

NOTICE OF RULE ADOPTION
EARNED SICK TIME RULES
Rules for Investigation of Complaints and Assessment
Of Civil Penalties under City Code Chapter 4-19
AUGUST 27, 2018

OCC RECEIVED AT
AUG 27 '18 PM 3:55

NOTICE OF RULE ADOPTION

ADOPTION DATE: AUGUST 27, 2018

By: Joya Hayes, Director
Human Resources Department

The Director of the City of Austin Human Resources Department has adopted the following Rule. Notice of the proposed Rule was posted on June 18, 2018. Public comment on the proposed Rule was solicited in the June 18, 2018 notice. Time for public comment was extended to July 20, 2018, but comments that were received late were considered for these final Rules. This notice is issued under Chapter 1-2 of the City Code. The adoption of a rule may be appealed to the City Manager in accordance with Section 1-2-10 of the City Code as explained below.

A copy of the complete text of the adopted Rule is available for public inspection and copying at the following locations. Copies may be purchased at the locations at a cost of ten cents per page:

City of Austin Equal Employment/Fair Housing Office ("EEFHO"), located at 1050 East 11th Street, Suite 200, Austin, Texas 78702

Office of the City Clerk, City Hall, located at 301 West 2nd Street, Austin, Texas.

Internet copies are available at <https://austintexas.gov/fairchancehiring>

EFFECTIVE DATE OF ADOPTED RULE

Based upon the August 17, 2018 Third Court of Appeals Order in No. 03-18-00445-CV; *Texas Association of Business et al. and The State of Texas, Intervenor v. City of Austin, Texas et al.*, the City is temporarily postponing the effective date for the Earned Sick Time Ordinance, No. 20180215-049, which is the subject of the rule. The rule-making process, including the appeals process outlined in Section 1-2-10 of the City Code is temporarily abated while the August 17, 2018 Order remains in effect.

TEXT OF ADOPTED RULE

The full text of the adopted Rule is set forth in Exhibit A attached to this Notice. Changes from the text of the Rule as initially proposed are shown in Exhibit A. Such changes have been made in response to written comments received from the public, or for clarification purposes.

SUMMARY OF COMMENTS

Written comments and comments submitted online to the EEFHO Earned Sick Time webpage or by email (spreadsheet attached) were received regarding Sections 1-7 Rules. The EEFHO has

reviewed the comments and determined that clarification in wording was warranted and made the applicable changes. A summary of the responses to comments is attached.

A copy of the comments and responses is available for public inspection and copying at the following locations. Copies may be purchased at the locations at a cost of ten cents per page:

City of Austin Equal Employment/Fair Housing Office ("EEFHO"), located at 1050 East 11th Street, Suite 200, Austin, Texas 78702

Office of the City Clerk, City Hall, located at 301 West 2nd Street, Austin, Texas.

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AUTHORITY FOR ADOPTION OF RULE

City Code Chapter 4-19-6(A)(5) provides that the "Equal Employment/Fair Housing Office shall adopt rules necessary to implement this [City Code] chapter [4-19]."

The authority and procedure for adoption of a rule to assist in the implementation, administration, or enforcement of a provision of the City Code is provided in Chapter 1-2 of the City Code.

APPEAL OF ADOPTED RULE TO CITY MANAGER

A person may appeal the adoption of a rule to the City Manager. **AN APPEAL MUST BE FILED WITH THE CITY CLERK NOT LATER THAN THE 30TH DAY AFTER THE DATE THIS NOTICE OF RULE ADOPTION IS POSTED. THE POSTING DATE IS NOTED ON THE FIRST PAGE OF THIS NOTICE.** If the 30th day is a Saturday, Sunday, or official city holiday, an appeal may be filed on the next day which is not a Saturday, Sunday, or official city holiday.

An adopted rule may be appealed by filing a written statement with the City Clerk. A person who appeals a rule must (1) provide the person's name, mailing address, and telephone number; (2) identify the rule being appealed; and (3) include a statement of specific reasons why the rule should be modified or withdrawn.

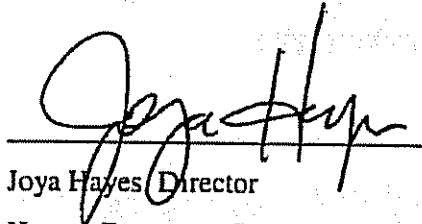
Notice that an appeal was filed will be posted by the City Clerk. A copy of the appeal will be provided to each member of the City Council. An adopted rule will not be enforced pending the City Manager's decision. The City Manager may affirm, modify, or withdraw an adopted rule. If the City Manager does not act on an appeal on or before the 60th day after the date the notice of rule adoption is posted, the rule is withdrawn. Notice of the City Manager's decision on an appeal will be posted by the city clerk and provided to the City Council.

