

AN ORDINANCE

AMENDING CHAPTER 15, HEALTH, OF THE CITY CODE OF SAN ANTONIO, TEXAS TO CREATE A NEW ARTICLE XI ENTITLED "EARNED PAID SICK TIME" TO REQUIRE THAT CERTAIN EMPLOYEES IN SAN ANTONIO BE PROVIDED EARNED PAID SICK TIME FOR USE IF AN EMPLOYEE NEEDS TO BE ABSENT FROM WORK BECAUSE THE EMPLOYEE OR THE EMPLOYEE'S FAMILY MEMBER EXPERIENCES ILLNESS, INJURY, STALKING, DOMESTIC ABUSE, SEXUAL ASSAULT, OR OTHERWISE REQUIRES MEDICAL OR HEALTH CARE, INCLUDING PREVENTATIVE CARE AND MENTAL HEALTH CARE, ESTABLISHING NOTICE, POSTING, AND RECORDKEEPING REQUIREMENTS, ESTABLISHING ENFORCEMENT AUTHORITY, ESTABLISHING CIVIL PENALTIES FOR VIOLATIONS AND SETTING THE EFFECTIVE DATE.

* * * * *

WHEREAS, most workers in the City of San Antonio will at some time during each year need limited time off from work to care for their own health and safety needs or the health and safety needs of a close family member; and

WHEREAS, denying earned paid sick time to employees is detrimental to the health, safety, and welfare of the residents of the City of San Antonio; and

WHEREAS, the lack of earned paid sick time for employees contributes to employee turnover and unemployment, and harms the local economy; and

WHEREAS, the City of San Antonio, as a home-rule municipality, has the ability to address matters of public health and safety; and now finds that establishing earned paid sick time requirements is a matter of public health and safety; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. Chapter 15, Health, of the City Code of San Antonio, Texas is hereby amended by adding the underlined (added) language and deleting stricken (~~deleted~~) language.

SECTION 2. Chapter 15, Health, of the City Code of San Antonio, Texas is hereby amended by adopting a new Article XI, entitled "Earned Paid Sick Time," to read as follows:

ARTICLE XI. EARNED PAID SICK TIME

Sec. 15-269. Definitions

In this Article:

City means the City of San Antonio, Texas.

Department means the health department of the city also known as the San Antonio Metropolitan Health District.

Director means the Director of the San Antonio Metropolitan Health District or their authorized designee.

Earned paid sick time means a period of paid leave from work accrued by an employee in accord with this Article.

Employee means an individual who performs at least eighty (80) hours of work for pay within the City of San Antonio, Texas in a year for an employer, including work performed through the services of a temporary or employment agency. Employee does not mean an individual who is an independent contractor according to Title 40, Section 821.5 of the Texas Administrative Code. Employee does not mean an unpaid intern.

Employer means any person, company, corporation, firm, partnership, labor organization, non-profit organization or association that pays an employee to perform work for an employer and exercises control over the employee's wages, hours and working conditions. The term does not include:

- (1) the United States;
- (2) a corporation wholly owned by the government of the United States;
- (3) the state or any state agency; or
- (4) the City of San Antonio, Texas, or any other political subdivision of the state or other agency that cannot be legally regulated by City ordinance.

Family member means an employee's spouse, child, parent or any other individual related by blood or whose close association with the employee is the equivalent of a family relationship.

Medium or large employer means an employer with more than fifteen (15) employees at any time in the preceding twelve (12) months, excluding family members.

Predecessor means an employer that employs at least one individual covered in this Article, and for which a controlling interest in such employer or a recognized division of such employer is acquired by a successor.

Small employer means any employer that is not a medium or large employer.

Successor means an employer that acquires a controlling interest in a predecessor or a controlling interest in a recognized division of a predecessor.

Year means a regular and consecutive twelve (12) month period as determined by the employer.

Sec. 15-270. Scope and Intent of Article.

