

**AGREEMENT**

**BETWEEN**

**THE**

**STATE OF OREGON  
DEPARTMENT OF ADMINISTRATIVE SERVICES**

**ON BEHALF OF THE**

**DEPARTMENT OF JUSTICE**

**AND**

**OREGON ASSOCIATION OF  
JUSTICE ATTORNEYS**

**2009-2011**



## TABLE OF CONTENTS

ARTICLE	PAGE
ARTICLE 1 - PARTIES TO THE AGREEMENT.....	1
ARTICLE 2 - RECOGNITION .....	1
ARTICLE 3 - TERM OF AGREEMENT .....	1
ARTICLE 4 - LEGISLATIVE ACTION .....	1
ARTICLE 5 - EFFECT OF LAWS AND RULES .....	1
ARTICLE 6 - SEVERABILITY .....	2
ARTICLE 7 - NO DISCRIMINATION .....	2
ARTICLE 8 - NO STRIKE OR LOCKOUT.....	2
ARTICLE 9 - MANAGEMENT RIGHTS.....	2
ARTICLE 10 - ASSOCIATION RIGHTS.....	2
ARTICLE 11 - ASSOCIATION MEMBERSHIP AND DUES .....	4
ARTICLE 12 - FAIR SHARE.....	5
ARTICLE 13 - EMPLOYEE ASSISTANCE PROGRAM .....	6
ARTICLE 14 - PERSONNEL RECORDS .....	6
ARTICLE 15 - WORKING OUT OF CLASSIFICATION.....	7
ARTICLE 16 - RECOUPMENT OF WAGE AND BENEFIT OVERPAYMENTS.....	7
ARTICLE 17 - SALARIES.....	7
ARTICLE 18 - INSURANCE .....	8
ARTICLE 19 - TRAVEL, MILEAGE AND MOVING EXPENSE REIMBURSEMENT .....	9
ARTICLE 20 - FEES; HONORARIA.....	9
ARTICLE 21 - CONTINUING LEGAL EDUCATION .....	9
ARTICLE 22 - BAR DUES.....	10
ARTICLE 23 - BAR CONVENTION ATTENDANCE.....	11
ARTICLE 24 - BAR COMPLAINTS .....	11
ARTICLE 25 - PROFESSIONAL WORKWEEK.....	12
ARTICLE 26 - JOB ROTATIONS.....	12
ARTICLE 27 - ADMINISTRATIVE LEAVE .....	13
ARTICLE 28 - PERSONAL LEAVE.....	13
ARTICLE 29 - SICK LEAVE .....	14
ARTICLE 30 - LEAVE OF ABSENCE WITH PAY .....	15
ARTICLE 31 - LEAVE OF ABSENCE WITHOUT PAY.....	16
ARTICLE 32 - PARENTAL LEAVE .....	17
ARTICLE 33 - VACATION LEAVE.....	17
ARTICLE 34 - HOLIDAYS .....	19
ARTICLE 35 - LABOR/MANAGEMENT COMMITTEE.....	20
ARTICLE 36 - SAFETY AND HEALTH .....	21
ARTICLE 37 - SECURITY.....	21
ARTICLE 38 - INCLEMENT CONDITIONS.....	21
ARTICLE 39 - DISCIPLINE AND DISCHARGE .....	22
ARTICLE 40 - GRIEVANCE AND ARBITRATION PROCEDURE .....	23
ARTICLE 41 - BILLABLE HOURS .....	24
ARTICLE 42 - BILINGUAL DIFFERENTIAL .....	25
ARTICLE 43 - REDUCTION IN WORKFORCE.....	26
ARTICLE 44 - POSTING OF BARGAINING UNIT VACANCIES .....	26
LETTER OF AGREEMENT - STEP FREEZE ADVANCEMENT AND ADD/DROP STEPS .....	28
LETTER OF AGREEMENT - MANDATORY UNPAID FURLOUGH TIME OFF .....	30
LETTER OF AGREEMENT - MANDATORY UNPAID TIME OFF CLARIFICATIONS FOR IMPLEMENTATION.....	34
LETTER OF AGREEMENT ON CREDIT FOR UNPAID FURLOUGH TIME OFF .....	40
LETTER OF AGREEMENT REGARDING PREMIUM INCREASES BETWEEN 5% AND 10%.....	40
LETTER OF AGREEMENT - PEBB RESERVE REIMBURSEMENT .....	40

<b>LETTER OF AGREEMENT - PROVIDER TAX ASSESSMENT .....</b>	<b>41</b>
<b>LETTER OF AGREEMENT - PART-TIME EMPLOYEES HEALTH INSURANCE SUBSIDY.....</b>	<b>41</b>

## **ARTICLE 1 - PARTIES TO THE AGREEMENT**

This Agreement is made and entered into by and between the American, State, County and Municipal Employees (AFSCME) on behalf of the Oregon Association of Justice Attorneys (hereinafter the "Association") and the State of Oregon (hereinafter the "Employer"), acting by and through its Department of Administrative Services (DAS) on behalf of the Department of Justice (hereinafter the "Department").

## **ARTICLE 2 - RECOGNITION**

The Employer and the Department recognize the Association as the sole and exclusive bargaining representative for all Assistant Attorneys General below the rank of Attorney In Charge, excluding supervisory employees, confidential employees, employees hired for a term of six (6) months or less, employees in positions which are less than .50 full-time equivalency, honors attorneys, contract attorneys and assistants appointed pursuant to ORS 180.140(3).

## **ARTICLE 3 - TERM OF AGREEMENT**

Unless otherwise noted in a specific article or letter of agreement from the Central Table, all agreements become effective July 1, 2009 or upon signing whichever is later and terminates June 30, 2011.

## **ARTICLE 4 - LEGISLATIVE ACTION**

Section 1. Provisions of this Agreement not requiring legislative review, funding, expenditure limitation increase, or statutory changes before such provisions can be put into effect shall be implemented on the effective date of this Agreement or as otherwise specified herein.

Section 2. Upon signing this Agreement, both parties shall promptly submit and jointly recommend to the Legislative Assembly or the Emergency Board the passage of the funding or expenditure limitation necessary to implement this Agreement as well as any changes in statute which may be required to accomplish that purpose.

Section 3. Should the Legislative Assembly or the Emergency Board fail to enact or adopt matters submitted to them under the preceding Section then the Employer and the Association shall immediately meet and negotiate concerning the affected portion or portions of this Agreement.

Section 4. Nothing in this provision shall be construed as to require the Governor to call a special session of the legislature.

## **ARTICLE 5 - EFFECT OF LAWS AND RULES**

This Agreement is subject to all applicable existing laws of the State of Oregon. In the event of a conflict between a provision of this Agreement and a rule or regulation of the Department of Administrative Services or any of its Divisions, the terms of this Agreement shall prevail.

## **ARTICLE 6 - SEVERABILITY**

In the event that any provision of this Agreement is at any time declared invalid by a court of competent jurisdiction, declared invalid by final Employment Relations Board (ERB) order, made illegal through enactment of federal or State law or through government regulations having the full force and effect of law, such action shall not invalidate the entire Agreement, it being the express intent of the parties hereto that all other provisions not invalidated shall remain in full force and effect. The invalidated provision shall be subject to renegotiation upon request by either party. Such renegotiation shall be conducted in accordance with ORS 243.650 et seq.

## **ARTICLE 7 - NO DISCRIMINATION**

It is the policy of the Department and the Association to continue their policies not to engage in unlawful discrimination against any employee because of race, color, marital status, religion, sex, sexual orientation, national origin, age, mental or physical handicap, political affiliation, Association affiliation or protected Association activity.

## **ARTICLE 8 - NO STRIKE OR LOCKOUT**

Section 1. The Department agrees that during the term of this Agreement, the Department shall not cause or permit any lockout of employees from their work.

Section 2. During the term of this Agreement, the Association shall neither cause nor counsel the members of the bargaining unit to strike, walk out, slowdown or commit other acts of work stoppage.

## **ARTICLE 9 - MANAGEMENT RIGHTS**

Section 1. In addition to the Attorney General's authority under ORS Chapter 180 and other statutory provisions, the Attorney General shall retain the exclusive right to exercise the customary functions attributed to the management and operation of the Department.

Section 2. Except as may be specifically modified by the terms of this agreement, the rights of management include but are not limited to the following:

- (a) Direct employees
- (b) Hire, promote, transfer, assign and retain employees
- (c) Suspend, discharge, or take other disciplinary action against employees
- (d) Reassign employees
- (e) Relieve employees from duty because of lack of work or other reasons
- (f) Schedule work
- (g) Determine methods, means, and personnel by which operations are to be conducted.

## **ARTICLE 10 - ASSOCIATION RIGHTS**

Section 1. AFSCME Representatives. The Association will notify the Department in writing of its representative of the District Council 75, American Federation of State and County Municipal Employees, AFL-CIO. After such notice is provided and following proper

introductions, the representative shall have reasonable access to the premises of the Department during all work hours to conduct Association business. Such visits are not to interfere with the normal flow of work.

Section 2. Association Representatives. The Association shall provide the Associate Attorneys General with the names of Association Representatives, including officers and board members.

Section 3. Except where otherwise provided in this Agreement, the internal business of the Association shall be conducted by the employees on their own time.

Section 4. The Department shall furnish the Association reasonable bulletin board space for communicating with employees not to exceed eleven (11) spaces.

Section 5. Reasonable paid time shall be granted for an Association representative to make a presentation on behalf of the Association at new employee orientation to identify the organization's representation status and to collect membership applications. The Department will provide the Association reasonable notice of the place and time of meetings for the orientation of new employees.

Section 6.

(a) Upon timely request, DAS shall make available at cost to the Association the latest copy of any statistical and expenditure reports related to employment and benefits currently produced by DAS that do not require manual or machine editing to remove confidential data or non-Association employee data. Such request must be made in advance of the preparation of the reports.

(b) Upon request, DAS shall make available to the Association at cost any statistical and expenditure data related to employment and benefits that is reasonable to produce, even though not normally produced by DAS. Data not normally produced but reasonable to produce includes manual or machine editing of existing reports to remove confidential data, data on non-Association employees, or data or reports that require new development.

(c) The Department shall furnish monthly to the Association a list of all Assistant Attorney General appointments. The list shall contain the names and dates of appointment of the employees.

Section 7. Incidental use of Department office space may be permitted for Association activities if the space is available, scheduling has been arranged and the use is consistent with Department space use policies.

Section 8. Association officers and stewards will be allowed to post messages to a designated non-interactive electronic bulletin board when available. OAJA members may utilize Department equipment to access bulletin board information.

Section 9. Email Messaging System.

Association Board members may use the Department's email messaging system to communicate with represented and fair share Assistant and Senior Attorneys General about Association business provided that all of the following conditions are met:

(a) Use must be lawful and inoffensive. Such communications shall not contain profanity, vulgarity, sexual content, pornographic material, nudity or character slurs. No use

shall make offensive or hostile reference to age, race, gender, sexual orientation, religious or political beliefs, national origin, health or disability;

(b) The Department shall have the right to control its email system, its uses and information;

(c) Employees using the Department's email system shall have no right to or expectation of privacy regarding any message sent or received through the email system. The Department reserves the right to trace, review, audit, access, intercept, recover and/or monitor use of its email system without notice, and the Department's exercise of this right shall not form the basis of or constitute a violation of the Public Employee Collective Bargaining Act.