On or before the 16th day after the City Clerk posts notice of the City Manager's decision, the City Manager may reconsider the decision on an appeal. Not later than the 31st day after giving written notice of an intent to reconsider, the City Manager shall make a decision.

CERTIFICATION BY CITY ATTORNEY

By signing this Notice of Rule Adoption, the City Attorney certifies that the City Attorney has reviewed the Rule and finds that adoption of the Rule is a valid exercise of the Director's administrative authority.

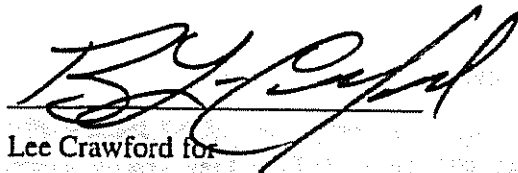
REVIEWED AND APPROVED



Joya Hayes Director

Human Resources Department

Date: 8/27/18



Lee Crawford for

Anne L. Morgan

City Attorney

Date: 8/27/2018

EXHIBIT A

TEXT OF ADOPTED RULE

**EARNED SICK TIME RULES FOR INVESTIGATION OF COMPLAINTS AND
ASSESSMENT OF CIVIL PENALTIES UNDER CITY CODE CHAPTER 4-19**

City of Austin

Rules for Investigation of Complaints and Assessment Of Civil Penalties under City Code Chapter 4-19

1. Purpose and Scope.

- (A) On February 15, 2018, the City Council approved the Earned Sick Time Ordinance (City Code Chapter 4-19), which ~~will be~~would have been effective beginning October 1, 2018.
- (B) These Rules define the procedures for investigating complaints and assessing civil penalties under Chapter 4-19.

2. Definitions.

Terms defined in Chapter 4-19 shall have the same meaning when used in these Rules. In addition, in these Rules:

- (A) "Administrator" means the Equal Employment/Fair Housing Office ("EE/FHO") Administrator appointed by the City of Austin Director of Human Resources.
- (B) "Complainant" means an individual who makes an allegation of a violation of Chapter 4-19 to the EE/FHO.
- (C) "Complaint" means a written, oral, or electronic statement by a Complainant alleging a violation of Chapter 4-19 by a Respondent.
- (D) "Determination" means the written decision of the Administrator stating the outcome and disposition of a Complaint.
- (E) "EE/FHO" means the Equal Employment/Fair Housing Office of the City.
- (F) "Investigator" means an employee who reports directly or indirectly to the Administrator and has responsibility for conducting investigations and/or making recommendations to the Administrator concerning Complaints.
- (G) "Preponderance of the evidence" when applied to the evaluation of whether a violation of Chapter 4-19 has occurred means that the issue under consideration is more likely true than not.
- (H) "Respondent" means the employer named in a Complaint.

3. Filing of Complaints.

- (A) The Administrator will not investigate an alleged violation of Chapter 4-19 unless the allegation is the subject of a timely Complaint filed in accord with these Rules.
- (B) The Administrator may prescribe forms and administrative procedures for filing a Complaint.
- (C) A Complaint will be timely filed under these Rules if it is filed with the EE/FHO within the time prescribed in City Code §4-19-6(B). Under these Rules:
 - (1) A Complaint will be deemed filed with the EE/FHO as of the date the Complainant first contacts the EE/FHO, whether in-person, ~~or~~ by telephone, by postal mail, or ~~email~~ electronically, provided that the Complainant also complies with any procedures established by the Administrator under Part 3(B) of this Rule.
 - (2) If the last day for filing a Complaint under §4-19-6(B) falls on a City, state, or federal holiday, a Complaint received on the next regular City business day following the holiday will be deemed filed on the last day prescribed in §4-19-6(B).
 - (3) A Complaint received by regular-postal mail will be deemed filed on the date the Complaint is postmarked or the postage meter date if there is no postmark.

4. Investigation of Complaints.

- (A) Investigations shall be performed in a fair, impartial, and objective manner, according to the procedures below.
- (B) The Administrator may prescribe forms and administrative procedures for the investigation of Complaints.
- (C) Within two business days of receiving a Complaint that meets the requirements of these Rules, including any procedures prescribed under Part 3(B), the Administrator will assign the Complaint to an Investigator. The Investigator will allow the Complainant and the Respondent a full opportunity to present witness statements, documents, or other information relevant to the allegations in the Complaint, and will take or cause to be taken the following actions:

- (1) Within ~~40-eight~~ business days of ~~receiving the assignment~~receiving the assignment, the Investigator will make all reasonable efforts to schedule an initial interview with the Complainant.
- (2) Within ~~40-eight~~ business days of ~~receiving the assignment~~receiving the assignment, the Respondent will be served with a copy of the Complaint and a request for responsive information. The Respondent will be given 21 days from the date of receipt to respond.
- (D) The Administrator may cause a subpoena to be issued and served on the Respondent in accord with City Code §4-19-7 if the Respondent fails to respond to the information request in Part 4(C)(2).
- (E) The Complainant and the Respondent may submit witness statements and documents during the investigation that prove or disprove the allegations in the Complaint. The Investigator may request additional witnesses or documents from either the Complainant or the Respondent during the investigation.
- (F) Investigations are not governed by formal rules of evidence. The Investigator and the Administrator may consider information that tends to prove or disprove the allegations in the complaint, regardless of whether such information would be admissible in a court of law.