To provide employees with the ability to accrue and use earned paid sick time when they need to be absent from work because the employee or the employee's family member suffer illness, injury, stalking, domestic abuse, sexual assault, or otherwise require medical or health care, including preventative care and mental health care.

Sec.15-271. Duties and Powers of the Director.

- (a) The Director is hereby authorized to carry out and enforce the provisions of this Article, to educate employers and employees about this Article, to render interpretations of this Article, and to adopt policies and procedures in order to clarify and administer the application of this Article's provisions. Such interpretations, policies and procedures shall be in compliance with the intent and purpose of this Article. Such policies and procedures shall not have the effect of waiving requirements specifically provided for in this Article.

Sec. 15-272. Earned Paid Sick Time Requirements.

- (a) **General.** An employer shall provide an employee with earned paid sick time that meets the requirements of this Article in an amount up to the employee's available earned paid sick time. The employer shall pay earned paid sick time in an amount equal to what the employee would have earned if the employee had worked the scheduled work time, exclusive of any overtime premium, tips, or commissions, but no less than the state minimum wage.

(b) Accrual Requirements and Yearly Cap.

- (1) An employer shall grant an employee one hour of earned paid sick time for every thirty (30) hours worked for the employer in the City of San Antonio. Earned paid sick time shall accrue in one hour unit increments. There shall be no accrual of a fraction of an hour of earned paid sick time unless an employer chooses such smaller increment.

- (2) Earned paid sick time shall accrue starting at the commencement of employment or the date this Article is effective, whichever is later.
- (3) This Article does not require an employer to provide an employee with more earned paid sick time in a year than the yearly cap provided in this Section. This Article does not require an employer to allow an employee to accrue more than the yearly cap of earned paid sick time in a year. An employer may inform an employee that leave requested in excess of the employee's available earned paid sick time will not be paid. The yearly cap for earned sick time under this Article is:
 - (A) Sixty-four (64) hours per employee per year for medium or large employers, unless the employer chooses a higher limit; and
 - (B) Forty-eight (48) hours per employee per year for small employers, unless the employer chooses a higher limit.
- (4) All available earned paid sick time up to the yearly cap provided in this Section shall be carried over to the following year. Provided, that an employer that makes at least the yearly cap of earned paid sick time available to an employee at the beginning of the year under the purpose and usage requirements of this Article is not required to carry over earned paid sick time for that year.
- (5) A written contract made pursuant to Title 29, Section 158(d) of the United States Code between an employer and a labor organization representing employees may modify the yearly cap requirement established in this Section for employees covered by the contract if the modification is expressly stated in the contract.
- (6) A successor must provide to an employee who was employed by a predecessor at the time of the acquisition and hired by the successor at the time of acquisition all earned paid sick time available to the employee immediately before the acquisition.

(c) Usage Requirements.

- (1) Earned paid sick time shall be available for an employee to use in accord with this Article as soon as it is accrued, provided, that an employer may restrict an employee from using earned paid sick time during the employee's first sixty (60) days of employment if the employer establishes that the employee's term of employment is at least one year.

- (2) An employee may request earned paid sick time from an employer for an absence from the employee's scheduled work time caused by:
 - (A) The employee's physical or mental illness or injury, preventative medical or health care or health condition; or
 - (B) The employee's need to care for a family member's physical or mental illness, preventative medical or health care, injury or health condition; or
 - (C) The employee's or their family member's need to seek medical attention, seek relocation, obtain services of a victim services organization or participate in legal or court ordered action related to an incident of victimization from domestic abuse, sexual assault, or stalking involving the employee or the employee's family member.
- (3) An employer may adopt reasonable verification procedures to establish that an employee's request for earned paid sick time meets the requirements of this Section if an employee requests to use earned paid sick time for more than three (3) consecutive work days. An employer may not adopt verification procedures that would require an employee to explain the nature of the domestic abuse, sexual assault, stalking, illness, injury, health condition or other health need when making a request for earned paid sick time under this Section.
- (4) An employer shall provide earned paid sick time for an employee's absence from the employee's scheduled work time if the employee has available earned paid sick time and makes a timely request for the use of earned paid sick time before their scheduled work time. An employer may not prevent an employee from using earned paid sick time for an unforeseen qualified absence that meets the requirements of this Section.
- (5) This Section does not require any employer to allow an employee to use earned paid sick time on more than eight (8) days in a year.
- (6) An employee who is rehired by an employer within six (6) months following separation from employment from that employer may use any earned paid sick time available to the employee at the time of the separation.