(d) Use of the email system will not adversely affect the use or hinder the performance of the Department's computer system for official business;

(e) Email messages sent simultaneously to more than ten (10) people shall be no more than approximately one (1) page and in plain or rich text format. Such group emails shall not include attachments or contain graphics. Recipients of such group emails shall not use the "reply all" function;

(f) Email usage shall comply with the Department's policies which are applicable to all users;

(g) The Department will not incur any additional costs for email usage including printing;

(h) The Association shall indemnify the Department and hold it harmless from and against any and all liability, lawsuits, claims, complaints, other legal or administrative actions, costs and attorney fees arising from or related to email communications originated, sent or forwarded by the Association or its agents using the Department's email system;

(i) Use of the Department's email system shall be on employees non-work time; and

(j) Email shall not be used to lobby, solicit, recruit, persuade for or against any political candidate, ballot measure, legislative bill or law, or to initiate or coordinate strikes, walkouts, work stoppages, or activities that violate the Contract.

Section 10. Effective September 1, 2009, the Employer will send a monthly report to the Union of the names of individuals that have retired the previous month. For purposes of this agreement, a retiree shall be defined as a person who has given the Agency written notice that he/she is separating from State service by retirement and that person has actually separated from State service.

## **ARTICLE 11 - ASSOCIATION MEMBERSHIP AND DUES**

Section 1. All applications for Association membership shall be submitted by the employee to the Association. All applications for membership or dues cancellation that the Department receives shall be promptly forwarded to the Association.

Section 2. The Department shall deduct from the wages of employees in the bargaining unit who are members of the Association and who have authorized such deductions a sum equal to Association dues. The deduction shall begin on the first payroll period following such authorization. A listing of dues deducted by the Department for the previous month shall be forwarded to the Association by the third workday of each month with the dues check for the previous month. The listing shall include the employee's name (last, first, middle initial) and amount deducted.

Section 3. The Department shall continue to deduct dues from employees as long as the employee remains on the payroll, except when the employee requests cancellation of the Association membership dues deduction in writing.

Section 4. The Department shall reinstate the payroll deduction of Association dues upon return from leave without pay for those employees who were having dues deducted immediately before taking leave.

Section 5. Dues for part-time employees shall be prorated.

Section 6. The Association shall indemnify and hold the Employer harmless from and against any claims, demands, suits, losses, costs and expenses, including but not limited to attorney fees, incurred by the Employer as a result of action taken by the Employer in compliance with the terms and provisions of this Article.

## **ARTICLE 12 - FAIR SHARE**

Section 1. All employees in the bargaining unit who are not members of the Association shall make fair share payments in lieu of dues paid to the Association.

Section 2. Effective the first day of the month following contract approval, the Department shall deduct from the wages of employees in the bargaining unit who are not members of the Association, an amount equivalent to Association dues. These deductions also will be made from the wages of new bargaining unit employees who do not become members of the Association or from employees who exercise their right to cancel membership. Such deductions will begin on the first payroll period following employment or notice of election. A listing of fair share deductions made by the Department for the previous month shall be forwarded to the Association by the third workday of each month with the payment in lieu of dues check for the previous month. The listing shall include the employee's name (last, first, middle initial) and amount deducted.

Section 3. Bargaining unit members who exercise their right of non-association, if based on a bona fide religious tenet or teaching of a church or religious body of which such employee is a member, shall pay an amount of money equivalent to regular monthly Association dues to a nonreligious charity or to another charitable organization mutually agreed upon by the employee and the Association. At the time of payment, notice of such payment shall simultaneously be sent to the Department and the Association by the employee. Notwithstanding an employee's claim of exemption under this Section, the Department shall deduct fair share from the employee's wages pursuant to this Article, until agreement has been reached between the employee and the Association.

Section 4. The Department shall reinstate the payroll deduction of fair share payments upon return from leave without pay for those employees who were having such payments deducted immediately before taking leave.

Section 5. Fair share payments for part-time employees shall be prorated.

Section 6. The Association shall indemnify and hold the Employer harmless from and against any claims, demands, suits, losses, costs and expenses, including but not limited to attorney

fees, incurred by the Employer as a result of action taken by the Employer in compliance with the terms and provisions of this Article.

### **ARTICLE 13 - EMPLOYEE ASSISTANCE PROGRAM**

Section 1. Employees shall be entitled to participate in the Department Employee Assistance Program (EAP) as long as available and may use accrued sick leave for such participation.

Section 2. Upon Association written request to Administrative Services, the Department shall provide the Association with statistical information provided to management concerning the Department EAP.

### **ARTICLE 14 - PERSONNEL RECORDS**

Section 1. An employee may, upon request, inspect the contents of his/her official Department personnel file except for confidential reports from previous employers. No grievance material shall be kept in the official personnel file. There shall be only one (1) official personnel file kept for each employee.

Section 2. No information reflecting critically upon an employee shall be placed in the employee's official personnel file that does not bear the signature of the employee. The employee shall be required to sign such material to be placed in his/her official personnel file provided the following disclaimer is attached:

"Employee's signature confirms only that the supervisor had discussed and given a copy of the material to the employee, and does not indicate agreement or disagreement."

If the employee is not available within a reasonable period of time or the employee refuses to sign the material, the Department may place the material in the file provided a statement has been signed by two (2) management representatives and a copy of the document was mailed to the employee at his/her address of record and a copy to the Association.

Section 3. If the employee believes that any of the above material is incorrect or a misrepresentation of facts, he/she shall be entitled to prepare in writing his/her explanation or opinion regarding the prepared material. This shall be included as part of the personnel record until the material is removed.

Section 4. An employee may include in his/her official personnel file a reasonable amount of relevant material such as letters of commendation, licenses, certificates, college course credits and other material that reflects credit on the employee.

Section 5. Access to the employee's official personnel file by non-Department employees shall be as authorized by policy, rule or statute or as authorized by the employee.

Section 6. The Employer's failure to comply with any provision of this Article shall not invalidate any disciplinary action or other action taken concerning an employee.

## **ARTICLE 15 - WORKING OUT OF CLASSIFICATION**

Section 1. Employees who have been designated in writing by their attorney-in-charge or division administrator as acting attorney in charge of a section for ten (10) consecutive work days or longer, shall be entitled to receive work-out-of-classification pay.

Section 2. Employees shall be paid five percent (5%) above their current base rate of pay for the full period of the assignment.

## **ARTICLE 16 - RECOUPMENT OF WAGE AND BENEFIT OVERPAYMENTS**

Section 1. In the event that an employee receives wages or benefits from the Department to which the employee is not entitled, regardless of whether the employee knew or should have known of the overpayment, the Department shall recover the overpayment as follows:

- (a) Provide written notice of an overpayment to the employee within ten (10) calendar days from the date of discovery;
- (b) Overpayments of ten percent (10%) or less of an employee's monthly adjusted base salary will be recovered in one (1) lump sum;
- (c) Employees shall make arrangements for the return of overpayments in monthly amounts not to exceed ten percent (10%) of the employee's monthly adjusted base salary through payroll deduction provided that the following conditions apply:
  - (1) The amount of the overpayment exceeds ten percent (10%) of the employee's monthly adjusted base pay;
  - (2) The employee has submitted accurate time and attendance information for the pay period in which the overpayment occurred; and either
  - (3) The employee demonstrates that an economic hardship would result for the employee if a lump-sum repayment were to occur; or
  - (4) The overpayment to be repaid occurred through no fault of the employee over two (2) or more pay periods.
- (d) Nothing in this Section shall preclude an agreement for immediate restitution.
- (e) If an employee leaves the Department prior to full recovery of the overpayment, the balance owing shall be deducted from the employee's final paycheck.

Section 2. This Article does not waive the Department's right to pursue other legal procedures and processes to recoup an overpayment made to an employee at any time.

## **ARTICLE 17 - SALARIES**

### Section 1. Public Employees Retirement System ("PERS") Members.

For purposes of this Section 1, "employee" means an employee who is employed by the State on August 28, 2003 and who is eligible to receive benefits under ORS Chapter 238 for service with the State pursuant to Section 2 of chapter 733, Oregon Laws 2003.

Retirement Contributions. On behalf of employees, the State will continue to "pick up" the six percent (6%) employee contribution, payable pursuant to law. The parties acknowledge that various challenges have been filed that contest the lawfulness, including the constitutionality, of various aspects of PERS reform legislation enacted by the 2003 Legislative Assembly, including Chapters 67 (HB 2003) and 68 (HB 2004) of Oregon Laws 2003 ("PERS

Litigation”). Nothing in this Agreement shall constitute a waiver of any party’s rights, claims or defenses with respect to the PERS Litigation.

Section 2. Oregon Public Service Retirement Plan Pension Program Members.

For purposes of this Section 2, “employee” means an employee who is employed by the State on or after August 29, 2003 and who is not eligible to receive benefits under ORS Chapter 238 for service with the State pursuant to Section 2 of Chapter 733, Oregon Laws 2003.

Contributions to Individual Account Programs. As of the date that an employee becomes a member of the Individual Account Program established by Section 29 of Chapter 733, Oregon Laws 2003 and pursuant to Section 3 of that same chapter, the State will pay an amount equal to six percent (6%) of the employee’s monthly salary, not to be deducted from the salary, as the employee’s contribution to the employee’s account in that program. The employee’s contributions paid by the State under this Section 2 shall not be considered to be “salary” for the purposes of determining the amount of employee contributions required to be contributed pursuant to Section 2 of Chapter 733, Oregon Laws 2003.

Section 3. Effect of Changes in Law (Other than PERS Litigation).

In the event that the State’s payment of a six percent (6%) employee contribution under Section 1 or under Section 2, as applicable, must be discontinued due to a change in law, valid ballot measure, constitutional amendment, or a final, non-appealable judgment from a court of competent jurisdiction (other than in the PERS Litigation), the State shall increase by six percent (6%) the base salary rates for each classification in the salary schedules in lieu of the six percent (6%) pick-up. This transition shall be done in a manner to assure continuous payment of either the six percent (6%) contribution or a six percent (6%) salary increase.

For the reasons indicated above, or by mutual agreement, if the State ceases paying the applicable six percent (6%) pickup and instead provides a salary increase for eligible bargaining unit employees during the term of the Agreement, and bargaining unit employees are able, under then-existing law, to make their own six percent (6%) contributions to their PERS account or the Individual Account Program account, as applicable, such employees’ contributions shall be treated as “pre-tax” contributions pursuant to Internal Revenue Code, Section 414(h)(2).

Section 4. Salaries – Effective July 1, 2007, salary schedules shall be adjusted upward by three percent (3%), but not less than eighty dollars (\$80.00). Effective November 1, 2008, salary schedules shall be adjusted upward by three and two-tenths percent (3.2%), but not less than eighty-five dollars (\$85.00).

Section 5. Selective Salary Increases – In recognition of the need for a selective salary adjustment, management will begin implementation of a new compensation plan effective July 1, 2007. Selective salary adjustments will be pursuant to Appendix A.

Section 6. See attached Letter of Agreement - Step Freeze Advancement and Add/Drop Steps.

**ARTICLE 18 - INSURANCE**

An Employer contribution will be made for each eligible employee who has at least eighty (80) paid regular hours in the month.

The contribution for eligible participating part-time employees with eighty (80) or more hours paid time for the month will be prorated based on the ratio of paid regular hours to full-time hours to the nearest full percent.

Effective January 1, 2009 through December 31, 2009, the Employer shall make a contribution sufficient to cover the premium costs for the PEBB health, dental and basic life benefits chosen by each eligible full-time employee who has at least eighty (80) paid regular hours in a month.

