



Office of the City Clerk

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Legislation Details (With Text)

File #: O2014-1511

Type: Ordinance **Status:** Failed to Pass

File created: 3/5/2014 **In control:** City Council

Final action: 5/20/2015

Title: Amendment of Municipal Code Title 7 by adding new Chapter 7-18 regarding City employee sick leave policy

Sponsors: Moreno, Proco Joe, Foulkes, Toni, Cappelman, James, Sawyer, Roderick T., Burns, William D., Sposato, Nicholas, Pawar, Ameya, Arena, John, Lane, Lona, Moore, Joseph, Munoz, Ricardo, Waguespack, Scott, Burnett, Jr., Walter, Fioretti, Bob, Silverstein, Debra L., Osterman, Harry, Quinn, Marty, Pope, John, Solis, Daniel, Brookins, Jr., Howard, Colón, Rey, Beale, Anthony, Thompson, JoAnn, Hairston, Leslie A., Dowell, Pat, Thomas, Latasha R., Mell, Deborah

Indexes: Ch. 18 Chicago Earned Sick Time Ordinance

Attachments: 1. O2014-1511.pdf, 2. O2015-1511.pdf

Date	Ver.	Action By	Action	Result
5/20/2015	1	City Council	Failed to Pass	Fail
4/15/2015	1	Committee on Workforce Development and Audit	Add Co-Sponsor(s)	
3/5/2014	1	City Council	Referred	

ORDINANCE

WHEREAS, Throughout the year, employees in every industry occasion the need for time away from the workplace to tend to their health or the health of their family. Parents and guardians without paid sick days must lose income and risk losing their jobs when a child is ill or needs medical care; and

WHEREAS, in Chicago forty-three percent of private sector workers are without any paid sick time; and

WHEREAS, Providing the right to earned sick time not only has a positive effect on the health of the employees and their family members but also the health of their fellow workers and the public at large by limiting the exposure to spread of and disease. The largest national survey of U.S. restaurant workers found that two-thirds of restaurant waitstaff and cooks have come to work sick; and

WHEREAS, parents who don't have paid sick time are more than twice as likely as parents with paid sick time to send a sick child to school or daycare, and five times as likely to report taking their child or a family member to a hospital emergency room because they were unable to take time off work during their regular work hours; and

WHEREAS, earned sick time will reduce health care expenditures by promoting access to primary and preventive care. Nationally, providing all workers with paid sick time would result in \$1.1 billion in annual savings in hospital emergency department costs; and

WHEREAS, Many employers already recognize that a healthy workforce generates higher productivity as well as the retention of valued employees and thus currently have a sick leave policy in place. Replacing workers can cost anywhere from 25 to 200 percent of an employee's annual compensation; and

WHEREAS, nearly one in four American women report domestic violence by an intimate partner at some point in their lives, nearly one in five women have been raped in their lifetime, and nearly one in six women have been stalked in their lifetime. Many workers, men and women, need time off to care for their health after these incidents or to find solutions,

such¹ as a protective order or new housing, to avoid or prevent further domestic or sexual violence. Without Jpaid time off, victims are in grave danger of losing their jobs, and loss of employment can be devastating when victims need economic security to ensure their and their children's safety; and

WHEREAS, Other municipalities such as Jersey City, New York City, San Francisco, Seattle and Portland have passed legislation requiring some minimal paid sick leave policy for employees within their jurisdictions; and

WHEREAS, At a time when the economy shows significant signs of improvement, it behooves this legislative body to promulgate regulations requiring at least a minimal sick leave policy to promote and protect the health and well-being of the working citizens of this city, now therefore

BE IT ORDAINED BY THE CITY OF CHICAGO CITY COUNCIL:

SECTION 1. A new Chapter 7-18 of the Municipal Code of the City of Chicago is hereby added as follows:

7-18-000 Short title.

This Chapter shall be referred to as the Chicago Earned Sick Time Ordinance.

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7-18-005 Definitions.

When used in this Chapter, the following terms have the stated definitions:

"Agency" shall mean the Chicago Commission on Human Relations. **"Calendar year"** shall mean a regular and consecutive twelve-month period. **"Domestic partner"** shall mean any person who has a registered domestic partnership or qualifies as such under the provisions outlined in Section 2-152-072 of the municipal code or the Illinois Religious Freedom Protection and Civil Union Act, 750 ILCS 75/1 et seq.

