

STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~Struck-Out~~

NEW LANGUAGE: Double Underline

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 3 OF THE
SAN DIEGO MUNICIPAL CODE BY ADDING ARTICLE 9,
DIVISION 1, SECTIONS 39.0101 THROUGH 39.0114,
RELATING TO THE EARNED SICK LEAVE TO BE
PROVIDED TO EMPLOYEES WORKING IN THE CITY OF
SAN DIEGO.

Article 9: City of San Diego Earned Sick Leave and Minimum Wage

Division 1: City of San Diego Earned Sick Leave Ordinance

§39.0101 Purpose and Intent

This Division ensures that employees who work in the City have the right to take earned, paid sick leave to ensure a decent and healthy life for themselves and their families. By enabling more employees to support and care for their families through their own efforts and with less need for financial assistance from the government, and by protecting the rights of employees to care for their health and the health of their family members, the City can safeguard the general welfare, health, safety and prosperity of all San Diegans.

It is the purpose and intent in enacting this Division that San Diego workers be guaranteed the right to take earned sick leave. Most employees will at some time during each year need limited time off from work to take care of their own health needs or the health needs of members of their families. Guaranteeing employees earned sick leave will reduce recovery time from illnesses, promote the use of

regular medical providers rather than hospital emergency departments, and reduce the likelihood of workers spreading illness to other members of the workforce and to the public.

§39.0102 Citation

This Division shall be cited as the City of San Diego Earned Sick Leave Ordinance.

§39.0103 Authority

This Division is adopted pursuant to the powers vested in the *City* under the Constitution and the laws of the State of California, including, but not limited to, the police powers vested in the *City* pursuant to Article XI, section 7 of the California Constitution and California Labor Code section 1205(b).

§39.0104 Definitions

Each word or phrase defined in this Division appears in the text of this Division in italicized letters. To the extent that a federal, state, or other law is referenced within this Division, the citation includes and incorporates the law as it may be amended or renumbered in the future. For purposes of this Division, the following definitions apply:

Benefit Year means a regular and consecutive twelve-month period, as determined by an *Employer*.

Child means a biological, adopted, or foster child; a stepchild; a legal ward; a child of a *Domestic Partner*; or a child of an *Employee* standing in loco parentis.

City means the City of San Diego.

City Council means the Council of the City of San Diego.

Domestic Partners mean two adults in a relationship recognized by the State of California by filing as domestic partners under California Family Code section 297, and who have registered as domestic partners with a governmental entity pursuant to state or local law authorizing such registration or with an internal registry maintained by the employer of at least one of the domestic partners.

Domestic Violence means “domestic violence” as defined in California Penal Code section 13700.

Earned Sick Leave means accrued increments of compensated leave provided by an Employer to an Employee as a benefit of the employment for use by the Employee during an absence from the employment because of a qualifying medical condition or event, as specified in section 39.0106 of this Division.

Employee means any person who:

- (a) In one or more calendar weeks of the year performs at least two hours of work within the geographic boundaries of the City for an Employer; and
- (b) Qualifies as an employee entitled to payment of a minimum wage from any employer under the California minimum wage law, as set forth in the California Labor Code and wage orders published by the California Industrial Welfare Commission or the State of California Division of Labor Standards Enforcement, or is a participant in a State of California Welfare-to-Work Program.
- (c) Employee does not include any person who is authorized to be employed at less than the minimum wage under a special license issued under California Labor Code sections 1191 or 1191.5; any person employed under a publicly subsidized summer or short-term youth employment

program, such as the San Diego County Urban Corps Program; or any student employee, camp counselor, or program counselor of an organized camp as defined in California Labor Code section 1182.4. *Employee* also does not include any person who is employed as an independent contractor as defined by the California Labor Code.

Employer means any person or persons, as defined in California Labor Code section 18, who exercises control over the wages, hours, or working conditions of any *Employee*, or suffers or permits the *Employee* to work, or engages the *Employee*. *Employer* does not include a person receiving services under the California In-Home Supportive Services program pursuant to Welfare and Institutions Code section 12300.

Enforcement Office means the *City* Department or Office that the *City Council* designates to enforce this Division.