For plan year January 1, 2010 through December 31, 2010, the Employer will increase its monthly contributions by up to five percent (5%) of the actual monthly composite resulting for plan year 2009, should the cost of insurance premiums increase by that amount or more.

For plan year January 1, 2011 through December 31, 2011, the Employer will increase its monthly contributions by up to five percent (5%) of the actual monthly composite resulting from plan year 2010.

Should rates for 2010 or 2011 exceed the employer contribution, the parties shall jointly petition the Public Employees Benefit Board to use reserve funding to support any premium increase above five percent (5%) during either plan year.

The parties may jointly petition the PEBB to do as follows: Employees who live in counties where the PEBB considers there to be an insufficient number of preferred primary care providers within the PPO network will receive the same level of benefits when they use a non-preferred primary care provider as they would using a preferred primary care provider.

## **ARTICLE 19 - TRAVEL, MILEAGE AND MOVING EXPENSE REIMBURSEMENT**

Section 1. Travel and Mileage Allowance. Reimbursements and procedures will be in accordance with Oregon Accounting Manual, Policy No. 40.10.00PO, and its successors. Changes in this policy will be automatically incorporated into Article 19.

Section 2. Moving Expenses. Reimbursements and procedures will be in accordance with the Department of Administrative Services, Human Resource Services Division Policy 40.055.10, and its successors. Changes in this policy will be automatically incorporated into this contract.

## **ARTICLE 20 - FEES; HONORARIA**

An employee shall not accept fees or honoraria for speeches, lectures or teaching that are related to the operations of the Department without the prior approval of the Attorney General or designee. Such approval shall not be unreasonably withheld or delayed.

## **ARTICLE 21 - CONTINUING LEGAL EDUCATION**

Section 1. The Department encourages the professional development of its staff through provision of in-house CLE programs and by paying the cost of outside programs, subject to the availability of funds budgeted by the Department for CLE expenses. Each Division Administrator (other than the Administrator of DCS) will be given a biennial budget for attorney CLE expenses. Such budget may be modified by the Associate Attorney General as he/she determines necessary, based on the Department's financial condition. Each Administrator will review and approve CLE requests for attorneys within his or her division in a manner consistent with the guidelines set forth below. Administrative Services will provide each Division with a quarterly accounting of CLE expenditures, indicating the amount remaining in

each division's budget. Out-of-state travel requires approval by the Associate Attorney General.

Section 2. In-House CLEs.

- (a) The Department shall apply for approval from the Oregon State Bar for providing CLE courses. The Department will provide at least thirty (30) hours of approved CLE credit per calendar year, to include not less than two (2) hours of approved ethics credit. The Department will encourage each Division after coordinating with the CLE Committee to present at least four (4) hours of approved CLE courses per calendar year that are relevant to the work of the attorneys in each of that Division's sections. All section-specific CLEs will be available to all DOJ attorneys.
- (b) The Department shall continue to maintain an in-house CLE library of all Department-wide CLE courses. Where feasible, the Department will offer CLEs in multiple formats.

Section 3. Outside CLEs.

- (a) Guidelines for attendance at outside CLEs shall be as follows:
  - (1) In general, attorneys should meet MCLE requirements through in-house CLEs.
  - (2) Attorneys should not use State funds to attend outside CLEs if they already have sufficient hours to meet MCLE requirements.
  - (3) Content of CLE must be relevant to the attorney's work assignment or to the goals outlined in the attorney's annual evaluation.
  - (4) If a Division Administrator approves an outside CLE and there is no annual pass or other cost-reduction available within the Division, the Division Administrators of other Divisions will cooperate by allowing the attorney to use any pass or other cost-reduction that is available.
- (b) Subject to the sub-item 3(a)(3) and to the extent permitted by the operational needs of the Department, attorneys will be given approval to attend one CLE per year, whether in state or out of state, where an agency or other organization is willing to assume such costs.

Section 4. Exceptions to the above guidelines and expenditures beyond each Division's budget must be approved in advance by the Associate Attorney General.

**ARTICLE 22 - BAR DUES**

The Department shall pay the cost of Oregon State Bar dues plus dues for membership in up to two (2) OSB sections for each employee. Upon the receipt of an employee's written request to Admin Services, the Department shall pay the cost of one (1) local bar association for each employee as provided below.

If the employee chooses to join the local bar association of his/her primary office location, the Department will pay the full cost. If the employee chooses to join a bar association other than his/her primary office location, the Department will pay up to the cost of the Marion County Bar Association dues.

Subject to recommendation by the Division Administrator and approval of the Attorney General or designee, taking into consideration the operational needs of the Department, bar dues for other states and additional section dues may be paid by the Department.

## ARTICLE 23 - BAR CONVENTION ATTENDANCE

The Department seeks to ensure that the maximum number of Department Attorneys be permitted to attend the Oregon State Bar Convention, consistent with budgetary constraints, and to the extent permitted by the operational needs of the Department. Approval of attendance at the Bar Convention and the reimbursement of expenses shall be in accordance with Department Policy 3-33(1), in effect on January 17, 1996.

## ARTICLE 24 - BAR COMPLAINTS

Section 1. Under ORS 180.060(1)(d), the Attorney General shall provide counsel and represent an Assistant Attorney General in responding to complaints filed or disciplinary proceedings commenced by the Oregon State Bar under the authority of ORS 9.527-536 and rules of the Oregon Supreme Court, when in his/her discretion the Attorney General believes that such defense is necessary or advisable to protect the interests of the State, under the following conditions or substantial equivalent:

- (a) Upon the request of the Attorney charged, approved by the supervisor of that Attorney;
- (b) Waiver by the Attorney charged of the attorney client privilege as to any facts relevant to any separate proceedings in which the State also has an interest, e.g., defense of a tort claim, termination of employment; and
- (c) The conduct which is the subject of the complaint was in accordance with:
  - (1) Department ethics policy or procedure or an opinion of the Department of Justice Ethics Committee;
  - (2) The direction of a supervisor; or
  - (3) Was apparently within the proper scope and discretion of the duties assigned.

In any disciplinary proceeding involving a complaint against an Assistant Attorney General which is not covered under the first paragraph of this Section, at the request of the attorney charged, the Attorney General shall evaluate the basis for the charges and may provide counsel and representation in the proceeding for the attorney charged if the Attorney General concludes that the Attorney's actions were consistent with Bar disciplinary rules and Department ethics policies.

Section 2. Failure of the Attorney General to appear under Section 1 above shall not preclude appearance in any amicus capacity if such an appearance is deemed necessary or advisable by the Attorney General to protect the interests of the State.

Section 3. Any decision to appear under Section 1 or 2 above shall be made by either the Attorney General or the Deputy Attorney General. Requests for any such action shall be addressed to the Deputy Attorney General.

Section 4. Attorneys who anticipate a Bar disciplinary proceeding or issue arising out of a particular matter involving their personal conduct should advise the Deputy Attorney General in a timely manner.

Section 5. Nothing in Sections 1-4 shall be construed to or suggest that the Attorney General may defend persons charged in criminal proceedings or ethics matters under ORS Chapter 244.

Section 6. The Attorney General reserves the right to withdraw from an appearance made under Sections 1-4 when in the Attorney General's discretion such action is necessary or advisable.

Section 7. The Attorney General shall not undertake representation of any Assistant Attorney General if such representation would be in violation of Disciplinary Rule of Procedure 2.1.

## **ARTICLE 25 - PROFESSIONAL WORKWEEK**

Section 1. Attorneys are exempt from FLSA overtime provisions and are expected to work a professional workweek on a salaried basis. The parties recognize that business hours for law offices and for most governmental agencies, including the courts, are from 8:00 a.m. to 5:00 p.m., Monday through Friday, which generally requires that, during this time, the legal staff of the Department of Justice be available to agencies and other DOJ staff in order to perform timely and effective legal services.

### Section 2.

(a) Attorneys may request approval to work a schedule that is different from the normal business hours of the Department, such as a schedule regularly beginning at 7:00 a.m. and ending at 4:00 p.m.

(b) Attorneys may request to work a part-time work schedule provided that such schedule is not less than one-half (1/2) time and that the attorney takes responsibility for the effective and prompt servicing of clients and matters under that attorney's supervision.

(c) In consultation with the Attorney In Charge, a Division Administrator shall have the discretion to approve such requests after considering the following factors:

(1) The personal needs of the Attorney making the request;

(2) The operational needs of the Department. For purposes of this Article, operational needs includes the needs of the Department, division, work unit and client agencies, as determined by the Division Administrator, in consultation with the Attorney In Charge.

(d) The Agency will periodically review attorney alternative work schedules.

(e) An attorney who is approved to work an alternative schedule will be required to maintain billable hours expectations.

Section 3. Such discretion shall not be unreasonably withheld.

Section 4. Alternative schedules may be terminated after considering the above factors whenever, in the judgment of the Division Administrator, the needs of the Department so require.

## **ARTICLE 26 - JOB ROTATIONS**

Section 1. Job rotation is any temporary change in job assignment requested by an Assistant Attorney General for a designated period of time after which the Assistant Attorney General shall resume his/her original job assignment.

Section 2. Job rotations as defined in this Article shall be made at the discretion of the Attorney General or designee.

## **ARTICLE 27 - ADMINISTRATIVE LEAVE**

Section 1. Assistant Attorneys General are not entitled to overtime pay or to hour-for-hour compensatory time. Both parties recognize that some positions require longer or more irregular hours than others. However, the Department recognizes that the time demands of a particular case or project may require such extraordinary hours that some time off is necessary and fair without requiring use of accrued leave for a needed break.

Section 2. Administrative leave may be granted by the Attorney In Charge or the Division Administrator.

- (a) Examples of circumstances in which administrative leave may be considered are:
  - (1) An assignment that requires the Attorney to work substantial additional time in order to complete the assignment within an extremely short time period.
  - (2) A case or administrative proceeding that requires the Attorney to work substantial additional time over a sustained period of time.
- (b) Administrative leave may not be granted under this Article for:
  - (1) Occasional night or weekend work.
  - (2) Working extended hours, including weekends, where it is not required by the demands of a particular project.

Section 3. An Attorney In Charge or a Division Administrator may approve no more than two (2) consecutive days of leave under this Article in any particular circumstances. Any exceptions to the time limit contained in this Section must be approved by the Associate Attorney General.

## **ARTICLE 28 - PERSONAL LEAVE**

Section 1. All employees after completion of six (6) full calendar months of service shall be entitled to receive personal leave days in the following manner:

- (a) All full-time employees shall be entitled to twenty-four (24) hours of personal leave with pay each fiscal year.
- (b) Part-time employees shall be granted such leave in a prorated amount of twenty-four (24) hours based on the same percentage or fraction of month they are hired to work, or as subsequently formally modified, provided it is anticipated that they will work 1,040 hours during the fiscal year.

Section 2. Should any employee fail to work 1,040 hours for the fiscal year, the value of personal leave time used may be recovered from the employee.

Section 3. Personal leave shall not be cumulative from year to year, nor is any unused leave compensable in any other manner.

Section 4. Such leave may be used by an employee for any purpose he/she desires and may be taken at times mutually agreeable to the Department and the employee.

## ARTICLE 29 - SICK LEAVE

### Section 1. Eligibility for and Use of Sick Leave.

(a) An employee, upon initial appointment to State service, is eligible to receive and use an advance of ninety-six (96) hours of accrual. Otherwise, an employee may use accrued sick leave with pay on or after the first of the month following the month of accrual. The accrual may be used for personal or a family member's illness, medical or dental care, injury, or death or any period of absence from employment qualifying as family or medical leave under HRSD Policy 60.000.15.