5. Final Determinations on Complaints.

- (A) The Investigator shall submit a recommended final determination to the Administrator on each Complaint assigned to the Investigator. The recommendation shall state whether the evidence is sufficient or insufficient to establish a violation of Chapter 4-19 based on a preponderance of the evidence submitted during the investigation.
- (B) The Investigator's recommended final determination shall be ~~made~~delivered to the Administrator within 7590 days of assignment of the Complaint to the Investigator. The Investigator shall provide the Complainant, Respondent, and Administrator a written justification concerning any Complaint for which a recommended final determination is not made within 7590 days of the date the Complaint is assigned.
- (C) The Administrator shall independently review the Complaint and the evidence gathered during the investigation, and shall consider the Investigator's recommended final determination. Within 15 business days of receiving the Investigator's recommendation, the Administrator shall take one of the following actions:

- (1) Return the Complaint to the Investigator for additional analysis or to gather and analyze additional evidence, and the Investigator shall perform the tasks assigned by the Administrator. The Investigator shall prepare a new recommended final determination for the Administrator's evaluation under this Part.
 - (2) Issue a written notice of dismissal of the complaint to the Complainant and Respondent if the Administrator concludes that a preponderance of the evidence does not establish a violation of Chapter 4-19.
 - (3) Issue a written notice of violation and civil penalty assessment to the Respondent, with a copy to the Complainant, in accord with City Code §4-19-6(C) if the Administrator concludes that a preponderance of the evidence establishes a violation of Chapter 4-19. The amount of the civil penalty assessment shall be determined under Part 6.
 - (a) For violations that occur after October 1, 2018, but before June 1, 2019, the notice shall state that a civil penalty shall be assessed for a violation that occurs after June 1, 2019, if the Respondent fails to establish voluntary compliance with ~~the Ordinance~~ Chapter 4-19 to the satisfaction of the Administrator within 10 business days after the Respondent receives the notice.
 - (b) For violations of §4-19-5, Retaliation, that occur after October 1, 2018, the notice shall state that a civil penalty shall be assessed for a violation if the Respondent fails to establish voluntary compliance with ~~the Ordinance~~ Chapter 4-19 to the satisfaction of the Administrator within 10 business days after the Respondent receives the notice.
 - (c) For violations that occur after June 1, 2019, the notice shall state that a civil penalty shall be assessed if the Respondent fails to establish voluntary compliance with ~~the Ordinance~~ Chapter 4-19 to the satisfaction of the Administrator within 10 business days after the Respondent receives the notice.
- (D) If the Administrator issues a notice of violation and civil penalty assessment under Part 5(C)(3)(c):
- (1) The Administrator shall issue a no-penalty violation notice to the Respondent if the Respondent establishes to the satisfaction of the Administrator that the Respondent remedied the violation and voluntarily complied with the ~~Ordinance~~ Chapter 4-19 within 10 business days of receipt of the notice of violation and civil penalty assessment.

- (2) The Administrator shall issue a notice of violation and civil penalty assessment against the Respondent in the amount of the proposed civil penalty if the Respondent failed to establish to the satisfaction of the Administrator that the Respondent remedied the violation and voluntarily complied with the ~~Ordinance Chapter 4-19~~ within 10 business days of receipt of the notice of violation and civil penalty assessment.
- (E) A notice of violation and civil penalty assessment issued under these Rules shall constitute a liability of the Respondent to the City, and shall be enforceable against the Respondent on the same basis as any other liability to the City.
- (F) The Administrator may dismiss a Complaint if a Respondent provides evidence satisfactory to the Administrator that the Respondent is exempt from Chapter 4-19, or that Chapter 4-19 does not otherwise apply to the Respondent.
- (G) The decision of the Administrator under this Rule is final. There is no right of appeal of any determination issued by the Administrator.
- (H) The Administrator shall endeavor to close the investigation and determination of all Complaints no later than the ~~105+20~~th day after the date the Complaint is assigned to an Investigator. If the Administrator is unable to close the investigation within the ~~105+20~~-day period, the Administrator shall notify the Complainant and the Respondent in writing of the reasons for the delay.