Family Member means a *Child*, *Spouse*, *Parent*, grandparent, grandchild, *Sibling*, or the *Child* or *Parent* of a *Spouse*.

Health Care Provider means any person licensed under federal or California law to provide medical or emergency services, including, but not limited to, doctors, nurses and emergency room personnel.

Parent means a biological, foster, or adoptive parent; a step-parent; a legal guardian; or a person who stood in loco parentis when the *Employee* was a minor child.

Public Health Emergency means a state of emergency declared by any public official with the authority to do so, including officials with the City, the County of San Diego, the State of California, or the United States government.

Retaliation means any threat, discipline, discharge, demotion, suspension, reduction in *Employee* hours, or any other adverse employment action against any *Employee* for exercising or attempting to exercise any right guaranteed under this Division.

Safe Time means time away from work that is necessary due to *Domestic Violence, Sexual Assault, or Stalking*, provided the time is used to allow the *Employee* to obtain for the *Employee* or the *Employee's Family Member* one or more of the following:

- (a) Medical attention needed to recover from physical or psychological injury or disability caused by *Domestic Violence, Sexual Assault, or Stalking*;
- (b) Services from a victim services organization;
- (c) Psychological or other counseling;
- (d) Relocation due to the *Domestic Violence, Sexual Assault, or Stalking*; or
- (e) Legal services, including preparing for or participating in any civil or criminal legal proceeding related to or resulting from the *Domestic Violence, Sexual Assault, or Stalking*.

Sexual Assault means “rape” as defined in California Penal Code section 261 or “sexual battery” as defined by California Penal Code section 243.4.

Sibling means a brother or sister, whether related through half blood, whole blood, or adoption, or one who is a step-sibling.

Spouse means a person to whom an *Employee* is legally married under the laws of the State of California, or the *Employee's Domestic Partner*.

Stalking means the unlawful conduct described in California Penal Code section 646.9.

§39.0105 Accrual of Earned Sick Leave

- (a) Employers must provide Earned Sick Leave to their Employees in accordance with this Division.
- (b) Employers must provide an Employee with one hour of Earned Sick Leave for every thirty hours worked by the Employee within the geographic boundaries of the City, but Employers are not required to provide an Employee with Earned Sick Leave in less than one-hour increments for a fraction of an hour worked. Earned Sick Leave must be compensated at the same hourly rate or other measure of compensation as the Employee earns from his or her employment at the time the Employee uses the Earned Sick Leave.
- (c) An Employer required to provide Earned Sick Leave pursuant to this Division who provides an Employee with an amount of paid leave, including paid time off, paid vacation, or paid personal days sufficient to meet the requirements of this section, and who allows such paid leave to be used for the same purposes and under the same conditions as Earned Sick Leave required pursuant to this Division, is not required to provide additional Earned Sick Leave to such Employee.
- (d) Earned Sick Leave begins to accrue at the commencement of employment or on April 1, 2015, whichever is later, and an Employee is entitled to begin using Earned Sick Leave on the ninetieth calendar day following commencement of his or her employment or on July 1, 2015, whichever is

later. After the ninetieth calendar day of employment or after July 1, 2015, whichever is later, such *Employee* may use *Earned Sick Leave* as it is accrued.

- (e) *Employees* who are not covered by the overtime requirements of California law or regulations are assumed to work forty hours in each work week for purposes of *Earned Sick Leave* accrual unless their regular work week is less than forty hours, in which case *Earned Sick Leave* accrues based upon that regular work week.
- (f) *Employees* may determine how much *Earned Sick Leave* they need to use, provided that *Employers* may set a reasonable minimum increment for the use of *Earned Sick Leave* not to exceed two hours.
- (g) *Employers* may limit an *Employee's* use of *Earned Sick Leave* to forty hours in a *Benefit Year*, but *Employers* must allow *Employees* to continue to accrue *Earned Sick Leave* based on the formula set forth in this section. Unused *Earned Sick Leave* must be carried over to the following *Benefit Year*.
- (h) If an *Employee* is transferred to a separate division, entity, or location in the *City*, but remains employed by the same *Employer*, the *Employee* is entitled to all *Earned Sick Leave* accrued at the prior division, entity, or location, and is entitled to retain and use all *Earned Sick Leave*, as provided by this Division. When there is a separation from employment and the *Employee* is rehired within six months of separation by the same

Employer, previously accrued Earned Sick Leave that was not used or paid out must be reinstated and such Employee must be entitled to use such accrued Earned Sick Leave.