(b) If the absence from employment is qualifying under Family and Medical Leave Policy 60.000.15, "family member" is defined in the applicable leave law. Otherwise, "family member" is defined as spouse and parents thereof; children, including adopted children, and spouses thereof; parents; brothers and sisters and spouses thereof; and any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

(c) Certification of an attending physician or practitioner may be required by the Department.

### Section 2. Accrual Rate.

(a) A full-time employee shall accrue eight (8) hours of sick leave per month.

(b) A full-time employee on leave without pay or a part-time employee shall accrue sick leave on a pro rata basis.

(c) Actual time in paid status, except for educational leave, shall be included in determining the pro rata accrual of sick leave each month.

### Section 3. Transfer of Sick Leave Hours.

(a) When an employee transfers to another position in State service not covered by this Agreement, the employee's unused sick leave accrual shall transfer to the gaining agency if allowed by that agency's applicable rules or collective bargaining agreement.

(b) When an employee transfers to a position covered by this Agreement from a position in State service not covered by this Agreement, the employee's unused sick leave accrual shall transfer to the Department.

(c) If the employee came from another public employer within the State of Oregon because its functions were assumed by the Department, the Department, upon appointing the employee without a break of more than fifteen (15) calendar days, shall accept the amount of unused sick leave accrued during the employee's tenure with the public employer as long as the public employer's accrual rate does not exceed the accrual rate of eight (8) hours per month. If the public employer's accrual rate exceeds eight (8) hours per month, the following formulas shall apply:

$$\frac{8 \text{ Hours}}{\text{Previous Accrual Rate}} \times \text{Sick Leave Balance at Previous Employer} = \text{Maximum Sick Leave Assumable}$$

Section 4. Sick Leave Upon Separation. No compensation for unused sick leave hours shall be allowed upon separation except as provided in the applicable provisions of the Public Employees Retirement Act. Upon separation, if an employee has used sick leave in excess of the amount accrued, the equivalent dollar amount will be deducted from the final paycheck.

Section 5. Restoration of Sick Leave Upon Rehire. An employee who separates from State service and returns within two (2) years shall have unused sick leave hours accrued during previous employment restored.

Section 6. Coordination with Workers' Compensation. An employee shall exhaust accrued paid leave beginning with sick leave and then other paid leave in any sequence (vacation and personal) before electing leave without pay during any period of time loss due to a work-related injury or illness. Prorated charges shall be made against accrued leave based on the difference between the time loss payment and the employee's regular salary rate.

Section 7. Sick Leave Acquired by Donated Vacation Leave. The Department will establish and administer a donated leave program that:

- (a) Allows any employee who, as a result of extended or catastrophic illness and/or injury to the employee or family member, has exhausted all accumulated leave (sick, vacation and personal) and is not receiving workers' compensation benefits or PERS retirement benefits to receive donated leave;
- (b) Allows an employee, within the same agency, to voluntarily donate vacation leave in increments of one (1) hour or more to an eligible Department employee's sick leave account, based on the conversion of the donor's salary rate to sick leave hours at the donee's salary rate;
- (c) Allows an eligible donee employee to receive up to a maximum of four hundred eighty (480) hours converted hours (sixty (60) days) of donated leave per calendar year;
- (d) Prohibits the donor from recovering any unused hours from the donee's sick leave account;
- (e) Requires documentation, including the donor's signature and verification of need;
- (f) Allows exceptions to the above provisions by approval of the Attorney General.

### **ARTICLE 30 - LEAVE OF ABSENCE WITH PAY**

The State of Oregon recognizes that certain employee leaves are either directly or indirectly beneficial to the State and therefore qualify as paid leave. Employees shall receive the following paid leave:

Section 1. Military Training Leave With Pay. An employee shall be granted military training leave with pay, identified by a copy of the military training orders furnished by the employee, for a period not exceeding fifteen (15) calendar days or eleven (11) workdays in any federal training year if the employee:

- (a) Has been employed with the State of Oregon or its counties, municipalities or other political subdivisions for six (6) months or more immediately preceding application for military leave, and
- (b) Is a member of the National Guard or reserve component of the United States Armed Forces.

Section 2. World, Pan American, or Olympic Event Training Leave With Pay. A leave-with-pay loan to participate in official training camps and competitions for World, Pan American, or Olympic events may be granted not to exceed ninety (90) calendar days per calendar year. The conditions under which such a loan may be granted shall be in accordance with ORS 243.325-243.335.

Section 3. Jury Service Leave with Pay. An employee shall be granted jury leave upon request. The employee may keep any money paid by the court for jury service.

Section 4. Court, Legislative Committee, or Quasi-Judicial Body Witness Leave of Absence With Pay. An employee shall be granted court, legislative committee, or quasi-judicial body witness leave with pay if such appearance was required by subpoena or other direction by proper authority for matters other than officially assigned duties. The employee may keep any money paid. Money received while performing officially assigned duties shall be Department property unless the appearance was required during off-duty hours.

Section 5. Search and Rescue Operation Leave With Pay. Leave with pay not to exceed five (5) workdays for each operation shall be granted if requested by a law enforcement agency; the Department of Transportation, Aeronautics Section manager; the United States Forest Service; or any local civil defense organization.

Section 6. Job Interview and Testing Leave With Pay. An employee is entitled to up to two (2) hours leave with pay per instance to take examinations for other State positions or to interview for other State positions, including interviews for transfers, promotions, or voluntary demotions. Time in excess of two (2) hours may be charged to personal leave or to vacation time, or to unpaid leave if no paid leave is available to the employee.

Section 7. Preretirement Counseling Leave With Pay. Leave with pay for an employee to investigate and assemble a retirement program may be granted by the appointing authority, for a period up to three and one-half (3-1/2) days of leave within three (3) years of the chosen retirement date.

Section 8. Red Cross Disaster Relief Services Leave With Pay. Leave with pay not to exceed fifteen (15) work days may be granted to an employee to participate in disaster relief services in Oregon. To qualify for such leave, the employee shall be a certified disaster services volunteer of the American Red Cross.

Section 9. Education Leave With Pay. The Attorney General may grant education leave with pay for up to one (1) year for education or research projects directly related to the employee's assignment with the Department.

Section 10. Bereavement Leave. Regardless of donated leave or sick leave eligibility criteria, employees shall be eligible for a maximum of twenty-four (24) hours paid bereavement leave in order to discharge the customary obligations arising from the death in the immediate family. The definition of 'immediate family' shall be the same as used in Article 29, Section I (Sick Leave) of the agreement. The Agency may request documentation. Bereavement leave shall be prorated for part-time employees. If additional leave is needed to discharge the customary obligations arising from the death in the immediate family, an employee may request to use accrued sick leave hours, leave without pay or accrued vacation hours. Employees may be eligible to receive up to forty (40) hours of donated leave, to be used consecutively. The employee must exhaust all available accrued leave to qualify to receive donated leave.

## **ARTICLE 31 - LEAVE OF ABSENCE WITHOUT PAY**

Section 1. An employee shall be entitled to military leave without pay as required by federal and State law.

Section 2. An employee may request and shall be granted leave without pay for the time required to make an appearance as a plaintiff or defendant in a civil or criminal court proceeding that is not connected with the employee's officially assigned duties.

Section 3. At the discretion of the Attorney General, an employee may be granted temporary leave of absence without pay for:

- (a) Work as a loaned employee to another State agency for performance of a specific assignment;
- (b) Service in connection with an American Bar Association sponsored activity; and/or
- (c) For any other purpose approved by the Attorney General or designee.

Section 4. An employee who has worked for the Department for more than five (5) years may, with the approval of the Department, take up to one (1) year of unpaid leave on sabbatical for any purpose, and upon return shall be entitled to return to the Department in the same classification at the current salary rate for such classification. This provision shall not be construed to prevent the Department from granting leave without pay before five (5) years of Department service. An unpaid leave of absence will not be granted to any employee who is accepting some other position in State government; who is leaving State employment to enter other outside employment; or who does not intend to, nor can reasonably be expected to, return to State employment on or before the expiration of the unpaid leave of absence.

Section 5. An employee shall use appropriate accrued leave before using leave without pay except when:

- (a) Prohibited by federal or State law; or
- (b) This requirement is waived by the Attorney General or designee, upon specific request of the employee, due to extenuating or unusual circumstances related to the nature of the approved leave purpose.

Section 6. During periods of unpaid leaves an employee shall:

- (a) Receive such benefits as required by federal and State laws; and
- (b) Not accrue sick leave or vacation leave.

Section 7. Leaves of absence up to one (1) year shall not be considered a break in service.

## **ARTICLE 32 - PARENTAL LEAVE**

A parent shall be granted leave in accordance with State and federal laws.

## **ARTICLE 33 - VACATION LEAVE**

Section 1. Vacation Leave Accrual.

- (a) Vacation leave shall accrue as follows:

<u>Months Worked</u>	<u>Accrual Rate</u>
First month through 60 <sup>th</sup> month	10.00 hours per month
61 <sup>st</sup> month through 120 <sup>th</sup> month	11.34 hours per month

121 <sup>st</sup> month through 180 <sup>th</sup> month	13.34 hours per month
181 <sup>st</sup> month through 240 <sup>th</sup> month	15.34 hours per month
241 <sup>st</sup> month through 300 <sup>th</sup> month	17.34 hours per month
After 300 <sup>th</sup> month	18 hours per month

- (b) An employee, upon initial appointment to State service, is eligible to receive and use an advance of forty (40) hours of accrual.
- (c) An employee may take accrued vacation leave on or after the first of the month following the month in which it is accrued, except as and may be further allowed in subsection (b).
- (d) A part-time employee, a full-time employee on leave without pay, or an employee beginning work after the first working day of the month shall accrue vacation leave on a pro rata basis.

Section 2. Vacation Leave Application. An employee shall be eligible to use accrued vacation leave for any period of absence from employment qualifying as family or medical leave under HRSD Policy No. 60.000.15, Family and Medical Leave.

Section 3. Determination of Service for Pro Rata Accrual. Actual time in paid status, except for educational leave, shall be included in determining the pro rata accrual of vacation each month.

Section 4. Determination of Service for Recognized Service Date.

(a) Each employee shall be assigned a recognized service date representing length of service for vacation accrual rate adjusted for breaks in service.

(b) Time spent in the exempt, unclassified, academic unclassified, classified, and management service and time spent on paid leave or on Peace Corps, military, educational, mobility, or job-incurred time loss or other qualifying family and medical leaves covered by Policy 60.000.15 without pay shall be considered as time in the State service in determining the recognized service date.

Section 5. Restoration of Vacation Accrual Rate Upon Rehire. An employee who separates from State service and returns within two (2) years shall be given credit toward additional vacation accrual rates for service prior to separation.

Section 6. Accumulation of Vacation Leave. An employee who has accrued the maximum three hundred fifty (350) vacation leave hours authorized may request use of vacation leave to prevent its loss. An appointing authority, upon determining that granting of vacation leave is not appropriate, may make cash payment for not more than forty (40) hours. Vacation leave for which payment is made shall be cancelled.

Section 7. Use of Leave. Vacation leave may be utilized with prior approval of the designated supervisor at a time mutually acceptable to the Department and the employee and consistent with the operating requirements of the Department, except as otherwise provided by HRSD Policy No. 60.000.15, Family and Medical Leave.

Section 8. Retention of Vacation Leave Hours Upon Transfer. Whenever an employee accepts an appointment to a position not covered by this Agreement, any portion of the employee's accrued vacation leave hours not assumed by the gaining agency shall be compensated to the employee in cash by the Department to a maximum of two hundred fifty (250) hours.