(d) Requiring Employees to Find a Replacement to Work Scheduled Time Prohibited.

An employer shall not require an employee to find a replacement to cover the hours of earned paid sick time as a condition of using earned paid sick

time. This Article does not prohibit an employer from allowing an employee to voluntarily exchange hours or voluntarily trade shifts with another employee, or prohibit an employer from establishing incentives for employees to voluntarily exchange hours or voluntarily trade shifts.

- (e) **Donating Unused Earned Paid Sick Time.** This Article does not prohibit an employer from permitting an employee to donate available earned paid sick time to another employee.
- (f) **Employee Transfer.** Neither the amount of earned paid sick time nor the right to use earned paid sick time shall be affected by an employee's transfer to a different facility, location, division or job position with the same employer.

Sec. 15-273. No Change to More Generous Sick Leave Policies.

- (a) An employer may provide paid leave benefits to its employees that exceed the requirements of this Article. This Article does not require an employer who makes paid time off available to an employee under conditions that meet the purpose, accrual, yearly cap, and usage requirements of this Article to provide additional earned paid sick time to that employee.
- (b) This Article does not require an employer to provide additional earned paid sick time to an employee if the employee has used paid time off that meets the requirements of this Article for a purpose not specified in Section 15-272.
- (c) This Article does not prohibit an employer from granting earned paid sick time to an employee prior to accrual by the employee.

Sec. 15-274. Notice, Recordkeeping, and Signage Requirements.

- (a) **Monthly Notice to Employee.** On no less than a monthly basis, an employer shall provide electronically or in writing to each employee a statement showing the amount of the employee's available earned paid sick time. This Section does not create a new requirement for certified payroll.
- (b) **Notice in Employee Handbook.** An employer who provides an employee handbook to its employees must include a notice of an employee's rights and remedies under this Article in that handbook.
- (c) **Recordkeeping.** For the period required for maintenance of records under Title 29, Section 516(a) of the Code of Federal Regulations, an employer shall maintain records establishing the amount of earned paid sick time accrued and used by each employee.
- (d) **Posting of Signs.** If the Director makes such signage publicly available on the Department's website, an employer shall display a sign describing the

requirements of this Article in a conspicuous place or places where notices to employees are customarily posted. The Director has the authority to prescribe the size, content, and posting location of signs required under this Section. The signs displayed under this Section shall be in English and other languages, as determined by the Director.

Sec. 15-275. Retaliation Prohibited.

An employer may not transfer, demote, discharge, suspend, reduce hours or directly threaten these actions against an employee because that employee requests or uses earned paid sick time, reports or attempts to report a violation of this Article, participates or attempts to participate in an investigation or proceeding under this Article, or otherwise exercises any rights afforded by this Article.

Sec. 15-276. Investigations of Complaints.

- (a) An employee may file a complaint with the Department and the Department may investigate complaints, including anonymous complaints, alleging a violation of this Article.
- (b) A complaint alleging a violation of this Article must be filed with the Department by or on behalf of an aggrieved employee within two (2) years from the date of the violation.
- (c) An employer shall timely provide relevant information and testimony when requested by the Department for the purposes of determining compliance with this Article. Relevant information and testimony includes, and is limited to, only the information necessary to determine whether a violation of this Article has occurred.
- (d) The Department may inform employees at a worksite of any investigation of a complaint at that worksite alleging a violation of this Article.