"Domestic worker" shall mean any employee who works in a home or residence or any other location the domestic work is performed for the purpose of caring for a child, as a companion to a sick, convalescing or elderly person, housekeeping, or providing any other domestic service for one employer for more than eighty hours within 120 days on a full-time or part-time basis.

"Earned sick time" shall mean time that is provided by an employer to an employee that can be used for the purposes described in section 7-18-015a) of this Chapter and is compensated at the same rate and with the same benefits, including health care benefits, as the employee regularly earns during hours worked, and in no case shall the hourly wage be less than that provided under the Illinois minimum wage in 820 ILCS 105 et seq. An employee engaged in an occupation in which gratuities have customarily and usually constituted and have been recognized as part of the remuneration for hire purposes shall be paid by their employer at least the full Illinois minimum wage for earned sick time taken.

"Employee" shall mean any persons hired for monetary compensation for more than eighty hours within 120 days who performs work on a full-time or part-time basis within the City of Chicago.

"Employer" shall mean any person who hires the services of an employee or domestic worker who performs work on a full-time or part-time basis within the City of Chicago. **"Family member"** shall mean an employee's child, legal guardian or ward, spouse, domestic partner or parent, or the child, legal guardian or ward, or parent of an employee's spouse or domestic partner, sibling, grandparent, or grandchild. A child includes not only a biological relationship but also a relationship resulting from an adoption, step-relationship, and/or foster care relationship, or a child to whom the employee stands in loco parentis. A parent includes a biological, foster, stepparent or adoptive parent or legal guardian of an employee, or a person who stood in loco parentis when the employee was a minor child.

"Health care provider" shall mean any person licensed under Illinois statutes to provide medical or emergency services, including, but not limited to, doctors, nurses and emergency room personnel.

"Retaliation" shall mean 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 Chapter.

"Small employer" shall mean an employer for which fewer than ten persons work for compensation during a given week. In determining the number of persons performing work for an employer during a given week, all persons performing work for compensation on a full-time, part-time, or temporary basis shall be counted, including persons made available to work through the services of a temporary services or staffing agency or similar entity.

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"Spouse" shall mean a person to whom an employee is legally married as defined by Illinois statute.

7-18-010 Right to earned sick time.

- a) For employees, earned sick time as provided pursuant to this Chapter shall begin to accrue at the commencement of employment or on the effective date of this local law, whichever is later, and an employee shall be entitled to begin using sick time on the one hundred twentieth calendar day following commencement of his or her employment or on the one hundred twentieth calendar day following the effective date of this local law, whichever is later.
- b) For every 30 hours worked after earned sick time begins to accrue for an employee, the employee shall accrue one hour of earned sick time. Earned sick time shall accrue only in hourly increments. There shall be no fractional accruals. Employees shall determine how much earned sick time they need to use, provided that employers may set a reasonable minimum increment for the use of sick time not to exceed four hours per day.
- c) Employees who are exempt from overtime requirements under 29 U.S.C. 213(a)(1) of the Federal Fair Labor Standards Act will be assumed to work 40 hours in each work week for purposes of earned sick time accrual unless their normal work week is less than 40 hours, in which case earned sick time accrues based upon that normal work week.
- d) For employees of small employers, that include domestic workers, there shall be a cap of 40 hours of accrued earned sick time unless the employer selects a higher limit. For employees of other employers, that include domestic workers, there shall be a cap of 72 hours of accrued earned sick time unless the employer selects a higher limit. Accrued earned sick time for employees carries over from year to year but is limited to the aforementioned caps unless the employer selects a higher limit. The 12-month period for an employee shall be calculated from the date the employee was entitled to begin using sick time.
- e) If an employer has a paid leave policy that makes available to employees an amount of paid leave that may be used for the same purposes as earned sick time and that is sufficient to meet the requirements for accrued earned sick time under this Chapter, the employer is not required to provide additional paid leave.
- f) All or any portion of the applicable requirements of this Chapter shall not apply to any employee covered by a bona fide collective bargaining agreement to the extent that 1) such requirements are expressly waived in the collective bargaining agreement in clear and unambiguous language, and 2) such collective bargaining agreement provides for a comparable benefit for the employees covered by the collective bargaining agreement that is sufficient to meet the requirements for accrued earned sick time under this Chapter.
- g) 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 accrued earned sick time that the employee has not used.