6. Assessment and Collection of Civil Penalties.

- (A) If the Administrator determines under Part 5(C)(3) that a violation of Chapter 4-19 has occurred, the Administrator shall determine a civil penalty assessment for the violation. The amount of the civil penalty assessment shall be determined as follows:
 - (1) For a Respondent with 15 or fewer employees as of the date the Complaint was filed:
 - (a) ~~\$200+00~~ per violation for a first-time violation;
 - (b) ~~\$250+50~~ per violation for a second violation;
 - (c) ~~\$300~~ per violation for a third violation; and
 - (d)(c) ~~\$500~~ per violation for the third and every subsequent violation within a 12-month period.
 - (2) For a Respondent with 16 or more employees as of the date the Complaint was filed:

- (a) \$~~2~~450 per violation for a first-time violation;
- (b) \$~~4~~300 per violation for a second violation, and
- (c) \$500 per violation for the third and every subsequent violation within a 12-month period.

(B) The Administrator may increase or decrease the amount of the proposed civil penalty under Part 6(A) in light of a demonstrated hardship to the Respondent or a history of non-compliance with Chapter 4-19 by the Respondent. The decision whether to increase or decrease a proposed civil penalty is subject to the following limitations:

- (1) In determining whether to increase or decrease a penalty, the Administrator may consider any of the following:
 - (a) The number of employees or others working for the Respondent;
 - (b) The Respondent's good faith efforts to comply with Chapter 4-19;
 - (c) The Respondent's indifference toward or disregard of its obligations under Chapter 4-19; and
 - (d) Other violations of Chapter 4-19 by the Respondent during the previous year.
- (2) In determining the amount of a civil penalty assessment, the Administrator shall not negotiate the amount of any increase or decrease under this Part 6(B) with the Complainant or the Respondent.
- (3) The Administrator ~~shall~~may not increase a proposed civil penalty above the maximum penalty amount set out in Chapter 4-19-6(C).

7. Closure of Complaint Investigations.

(A) The Administrator will close the investigation of a Complaint and terminate EE/FHO proceedings on the Complaint at the earliest to occur of the following:

- (1) The Complaint is withdrawn by the Complainant; or
- (1)(2) The Administrator determines under Part 5(C)(2) that the preponderance of evidence does not establish a violation of Chapter 4-19; or

(2)(3) The Respondent establishes to the satisfaction of the Administrator that a violation determined under Part 5(C)(3) has been remedied and that the Respondent has voluntarily complied with the Ordinance Chapter 4-19; or

(3)(4) The Respondent establishes to the satisfaction of the Administrator that a civil penalty liability under Part 5(D)(2) has been paid; or

(4)(5) The Administrator determines that the Complainant has failed to cooperate reasonably in the investigation of the Complaint, or has abandoned the Complaint.

(B) The Administrator may prescribe forms and administrative procedures for the closure of Complaint investigations.

(C)

8. ~~Effective Date.~~

~~These Rules shall be effective as of October 1, 2018.~~

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
1	Rule Parts 4 & 5	Mia Ibarra, Deputy Legislative and Policy Director, Center for Public Policy Priorities	EE/FHO should resolve complaints in a timely manner and seek a resolution that makes employees whole. Many workers likely to file complaints under this Ordinance do so in a moment of great need and put themselves in a vulnerable position by doing so. Without sacrificing the thoroughness or integrity of the investigation process, EE/FHO should attempt to resolve complaints as quickly as possible, but no more than 90 days after the complaint is assigned to an Investigator.	Against	Thank you for your comment. The City of Austin appreciates the impact a violation of the Earned Sick Time Ordinance could have on vulnerable populations, and we have taken that concern into account in the Proposed Rules. In addition we considered the potential complexity involved in examining and analyzing attendance records and payroll records inherent in Earned Sick Time complaints, and we proposed investigation closure standards that we believe are achievable, responsive to the needs of the individuals who file complaints, and sensitive to the legitimate interests of employers that are striving in good faith to comply with a new Ordinance. However, we have reduced the Rule deadlines: <ul style="list-style-type: none"> o Investigators now have 8 days to schedule interviews with Complainants and serve Respondents with a request for information (down from 10-effectively making the initial contact within 10 days of receiving the complaint) o Investigators now have 75 days to recommend a final determination to the Administrator (down from 90) o Administrators now have 105 days to close complaints (down from 120)
2	Ordinance §4-19-6, Rule Part 7	Mia Ibarra, Deputy Legislative and Policy Director, Center for Public Policy Priorities	The final Rules should provide additional clarity regarding how EE/FHO will try to seek voluntary compliance to correct a violation, deter additional violations in the future, and make workers whole if their rights under the law have been violated. Without such assurances, the draft Rules provide little incentive for workers to file complaints alleging violations of the law. Without complaints from the workers who are supposed to benefit from this law, enforcement becomes all but impossible. Low-wage and part-time workers in particular are often extremely fearful of bringing complaints against their employers because they know they risk their jobs, working hours, and more if they do so.	Against	Thank you for your comment. The Earned Sick time Ordinance does not restrict EE/FHO from using any appropriate methods to seek voluntary compliance, and it is unnecessary to limit the methods available to EE/FHO in the Rules. The Ordinance addresses concerns about retaliation by prohibiting those practices and implementing penalties for violations of those provisions immediately when the Ordinance takes effect on October 1, 2018 for all covered employers.

