

MCAA Position Paper – 2022

Dear CER Members:

This letter provides the position of the Madison City Attorney's Association (MCAA) in support of one unresolved item from the 2022 meet and confer process. MCAA respectfully asks the CER to approve:

The option to cash out up to 10 days of earned, but unused vacation, per year for those who have accumulated more than 25 unused vacation days, including in the last 3 years prior to retirement.

We are asking the CER, who is tasked with resolving disputes between labor and management, to approve a path forward to allow a reasonable pay-out for unused but earned vacation.

I. Our Job and Duties as Licensed Attorneys.

We earn vacation at the same rate as other City employees. However, much like department heads, our workload, and timelines associated with our workload, are not always within our control. We must meet deadlines imposed by judges, statutes, emergencies, contractors, vendors, department heads, other staff, the Mayor's office, Common Council, public meetings, administrative agencies, and so on.

There are many complicated legal issues affecting the City. An organization as large as the City of Madison requires expertise in many specialized areas of municipal law. Most would agree, you want someone with the best knowledge of your agency and situation to give legal advice or represent you in court when you need it. This is what makes the attorneys' and hearing examiner's jobs unique.

Attorneys in Wisconsin take an oath and are bound by rules established by the Wisconsin Supreme Court, to protect the client and integrity of legal practice. Our client is the City of Madison. As licensed attorneys we have a duty to perform our legal duties competently (SCR 20:1.1) and with diligence (SCR 20:1.3) and we take that duty very seriously. This means we cannot always "clock out" or take vacations to avoid accumulating paid leave time.¹

We mention these things to explain the nature of our work, and why we believe a vacation pay-out option is the right thing to do. During the November 18 meeting, we will provide some real-life examples of how our duties play out.

II. Our Request.

In comparing other vacation benefits within the City, a close comparable is the Department Head contract (see attached 2021 Department Head contract.)

"Vacation Conversion: If the Director accrues a balance of more than five weeks from the preceding year(s), the Director may elect to convert up to ten (10) days of their annual vacation to an amount of cash equivalent, calculated on their regular earnings."

The Department Head vacation scenario is an appropriate comparison for the reasons listed above. Department heads are also obligated to the Mayor and elected officials and are experts in the subject matter of their agencies. The work of their agencies is non-stop, they are frequently on-call, and their contract recognizes that they might not always use up their vacation. And when they need legal advice, the attorneys of our association are there to advise them, and represent their legal interests.

¹ Attorneys are also "counselors." (SCR 20:2.1.) Our work relies on close, trusting relationships with agency staff and elected officials, being available to advise on time-sensitive and delicate matters.

Police and Fire Supervisors have also negotiated similar pay-out options – notably, without the requirement to accumulate any minimum unused vacation. AMPS can convert up to fourteen (14) days of unused vacation each year, and 4 floating holidays, for a total of 18 days paid out as cash annually. AMFS can convert up to 2 weeks of vacation. AMFS also has this provision, upon which we base the second part of our request:

“X.D. Employees that have identified a retirement year, and are in their last three years, will be given priority to convert vacation days up to a maximum of 84 hours to straight time compensation.”

This clause is important for purposes of WRS pension calculations. We respectfully request the ability to convert up to 10 days of vacation in the final 3 years prior to retirement, without the 25+ day minimum, if we identify a retirement year to the City in advance, similar to AMFS members.

III. History and the Pandemic.

Growth. The number of Assistant City Attorney and Hearing Examiner positions has not increased since 1999. The same cannot be said for the City’s legal needs. The population of the City has grown and that growth, along with changes in technology, development, and social issues, naturally increases the City’s need for legal services. These increased legal needs at times result in attorneys being unable to take their vacation time.

Covid-19 legal work. The amount of extra legal work in response to Covid-19 is unprecedented. Like a lot of other city staff, attorneys worked extended hours and days for a prolonged period - unable to take vacation due to the constant, and rapidly changing, need for legal services. This includes last-minute court filings and other demands that cannot be delayed. Responding to the legal demands meant we cannot stop on the weekend or after-hours, and these attorneys were unable to take much vacation time for 2020 and 2021. (The pandemic and its after-effects are not over.) Approving days off, and allowing extra carry-over, while the gesture is appreciated, does not solve this problem.

Our vacation benefit should be honored in a *meaningful way*. When emergencies and workloads mean our members can’t use that benefit as intended, *when* intended, we should be allowed a cash conversion for that earned benefit. We cannot predict the next crisis that will generate unexpected and intense legal work. Our request is meant as a protection for those unexpected times.

Vacation payout should not be viewed as an extra financial liability. The City has found it worthwhile to absorb that liability for Department Heads as well as all Police and Fire supervisors – all of whom outnumber the members of the MCAA (currently 14.) Plus, allowing a payout should result in a reduction in vacation carry-over balance, thus reducing that liability over time.

A cash conversion of some vacation time is not contrary to the philosophy of vacation or the value of time off (morale, recharging, mental health, etc.) Our members value the ability to take real time off. But stress relief is not just about taking time off. Our members may be dealing with an acute financial crisis, stressed about loans or medical bills, being financially responsible for other family members, and in our field, looming student loan bills. The pressure of ongoing legal demands that do not permit adequate vacation adds even more stress. The ability to convert earned vacation time to pay brings some relief, particularly in a year when that employee’s work demands made them unable to take much vacation.

The MCAA takes pride in delivering high-quality legal services that help make Madison the national leader that it is. We also enjoy taking a well-earned vacation. But, because of our unique position as licensed professionals, responsive to all of the City’s needs across ALL agencies, there are times that we **cannot** set our work aside and take time off. To do so would be a violation of the oath we took when we became attorneys.

IV. Conclusion.

Our request is simple – If a member of CG 23 accrues a balance of more than five weeks from the preceding year(s), the employee may elect to convert up to ten (10) days of their annual vacation to an amount of cash equivalent, calculated on their regular earnings. Employees that have identified a retirement year, and are in their last three years, may convert up to a maximum of 10 vacation days to compensation in each of those three years.

This is a fair outcome based on our unique obligations and duties.

Sincerely, Lara Mainella, MCAA President
on behalf of the members of the MCAA

CC: Greg Leifer, Erin Hillson,
Harper Donohue IV