will be preserved in a separate account for use by the employee in accordance with the provisions of former Section 9.1B(2), including the following:

- a. Such bank shall be set aside for payment upon death/retirement/termination and shall not be included in the calculation of unused sick leave pursuant to paragraph B(1) above or Government Code Section 20965.

- b. Sick leave hours banked will be paid at the employee's base rate of pay, effective on the employee's date of death or retirement/termination from District's employment.
- c. Employees who experience an illness/injury and exhaust their existing sick leave that is available, may utilize sick leave that has been banked under prior Section 9.1B(2) provided they make a written request to do so through their Department Manager at the time of the illness/injury and the circumstances qualify for sick leave under section F ("sick leave payment") below.

## 2. Sick Leave Buy-Back (Under Previously Exercised Option)

Employees who exercised the option during the September 2008 option period specified in Labor Agreement Section 9.1B(2) in effect on June 30, 2009 to make an irrevocable election to buy-back or deposit into the MPPP the value of sick leave earned during the annual accrual period, less sick leave taken during the annual accrual period shall receive the buy-back payments and the MPPP deposits required by the prior Labor Agreement.

Buy back checks for the 2009 accrual period under former Labor Agreement Section 9.1B will be distributed to employees no later than December 1 following the end of the accrual period, and MPPP elections for that period will be deposited by that same date.

## 3. Retirement Buy-Back

Sick leave accrued prior to October 19, 2009, and not (1) banked pursuant to paragraph 1 above; (2) bought back or deposited in the MPPP pursuant to paragraph 2 above; (3) converted to PERS creditable sick leave pursuant to paragraph C above; or (4) used pursuant to E and F below, shall be available for use as a Retirement Buy Back incentive. Employees leaving District service on a service retirement shall be paid fifty percent (50%) of this accrued sick leave balance upon the effective date of service retirement. This accrued sick leave shall not be included in the calculation of unused sick leave pursuant to paragraph B above or Government Code Section 20965.

## **E. Order Of Use Of Sick Leave From Separate Accounts**

When using sick leave with pay pursuant to Section F below, employees' sick leave balances will be deducted in the following order:

1. Sick leave accrued on or after October 19, 2009, if any, including any sick leave accrued before October 19, 2009 which an employee has elected to convert to PERS creditable sick leave pursuant to paragraph C above, if any.
2. If the accruals described in paragraph E(1) are exhausted, unbanked sick leave accrued prior to October 19, 2009, if any.

3. If the accruals described in paragraphs E(1) and E(2) above are exhausted, banked sick leave, if any, may be used subject to the terms of paragraph D(1)(c) above.

**F. Sick Leave Payment:**

FMLA/CFRA

An Employee on FMLA/CFRA qualifying leave may elect to use any accumulated leave as may be permitted by Federal and State law and regulations (i.e. sick leave, vacation, floating holidays or compensatory leave) or elect to take the leave unpaid in any order and at the employee's discretion. Employees who would otherwise qualify for short term disability while on FMLA/CFRA leave will not qualify for that disability until all of the employee's sick leave is exhausted.

Employees shall receive sick leave with pay up to the amount of sick leave accrued at the time of illness, provided the requirements of this section are met. Employees shall accrue sick leave credits during the probationary period, however, they shall not be eligible for sick leave pay until after completion of the probation period.

An employee who is absent from work for reasons that qualify for use of sick leave under Section 9.1 who has no accumulated sick leave to cover such absence must use accumulated vacation, personal holiday, and compensatory time off before unpaid leave may be granted. Even though such charges are made, the employee's absence remains subject to the contract provisions governing the use of sick leave. The employee must advise the employee's appropriate absence report recipient, as designated by the District, of the category of paid leave that shall be charged for such absence. If the employee does not do so, the absence shall be charged by default against the employee's accumulated vacation, holiday and compensatory time off in that order. Sick leave preserved under section 9.1.F last paragraph (below) will not be available for such charges. Holidays may not be charged if such charge would reduce the number of holidays in the employee's account below the number of designated contractual holidays remaining in the fiscal year.