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
3	Rule Parts 3(B) & 4(B)	Mia Ibarra, Deputy Legislative and Policy Director, Center for Public Policy Priorities	The complaint and investigation process should be as accessible as possible. EE/FHO should ensure that its complaint form is available in multiple languages and formats (i.e., both mobile-friendly digital and hard copy), is easy to access (e.g., mobile friendly and easy to find on the city website), easy to understand (e.g., 8th grade reading level), and easy to submit.	Against	Thank you for your comment. Serving Limited English Proficient customers is already a City of Austin priority independent of the Proposed Rules. EEFO will make best efforts to translate the complaint form into Spanish and other languages as soon as possible after the forms are finalized. Final forms will be available at the City of Austin Equal Employment/Fair Housing Office (“EEFO”), located at 1050 East 11th Street, Suite 200, Austin, Texas 78702 and included on the EEFO Earned Sick Time Website at: https://austintexas.gov/earnedsicktime . City of Austin customer service standards, embodied in the City's Vision and Values, require all City of Austin services be easily accessible, and the Earned Sick Time complaint and investigation process, including all forms, will adhere to these standards.
4	Rule Part 4(B)	Mia Ibarra, Deputy Legislative and Policy Director, Center for Public Policy Priorities	Whenever possible, EE/FHO Investigators should attempt to conduct interviews over the phone and outside of regular business hours, in order to accommodate people who may not have access to reliable transportation or whose work schedules make it difficult for them to be reached during the work day.	Neutral	Thank you for your comment. EE/FHO Investigators routinely work outside of standard business hours to accommodate the needs of all parties, and those practices will extend to complaint and investigation processes in connection with enforcement of the Earned Sick Time Ordinance.
5	Ordinance §4-19-6(C)(1), Rule Part 6	Mia Ibarra, Deputy Legislative and Policy Director, Center for Public Policy Priorities	The civil penalties should be designed to deter violations and ensure consistency in enforcement. Austin’s proposed penalties are low in comparison to other cities around the country, and the proposed Rules create uncertainty for employers regarding what to expect from the EE/FHO regarding assessment of penalties if a violation occurs. The final Rules should both simplify and increase the civil penalty amounts for all violations.	Against	Thank you for your comment. The Ordinance authorizes the Equal Employment/Fair Housing Office to exercise discretion and independent judgment in assessing a penalty in any amount up to \$500. The Rules are designed to assist the Administrator with guidelines that have the intended effect of consistent, even-handed application of the Ordinance across a wide range of varying fact settings. The Rules at Part 6(B) authorize the Administrator to take into account other factors in consideration of increasing or decreasing a penalty established by the general guidelines in Part 6(A), so long as the Administrator does not engage in negotiations with either party or exceed the \$500 limit established in the Ordinance. However, all penalties have been increased by \$100, and small businesses now have a 3 violation structure, instead of 4.

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
6	Ordinance §4-19-5, §4-19-6(C)(1), Rule Part 6	Mia Ibarra, Deputy Legislative and Policy Director, Center for Public Policy Priorities	Except for cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250.	Against	Thank you for your comment. The Ordinance authorizes the Equal Employment/Fair Housing Office to exercise discretion and independent judgment in assessing a penalty in any amount up to \$500. The Rules are designed to assist the Administrator with guidelines that have the intended effect of consistent, even-handed application of the Ordinance across a wide range of varying fact settings. The Rules at Part 6(B) authorize the Administrator to take into account other factors in consideration of increasing or decreasing a penalty established by the general guidelines in Part 6(A), so long as the Administrator does not engage in negotiations with either party or exceed the \$500 limit established in the Ordinance. All penalties have been increased by \$100, and small businesses now have a 3 violation structure, instead of 4.
7	Rule Part 6	Mia Ibarra, Deputy Legislative and Policy Director, Center for Public Policy Priorities	Civil penalties for any subsequent violation by an employer - regardless of the size of the employer or when this subsequent violation occurred - should be \$500.	Against	Thank you for your comment. The Ordinance authorizes the Equal Employment/Fair Housing Office to exercise discretion and independent judgment in assessing a penalty in any amount up to \$500. The Rules are designed to assist the Administrator with guidelines that have the intended effect of consistent, even-handed application of the Ordinance across a wide range of varying fact settings. The Rules at Part 6(B) authorize the Administrator to take into account other factors in consideration of increasing or decreasing a penalty established by the general guidelines in Part 6(A), so long as the Administrator does not engage in negotiations with either party or exceed the \$500 limit established in the Ordinance. However, all penalties have been increased by \$100, and small businesses now have a 3 violation structure, instead of 4.

