

EARNED SICK AND SAFE TIME ORDINANCE DRAFT

PURPOSE

The purposes of this chapter are:

- (a) To ensure that all workers in the City of Saint Paul can address their own health needs and the health needs of their family members by requiring employers to provide a minimum level of earned sick leave, including leave for care for family members; and
- (b) To diminish public and private health-care costs and promote preventative health services in the City of Saint Paul by enabling workers to seek routine medical care for themselves and their family members; and
- (c) To protect the public's health in Saint Paul by reducing the risk and spread of contagion; and
- (d) To assist victims of domestic abuse and their family members by providing them with job-protected paid leave away from work to allow them to receive treatment and take the necessary steps to ensure their protection; and
- (e) To promote the economic security and stability of workers and their families, as well as businesses serving the City of Saint Paul and its residents; and
- (f) To protect residents and all workers in the City of Saint Paul from losing their jobs or facing discipline as a result of illness and use of sick leave to care for themselves or their family members; and
- (g) To safeguard the public welfare, health, safety, and prosperity of the people in the City of Saint Paul; and

To accomplish the purposes described in subsections (a)–(g) in a manner that is fair and reasonable to both employees and employers, and rationally related to the objective of promoting the overall health and safety of the residents and workers in the City of Saint Paul by reducing the risk of and spread of communicable disease and contagion,

The Council of the City of Saint Paul does ordain that the Ordinances of the City of Saint Paul are hereby amended to include the following Ordinance entitled Earned Sick and Safe Time.

Section 1. DEFINITIONS

For purposes of this chapter, the following definitions apply:

“City” means the City of Saint Paul.

“Department” means the Department of Human Rights and Equal Economic Opportunity or any department or office that by ordinance or resolution is designated the successor to the Department.

“Director” means the Director of the Department of Human Rights and Equal Economic Opportunity or his or her designee.

“Domestic abuse” has the meaning given in Minnesota Statutes § 518B.01.

“Earned sick and safe time” means leave, including paid time off and other paid-leave systems, paid at the same hourly rate as an employee earns from employment that may be used for the same purposes as section 3, paragraph B of this chapter.

“Employee” means any person who is employed by the employer, including temporary and part-time employees, who perform work within the geographic boundaries of the city. For purposes of this chapter, employee does not include an independent contractor.

“Employer” means a person who has one or more employees. The term includes an individual, corporation, partnership, association, nonprofit organization, or a group of persons. An employer includes a person, firm, or corporation that hires temporary employees through an employment service. For purposes of this chapter, employer does not include:

- (a) the United States government,
- (b) the State of Minnesota, including any officer, department, agency, authority institution, association, society, or other body of the State including the legislature and the judiciary,
- (c) any county or local government except the City of Saint Paul.

“Family member” means the employee’s child, step-child, adopted child, foster child, adult child, spouse, sibling, parent, step-parent, mother-in-law, father-in-law, grandchild, and any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

“HREEO Commission” means the commission established pursuant to Section 183.19 of the Legislative Code for the City of Saint Paul.

“Safe time” means the need for time off under the circumstances described in Minnesota Statutes § 181.9413(b).

“Sexual assault” means an act that constitutes a violation under Minnesota Statutes §§609.342 to 609.3453 or § 609.352.

“Stalking” has the meaning given in Minnesota Statutes § 609.749

Section 2. ACCRUAL OF SICK AND SAFE TIME.

A. Employees shall earn and accrue paid leave, to be used as either earned sick and safe time, after the employee has worked 80 hours for the employer. For individuals who are employed and have previously worked for the employer for 80 hours on the date this ordinance takes effect, accrual shall begin on the date this ordinance takes effect. Accrual rates shall not apply to hours worked before this ordinance takes effect.

B. For every 30 hours worked after earned sick and safe time begins to accrue for an employee, the employee shall accrue one hour of earned sick leave. Earned sick and safe time shall accrue only in hour-unit increments; there shall be no accrual of a fraction of an hour of earned sick leave. The maximum number of earned sick and safe time hours an employee can earn in each calendar or fiscal year shall not exceed 48 hours.

C. Employers must permit an employee to accrue up to 80 hours of earned sick and safe time. Employers shall permit an employee to carry over earned but unused sick and safe time into the following year (whether calendar or fiscal year), but time carried over is limited to the aforementioned caps.