7-18-15 Use of earned sick time.

- a.) An employee may use; earned sick time when

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- i. he or she is ill or injured or for the purpose of the employee's receiving medical care, treatment, diagnosis or preventive medical care;
 - ii. he or she or the employee's family member is the victim of domestic violence as defined in Section 103(3) of the Illinois Domestic Violence Act of 1986 or sexual violence as defined under the Illinois Criminal Code of 2012 Article 11 and Sections 12-7.3, 12-7.4, and 12-7.5:
 - iii. a family member is ill or injured, or to care for a family member receiving medical care, treatment, diagnosis, or preventive medical care;
 - iv. an employee's place of business is closed by order of a public official due to a public health emergency or an employee's need to care for a child whose school or place of care has been closed by order of a public official due to a public health emergency.
- b.) An employer may not require, as a condition of an employee's taking earned sick time, that the employee search for or find a replacement worker to cover the hours during which the employee is on earned sick leave.
- c.) An employer may require employees to give not less than 7 days notice before the date that earned sick time is to begin for an absence from work that is foreseeable.
- d.) For an absence of more than three consecutive work days, an employer may require certification that the use of sick time was authorized by subsection a.) of this section. For time used pursuant to subsections a.)i.) or iii.), documentation signed by a licensed health care provider indicating the need for the amount of time taken shall be considered acceptable documentation and an employer shall not require that such documentation specify the nature of the employee's or the employee's family member's injury, illness or condition, except as required by law. For time used pursuant to subsection a.)ii.), a police report, court document, or signed statement from an attorney, a member of the clergy, or a victim services advocate shall be considered acceptable documentation. The employee shall choose which document shall be submitted, and no more than one document shall be required to be submitted if the leave time is related to the same incident of violence or the same perpetrator. The employer shall not delay the commencement of leave taken for purposes of subsections a.)i.), ii.) or iii.) nor delay pay for this period on the basis that the employer has not yet received the notification.
- e.) Nothing in this Chapter shall be construed to prohibit an employer from taking disciplinary action, up to and including termination, against a worker who uses sick time provided pursuant to this Chapter for purposes other than those described in this section.

7-18-020 Retaliation prohibited.

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- a) It shall be unlawful for an employer or any other person to interfere with, restrain, or deny the exercise

of, or the attempt to exercise, any right protected under this Chapter.

- b) It shall be unlawful for an employer or any other person to discharge, threaten to discharge, demote, suspend, or in any manner discriminate or take adverse action against any person in retaliation for exercising rights protected under this Chapter. Such rights include but are not limited to the right to use or attempt to use earned sick time pursuant to this Chapter, the right to file a complaint or inform any person about any employer's alleged violation of this Chapter, the right to cooperate with investigations of alleged violations of this Chapter, and the right to inform any person of his or her potential rights under this Chapter.
- c) It shall be unlawful for an employer's absence control policy to count earned sick time taken under this Chapter as an absence that may lead to or result in discipline, discharge, demotion, suspension, or any other adverse activity.
- d) There shall be a rebuttable presumption of unlawful retaliation under this section whenever an employer takes adverse action against a person within 90 days of when that person: a) files a complaint with the Agency or a court alleging a violation of any provision of this section; b) informs any person about an employer's alleged violation of this section; c) cooperates with the Agency or other persons in the investigation or prosecution of any alleged violation of this section; or d) informs any person of his or her rights under this section.

7-18-25 Notice and Posting.

- a.) Employers shall give notice that employees are entitled to earned sick time, the amount, terms of its use guaranteed under this Chapter, that retaliation is prohibited for requesting or using leave, that filing a complaint or bringing a civil action is allowed if sick time as required by this Chapter is denied or delayed by the employer.
- b.) An employer shall provide an employee at the commencement of employment with written notice of such employee's right to sick time as described under this subsection a.)
- c.) Employers may comply with this subsection a) by displaying a poster in a conspicuous and accessible place in each establishment where such employees are employed. The Agency shall create and make available to employers posters that contain the information required under this subsection a) for employers' use in complying with this subsection.
- d.) An employer who willfully violates the notice and posting requirements of this section shall be subject to a civil fine in an amount not to exceed \$100 for each separate offense.

