

AN ORDINANCE

AMENDING the City of Marietta/BLW Retirement Plan 4532 (New Consolidated Plan) to address the calculation of benefits for rehired employees who received a refund of employee contributions after a previous termination of employment and to revise the provisions regarding breaks in service subject to the Family Medical Leave Act.

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF MARIETTA, GEORGIA:

Section 1: That Section 4-12-6-010, Exhibit B to Chapter 4-12, also known as Ordinance 4532, the "Consolidated Plan," Article VI, Section 4, "Break in Service," shall be restated effective as of January 1, 2009, to read as follows:

"A. General rule. A participant will incur a break in service upon his termination of employment with the employer. A participant who is vested upon termination of employment shall be eligible for a vested retirement benefit in accordance with section 9 of article V. A participant who is not vested upon termination of employment shall lose his service and credited service. However, if the participant later returns to work with the employer and, after such rehire, earns the number of years of continuous service required to earn a vested percentage for the vesting period in effect on the date of rehire, then, except to the extent described in B below in the case of a participant who received a refund of his participant contributions, his previous years of service, prior to January 1, 2009, and credited service prior to January 1, 2009, for which he did not make participant contributions, shall be restored.

B. Participant received a refund of participant contributions. The rules set forth in this paragraph B shall apply to any participant who (1) has a termination of employment with the employer; (2) is rehired in a position in which he is or will be eligible to accrue a benefit under this Plan; and (3) received, upon his original termination of employment, a refund of his participant contributions, pursuant to Article IV, Section 3(2). In such a case:

- (1) If the participant is rehired as of a date that is within sixty (60) months of his original termination of employment, and subsequently attains vested status according to the vesting requirements in place at the time of rehire, the participant shall, upon his rehire date and for purposes of calculating both his vested percentage and the amount of any benefit payable under this plan (i.e., both retirement and disability benefit), receive credit for fifty percent (50%) of the service with which the Participant was credited during the period that he made participant contributions.
- (2) If the participant is rehired as of a date that is more than sixty (60) months after his original termination of employment, the

participant shall not receive credit, for purposes of calculating the amount of any benefit payable under this plan, for the period of service earned during the period that he made participant contributions. Such a participant may, however, receive credit for vesting purposes under the rule set forth in Section 4.A above."

Section 2: That Section 4-12-6-010, Exhibit B to Chapter 4-12, also known as Ordinance 4532, the "Consolidated Plan," Article VI, Section 5, "Exceptions to Break in Service," shall be amended by restating Paragraph A thereof, effective as of January 1, 2009, to read as follows:

"A. An employee's absence from service by reason of (1) her pregnancy, (2) birth of child of the employee, (3) placement of a child with the employee in connection with his or her adoption of the child, or (4) care for such child for a period beginning immediately after such birth or placement for reasons defined under the Family Medical Leave Act (FMLA). Such absence shall be credited as hours of employment up to the number of months allowed per incident pursuant to the FMLA. The time so credited shall be applied to the plan year in which such absence begins, if doing so will prevent the employee from incurring a break in service in that plan year; otherwise it shall be applied to the next plan year. FMLA may cover absences that are attributable to (1) the birth and care of the newborn child of the employee; (2) the placement with the employee of a son or daughter for adoption or foster care; (3) the employee's care of an immediate family member (spouse, child, or parent) with a serious health condition; or (4) the employee's medical leave when the employee is unable to work because of a serious health condition, or (5) other FMLA-covered reasons."

Section 3: It is hereby declared to be the intention of this Ordinance that its sections, paragraphs, sentences, clauses, phrases and words are severable, and if any section, paragraph, clause, phrase or word of this Ordinance is declared to be unconstitutional or invalid, it shall not affect any of the remaining sections, paragraphs, clauses, phrases or words of this Ordinance.

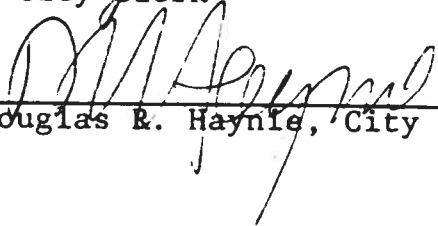
Section 4: All Ordinances or parts of Ordinances in conflict with this Ordinance are hereby repealed.

Section 5: This Ordinance shall become effective upon the signature or without the signature of the Mayor, subject to Georgia laws 1983, page 4119.

Date: March 11, 2009

Approved: 
William B. Dunaway, Mayor

Attest: 
Stephanie Guy, City Clerk

Approved As To Form: 
Douglas R. Haynie, City Attorney