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
8	Ordinance §4-19-5 & §4-19-6(C)(1), Rule Part 6	Mia Ibarra, Deputy Legislative and Policy Director, Center for Public Policy Priorities	Any violation of the retaliation provision - whether it be a first or subsequent violation - should result in the assessment of a \$500 penalty.	Against	Thank you for your comment. The Ordinance authorizes the Equal Employment/Fair Housing Office to exercise discretion and independent judgment in assessing a penalty in any amount up to \$500. The Rules are designed to assist the Administrator with guidelines that have the intended effect of consistent, even-handed application of the Ordinance across a wide range of varying fact settings. The Rules at Part 6(B) authorize the Administrator to take into account other factors in consideration of increasing or decreasing a penalty established by the general guidelines in Part 6(A), so long as the Administrator does not engage in negotiations with either party or exceed the \$500 limit established in the Ordinance. However, all penalties have been increased by \$100, and small businesses now have a 3 violation structure, instead of 4.
9	Ordinance §4-19-6(C)(1), Rule Part 6	Mia Ibarra, Deputy Legislative and Policy Director, Center for Public Policy Priorities	While the final Rules should grant EE/FHO the discretion to assess higher penalties for violations that involve bad faith or malicious conduct, penalties should not be lower than those established in the Rules.	Against	Thank you for your comment. The Ordinance authorizes the Equal Employment/Fair Housing Office to exercise discretion and independent judgment in assessing a penalty in any amount up to \$500. The Rules are designed to assist the Administrator with guidelines that have the intended effect of consistent, even-handed application of the Ordinance across a wide range of varying fact settings. The Rules at Part 6(B) authorize the Administrator to take into account other factors in consideration of increasing or decreasing a penalty established by the general guidelines in Part 6(A), so long as the Administrator does not engage in negotiations with either party or exceed the \$500 limit established in the Ordinance. However, all penalties have been increased by \$100, and small businesses now have a 3 violation structure, instead of 4.
10	Rule Part 5(G)	Mia Ibarra, Deputy Legislative and Policy Director, Center for Public Policy Priorities	Parties should be able to appeal an initial determination of a complaint. To ensure that everyone's due process rights are respected, parties should have the opportunity to appeal EE/FHO's initial determination of a complaint. Benchmark cities such as Minneapolis and St. Paul offer examples for an appeal process. The administrative Rules from St. Paul, MN, for example, allow either party to appeal the enforcing agency's grant or denial of a request for consideration of a complaint within 21 days of date of the department's response.	Against	Thank you for your comment. The Ordinance does not authorize the Administrator to create an appeal process, and the Rules cannot exceed the authority found in the Ordinance. The Rules expressly separate investigative functions, assigned to an Investigator, from review and decision-making functions, assigned to the Administrator.

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
11	N/A	Mia Ibarra, Deputy Legislative and Policy Director, Center for Public Policy Priorities	EE/FHO's final Rules should both interpret the Ordinance and outline the agency's investigation and enforcement procedures. Without interpretative Rules, it will be difficult for employers to successfully comply with the Ordinance, for workers to fully understand their rights under the Ordinance, and for EE/FHO to enforce the Ordinance fairly and effectively.	Against	Thank you for your comment. Although EE/FHO has extensive knowledge of investigative procedures, based on lengthy, substantial experience gained from the administration of regulatory complaint investigations, the Division has limited working knowledge of the extremely wide range of compensation, attendance, and leave practices utilized in private sector employment subject to the Earned Sick Time Ordinance. The Earned Sick Time website and hotline have been open for questions since March, and we recommend you reach out with your questions before the Ordinance becomes effective. http://austintexas.gov/earnedsicktime or 512-974-3200
12	N/A	Mia Ibarra, Deputy Legislative and Policy Director, Center for Public Policy Priorities	Interpretive Rules should provide additional guidance on how employers should compensate different types of employees who use earned paid sick time, including salaried workers, overtime eligible workers, on-call workers, and workers whose compensation is not based on a "regular rate" - such as workers who are "on-call," workers who are paid piece rate, workers who can receive a differential rate, workers who are salaried but also overtime eligible and workers whose pay fluctuates based on the kind of work they are doing. The City of St. Paul includes good examples of this type of clarification.	Against	Thank you for your comment. The requirement at §4-19-2(J) of the Ordinance to "pay earned 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" is sufficiently clear to apply to the facts in any given complaint investigation to obviate the need for Rules of interpretation. The Earned Sick Time website and hotline have been open for questions since March, and we recommend you reach out with your questions before the Ordinance becomes effective. http://austintexas.gov/earnedsicktime or 512-974-3200
13	N/A	Mia Ibarra, Deputy Legislative and Policy Director, Center for Public Policy Priorities	Interpretive Rules should provide additional guidance on when compensation for earned sick time is due to an employee. For example, Seattle's Rules specify that employer must pay earned sick time to an employee no later than the payday for the pay period in which earned sick time was used by the employee. If verification is required, earned sick time must be paid to the employee no later than the payday for the pay period during which verification is provided to the employer by the employee.	Against	Thank you for your comment. The requirement at §4-19-2(J) of the Ordinance to "pay earned 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" is sufficiently clear to apply to the facts in any given complaint investigation to obviate the need for Rules of interpretation. The Earned Sick Time website and hotline have been open for questions since March, and we recommend you reach out with your questions before the Ordinance becomes effective. http://austintexas.gov/earnedsicktime or 512-974-3200