D. If an employer has a paid-leave policy, such as a paid-time-off policy, that makes available to employees an amount of paid leave that may be used for the same purposes as earned sick and safe leave under this section and that is sufficient to meet the requirements for earned sick leave as stated in subsections (A)–(C) of this section, the employer is not required to provide additional earned sick leave.

E. An employer is not required to provide financial or other reimbursement to an employee upon the employee's termination, resignation, retirement, or other separation from employment for earned sick and safe leave that the employee has not used.

Section 3. USE OF EARNED SICK AND SAFE TIME.

A. Employees shall be entitled to use earned sick and safe time 90 calendar days following the commencement of their employment. After 90 calendar days of employment, employees may use sick and safe time as it is earned.

B. Earned sick and safe time shall be provided to an employee by an employer for the following reasons:

1. An absence resulting from an employee's own mental or physical illness, injury, or health condition; to accommodate the employee's need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or an employee's need for preventive medical care;

2. To allow the employee to provide care for a family member with a mental or physical illness, injury, or health condition; care for a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or care for a family member who needs preventive medical care.

3. An absence due to domestic abuse, sexual assault, or stalking of the employee or employee's family member, provided the absence is to:

- a. seek medical attention related to physical or psychological injury or disability caused by domestic abuse, sexual assault, or stalking;
- b. obtain services from a victim-services organization;
- c. obtain psychological or other counseling;
- d. seek relocation due to domestic abuse, sexual assault, or stalking; or
- e. take legal action, including preparing for or participating in any civil or criminal legal proceeding related to or resulting from domestic abuse, sexual assault, or stalking.

C. Employees may use earned sick and safe time in increments consistent with the current business/payroll practice as defined by industry standards or existing employer policies.

D. An employer must compensate an employee at the same hourly rate with the same benefits as the employee would have earned during the time the earned sick and safe time is used. Employees are not entitled to compensation for lost tips or commissions and compensation is required only for hours that an employee is scheduled to have worked.

E. Earned sick and safe time shall be provided upon the request of an employee. When possible, the request shall include the expected duration of the absence. An employer may require an employee to comply with the employer's usual and customary notice and procedural requirements for absences or for requesting leave, provided that such requirements do not interfere with the purposes for which the leave is needed.

F. It is not a violation of this ordinance for an employer to require reasonable documentation that the sick and safe time is covered by paragraph B of this section for absences of more than three consecutive days.

G. An employer may not require, as a condition of an employee's using sick and safe time, that the employee find a replacement worker to cover the hours during which the employee uses sick and safe time.

Section 4. CONFIDENTIALITY AND NONDISCLOSURE.

A. Except as provided in subsection B of this section, an employer shall maintain the confidentiality of information provided by the employee or others in support of an employee's request for sick and safe time, including health information and the fact that the employee or employee's family member is a victim of domestic violence, sexual assault, or stalking; that the

employee has requested or obtained leave under this ordinance; and any written or oral statement, documentation, record, or corroborating evidence provided by the employee.

- B. Information given by an employee may be disclosed by an employer only if it is:
 - 1. requested or consented to by the employee;
 - 2. ordered by a court or administrative agency; or
 - 3. otherwise required by applicable federal or state law.

Section 5. EXERCISE OF RIGHTS PROTECTED; RETALIATION PROHIBITED.

- A. It shall be unlawful for an employer or any other person to interfere with, restrain, or deny the exercise of, or the attempted exercise of, any right protected under this chapter.
- B. An employer shall not take any adverse employment action or in any other manner discriminate against an employee because the employee has exercised in good faith the rights protected under this chapter. Such rights include but are not limited to the right to use earned sick and safe time pursuant to this chapter, the right to file a complaint, or filing an action to enforce a right to use earned sick and safe time under this chapter.

Section 6. NOTICE AND POSTING.