Employees shall be eligible for paid sick leave as follows: without limitation on their rights under state and federal law.

1. Illness, including the appropriate use of required prescribed medication which would impair the employee's work performance, injury, quarantine, or similar exposure to contagious disease;
2. Verifiable medical and/or dental appointments which cannot be scheduled outside the normal working hours, provided that a minimum of forty-eight (48) hours advance notice is given and provided subsequent confirmation that the appointment was kept is given if requested by Management.
3. Doctor's visits associated with pregnancy, subject to the provisions in "2." above;
4. Hospitalization or serious illness/accident and resulting subsequent related

scheduled doctor's visits, subject to the provisions in "2." above;

5. Required attendance upon a seriously ill spouse, eligible domestic partner, or child. The District may require a written statement from the attending physician that the employee's attendance was required.
6. Required transportation to doctor for employee's spouse, eligible domestic partner, or child if spouse, eligible domestic partner, or child has serious accident or serious illness (subsequent verified and scheduled doctor's visits resulting from initial visit are also included).
7. Industrial injury and resulting subsequent related scheduled doctor's visits.

Sick leave with pay shall apply to each separate sick leave incident. For purposes of this section, "sick leave with pay" means pay calculated at the straight time day shift rate for the number of hours the employee was regularly scheduled to work each day, had the illness or injury not occurred.

If an employee's absence which qualifies for paid sick leave also qualifies as statutory family and medical leave (i.e. FMLA/CFRA), the employee may elect to preserve eligibility for participation in the annual buy-back or transfer into the MPPP of eligible accruals, if elected during the election period, by requesting to substitute vacation, floating holidays (for increments of a full day only), or compensatory leave pay, if applicable, or, if he/she has no accrued vacation, floating holidays or compensatory leave, requesting to take the leave unpaid. The request must be made before receipt of sick pay.

- G. Sick Leave Verification: The District may take reasonable means to verify the employee's eligibility for sick leave. Upon prior written notice, an employee, at his or her expense may be required to provide a doctor's statement which demonstrates to the satisfaction of the District, eligibility for sick leave as defined above, for any sick leave incident.

Employees shall furnish a doctor's statement for each sick leave incident involving absences of more than three (3) working days.

In instances where the District requires a doctor's statement, either to verify sick leave or determine an employee's fitness to return to work, that statement must include the following:

1. date and time of treatment;
2. duration of illness;
3. date cleared to return to work.

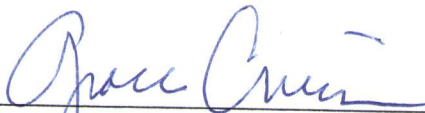
Otherwise, an employee returning to work from a sick leave incident must submit a required doctor's statement and other documentation within seven (7) calendar days of his/ her return to work. Failure to submit required documentation within the time provided shall result in denial of sick leave pay, and may result in disciplinary action.


The District may require any employee to submit to a medical examination by a doctor designated by the District, at the District's expense, as a condition of return to work from a sick leave incident or to verify the continuing need for sick leave.

Pattern use, misuse or abuse of sick leave will be governed by the District's disciplinary procedures and handled on a case-by-case basis.

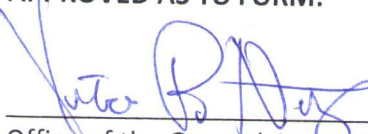
H. Sick Leave Reporting: It is the responsibility of every employee absent from work because of illness or injury to report such absences to his/her immediate supervisor or the supervisor's designated representative. This report must include information as to the expected date of return to work and where the employee can be reached during his/her normal work hours. The employee will promptly notify his/her supervisor or supervisor's designee of any change which affects his/her ability to return to work.

**FOR THE DISTRICT**


  
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General Manager

  
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Chief Labor Relations Officer

**APPROVED AS TO FORM:**

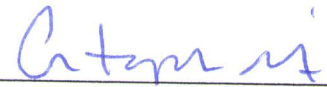
  
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