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
14	Ordinance §4-19-2(E)	Mia Ibarra, Deputy Legislative and Policy Director, Center for Public Policy Priorities	Interpretive Rules should provide additional guidance on what constitutes “reasonable” verification procedures for employees who request to use earned sick time for more than three consecutive work days, including clarification that “three consecutive work days” means three consecutive days on which the employee is required or scheduled to work. Again, Seattle’s paid sick and safe time Rules can serve as a benchmark for providing employers with clear guidance, protecting the medical privacy of employees and their family members, and ensuring that employer-required verification does not result in an unreasonable burden or expense for the employee.	Against	Thank you for your comment. Although EE/FHO has extensive knowledge of investigative procedures, based on lengthy, substantial experience gained from the administration of regulatory complaint investigations, the Division has limited working knowledge of the extremely wide range of compensation, attendance, and leave practices utilized in private sector employment subject to the Earned Sick Time Ordinance. The use of "reasonable" at §4-19-2(E) of the Ordinance requires an investigation and analysis of all of the facts and circumstances that may arise in any given complaint, and those facts and circumstances can vary widely from one workplace setting to the next. The Earned Sick Time website and hotline have been open for questions since March, and we recommend you reach out with your questions before the Ordinance becomes effective. http://austintexas.gov/earnedsicktime or 512-974-3200
15	Ordinance §4-19-2(F)	Mia Ibarra, Deputy Legislative and Policy Director, Center for Public Policy Priorities	Interpretive Rules should provide additional guidance on how much advance notice employers can require for a “timely request” from an employee to use earned sick time for foreseeable absences, the requirements for notifying employees of such a policy or agreement, and obligations of employers to ensure such a policy does not interfere with an employee’s lawful use for earned sick time for unforeseen absences. The Rules for the District of Columbia’s Accrued Sick and Safe Leave Act of 2008 include helpful language.	Against	Thank you for your comment. Although EE/FHO has extensive knowledge of investigative procedures, based on lengthy, substantial experience gained from the administration of regulatory complaint investigations, the Division has limited working knowledge of the extremely wide range of compensation, attendance, and leave practices utilized in private sector employment subject to the Earned Sick Time Ordinance. The use of "timely request" at §4-19-2(F) of the Ordinance requires an investigation and analysis of all of the facts and circumstances that may arise in any given complaint, and those facts and circumstances can vary widely from one workplace setting to the next. The Earned Sick Time website and hotline have been open for questions since March, and we recommend you reach out with your questions before the Ordinance becomes effective. http://austintexas.gov/earnedsicktime or 512-974-3200

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

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16	Ordinance §4-19-2(L)	Mia Ibarra, Deputy Legislative and Policy Director, Center for Public Policy Priorities	Interpretive Rules should provide additional guidance on the information that should be included in an employee handbook, if the employer provides a handbook, about employee rights under Austin's Ordinance and the employer's own policy.	Against	Thank you for your comment. Although EE/FHO has extensive knowledge of investigative procedures, based on lengthy, substantial experience gained from the administration of regulatory complaint investigations, the Division has limited working knowledge of the extremely wide range of compensation, attendance, and leave practices utilized in private sector employment subject to the Earned Sick Time Ordinance. Employers have long implemented employee policy handbooks, or not, without intervention by the City of Austin, and the appropriate way for any given employer to communicate with its employees in a handbook is a decision best left to each individual employer, based on its knowledge of the needs of its workforce. The Earned Sick Time website and hotline have been open for questions since March, and we recommend you reach out with your questions before the Ordinance becomes effective. http://austintexas.gov/earnedsicktime or 512-974-3200
17	Ordinance §4-19-4	Mia Ibarra, Deputy Legislative and Policy Director, Center for Public Policy Priorities	Interpretive Rules should provide additional guidance on the signage that employers are required to post, including size, display specifications, required languages, and what employers should do if displaying the sign is not feasible.	Against	Thank you for your comment. The City will create and distribute the signage required by §4-19-4 of the Ordinance. An interpretive Rule is not necessary to fulfill this responsibility.
18	N/A	Mia Ibarra, Deputy Legislative and Policy Director, Center for Public Policy Priorities	Over thirty cities have passed similar policies, and the EE/FHO should review the Rules of other jurisdictions to determine the appropriate approach for Austin.	Neutral	Thank you for your comment. City of Austin management staff routinely review policies from other cities, and that review, along with the actual experience gained from administering this Ordinance will be considered as part of the annual report required by §4-19-8 of the Ordinance, especially with respect to any recommendations for improvements to the Ordinance.

