

ARTICLE XI. - ~~EARNED-PAID SICK~~ AND SAFE TIME LEAVE BENEFITS

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.

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 (TAC). 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; or
- (5) any person, company, corporation, or firm subject to, or with employees subject to the Railway Labor Act (45 U.S.C. 181 et seq.).

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~~

(a) any of the following as they relate to an employee:

1. Spouses, domestic partners, and both different-sex and same-sex significant others; or
2. Any other family member within the second degree of consanguinity or affinity; or
3. A member of the covered employee's household;

(b) A minor's parents, regardless of the sex or gender of either parent.

The concept of parenthood is to be liberally construed without limitation as encompassing legal parents, foster parents, same-sex parent, step-parents, those serving *in loco parentis*, and other persons operating in caretaker roles.

~~*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.~~

~~Earned-paid~~ Sick and safe time leave means a period of paid leave from work accrued by an employee in accord with this article. Sick and safe leave is a fringe benefit as defined by the Texas Labor Code and not a wage or a component of salary.

~~Small employer means any employer that is not a medium or large employer, excluding family members.~~

~~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 and safe time leave 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. This ordinance does not require the payment of sick and safe leave upon separation from employment and it does not require that sick and safe leave be calculated as an increase to salary or wages for an employee. No provision of this Article is designed or intended to conflict with or be preempted by the Federal Labor Standards Act (FLSA) (29 U.S.C. 201, et seq.) or the Texas Minimum Wage Act (TMWA) (Texas Lab. Code Section 62.001, et seq.).

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 and safe leave time requirements.

(a) General. An employer shall provide an employee with ~~earned-paid~~ sick and safe time leave that meets the requirements of this article in an amount up to the employee's available ~~earned-paid~~ sick and safe time leave. The employer shall ~~pay~~ provide ~~earned-paid~~ sick and safe time leave at the rate of pay that 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 and safe time leave for every thirty (30) hours worked for the employer in the city of San Antonio. ~~Earned-paid~~ sick and safe time shall accrue in one hour unit increments. There shall be no accrual of a fraction of an hour of ~~earned-paid~~ sick and safe time leave unless an employer chooses such smaller increment.
- (2) ~~Earned-paid~~ Sick and safe time leave shall accrue starting at the commencement of employment or the date this article is effective, whichever is later. However, consistent with Section 15-272(C)(1), use of ~~earned-paid~~ sick and safe time leave shall not be required until

Paid Sick Leave Commission PROPOSED REVISIONS – 09/05/2019

All proposed revisions are subject to PSL Commission review and City Council consideration and approval

after an employee has met the established requirements for employment benefit eligibility, as applicable.

- (3) This article does not require an employer to provide an employee with more ~~earned-paid~~ sick and safe time leave in a year than the ~~yearly-cap-provided~~ baseline amount specified in this section. This article does not require an employer to allow an employee to accrue more than the ~~yearly-cap~~ baseline amount specified of ~~earned-paid~~ sick and safe time leave in a year. An employer may inform an employee that leave requested in excess of the employee's available ~~earned-paid~~ sick and safe time leave will not be paid. The ~~yearly-cap~~ baseline amount for ~~earned-paid~~ sick and safe time leave for full time employees 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)~~ fifty-six (56) hours per employee per year ~~for small employers,~~ unless the employer chooses a higher limit.
 - (4) All available ~~earned-paid~~ sick and safe time leave up to the ~~yearly-cap~~ baseline amount provided in this section shall be carried over to the following year. Provided, that an employer that makes at least the ~~yearly-cap~~ baseline amount of ~~earned-paid~~ sick and safe time leave 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 and safe time leave 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~~ Reserved.
 - ~~(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 and safe time leave shall be available for an employee to use in accord with this article ~~as soon as it is accrued~~, provided, that an employer that has an established employment benefit eligibility period prior to the effective date of this ordinance for all employees may restrict or limit an employee from using ~~earned-paid~~ sick and safe time leave during the an employee's eligibility period first sixty (60) days of employment if the employer establishes that the employee's term of employment is at least one year. An established eligibility period applying to the accrual and use of sick and safe leave may not exceed 180 days from the start of employment. An eligibility period applying to the accrual and use of sick and safe leave that is established by an employer after the effective date of this ordinance may not exceed 90 days from the start of employment. Employment benefit eligibility periods for the accrual and use of sick and safe leave are not applicable to, and do not supersede, any other timeline or eligibility requirement set out in state or federal law.
 - (2) An employee may request ~~earned-paid~~ sick and safe time leave 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.