- A. Employers shall give notice that: employees are entitled to earned sick and safe time; the amount of earned sick and safe time and the terms of its use guaranteed under this chapter; that retaliation against employees who request or use earned sick and safe time is prohibited; and that each employee has the right to file a complaint or bring a civil action if earned sick and safe time as required by this section is denied by the employer or the employee is retaliated against for requesting or taking earned sick and safe time.
- B. The department shall create and make available to employers a poster and a model notice, hereinafter referred to as the "Notice," which contains the information required under subsection A of this section for their use in complying with this subsection. The poster shall be printed in English and any other languages that the department determines are needed to notify employees of their rights under this chapter.
- C. Employers may comply with this section by displaying the poster in a conspicuous and accessible place in each establishment where such employees are employed.
- D. An employer that provides an employee handbook to its employees must include in the handbook notice of employee rights and remedies under this chapter.

Section 7. REQUIRED STATEMENT TO EMPLOYEE.

Upon request of the employee, the employer must provide, in writing or electronically, information stating the employee's then current amount of:

- (1) earned sick and safe time available to the employee, and
- (2) used sick and safe time.

Employers may choose a reasonable system for providing this notification, including but not limited to listing information on each pay stub or developing an online system where employees can access their own information.

Section 8. EMPLOYER RECORDS.

- A. Employers shall retain accurate records documenting hours worked by employees and earned sick and safe time taken by employees for a period of 3 years.
- B. Employers shall allow the department access to such records, with appropriate notice and at a mutually agreeable time, to investigate potential violations and to monitor compliance with the requirements of this chapter. The employer shall allow the department to copy, as needed, its employment records, but without allowing social security numbers to become a matter of public record.
- C. When an issue arises as to an employee's entitlement to earned sick leave under this chapter, if the employer does not maintain or retain adequate records documenting hours worked by the employee and earned sick and safe leave taken by the employee, or does not allow the department reasonable access to such records, it shall be presumed that the employer has violated this chapter, absent clear and convincing evidence otherwise.
- D. Records and documents relating to medical certifications, re-certifications, or medical histories of employees or employees' family members created for purposes of this chapter must be maintained as confidential medical records separate from the usual personnel files. If the Americans with Disabilities Act (ADA) applies, then these records must comply with the ADA's confidentiality requirements.

Section 9. TRANSFER; SEPARATION.

- A. If an employee is transferred to a separate division, entity, or location outside of the city, but remains employed by the same employer, and the employer does not allow the use of earned sick and safe time outside of the city, the employer must maintain the employee's earned sick and safe time on the books for a period of three years from the time of the transfer. If, within three years of the time of the employee's transfer to a separate division, entity, or

location outside of the city, the employee is transferred back to a division, entity, or location within the city but remains employed by the same employer, the employee is entitled to all previously earned sick and safe time accrued but not used at the prior division, entity, or location within the city and is entitled to use all earned sick and safe time as provided in this chapter.

B. If an employee is transferred to a separate division, entity, or location within the city but remains employed by the same employer, the employee is entitled to all earned sick and safe time earned but not used at the prior division, entity, or location and is entitled to use all earned sick and safe time as provided in this chapter.

C. When there is a separation from employment and the employee is rehired within 90 days of separation by the same employer, previously earned sick and safe time that had not been used must be reinstated. An employee is entitled to use earned sick and safe time and earn additional sick and safe time upon commencement of reemployment.

Section 10. EMPLOYER SUCCESSION.

When a different employer succeeds or takes the place of an existing employer, all employees of the original employer who remain employed by the successor employer are entitled to all earned sick and safe time accrued but not used when employed by the original employer, and are entitled to use all earned sick and safe time previously accrued but not used.

Section 11. IMPLEMENTATION.

A. The director has authority to implement, administer, and enforce this chapter. The department shall have the authority to investigate possible violations of this chapter whenever it has cause to believe that any violation of this chapter has occurred, either on the basis of a report of a suspected violation or on the basis of any other credible information including violations found during the course of an investigation.

B. The department shall be authorized to coordinate implementation and enforcement of this chapter and shall promulgate appropriate guidelines and regulations for such purposes. Any guidelines or rules promulgated by the department shall have the force and effect of law and may be relied on by employers, employees, and other persons to determine their rights and responsibilities under this chapter. Such guidelines or rules shall:

- (1) be consistent with this chapter;
- (2) establish procedures for fair, efficient, and cost-effective implementation and enforcement of this chapter, including rules governing procedures for administrative hearings and appeals; and

- (3) establish procedures for informing employers of their duties and employees of their rights under this chapter and monitoring employer compliance.