7-18-030 Employer Records.

Employers shall retain records documenting hours worked by employees and paid earned sick time taken by employees, for a period of three years, and shall allow the Agency access to such records, with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of this Chapter. If the employer does not maintain or retain adequate records of employee hours worked and earned sick time taken, or does not allow the Agency reasonable access to such records, it shall be presumed that the employer has violated this Chapter, absent clear and convincing evidence otherwise.

Other legal requirements.

- a.) This Chapter provides minimum requirements pertaining to sick time and shall not be construed to preempt, limit or otherwise affect the applicability of any other law, regulation, rule, requirement, policy or standard that provides for greater accrual or use by employees of sick leave or time, whether paid or unpaid, or that extends other protections to employees.
- b.) Nothing in this Chapter shall be construed as creating or imposing any

requirement in conflict with any federal or state law, rule or regulation, nor shall anything in this Chapter be construed to diminish or impair the rights of an employee or employer under any valid collective bargaining agreement.

7-18-040 Enforcement and penalties.

- a) The commissioner of the Agency shall administer this Chapter and promulgate regulations for the enforcement of this Chapter.
- b) For the first instance of earned sick time taken by an employee but not compensated by the employer that relief to the employee shall be three times the wages that should have been paid under this Chapter or two hundred fifty dollars, whichever is greater.
- c) For the first instance of earned sick time requested by an employee but unlawfully denied by the employer and not taken by the employee or unlawfully conditioned upon searching for or finding a replacement worker, or for the first instance an employer requires an employee to work additional hours without the mutual consent of such employer and employee in violation of this Chapter to make up for the original hours during which such employee is absent pursuant to this Chapter: five hundred dollars to be paid to the employee.
- d) For the first instance of unlawful retaliation not including discharge from employment: full compensation including wages and benefits lost, and five hundred dollars to be paid to the employee and equitable relief as appropriate.
- e) For the first instance of unlawful discharge from employment: full compensation including wages and benefits lost, and two thousand five hundred dollars to be paid to the employee and equitable relief, including reinstatement, as appropriate.
- f) Any entity or person found to be in violation of the provisions of this Chapter shall be liable for a fine to the city of Chicago not to exceed five hundred dollars for the first violation.
- g) An employer shall be additionally liable to the aggrieved person(s) if it is found that the employer's conduct is repeated. A repeated violation is where there is more than one violation of any of the provisions of this Chapter against an employee, or there are one or more violations of any of the provisions of this Chapter against more than one employee, as proven by a preponderance of the evidence. A repeated violation need not be a violation of the same provision of this Chapter. The fines for each repeated violation shall be doubled for the second violation and tripled for each subsequent violation. In the case of one or more violations against more than one employee, the first instance shall be treated as a second violation for each employee.
- h) Any person aggrieved by a violation of this Chapter may bring a civil action in a court of competent jurisdiction against an employer violating this Chapter. Such action may be brought without first filing an administrative complaint. The statute of limitations for a civil action brought pursuant to this Chapter shall be

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for a period of 3 years from the date of the last event constituting the alleged violation for which the action is brought. Upon prevailing in an action brought pursuant to this Chapter, aggrieved persons shall recover damages equal to the full amount of any unpaid sick time, wages, salary, employment benefits, or other compensations denied or lost to such persons by reason of the violation, the interest on that amount calculated at the prevailing rate, such equitable relief as may be appropriate, including reinstatement and any actual damages suffered as the result of the employer's violation of this Chapter plus an equal amount of liquidated damages. Aggrieved persons shall also be entitled to costs and reasonable attorney's fees, and other costs of the action.

7-18-045 Effect of invalidity; severability.

If an section, subdivision, paragraph, sentence, clause, phrase or other portion of this local law 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 local law, which remaining portions shall continue in full force and effect.

SECTION 2. This ordinance shall be in full force and effect 60 days upon its passage and publication.

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Subject: _

Please Add Or Change The Co-Sponsor As Shown Below

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Principal Sponsor

Final copies to be filed with:

- Chairman of Committee to which legislation was referred
- City Clerk