Section 9. Vacation Pay Upon Separation. An employee who separates after six (6) months of State service shall be paid for not more than two hundred fifty (250) unused vacation leave hours. Any hours beyond the two hundred fifty (250)-hour cap not paid under Section 6 shall be lost. Any employee on a military leave of absence without pay may, at the option of the employee, either be paid for unused vacation leave hours or retain them on the agency leave records.

Upon separation, if an employee has used vacation leave in excess of the amount accrued, the equivalent dollar amount will be deducted from the final paycheck.

Section 10. Donation of Vacation Leave. An employee, having a minimum of six (6) months of State service, may voluntarily donate vacation leave, in increments of one (1) hour or more, to an individual employee for whom a donated leave bank has been established, in accordance with Article 29, Sick Leave.

## **ARTICLE 34 - HOLIDAYS**

Employees shall receive the following legal compensable holidays:

### Section 1. Legal Holidays.

- (a) The following are legal compensable holidays:
- (1) New Year's day on January 1;
  - (2) Martin Luther King's Birthday on the third Monday in January;
  - (3) President's Day on the third Monday in February;
  - (4) Memorial Day on the last Monday in May;
  - (5) Independence Day on July 4;
  - (6) Labor Day on the first Monday in September;
  - (7) Veterans Day on November 11;
  - (8) Thanksgiving Day on the fourth Thursday in November;
  - (9) Christmas Day on December 25;
  - (10) Every day appointed by the Governor as a holiday;
  - (11) Every day appointed by the President of the United States as a day of mourning, rejoicing, or other special observance only when the Governor also appoints that day as a holiday.

### Section 2. Application of Holiday Pay.

(a) A full-time employee shall be granted eight (8) hours time off with pay for each legal holiday. A full-time employee on leave without pay shall be granted time off with pay on a pro rata basis for each legal holiday.

(b) A part-time employee shall be granted time off with pay on a pro rata basis for each legal holiday.

Section 3. A holiday which occurs during vacation or sick leave shall not be charged against such leave.

Section 4. Whenever a holiday falls on Sunday, the following Monday shall be recognized as a holiday, and whenever a holiday falls on Saturday, the preceding Friday shall be recognized as a holiday. However, a day appointed by the Governor as a holiday or a day appointed by the President of the United States as a day of mourning, rejoicing or other special observance, which day the Governor also appoints as a holiday, shall be observed on the day appointed.

Section 5. When a designated holiday falls on an employee's regularly scheduled day off, other than Saturday or Sunday, the holiday shall be subsequently rescheduled, if possible, to another day within the same pay period but no later than during the following pay period.

Section 6. When a holiday occurs on what would normally be the first or last workday of the pay period, an employee who is hired on the first workday or who separates on the last workday shall receive pay for the holiday.

Section 7. In addition to the holidays specified in this Article, full-time employees shall receive eight (8) hours of paid leave. Part-time employees shall receive a prorated share of eight (8) hours of paid leave. Paid leave granted in this Section shall be accrued by all employees employed as of the day before Thanksgiving or Christmas of each year. Employees who are employed as of the day before Thanksgiving may request the option of using this paid leave on the workday before or after Thanksgiving, Christmas, or New Year's Day. Employees who become employed after Thanksgiving but before Christmas may request the option of using this paid leave on the workday before or after Christmas or the workday before or after New Year's Day. If the employee chooses not to take one of the aforementioned days, another day may be mutually agreed upon, provided such time is taken off by January 5<sup>th</sup> of the following year.

Section 8. Attorneys who are directed by their manager to work on a holiday shall be compensated at time and one-half (1-1/2) in addition to their regular pay for the holiday.

## **ARTICLE 35 - LABOR/MANAGEMENT COMMITTEE**

Section 1. To facilitate communication between the parties, a joint labor/management committee shall be established.

Section 2. The Department committee shall be composed of up to four (4) employee members appointed by the Association and up to four (4) members of management, unless mutually agreed otherwise.

Section 3. The committee shall meet when necessary, but not more than three (3) hours per meeting or more than once each calendar quarter. The first meeting shall be ninety (90) days after the parties have executed a labor contract. Subsequent meetings shall be established by mutual agreement of the parties.

Section 4. The committee shall prepare a written agenda ten (10) days in advance of any scheduled meeting.

Section 5. Department employees appointed to the committee shall be paid during time spent in committee meetings. Approved time spent in meetings shall not be charged to leave credits.

Section 6. The committee shall meet and confer on issues relating to the operations of the Department. The committee shall not have the authority to negotiate on mandatory subjects of bargaining. The committee shall have no power to contravene any provision of this Agreement or to enter into any agreements binding on the parties to this Agreement.

## **ARTICLE 36 - SAFETY AND HEALTH**

Section 1. The Department will abide by standards of safety and health in accordance with the Oregon Safe Employment Act (ORS 654.001 to 654.295 and 654.991).

Section 2. The Department shall comply with the provisions of OAR 437-127, Medical Services and First Aid.

Section 3. If an employee claims that an assigned job, vehicle or equipment is unsafe under Oregon Safe Employment Act standards and for that reason refuses to do the job or use the vehicle or equipment, the employee shall immediately give specific reason(s) in writing to his/her Attorney In Charge. The Attorney In Charge will request an immediate determination by the Department safety officer or designee, or, if none is available, by OR-OSHA of the Department of Consumer and Business Services as to whether the job, vehicle or equipment is safe or unsafe.

Section 4. Pending determination provided for in Section 3, the employee shall be given another vehicle or equipment or other work. If no work is available the employee shall be sent home. Time lost by the employee as a result of refusal to perform work on the grounds that it is unsafe under Oregon Safe Employment Act standards shall be paid by the Department if the employee's claim is upheld by the Department safety officer or designee or the Department of Consumer and Business Services.

## **ARTICLE 37 - SECURITY**

Section 1. The Department shall provide a safe work area for employees covered by this Agreement to the extent the Department determines to be reasonable and appropriate.

Section 2. The Department and the Association agree to cooperate to educate all employees about the need for security consciousness.

Section 3. The Department shall establish procedures to immediately and safely evacuate employees from the work site whenever the Department determines that there is a threat to personal safety.

Section 4. When it is necessary to evacuate from any work location, the Department must determine the location is safe before instructing and/or allowing employees to return to work. In no event shall a represented employee be required to enter an evacuated area for any purpose, prior to the time the location has been determined to be safe.

## **ARTICLE 38 - INCLEMENT CONDITIONS**

Section 1. When in the judgment of the Department, weather conditions require the closure of the work location after an employee reports to work, the employee shall not be required to use accrued leave for the remainder of the workday.

Section 2. The Department may notify employees not to report to work because of inclement weather or hazardous conditions. In such cases the Department, either directly or through the Department of Administrative Services announcement, will use radio or television announcements to attempt to notify employees of the closure prior to their leaving home. The Department shall notify all employees of the radio and television stations where such information may be found by a posting on the Department's intranet.

Section 3. If the Department gives notice of closure of a work location before the beginning of a workday and an employee is not otherwise approved to be on pre-scheduled leave or authorized to report to a different work location, the employee shall not be required to use accrued leave for the day of the closure.

Section 4. If local conditions in the vicinity of the employee's residence make travel to the work location hazardous, the employee shall notify the employee's supervisor that the employee is unable to report or will be late in reporting for work. The employee shall use accrued leave or leave without pay during the period that the employee's work is curtailed due to the hazardous conditions, unless the employee arranges with the Attorney In Charge to perform his or her work assignment in another way, such as working at home, working at another State office or performing work at another time.

Section 5. An employee may be required to use accrued leave when closure of a work location applies to that employee for a full workweek.

## **ARTICLE 39 – DISCIPLINE AND DISCHARGE**

Section 1. Weingarten Rights. Upon request, an employee shall have the right to Association representation during an investigatory interview that an employee reasonably believes will result in disciplinary action. The employee will have the opportunity to consult with a local Association steward or an AFSCME Council Representative before the interview, but such consultation shall not cause an undue delay.

Section 2. In accordance with ORS 180.140(1), assistant attorneys general are appointed by and serve at the pleasure of the Attorney General. Nevertheless, the principles of progressive discipline will be used as deemed appropriate by the Attorney General. Attorneys may be disciplined and removed by the Attorney General, subject only to the condition that no attorney shall be disciplined or discharged without "due process." For the purpose of this Agreement, "due process" shall be defined in subsections (a) and (b) of this Section, as follows:

- (a) Prior to the effective date of dismissal, an economic sanction (meaning a suspension without pay in full-week increments or a demotion where the Attorney General deems appropriate), or a written reprimand, the attorney shall be apprised in writing of the reasons for the discipline and have an opportunity to meet with the Attorney General, or deputy Attorney General, or associate Attorney General, to offer reasons why the attorney believes the discipline should not occur. The attorney shall have the right to request the presence and assistance of an Association representative at the meeting.

- (b) The parties understand that the meeting referred to in this Section is not a hearing. The Attorney General, deputy Attorney General, or associate Attorney General, shall control the conduct of the meeting.

Section 3. The Attorney General shall be the final arbiter of the question whether sufficient grounds exist for removal or discipline of an attorney in any particular case. In a contract enforcement proceeding under ORS 243.672, the Employment Relations Board shall have no authority to substitute its judgment for that of the Attorney General on that question or order an attorney's reinstatement or provide any monetary or other relief based upon a finding that the decision was without "cause." The matter for review in such a proceeding is whether the attorney was disciplined or dismissed without "due process" as defined in this Agreement. The Employment Relations Board shall have no authority to rule contrary to, to amend, add to, subtract from, change, or eliminate any of the terms of this Agreement.

Section 4. The provisions of this Article shall not be grievable under Article 40, Grievance and Arbitration Procedure.

## **ARTICLE 40 – GRIEVANCE AND ARBITRATION PROCEDURE**

Section 1. Grievances are defined as acts, omissions, applications or interpretations alleged to be violations of the terms and conditions of this Agreement. Employees are encouraged to resolve their problems informally at the immediate supervisor level. If such problems cannot be resolved, he/she may avail himself/herself of the following procedure. A grievance shall not be expanded upon after being filed at Step Two.

### Section 2. Grievance Steps.

(a) Step One. An employee, with or without Association representation, may submit a written grievance containing the date of occurrence, the act or omission that created the grievance, the Article and Section of the contract violated and the remedy desired within thirty (30)-calendar days of the alleged occurrence to the Division Administrator. The Division Administrator's response shall be due in writing within fifteen (15)-calendar days of receipt of the appeal.

(b) Step Two. If the grievance is not resolved by the Division Administrator's response, the Association may submit the written grievance to the Attorney General or designee within fifteen (15)-calendar days from the response to Step One. The Attorney General or designee shall, within fifteen (15)-calendar days, make a written response.

The Attorney General shall be the final arbiter of any grievance based upon an alleged violation of Articles 7, 9, 20, 24, 25, 26 Section 2; 30 Section 9; 31 Section 3 and 4. The grievance procedure provided in Steps One and Two is the exclusive process and remedy of redress of any grievance based upon an alleged violation of the Articles (or portions thereof) identified in this paragraph. The decision or action grieved and the Attorney General's decision on review of a grievance under this paragraph shall not be subject to review by the Employment Relations Board under ORS 243.672(1)(g).

(c) Step Three. Grievances not resolved at Step Two, except for grievances alleging violations of the articles, or portions of articles listed in Section 2(b) above, may be filed by the Association with the Labor Relations Unit of the Department of Administrative Services within fifteen (15)-calendar days of the receipt of the Attorney General's decision. The Labor Relations Unit response to the grievance shall be due within fifteen (15)-calendar days.