The director shall publish, maintain, and make available to the public any such initial rules at least 90 days prior to their effective date. Any revisions to published rules shall be published, maintained, and made available to the public at least 30 days prior to their effective date.

C. The director shall develop and implement a multilingual and culturally specific outreach program to educate employees and employers about their rights and obligations under this chapter. This outreach program shall include media, trainings, and materials accessible to the diversity of employees and employers in the city.

Section 12. ENFORCEMENT.

A. Report of Violations. An employee may report to the department any suspected violation of this chapter. Such reports may be filed only if the matter complained of occurred after the effective date of this chapter and within 365 days prior to filing the report. Filing a report of a suspected violation of this chapter does not create any right of appeal to the department. The director has sole discretion to decide whether to investigate or to pursue a violation of this chapter. If the director decides not to investigate or otherwise pursue a report of suspected violation, the director must provide a written notification to any employee who filed the report that the department is declining and the reasons for declining. The employee may within 21 days file a request for reconsideration with the director. The director must provide a written response on the reconsideration within ten days.

B. Investigation Process. The department may initiate an investigation pursuant to a complaint or when the director has reason to believe that a violation has occurred.

1. To pursue a violation of this chapter, the director must serve upon an employer via U.S. mail a notice of investigation setting forth the allegations and pertinent facts. The notice of investigation shall be accompanied by a request for a written position statement and may include a request for records or other information. The notice shall also inform the employer that retaliation for claiming rights under this chapter is a basis for additional monetary damages.

2. An employer's position and response to any request for records must be provided to the department as provided in the department's rules. An employer's failure to provide a position statement or to timely and fully respond to a request for records or any other reasonable request issued by the department pursuant to an investigation creates a rebuttable presumption of a violation of this chapter. An employer that fails to respond to a request for records may not use such records in any appeal made pursuant to section 13 of this chapter.

3. Investigations shall be conducted in an objective and impartial manner.

4. The department shall consider any statement of position or evidence with respect to the alleged violation which the employee or employer wishes to submit.

5. In order to define the issues, determine which elements are undisputed, resolve those issues that can be resolved, and afford an opportunity to discuss or negotiate settlement, during investigation the department may require a fact-finding conference or participation in another process with the employer and the employee and any of their agents and witnesses.

C. Director determination of violation/no violation. Except when there is an agreed upon settlement, the director must issue a written determination of violation with findings of fact resulting from the investigation and a statement of whether a violation of this chapter has occurred based upon a preponderance of the evidence before the department. The determination of violation/no violation must be issued to the employer and the employee who filed the suspected violation report. In the case of a determination of no violation, the employee may, within 21 days, file a request for reconsideration of the determination with the director. The director must provide a written response on the reconsideration within ten days.

D. Relief and administrative fines. The director may order any appropriate relief for a determination of violation, including but not limited to:

1. Reinstatement and back pay.

2. For the first violation, the payment of any sick and safe leave unlawfully withheld, and the payment of an additional sum as liquidated damages to each employee whose rights under this chapter were violated. The dollar amount of paid sick and safe leave withheld from the employee multiplied by two, or \$250.00, whichever amount is greater, may be included as the liquidated damages to be paid to the employee.

For a second violation, in addition to the payment of any sick and safe leave unlawfully withheld, the director shall assess liquidated damages in an additional amount and order the employer to pay to the employee the dollar value of the sick and safe time unlawfully withheld multiplied by two, or \$250.00, whichever amount is greater. In addition to the above, for a third or any subsequent violations, the director shall assess an administrative fine, payable to the employee, up to \$1,000, or an amount equal to ten percent of the total amount of unpaid wages, whichever is greater.

3. An administrative fine of up to \$1,000, payable to the employee, for each violation of sections 4 or 5 of this chapter.

4. An administrative fine of up to \$1000, payable to the City, for each violation of sections 6 or 7 of this chapter.

5. An administrative fine of \$1000, payable to the City, for each violation of section 8 of this chapter.

E. Failure to exhaust administrative remedies. If there is no appeal of the director's determination of a violation, that determination shall constitute the City's final decision. An employer's failure to appeal the director's determination of a violation shall constitute a failure to exhaust administrative remedies, which shall serve as a complete defense to any petition or claim brought by the employer against the City regarding the director's determination of a violation.