Sec.15-277. Enforcement.

The Department has the authority to enforce the provisions of this Article.

Sec.15-278. Violation(s); Civil Penalties; Voluntary Compliance.

- (a) **Civil Penalty.** The Department may impose a civil penalty in an amount not to exceed five hundred dollars (\$500.00) per violation of this Article. Each violation of a particular section or subsection of this Article constitutes a separate offense. If the Department finds after investigation of a timely complaint that a violation of this Article has occurred an employer shall receive written notice of the violation and the civil penalty assessed, if any. Such written notice is presumed to have been received on the fifth day after the notice is mailed.

- (b) **Voluntary Compliance.** If the Department finds after investigation of a timely complaint that a violation of this Article has occurred, the Department may seek voluntary compliance from the employer to remedy any violation of this Article before collecting any civil penalty. If voluntary compliance is not achieved within ten (10) business days following the employer's receipt of the written violation notice, the employer shall be liable for any assessed civil penalty.
- (c) For a violation of this Article that occurs after the effective date of the ordinance from which this Article derives but before April 1, 2020, the Department may issue a notice to the employer that a civil penalty may be assessed for a violation that occurs on or after April 1, 2020. Provided, that a civil penalty for a violation of Section 15-275 (Retaliation Prohibited) may be assessed anytime after the effective date of the enabling ordinance.
- (d) This Section does not create a criminal offense.

Sec. 15-279. Annual Report.

The Director may publish an annual report regarding implementation and enforcement of this Article including, without limitation, information about the number and nature of complaints reported, investigations undertaken, specific violations found, compliance achieved, and penalties assessed in the prior year, information about the industries and occupations with high rates of complaints and violations, and a discussion of this Article's impact on employers and employees. This report may also include the Director's recommendations for improvements to this Article.

Sec. 15-280. Effective Date.

- (a) This Article shall become effective on August 1, 2019 except as provided in this Section.
- (b) **Delayed implementation for very small employers.** This Article shall become effective on August 1, 2021 for employers having no more than five (5) employees at any time in the preceding twelve (12) months.

SECTION 3. The Director of the San Antonio Metropolitan Health District, in consultation and collaboration with the City Manager, as appropriate, may design and provide a multilingual public education campaign to inform employers and employees of the requirements of this Ordinance, such as creating a website with best practices for employers and an educational outreach strategy to inform employees and City residents of their rights under this Article.

SECTION 4. The Director of Finance, City of San Antonio, may determine where funds generated by this Ordinance shall be deposited. Wherever possible, funds generated by this Ordinance shall be used to implement and carry out the provisions of this Ordinance.

SECTION 5. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 6. Should any Article, Section, Part, Paragraph, Sentence, Phrase, Clause, or Word of this Ordinance for any reason be held illegal, inoperative, or invalid, or if any exception to or limitation upon any general provision in this Ordinance be held to be unconstitutional or invalid or ineffective, the remainder shall, nevertheless, stand effective and valid as if it had been enacted and ordained without the portion held to be unconstitutional or invalid or ineffective.

SECTION 7. No other provision of the City Code is amended by this Ordinance. All other provisions remain in effect.

SECTION 8. The City Clerk for the City of San Antonio may publish notice of this Ordinance in a newspaper published in the City of San Antonio, Texas, as required by Article 2, Section 17 of the City Charter of San Antonio, Texas.

SECTION 9. The publishers of the City Code of San Antonio are authorized to amend the City Code to reflect the changes adopted in this Ordinance, to correct typographical errors and to index, format and number paragraphs to conform to the existing code.

SECTION 10. Except as provided in Section 2, this Ordinance is effective January 1, 2019.

PASSED AND APPROVED on this the _____ day of _____, 2018.

M A Y O R
Ron Nirenberg

ATTEST:

APPROVED AS TO FORM:

Leticia M. Vacek, City Clerk

Andrew Segovia, City Attorney