Section 3. If the grievance is not resolved by the Labor Relations Unit, the Association shall simultaneously advise the Attorney General and the Labor Relations Unit, in writing, within ten (10) days of receipt of the Labor Relations Unit response, that it desires arbitration of the grievance.

Section 4. In the event that arbitration becomes necessary, the Association and the Employer shall select an arbitrator by alternatively striking names from a list of five (5) arbitrators requested from the Employment Relations Board. The moving party shall strike first. The name remaining on the list shall be accepted by the parties as the arbitrator unless mutually agreed otherwise.

Section 5. The parties agree that the decision or award of the arbitrator shall be final and binding on each of the parties and that they will abide thereby. The parties do not waive any right of review provided by law. The arbitrator shall have no authority to add to or subtract from or change or modify any of the terms of this Agreement. The arbitrator's award shall be due to the parties within thirty (30) calendar days of the close of the hearing unless mutually agreed otherwise.

Section 6. The arbitrator's fees and expenses shall be paid by the losing party. If, in the opinion of the arbitrator, neither party can be considered the losing party, then such expenses shall be apportioned as in the arbitrator's judgment is equitable. All other expenses shall be borne exclusively by the party requiring the service or item for which payment is to be made.

Section 7. Time limits specified in this procedure must be observed unless either party requests a specific extension of time which, if agreed to, shall be stipulated in writing and shall become part of the grievance record. If management fails to issue a response within the time limits set forth in this Article, the Association may advance the grievance to the next step of the grievance procedure, if another step is provided under this Article. If the grievant or Association fails to meet the specified time limits, the grievance will be considered withdrawn and cannot be resubmitted.

## **ARTICLE 41 – BILLABLE HOURS**

The parties acknowledge that the Department has set a standard for full-time employees to reach 1,638 billable hours of work each year. In addition to matters that are billed to a client agency or fund, billable hours shall also include:

- Administrative Law Manual Preparations: Researching, writing and editing the Administrative Law Manual.
- Alternative Dispute Resolution Manual: Researching, writing and editing the Alternative Dispute Resolution Manual.
- Amicus: Reviewing and researching requests that the State appear as amicus. Reviewing, researching, drafting and arguing amicus briefs not billed to a client agency or fund.
- Attorney Relations Committee: Attending Attorney Relations Committee meetings including travel time. Time recorded by OAJA representatives should be only for time spent in the Committee's meetings and travel time, or as mutually agreed upon by ARC members.

- **Ballot Title Preparation and Review:** All legal work connected with ballot titles (e.g., preparing draft and final ballot title, responding to legal challenges). Each ballot title will be assigned a separate matter number for tracking purposes.
- **CLE Presentations within DOJ:** Billable hour credit will be equivalent to Oregon State Bar credit for CLE presentation to DOJ attorneys.
- **Legislative Requests:** Responding to requests from legislators, legislative staff, and the governor's office, including research, informal advice and briefings. Attorneys must notify their AIC upon receipt of such requests. Formal opinion requests must have the approval of legislative leadership and are billed to Legislature.
- **Other Legislative Activities:** Preparing legislation and background information on DOJ bills, appearing before legislative committees on DOJ bills, and participating in department activities related to legislation, at the request of a DOJ manager, or DOJ press or legislative liaison.
- **Personnel Matters – Advisory to DOJ:** Reviewing issues and advising DOJ on non-SED personnel issues. Generally will be used only by Labor and Employment Section.
- **Public Contract Manual:** Researching, writing and editing the Public Contract Manual.
- **Public Law Conference:** Preparing and conducting sessions of the Public Law Conference.
- **Public Meetings & Records Manual:** Researching, writing and editing the Public Records and Meeting Manual.
- **DOJ Contracting Drafting and Review.**
- All work pertaining to constituents' mail, not to exceed five (5) billable hours per year, assigned by a DOJ manager.
- Other non-billable legal work (e.g., non-billed legal work for DOJ, the governor or legislators) assigned by a DOJ manager.
- DOJ CLE presentation preparations, not to exceed ten (10) billable hours per year, assigned by a DOJ manager
- All new attorneys to the Department or attorneys transferred to a new section or division inside of the Department will have their annual billing expectation reduced by 1/24. The 1/24 reduction in the billable hour expectation shall not apply when a transferred lawyer's duties and areas of expertise remain essentially the same after the transfer, or shall be offset to the extent that the transferred lawyer is able to bill a client any training time associated with the transfer.
- When negotiation sessions and related caucuses are held during normal work hours (8AM-5PM Monday through Friday), such time spent in bargaining and related caucuses will be considered 'on the clock' and credited as billable for a maximum of three (3) members of the Association bargaining team.

Employees who utilize approved leave that qualifies for OFLA or FMLA shall have their billable hours expectations reduced by 6.5 hours for the first fifteen (15) workdays and 6.8 hours for any workday starting with the sixteenth (16<sup>th</sup>) day. Attorneys who work less than a full-time schedule shall have their credited hours prorated.

## **ARTICLE 42 – BILINGUAL DIFFERENTIAL**

When formally assigned in the employee's position description, an employee assigned to interpret to or from another language to English will receive a differential of five percent (5%) of base pay.

### **ARTICLE 43 – REDUCTION IN WORKFORCE**

The Department agrees, to make a grandfather effort and when it is feasible to do so, to provide thirty (30) days advance notice to attorneys and to the Association of its intent to permanently or temporarily reduce its attorney workforce by more than ten (10) attorneys as a result of inadequate funding or for operational reasons. The Department will attempt to provide sixty (60)-days notice of any such layoff, but the Association and Department recognize that such sixty (60) day advance notice may not be possible. This attempted notice will in no way infringe upon the "at will" status of AAGs.

### **ARTICLE 44 – POSTING OF BARGAINING UNIT VACANCIES**

Subject to any court decrees, laws or rules, whenever the agency chooses to fill a vacant bargaining unit position through a competitive process, the Agency shall post the vacancy internally for no fewer than five (5) calendar days. Qualified candidates shall be considered for the appointment. The applications of internal candidates shall be segregated from external candidates and the applications of the internal candidates shall be reviewed first.

Signed this \_\_\_\_ day of \_\_\_\_\_, 2009, at Salem, Oregon.

FOR THE STATE OF OREGON

FOR THE OREGON ASSOCIATION OF  
JUSTICE ATTORNEYS

\_\_\_\_\_  
Scott L. Harra, Director  
Department of Administrative Services

\_\_\_\_\_  
Marc Abrams, President  
Oregon AFSCME, Council 75

\_\_\_\_\_  
John Kroger, Attorney General

\_\_\_\_\_  
Colleen Savage, Council Representative  
AFSCME Council 75

\_\_\_\_\_  
Diana L. Foster, Administrator  
Human Resource Services Division

\_\_\_\_\_  
Judith Anderson, Team Member

\_\_\_\_\_  
Mary Williams, Deputy Attorney General

\_\_\_\_\_  
Jennifer Chapman, Team Member

\_\_\_\_\_  
Craig Cowan, State Labor Relations Mgr.

\_\_\_\_\_  
Don Arnold, Counsel to the Attorney General

\_\_\_\_\_  
Loren Collins, Chief Trial Counsel

\_\_\_\_\_  
Frank Connell, Senior Assistant Attorney General

## **LETTER OF AGREEMENT STEP FREEZE ADVANCEMENT AND ADD/DROP STEPS**

This agreement is between the State of Oregon, acting through its Department of Administrative Services (Employer) and AFSCME Council 75 (Union).

This agreement shall cover all agencies and AFSCME locals under the jurisdiction of the AFSCME Central Table.

This agreement supersedes all provisions in all agreements pertaining to step advancement upon the affected employees' salary eligibility dates (SED).

Effective September 1, 2009, the Letter of Agreement dated December 13, 2007 to add and drop steps for each salary range in all classifications in the bargaining units is suspended.

Effective September 1, 2009, the following shall also apply:

1. Employees advancing to the new top step of their classification on or after July 1, 2009 through August 31, 2009 as a result of the December 14, 2007 Letter of Agreement will have their pay reduced to the prior top step. Employees advancing to a higher first step by virtue of the first step being dropped shall not have their pay reduced.
2. Employees advancing on the pay scale within their classification's salary range on or after July 1, 2009 through August 31, 2009 will be restored to their former step in effect prior to implementation of the December 13, 2007 Letter of Agreement.
3. For purposes of step advancement under the applicable provision of the agreements, employees having steps remaining in their classification after June 30, 2009 shall not receive these step advancements during the freeze period.
4. This agreement does not affect the initial increase upon promotion and reclassification upward but does affect any subsequent step advancement in the new classification. However, promotions or reclassifications to the new top step shall be subject to subsection #1 above.
5. For initial appointments in the state service occurring between July 1, 2009 and September 1, 2009, the affected employee shall receive a one step increase on September 1, 2010 and on their SED as pursuant to the local agreements. This subsection shall not apply to OAJA.
6. For purposes of promotion, if the employee promotes on the first of the month that date becomes the salary eligibility date (SED). For employees promoted after the first of the month the salary eligibility date will be established as the first of the month following the date of promotion.
7. The step freeze shall continue for twelve (12) months through August 31, 2010.

8. When the step freeze is lifted, an employee receiving a merit step or advanced to the new top step in July or August of 2009 will be restored on September 1, 2010 to the higher rate that was in effect through August 31, 2009. All other employees will commence receiving step increases on their salary eligibility date (SED) effective September 1, 2010,

**LETTER OF AGREEMENT  
MANDATORY UNPAID FURLOUGH TIME OFF**

This agreement is between the State of Oregon, acting through its Department of Administrative Services (Employer) on behalf of all agencies covered by the Central Table (Agency) and AFSCME Council 75 (Union).

This agreement covers all AFSCME agreements that are within the jurisdiction of the AFSCME Central Table. To the extent this agreement conflicts with any provisions of any AFSCME agreements, this agreement shall prevail.

The parties agree to the following:

1. This agreement becomes effective September 1, 2009 and sunsets June 30, 2011 unless the parties agree to extend or amend its provisions.
2. The Employer will implement mandatory unpaid furloughs for affected employees as follows:

Straight Time Monthly Base Pay Rate	Number of Days
\$2450 and below	10
\$2451-\$3100	12
\$3101 and above	14

3. The number of hours of mandatory unpaid furloughs for less than full-time employees shall be prorated based on the employee's regularly scheduled hours within the applicable month.
4. A. Agencies or divisions within an Agency can decide whether to designate whether the Agency or division within an Agency will close its offices. If the Agency so chooses, the Agency will close for the number of days identified in section 5 A of this agreement.

(i) Employees not taking unpaid mandatory furlough time off when the Agency is closed shall change their work schedule to a four (4) ten (10) hour-day schedule or otherwise adjust their schedule for that work week subject to prior Agency approval. The Agency shall not suffer any penalty or overtime payments as a result of the employee's schedule change.

B. Agencies that choose to allow employees to take "float days" will schedule designated unpaid mandatory furlough time off with their immediate supervisors using the following procedures:

(i) In an effort to ensure that the scheduling of unpaid mandatory furlough time off is distributed throughout the term of this agreement, such unpaid time off will be scheduled quarterly unless there is mutual agreement between the Agency and employee to schedule more days in some quarters and fewer in others; in no case no more than two (2) days (sixteen (16) hours) in a month.