Section 13. APPEAL.

A. An employer may appeal from a determination of a violation by filing an appeal in writing with the department within 21 days of the date of service of the determination. Failure to file a timely appeal shall constitute admission to the violation and the determination shall be deemed final.

B. The department shall notify the employer of this right of review after issuance of the director's decision.

C. Upon an appeal of the director's determination of a violation, the department shall refer the matter to the HREEO Commission, which for purposes of this chapter and pursuant to the department's rules is authorized to hear such appeals.

D. In such appeals, in addition to hearing oral arguments, the HREEO Commission shall consider the record and the written statements of positions by the parties involved. The HREEO Commission shall reverse the department's determination of a violation only upon a finding that it is clearly erroneous. The HREEO Commission's decision shall constitute the City's final decision without any further right of administrative appeal.

E. An employer may appeal the HREEO Commission's decision to the extent provided by state law.

Section 14. CIVIL ENFORCEMENT.

Where prompt compliance is not forthcoming with a final determination of violation, the department may refer the action to the city attorney to consider initiating a civil action against an employer for violating any requirement of this chapter and, upon prevailing, shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation.

Section 15. PRIVATE RIGHTS OF ACTION.

An employee claiming harm from a violation of this chapter may bring an action against an employer in court to enforce the provisions of this chapter and shall be entitled to all remedies available to remedy any violation of this chapter, including but not limited to back pay, reinstatement, and injunctive relief. Violations of this chapter are declared to irreparably harm the public and covered employees generally. The court shall award reasonable attorney's fees, witness fees, and expenses to any plaintiff who prevails in an action to enforce this chapter. Any person who negligently or intentionally violates this chapter shall be liable for civil penalties for each negligent or intentional violation for an amount to be determined by the court, with a maximum of \$1000 per violation. This chapter shall not give rise to any cause of action for damages against the City.

Section 16. REMEDIES CUMULATIVE.

The remedies, penalties, and procedures provided under this chapter are cumulative.

Section 17. EMPLOYEE EXCHANGE OF HOURS.

- A. Nothing in this chapter shall be construed to prohibit an employer from establishing a policy whereby employees may voluntarily exchange hours or trade shifts.
- B. Nothing in this chapter shall be construed to prohibit an employer from establishing a policy whereby employees may donate unused, earned sick and safe time to another employee.
- C. Nothing in this chapter shall be construed to prohibit an employer from advancing sick and safe time to an employee prior to accrual by the employee.

Section 18. ENCOURAGEMENT OF MORE GENEROUS SICK TIME POLICIES; NO EFFECT ON MORE GENEROUS POLICIES.

- A. Nothing in this chapter shall be construed to discourage or prohibit an employer from the adoption or retention of an earned sick and safe time policy more generous than the one required herein.

B. Nothing in this chapter shall be construed as diminishing the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan, or other agreement providing more generous sick and safe time to an employee than required herein.

Section 19. OTHER LEGAL REQUIREMENTS.

This chapter provides minimum requirements pertaining to earned sick and safe time and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for greater accrual or use by employees of sick or safe time, whether paid or unpaid, or that extends other protections to employees. Nothing in this chapter shall be interpreted or applied so as to create any power or duty in conflict with federal or state law. Nor shall this chapter be construed to preclude any person aggrieved from seeking judicial review of any final administrative decision or order made under this chapter affecting such person.

Section 20. SEVERABILITY.

If any of the provisions of this chapter or the application thereof to any person or circumstance is held invalid or unconstitutional by a decision of a court of competent jurisdiction, the remainder of this chapter, including the application of such provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby and shall continue in full force and effect. To that end, the provisions of this chapter are severable.

Section 21. EFFECTIVE DATE.

A. For employers with 24 or more employees, this chapter is effective July 1, 2017. For employers with 23 or fewer employees, this chapter is effective January 1, 2018.

B. For employers operating in their first six months after the hire date of the employer's first employee, the employer is required to provide unpaid sick and safe time but is not required to provide paid sick and time. After six months, the employer will be subject to this chapter. This subsection will sunset on January 1, 2023, at which point all employers will be subject to full enforcement.