Paid Sick Leave Commission PROPOSED REVISIONS – 09/05/2019

All proposed revisions are subject to PSL Commission review and City Council consideration and approval

(3) Verification of Leave.

- a. An employer may not adopt verification procedures that would require an employee to ~~explain the nature~~ provide a detailed description of the domestic abuse, sexual assault, stalking, illness, injury, health condition or other health need when making a request for ~~earned-paid~~ sick and safe time leave under this section.
- b. Consecutive days missed. An employer may adopt reasonable verification procedures consistent with section 15-272(c)(3)(c) to establish that an employee's request for more than three (3) consecutive days of ~~earned-paid~~ sick and safe time leave meets the requirements of this ~~section~~ Article.

c. Reasonable verification procedures for consecutive days missed:

- i. ~~An employer may request verification from an employee when an employee requests to use earned paid sick time for three (3) consecutive work days. An employer cannot request leave verification documentation from an employee until the employee's fourth (4th) consecutive day of using sick and safe leave.~~
 - ii. An employee will choose what documentation to provide in responding to a request for verification. The department will make examples of verification available to employers and employees.
 - iii. Verification may include a written statement from the employee that the employee took either "sick" or "safe" leave provided by this ordinance.
- ~~e.~~ d. Abuse of sick and safe leave. Employers suspecting abuse of sick and safe leave, including patterns of use, may request verification of the employee's need for leave, consistent with limitations and parameters established by state and federal law, or other source. Indications of patterns of use may include but are not limited to, repeated use of unscheduled sick time on or adjacent to weekends, holidays, vacation, pay day, on days when other leave has been denied, or when mandatory shifts are scheduled.
- e. An Employer that determines that an employee has failed to comply with the verification requirements set out in 15-273(c)(3)(b) or (c), may address that failure consistent with its established disciplinary processes and procedures.

- (4) An employer shall provide ~~earned-paid~~ sick and safe time leave for an employee's absence from the employee's scheduled work time if the employee has available ~~earned-paid~~ sick and safe time leave and makes a timely request for the use of ~~earned-paid~~ sick and safe time leave before their scheduled work time. An employer may not prevent an employee from ~~earned-paid~~ sick and safe time leave 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 more than the baseline amount set forth within Section 15-272(b)(3) of ~~earned-paid~~ sick and safe time leave ~~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 and safe time leave available to the employee at the time of the separation. An employer is not required to pay out the balance of sick and safe time to an employee upon separation from employment. However, if an employer chooses to pay out the balance of sick and safe leave to an employee upon

Paid Sick Leave Commission PROPOSED REVISIONS – 09/05/2019

All proposed revisions are subject to PSL Commission review and City Council consideration and approval

separation from employment, the employer is not required to reinstate any sick and safe leave upon rehiring of the employee.

(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 ~~and safe time leave~~ as a condition of using ~~earned-paid~~ sick ~~and safe time leave~~. 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 ~~and safe time leave~~. This article does not prohibit an employer from permitting an employee to donate available ~~earned-paid~~ sick ~~and safe time leave~~ to another employee.

(f) Employee transfer. Neither the amount of ~~earned-paid~~ sick ~~and safe time leave~~ nor the right to use ~~earned-paid~~ sick ~~and safe time leave~~ 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 or otherwise meet 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 in a manner consistent with~~ this article to provide additional ~~earned-paid~~ sick ~~and safe time leave~~ to that employee. An employer that provides the following minimum requirements to employees will be considered to be compliant with this article:

- 1) The employer provides an amount of leave for employees that is consistent with what is set out in section 15-272 (b) as a baseline amount;
- 2) An employee may use provided leave for circumstances set out in this ordinance.

(b) This article does not require an employer to provide additional ~~earned-paid~~ sick ~~and safe time leave~~ 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 ~~and safe time leave~~ to an employee prior to accrual by the employee.