(ii) Employees will have their choice of days off subject to Agency operating requirements. Employees will submit a mandatory unpaid furlough time off request form to their supervisors at least thirty (30) calendar days before the start of each quarter and supervisors will respond within fifteen (15) calendar days before the start of each quarter.

(iii) If the mandatory unpaid furlough time off is not scheduled or taken within the applicable quarter, then the Agency reserves the right to ensure the time off is rescheduled and taken within the next quarter (except for the last quarter in the biennium, during which the Agency may reschedule such time during the same quarter).

(iv) The Agency shall not incur any penalty or overtime payment for adjustments to an employee's schedule not to exceed a thirty-two (32) hour workweek.

(v) DEQ Only:

(a) Employees with minimum billable hour requirements will have their billable hour requirements prorated per current Agency practice.

(b) Employees with billable targets based upon the percentages required for their positions shall have their billable hours prorated per current Agency practice.

5. A. Where Agencies choose to close their offices, the following dates shall be designated as office closure days:

Friday, October 16, 2009  
Friday, November 27, 2009  
Friday, April 16, 2010  
Friday, March 19, 2010  
Friday, June 18, 2010

Friday, August 20, 2010  
Friday, September 17, 2010  
Friday, November 26, 2010  
Friday, March 18, 2011  
Friday, May 20, 2011

B. Employees mandated to take a greater number of unpaid mandatory furlough time off than closure days based on the tiers, will take the remaining unpaid mandatory furlough time off as float days under the following conditions:

(i) In an effort to ensure that the scheduling of unpaid mandatory furlough time off is distributed throughout the term of this agreement, such unpaid time off will be scheduled quarterly unless there is mutual agreement between the Agency and employee to schedule more days in some quarters and fewer in others. In no case will an employee take more than two (2) days (sixteen (16) hours) in a month.

(ii) Employees will have their choice of days off subject to Agency operating requirements. Employees will submit a mandatory unpaid mandatory furlough time off request form to their supervisors at least thirty (30) calendar days before the start of each quarter and supervisors will respond within fifteen (15) calendar days before the start of each quarter. If there is a conflict in requested days off,

that conflict shall be resolved by granting the days off to the person who made the first request.

(iii) If the unpaid mandatory furlough time off is not scheduled or taken within the applicable quarter, then the Agency reserves the right to ensure the time off is rescheduled and taken within the next quarter (except for the last quarter in the biennium, during which the Agency may reschedule such time during the same quarter).

(iv) The Agency shall not incur any penalty or overtime payment for adjustments to an employee's schedule not to exceed a thirty-two (32) hour workweek.

6. No employee will be required to take a mandatory unpaid furlough day on a recognized holiday unless the employee and supervisor agree otherwise.
7. Temporary employees will be unscheduled for mandatory unpaid furlough days.
8. Mandatory unpaid furlough time off will not count as a break in service and shall not affect seniority.
9. Mandatory unpaid furlough time off shall not add to the length of an employee's trial service period.
10. Deductions from pay of an FLSA exempt employee for absences due to a budget required mandatory unpaid furlough day shall not disqualify the employee from being paid on a salary basis except in the workweek in which the mandatory unpaid furlough time off occurs and for which the employee's pay is accordingly reduced.
11. If an FLSA exempt employee is permitted to work in excess of forty (40) hours in a workweek in which the employee takes a mandatory unpaid furlough day, then such employee shall be eligible for pay at the rate of time and one half (1 1/2x) for hours in excess of forty (40) hours that workweek.
12. Mandatory unpaid furlough time off shall only be considered time worked for: a) holiday pay computations, and, b) vacation, sick leave and personal accrual.
13. Subject to PEBB eligibility rules, mandatory unpaid furlough days shall be considered time worked for purposes of computing the Employer's insurance contributions.
14. Unless required by law, no employee shall be authorized to substitute other types of unpaid absences or paid leave to replace mandatory unpaid furlough time off.
15. Full-time employees shall take mandatory unpaid furlough time off in eight (8) hour blocks.
16. Part-time employees shall take mandatory unpaid furlough time off in blocks equal to their actual scheduled workday.

17. No employee shall be authorized to use any paid leave time or time accrued to replace mandatory unpaid furlough time off.
18. If an Agency closure day is scheduled on a day in which an employee is scheduled to work more or less than an eight (8) hour workday, the employee, with Agency approval, will adjust his/her schedule in a manner which is consistent with the practice that is used during a week there is a holiday. In either case, the employee's schedule will not exceed a thirty-two (32) hour workweek. The Agency shall not incur any penalty or overtime payment for adjusting the employee's schedule.
19. An employee shall not work on a date designated as a mandatory unpaid furlough time off. However, the Agency Head or designee for operational needs, may require the employee to work and reschedule the mandatory unpaid furlough time off.
20. Should the designated Agency closure date fall on an employee's regularly scheduled day off, subject to Agency approval, the employee shall take the mandatory unpaid furlough time off on an alternate workday. If the preferred workday is not available, the Agency shall schedule the time off on an alternate workday.
  - (i) If the alternate time is not scheduled or taken within the applicable quarter, then the Agency reserves the right to ensure the mandatory unpaid furlough time off is rescheduled and taken within the following quarter (except for the last quarter in the biennium, during which the Agency may reschedule such time during the same quarter).
  - (ii) The Agency shall not incur any penalty or overtime payment for adjustments to employee's schedules not to exceed a thirty-two (32) hour workweek.
21. For payroll purposes, mandatory unpaid furlough days shall be assigned a specific payroll code(s).

LIST OF AGENCIES/PROGRAMS/DIVISIONS  
OFFICE CLOSURE<sup>1</sup>

DCBS (Building Codes Division)  
 DCBS (Fiscal/Business Services Division, Director's Office & Information Management Division)  
 DEQ  
 Real Estate Agency  
 DOC Dentists  
 SOCP (Central Administration Staff)  
 CCB  
 Employment Department (Hearings Panel)  
 State Lands  
 OSP Fire Marshal

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<sup>1</sup> Where there are more unpaid furlough days than office closures, employees will take remaining days as float days.  
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LIST OF AGENCIES/PROGRAMS/DIVISIONS  
USE OF FLOAT DAYS

DOJ (Attorneys)  
 Military Department (includes Office of Emergency Management)  
 OLCC  
 OSP Support Unit  
 SOCP (Habilitative Training Technician 2, Licensed Respiratory Care Technician, LPN, Mental Health Therapy Technician)  
 OSH (Mental Health Registered Nurses, Nurse Practitioners)  
 DPSST  
 OSH Physicians  
 DLCD  
 OYA (Juvenile Parole and Probation Officers and Assistants)

**LETTER OF AGREEMENT  
MANDATORY UNPAID TIME OFF CLARIFICATIONS FOR IMPLEMENTATION**

The parties agree to the following clarifications for implementation of the mandatory unpaid time off tentative agreement.

1. The tiered obligation for mandatory unpaid time off days will be equally split between the fiscal years in the biennium.

Tier	Sept. 2009 – June 2010	July 2010 – June 2011
1 - \$2450 and below	5	5
2 - \$2451 - \$3100	6	6
3 - \$3101 and above	7	7

2. Requests for mandatory unpaid time off for September through December 2009.

Since the requirement to submit requests for mandatory unpaid time off cannot be submitted 30 days prior to the start of the quarter, the following will apply for such requests for September 2009 and the October – December 2009 quarter. Employees may request to take a float mandatory unpaid time off day any time through October 15, 2009. The supervisor will have up to fifteen (15) days to respond to the employee's request for the float day.

3. Scheduling mandatory unpaid time off for newly hired, reemployed, recalled and transferred employees.

At the time of an employment offer letter, the employee shall be given the quarterly request form for scheduling floating mandatory time off days. The employee must return the completed request form at the time of accepting the employment offer.

If the request form fails to be included in the employment offer letter, the employee must submit the form to schedule float mandatory unpaid time off days for the quarter in which they become employed within seven (7) days of beginning employment. The

supervisor will have up to seven (7) days to respond to the employee's mandatory unpaid time off request.

4. Seasonal employee—calculation of mandatory unpaid time off obligation.

Full-time FTE seasonal employee's mandatory unpaid time off days obligation is determined by the following formula:

$$(MS \div TM) \times TO$$

Where:

MS = Estimated number of months the seasonal employee will work during the period in which mandatory unpaid time off must be taken.

TM = Total number of months during the '09-'11 biennium during which mandatory unpaid time off must be taken (which is 22 months).

TO = Total number of mandatory unpaid time off days required for the biennium for the salary tier for the employee.

Example: The employee's seasons include the months of May through October 2010 and May and October 2011. The seasonal employee is expected to work both seasons. However, since the term of the CBA begins September 1, 2009 and ends on June 30, 2011, only September and October 2009, May through October 2010 and May and June in 2011 count for determining the mandatory unpaid time off obligation. Consequently, there are nine (9) months of the employee's seasons in the biennium that count. The seasonal employee is in the top salary tier which has a maximum of fourteen (14) mandatory unpaid time off (MUTO) days. The calculation is the following:

$$(MS \div TM) = (9 \text{ months} \div 22 \text{ months}) = .409$$

$$TO = 14 \text{ days}$$

$$(9 \div 22) \times 14 = 5.73 \text{ days}$$

Rounding to nearest whole number = 6 mandatory unpaid time off days (8 hours each).

Part-time FTE seasonal employee's mandatory unpaid time off obligation is prorated based on the scheduled hours for the part-time seasonal employee in the month. The same formula is used for part-time employees to calculate the number of days they are obligated to take. The hours that must be taken are prorated using the following formula:

$$(SSH \div FTH) \times 8 = MH$$

Where:

SSH = The scheduled hours in a month for the part-time seasonal employee.

FTH = The number of full-time hours in a month.

8 = The number of hours in a full-time mandatory unpaid time off day obligation.

MH = The number of mandatory unpaid time off hours required for an mandatory unpaid time off day for the part-time seasonal employee.

Example: Using the facts in the example used for full-time calculation (6 mandatory unpaid time off days), but adding that the part-time seasonal is scheduled to work three-quarter (3/4) time for the month.  $\frac{3}{4}$  time is equivalent to 130 hours (i.e.,  $\frac{3}{4}$  of the 173.33 full-time hours in a month). The calculation is:

$$(130 \text{ hours} \div 173.33 \text{ hours}) \times 8 = 6 \text{ hours}$$

The  $\frac{3}{4}$  time employee would take  $\frac{3}{4}$  of a work day (i.e., 6 hours) off for a mandatory unpaid time off day scheduled for the month.

5. Demotions, promotion, reclassification resulting in a change in salary tier for mandatory unpaid time off.

The effective date for a change in salary tier and a change in the mandatory unpaid time off obligation of an employee will be effective date of the personnel action. However, if the effective date is after the 15<sup>th</sup> of the last month in a quarter, the change will be effective the following quarter.

6. Unpaid Leaves (including: FMLA/OFLA, Military Leave, Workers Comp, LWOP).

For employees observing mandatory unpaid closure days, if an employee is on leave without pay when a mandatory unpaid time off closure day occurs, the employee will not be required to make up the missed mandatory unpaid time off day.

7. Unpaid Leaves (including: FMLA/OFLA, Military Leave, Workers Comp, LWOP) and float day observance.

For employees observing mandatory unpaid closure days, if an employee's scheduled mandatory unpaid time off day occurs when the employee is on leave without pay, the employee will be required to take or schedule the mandatory unpaid float day, unless the employee is on leave without pay for the entire calendar month.

If an employee returns to work the 15<sup>th</sup> day or before in the last month of a calendar quarter, the employee shall schedule and take the mandatory unpaid float day in that quarter, or with approval may schedule the mandatory unpaid float day in the following quarter.