- (i) Employers are not required by this Division to compensate an Employee for unused, accrued Earned Sick Leave, upon the Employee's termination, resignation, retirement, or other separation from employment.

§39.0106 Use of Earned Sick Leave

- (a) An Employee may use Earned Sick Leave for any of the following reasons:

(1) The Employee is physically or mentally unable to perform his or her duties due to illness, injury, or a medical condition of the Employee.

(2) The Employee's absence is for the purpose of obtaining professional diagnosis or treatment for a medical condition of the Employee.

(3) The Employee's absence is for other medical reasons of the Employee, such as pregnancy or obtaining a physical examination.

(4) The Employee is providing care or assistance to a Family Member, with an illness, injury, or medical condition, including assistance in obtaining professional diagnosis or treatment of a medical condition.

(5) The Employee's absence is for the Employee's use of Safe Time.

- (6) The *Employee's* place of business is closed by order of a public official due to a *Public Health Emergency*, or the *Employee* is providing care or assistance to a *Child*, whose school or child care provider is closed by order of a public official due to a *Public Health Emergency*.
- (b) An *Employer* may require reasonable notice of the need to use *Earned Sick Leave*. Where the need is foreseeable, an *Employer* may require reasonable advance notice of the intention to use such *Earned Sick Leave*, not to exceed seven days notice prior to the date such *Earned Sick Leave* is to begin. Where the need is not foreseeable, an *Employer* may require an *Employee* to provide notice of the need for the use of *Earned Sick Leave* as soon as practicable.
- (c) For an absence of more than three consecutive work days, an *Employer* may require reasonable documentation that the use of *Earned Sick Leave* was authorized under subsection (a) of this section. An *Employer* must accept as reasonable, documentation signed by a licensed *Health Care Provider* indicating the need for the amount of *Earned Sick Leave* taken, and an *Employer* may not require that the documentation specify the nature of the *Employee's* or the *Employee's Family Member's* injury, illness, or medical condition.
- (d) An *Employer* must not require an *Employee*, as a condition of using *Earned Sick Leave*, to search for or find a replacement worker to cover the hours during which such *Employee* is using *Earned Sick Leave*.

§37.0107 Notice and Posting

- (a) The bulletin and notices specified in this section will be published by the City and made available to Employers in English, Spanish, and any other language for which the San Diego County Registrar of Voters provides translated ballot materials pursuant to section 203 of the federal Voting Rights Act. The materials specified in this section will be made available to Employers by April 1 in 2015, 2016, and 2017; by October 1 in 2018; and by October 1 of each year thereafter:
- (1) A notice for Employers to post in the workplace informing Employees of their rights to Earned Sick Leave, including information about the accrual and use of Earned Sick Leave, the right to be free from Retaliation, and the right to file a complaint with the Enforcement Office or a court of competent jurisdiction.
- (2) A template notice suitable for use by Employers in compliance with this section.
- (b) Every Employer must post in a conspicuous place at any workplace or job site where any Employee works the notice published each year by the City informing Employees of their rights to Earned Sick Leave under this Division. Every Employer must post this notice in the workplace or on the job site in English and any other language that is referenced in subsection (a) and spoken by at least five percent of the Employees at the Employee's job site.

(c) Every Employer must also provide each Employee at the time of hire, or by April 1, 2015, whichever is later, written notice of the Employer's name, address, and telephone number and the Employer's requirements under this Division. The notice must be provided to the Employee in English and in the Employee's primary language, if it is a language referenced in subsection (a) and spoken by at least five percent of the Employees at the Employee's job site. Employers may provide this notice through an accessible electronic communication in lieu of a paper notice.