(d) A covered employer with a leave policy that is otherwise compliant with the requirements of this ordinance must still comply with and meet all other applicable requirements established by this ordinance, including the prohibition of retaliating against employees that utilize sick and safe leave consistent with this ordinance.

Sec. 15-274. - Notice, recordkeeping, and signage requirements.

(a) Monthly notice to employee. On no less than a monthly basis, an employer shall provide or make available for review, electronically or in writing to each employee a statement showing the amount of the employee's available ~~earned-paid~~ sick ~~and safe time leave~~ or the paid time off (PTO) balance that can be

used in the same manner as sick leave. 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 and safe time leave 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 and safe time leave consistent with this ordinance, 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 and withdrawal 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 by whichever date is later: within ~~two (2) years~~ sixty (60) days from the date of the violation, or sixty (60) days from the date of the employee's discovery of a violation. A complaint will be deemed to be received by any member of city staff if provided in writing and shall be directed to the department by city staff. A submitted complaint should provide the following information:

- (1) name of company or employer;
- (2) location of company or employer (including branch or office);
- (3) date of incident or violation;
- (4) explanation of incident or violation;
- (5) list of witnesses or persons with knowledge of the incident or violation, as applicable.

(c) An employer shall ~~timely~~ provide relevant information and testimony when requested by the department for the purposes of determining compliance with this article within fifteen (15) days of the department's request for information. An employer may request an additional ten (10) days to provide information as determined to be appropriate and upon approval of the director. Relevant information and testimony includes, and is limited to, only the information necessary to determine whether a violation of this article has occurred. This ordinance does not provide the department with subpoena power.

(d) Pre-Investigation Voluntary Compliance. The department will provide written notice to a employer advising that a complaint has been filed alleging a violation of this chapter and will be investigated by the department. Upon receipt of a notice of complaint, the employer will have ten (10) business days to resolve the subject matter of the complaint by paying an employee for sick time that was taken and not paid for, provide an additional period of sick time to what was denied or taken without pay, and/or addressing and correcting an administrative violation. Additional voluntary compliance methods or options can be considered and approved by the director as appropriate to the resolution of a complaint.

(e) The department may inform employees and relevant personnel at a worksite of any investigation of a complaint at that worksite alleging a violation of this article.

(f) Withdrawal of complaints. An employee, at any time and at the employee's sole discretion, may withdraw their complaint. A complaint is withdrawn by the employee, and will be deemed to be received, when the employee notifies an employee or elected official of City of San Antonio in writing. A complaint withdrawal will terminate the investigation process immediately, and will result in a finding of 'withdrawn complaint' with respect to the outcome of the investigation. A finding of 'withdrawn complaint' will result in no fine being assessed against the employer.

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.~~ Any employer who intentionally, knowingly, recklessly or negligently violates any provision of this chapter shall, consistent with the judicial procedure laid out in §20-104 et seq., be fined an amount not more than five hundred dollars (\$500.00). Each day that a violation is committed or permitted to exist shall constitute a separate offense. Each violation of a particular section or subsection of this article constitutes a separate offense.

(b) If ~~the department finds it is determined~~ 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.

(c) Post-Investigation Voluntary compliance. If the ~~department~~ municipal court/administrative hearing officer 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 submitting the violation for prosecution~~collecting any civil penalty~~. Upon receipt of a notice of violation, the employer will have ten (10) business days to resolve the violation by paying an employee for sick time that was taken and not paid for, provide an equivalent period of sick time to what was denied or taken without pay, and/or addressing and correcting an administrative violation. Additional voluntary compliance methods or options can be considered and approved by the director as appropriate to the resolution of a violation. If voluntary compliance is not achieved within ten (10) business days following the employer's receipt of the written violation notice, the violation will be submitted for filing at Municipal Court ~~employer shall be liable for any assessed civil penalty~~.

(d) 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.

(e) 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. – Severability.

It is hereby declared to be the intention of the city council that the sections, paragraphs, sentences, clauses and phrases of this chapter are severable, and if any phrase, clause, sentence, paragraph or section of this chapter shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this chapter, since the same would have been enacted by the city council without the incorporation in this chapter of any such unconstitutional phrase, clause, sentence, paragraph or section.

15-281 - Effective date.

~~(a) — This article shall become effective on August~~ December 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.~~

(Ord. No. 2018-08-16-0620, § 2, 8-16-18)