8. Employees returning to work from unpaid leave without pay in the last month of a calendar quarter.

If an employee returns to work from LWOP after the 15<sup>th</sup> day in the last month of a calendar quarter, the employee will not be required to take the floating mandatory unpaid time off for that quarter.

9. Scheduling of Vacation and Mandatory Unpaid Time Off.

In Agencies where vacation schedules or comp time off must be requested in advance and the advance requests cover periods of time beyond the quarterly scheduling of mandatory unpaid time off days, the prescheduled vacation or comp time off shall take precedence over scheduling of mandatory unpaid time off days. However, the quarterly scheduling of unpaid time off shall take precedence over short term vacation or comp time off requests.

Once mandatory unpaid time off has been scheduled, requests for vacation may be denied for operational reasons and cannot cause a rescheduling of mandatory unpaid time off days of other employees.

Employees may schedule a mandatory unpaid time off day as part of their vacation request. E.g., an employee may request a week's vacation that includes a mandatory unpaid time off day. Also, if an employee requests and is approved for vacation in the future, at the time of submitting his/her quarterly mandatory unpaid time off request form for the quarter in which the vacation is approved, the employee may request to substitute mandatory unpaid time off for pending vacation time. However, in no case shall an employee take more than two (2) mandatory unpaid time off days in a month. If seniority is used as a tiebreaker or to bump a pre-approved vacation there shall be no substitution with mandatory unpaid time off days.

10. Scheduling of Pre-approved Paid Sick Leave and Mandatory Unpaid Time Off.

Employees who have pre-scheduled, paid sick leave (e.g., elective surgery, maternity leave, etc.) may substitute a mandatory unpaid time off day for the pre-approved paid sick leave. The request to substitute is made at the time of submitting his/her quarterly mandatory unpaid time off request form for the quarter in which the sick leave is approved. However, in no case shall an employee take more than two (2) mandatory unpaid time off days in a month.

11. Employees Called In to Work on a Mandatory Unpaid Time Off Day Off.

In the event an employee is called in to work on a date designated as a mandatory unpaid time off day due to operational needs, the employee and supervisor shall arrange to take the remainder of the mandatory unpaid time off at a mutually agreeable time. The remaining mandatory unpaid time off, with approval from the supervisor, may be taken during the employee's work week, as long as the work week does not exceed thirty-two (32) hours, or at another time. If the remaining hours of mandatory unpaid time off to be made up are less than an employees full scheduled work day, the employee may either split a work day (mandatory unpaid hours plus regular work hours) to make a full work shift or make alternate arrangements for the remainder of the shift, including but not limited to using appropriate accrued leave. If the remaining portion of the mandatory unpaid time off is not mutually scheduled or taken within the applicable quarter, then management reserves the right to ensure the remaining portion of the mandatory unpaid time off day is rescheduled and/or taken no later than the following quarter.

12. Adjusting the Mandatory Unpaid Time Off Day Off Obligation for Employees Hired After September 1, 2009.

Employees hired after September 1, 2009 will have their mandatory unpaid time off obligation adjusted for the time remaining to June 30, 2011. The attached table identifies the obligation remaining for new hires by calendar quarter.

13. NEW DISCUSSION: Non emergency changes to employees observing fixed closure days.

This LOA does not preclude schedule changes pursuant to the CBA.

Employees who are attending or presenting at conferences or traveling on closure days may convert the closure day to a float day for that quarter.

For Board and Commission meetings scheduled on a closure day, the closure day may be converted into float days.

MUTO Obligation Remaining by Salary Tier  
 including examples for Tier 2 and 3 of Adjustments Made for MUTOs Taken

Year	Quarter	Months	10 Closure Days	Tier 1 MUTO Remaining after closures	Plus Tier 2 Float Obligation <sup>1</sup>	Plus Tier 3 Float Obligation <sup>1</sup>	For Example <sup>3</sup> Tier 2 MUTO Remaining after closures	For Example <sup>3</sup> Tier 3 MUTO Remaining after closures
2009		Sept	0	10			12	14
		Oct 16	1	9			11	13
	4	Nov 27	1	8			10	12
		Dec	0	8			10	11
2010	1	Jan	0	8	1	2	9	11
		Feb	0	8			9	11
		Mar 19	1	7			8	10
	2	Apr 16	1	6			7	9
	May	0	6			7	8	
	Jun 18	1	5		0 <sup>2</sup>		6	7
	3	July	0	5			6	7
		Aug 20	1	4			5	6
		Sept 17	1	3			4	5
	4	Oct	0	3			3	5
2011		Nov 26	1	2			2	4
		Dec	0	2			2	3
	1	Jan	0	2	1	2	2	3
		Feb	0	2			2	2
	Mar 18	1	1			1	1	
	Apr	0	1			1	1	
	May 20 <sup>4</sup>	1	0	0			0	1
	Jun	0	0	0	0 <sup>2</sup>		0	0

- NOTES:
- <sup>1</sup> Tier 2 and 3 float days are equally split in the Fiscal Years (FY) for equal distribution of mandatory unpaid time off in each FY.
  - <sup>2</sup> Tier 2 and 3 float obligation show 0 required in June 2010 & 2011, not because an employee cannot schedule one during those months, but because an employee hired after June 15 will not be required to take the float mandatory unpaid time off day for that FY.
  - <sup>3</sup> Tier 2 & 3 are examples only, since the actual day when a float day is taken can vary for each employee. Each example assumes a MUTO is taken in each closure month. For Tier 2, float days are assumed taken in January 2010 & October 2010; and for Tier 3, taken in December 2009, May 2010, December 2010 & February 2011.
  - <sup>4</sup> Tier 1 & 2 promotions and upward reclassifications effective after May 20, 2011 will not have a mandatory unpaid time off obligation.

O:\LRU\Admin\Furlough FAQs\MUTO Obligation Chart.xls

**LETTER OF AGREEMENT  
ON CREDIT FOR UNPAID FURLOUGH TIME OFF**

This agreement is between the State of Oregon, acting through its Department of Administrative Services (Employer) on behalf of the Department of Justice (Agency) and AFSCME Council 75 (Union).

The parties agree that full-time attorneys taking unpaid furlough days during the term of the agreement shall received credit for seven (7.0) billable hours for each furlough day. Attorneys that work less than a full-time schedule shall have their credited hours prorated.

This agreement automatically sunsets June 30, 2011.

**LETTER OF AGREEMENT  
REGARDING PREMIUM INCREASES BETWEEN 5% AND 10%**

This agreement is between the State of Oregon, acting through its Department of Administrative Services (Employer) and the AFSCME.

1. Increases in premium costs above five percent (5%), but less than ten percent (10%), in plan years 2010 and 2011, will be paid by the Employer for the non-General Fund share of such costs.
2. The parties shall jointly petition the Public Employees' Benefit Board (PEBB) to pay for the General Fund share of increases above five percent (5%), but less than ten percent (10%), in plan years 2010 and 2011 out of PEBB reserves. Should this become necessary, the parties shall jointly request that PEBB first access PEBB Stabilization Fund reserves and only draw on money in the standard Demutualization Account in the event that there is not enough money in the Stabilization Fund to pay for the increase without jeopardizing PEBB's ability to self-insure.

**LETTER OF AGREEMENT - PEBB RESERVE REIMBURSEMENT**

1. The Legislature allocated \$32 million General Fund in the 2009-2011 budget for increases in public employee health insurance costs (up to 5.0% per plan year) during the life of the 2009-2011 collective bargaining agreement between the parties.
2. If the State does not expend the entire \$32 million General Fund allocation, per Section 1 above, the State will request the Legislature, or the Emergency Board if the Legislature is not in session, to release any unspent portion of the \$32 million General Fund (and corresponding other funds). The purpose of requesting release of the remaining funds is to reimburse the PEBB for expenditures PEBB may agree to make from the Stabilization Fund (SF) reserves to offset premium increases in excess of the budgeted 5.0% during the 2010 and/or 2011 benefit plan years.

3. Prior to July 1, 2010, the State shall request the Legislature or Emergency Board, whichever is in session, to release all of the appropriate funds as noted above.
4. The Union will receive prior notification of submission of the request to the Legislature or Emergency Board.

### **LETTER OF AGREEMENT - PROVIDER TAX ASSESSMENT**

The parties recognize that, pursuant to HB 2116, the State of Oregon has levied an assessment on PEBB claims.

Should PEBB increase the rates it charges to the Employer based on this assessment, the Employer will pay for the portion of the rate increase that is attributable to the assessment. These payments will be in addition to the up to five percent increase in premium costs provided under the insurance article of the agreement and shall be made without petitioning PEBB to use reserves.

### **LETTER OF AGREEMENT PART-TIME EMPLOYEES HEALTH INSURANCE SUBSIDY**

This agreement is between the State of Oregon acting through its Department of Administrative Services (Employer) and the AFSCME Union.

The Parties agree to the following:

The Employer will continue to pay the current part-time subsidy for eligible part-time employees who participate in the part-time plan through December 31, 2009, as follows:

- Employee Only (EE) - \$206.94
- Employee and Family (EF) - \$268.05
- Employee & Spouse – (ES) - \$264.11
- Employee & Children (EC) - \$235.47

For Plan 2010 and 2011, the subsidy will be paid at an amount so that employees will continue to pay the same out-of-pocket premium costs that were in effect for Plan Year 2009. If an employee changes from one tier to another or changes plan pursuant to PEBB rules, his/her out-of-pocket premium costs will be adjusted to reflect the appropriate plan year's out-of-pocket premium costs for his/her new tier.

**7504 Assistant Attorney General**

<b>July 1, 2007 3% COLA (Actual)</b>							
	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7
AFSCME AT JUSTICE ATTORNEYS	\$4,351	\$4,571	\$4,809	\$5,048	\$5,299	\$5,561	\$5,843

**January 1, 2008 1 step selective (Projected)**

	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7
AFSCME AT JUSTICE ATTORNEYS	\$4,571	\$4,809	\$5,048	\$5,299	\$5,561	\$5,843	\$6,137

**November 1, 2008 3.2% COLA (Projected)**

	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7
AFSCME AT JUSTICE ATTORNEYS	\$4,717	\$4,963	\$5,210	\$5,469	\$5,739	\$6,030	\$6,333

**January 1, 2009 1 step selective (Projected)**

	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7
AFSCME AT JUSTICE ATTORNEYS	\$4,868	\$5,122	\$5,376	\$5,644	\$5,923	\$6,223	\$6,536

**7505 Senior Assistant Attorney General**

<b>July 1, 2007 3% COLA (Actual)</b>								
	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8
AFSCME AT JUSTICE ATTORNEYS	\$6,133	\$6,442	\$6,766	\$7,098	\$7,454	\$7,833	\$8,226	\$8,632

**January 1, 2008 1 step selective (Projected)**

	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8
AFSCME AT JUSTICE ATTORNEYS	\$6,442	\$6,766	\$7,098	\$7,454	\$7,833	\$8,226	\$8,632	\$9,063

**November 1, 2008 3.2% COLA (Projected)**

	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8
AFSCME AT JUSTICE ATTORNEYS	\$6,648	\$6,983	\$7,325	\$7,693	\$8,084	\$8,489	\$8,908	\$9,353

**January 1, 2009 1 step selective (Projected)**

	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8
AFSCME AT JUSTICE ATTORNEYS	\$6,983	\$7,325	\$7,693	\$8,084	\$8,489	\$8,908	\$9,353	\$9,820