§39.0108 Employer Records

Employers must create contemporaneous written or electronic records documenting their Employees' accrual and use of Earned Sick Leave and retain these records for a period of at least three years. Employers must allow the Enforcement Office reasonable access to these records in furtherance of an investigation conducted pursuant to this Division. An Employer's failure to create and retain contemporaneous written or electronic records documenting its Employees' accrual and use of Earned Sick Leave, or an Employer's failure to allow the Enforcement Office reasonable access to records creates a rebuttable presumption that the Employer has violated this section and the Employee's reasonable estimate regarding Earned Sick Leave accrued and Earned Sick Leave taken may be relied upon.

§39.0109 Confidentiality and Nondisclosure

Employers are prohibited from requiring an Employee to disclose details related to the medical condition of the Employee's or the Employee's Family Member as a condition for using Earned Sick Leave under this Division, except where

disclosure is required or authorized by federal or state law. Employers who obtain medical or other personal information about an *Employee* or an *Employee's Family Member* for the purposes of complying with *Earned Sick Leave* requirements of this Division must maintain the confidentiality of the information and must not disclose it, except with the permission of the *Employee* or as required by law.

§39.0110 Retaliation Prohibited

Employers are prohibited from engaging in *Retaliation* against an *Employee* for exercising any right provided pursuant to this Division. The protections of this Division apply to any *Employee* who reasonably and in good faith reports a violation of this Division to his or her *Employer* or a governmental agency tasked with overseeing the enforcement of any wage and hour law applicable to the *Employer*. Rights under this Division include, but are not limited to the right to use *Earned Sick Leave*, file a complaint for alleged violations of this Division with the *Enforcement Office* or in court, communicate with any person about any violation or alleged violation of this Division, participate in any administrative or judicial action regarding an alleged violation of this Division, or inform any person of his or her potential rights under this Division.

§39.0111 Implementation, Enforcement, and Remedies

- (a) The *City Council* will designate the *Enforcement Office*.
- (b) The *Enforcement Office* will have full authority to implement and enforce this Division, as set forth in an implementing ordinance to be approved by the *City Council*. The ordinance will establish a system to receive and adjudicate complaints and to order relief in cases of violations.

- (c) The City or any person claiming harm from a violation of this Division may bring an action against the Employer in court to enforce the provisions of this Division. Any person claiming harm from a violation of this Division and the City are entitled to all legal and equitable relief to remedy any violation of this Division, including, but not limited to, the payment of back wages withheld in violation of this Division; an additional amount equal to double the back wages withheld as liquidated damages; damages for an Employer's denial of the use of accrued Earned Sick Leave in violation of this Division; reinstatement of employment or other injunctive relief; and reasonable attorney's fees and costs to any plaintiff, who prevails in an action to enforce this Division. Violations of this Division are declared to irreparably harm the public and covered Employees generally.
- (d) Any Employer who violates any requirement of this Division is subject to a civil penalty for each violation of up to, but not to exceed, \$1,000 per violation; except that any Employer who fails to comply with the notice and posting requirements of this Division is subject to a civil penalty of one hundred dollars for each Employee who was not given appropriate notice pursuant to that section, up to a maximum of \$2,000.
- (e) Violations of this Division may not be prosecuted as a misdemeanor or infraction.
- (f) This Division does not create any right of action or cause of action for damages against the City in its enforcement of this Division.

(g) Submitting a complaint to the *Enforcement Office* is neither a prerequisite to nor a bar to bringing a private cause of action.

(h) This section is not intended to supersede any applicable, current or future state or local law, rule, regulation, or approved memoranda of understanding binding on the *City*, as a public agency employer, and its *Employees*.

§39.0112 Compliance with Legal Agreements

This Division must not be interpreted to modify any obligation of an *Employer* to comply with any contract, collective bargaining agreement, employment benefit plan, or other agreement providing higher wages or more *Earned Sick Leave* to an *Employee*.

§39.0113 No Effect on Higher Wages or More Earned Sick Leave

This Division must not be construed to discourage or prohibit an *Employer* from providing more *Earned Sick Leave* to its *Employees*.

§39.0114 Effect of Invalidity; Severability

If any section, subdivision, paragraph, sentence, clause, phrase, or other portion of this Division is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this Division, which shall continue in full force and effect.

JFD:ccm
07/10/14
Or.Dept: Council District 3
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