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
19	Ordinance Part 1 & Ordinance §4-19-6(A)(5)	Robert Henneke, General Counsel and Director of Litigation, Texas Public Policy Foundation	First, the Paid Sick Leave Ordinance is preempted by state statute. The Texas Minimum Wage Act explicitly preempts municipalities from setting wages in private employment. It also incorporates the standards of the federal Fair Labor Standards Act ("FLSA") into state law. The FLSA does not obligate employers to provide paid sick leave. Rather, it requires employers to pay employees wages for hours actually worked. "Wage" is defined in another section of the Labor Code, relating to protections for employees from deprivation of their justly-earned wages. There, "wage" is defined as including "compensation owed by an employer...for sick leave pay...owed to an employee under a written agreement with the employer or under a written policy of the employer." The two statutes should be read in harmony, with the definition of "wage" including sick leave pay under the state minimum wage law. By increasing the minimum wage for hours not actually worked, the City of Austin has acted outside of the scope of its legal authority under state law. The proposed Rules do not remedy this fundamental defect of preemption by Texas state law.	Against	Thank you for your comment. §4-19-6(A)(5) of the Earned Sick Time Ordinance requires EE/FHO to adopt Rules necessary to implement the Ordinance. EE/FHO has no discretion in this matter.
20	Ordinance §4-19-6(A)(5)	Robert Henneke, General Counsel and Director of Litigation, Texas Public Policy Foundation	Second, the Paid Sick Leave Ordinance also violates rights guaranteed under the Texas Constitution. The Ordinance is unconstitutional under the Texas Constitution's Due Course of Law clause. As interpreted by the Texas Supreme Court in <i>Patel v. Tx Dep't of Licensing & Regulation</i> , this provision of the Texas Constitution requires any Ordinance that restricts liberty or property to be justified by a legitimate governmental interest and not be unduly burdensome. Economic regulations are unconstitutional if, when considered as a whole, the law's actual, real-world effect, as applied to the party(ies) challenging the regulation, is so burdensome as to be oppressive in light of the governmental interest at stake. The City has provided no Austin-specific facts, data, or evidence to justify its articulated interests or assertions that a lack of mandatory paid sick leave harms the local economy. It is also unduly burdensome to employers of all sizes within the City. The proposed Rules do not remedy these defects.	Against	Thank you for your comment. §4-19-6(A)(5) of the Earned Sick Time Ordinance requires EE/FHO to adopt Rules necessary to implement the Ordinance. EE/FHO has no discretion in this matter.

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

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21	Ordinance §4-19-2(P)	Robert Henneke, General Counsel and Director of Litigation, Texas Public Policy Foundation	Third, the Texas Constitution provides for equal rights and guarantees that “no man, or set of men, is entitled to exclusive separate...privileges.” The Paid Sick Leave Ordinance is unconstitutional pursuant to this clause by distinguishing between unionized and non-unionized employers, and granting unionized employers special, exclusive, separate privileges. Essentially, the Ordinance allows only unionized employers subject to a collective bargaining agreement to modify the amount of paid sick leave provided to covered employees. Non-unionized employers enjoy no such freedom, and the Ordinance denies them equal protection of the law. This provision of the Ordinance also infringes upon the freedom of association of employers, which is also protected by the Texas Constitution. The proposed Rules do not remedy these defects.	Against	Thank you for your comment. §4-19-6(A)(5) of the Earned Sick Time Ordinance requires EE/FHO to adopt Rules necessary to implement the Ordinance. EE/FHO has no discretion in this matter.
22	Ordinance §4-19-7, Rule Part 4(D)	Robert Henneke, General Counsel and Director of Litigation, Texas Public Policy Foundation	Fourth, the Texas Constitution protects citizens from unreasonable searches and seizures, and states that “no warrant to search any place, or to seize any...thing, shall issue without...probable cause.” The Paid Sick Leave Ordinance violates this section of the Texas Constitution by subjecting businesses to warrantless searches and seizures of their business records, and by charging a person with a crime for failing to submit to those warrantless searches. The Ordinance fails to provide for any judicial checks and balances on the City’s administrative subpoena power, thereby violating the fundamental rights of employers. Proposed Rule section 4(D) does not remedy any of these defects.	Against	Thank you for your comment. §4-19-6(A)(5) of the Earned Sick Time Ordinance requires EE/FHO to adopt Rules necessary to implement the Ordinance. EE/FHO has no discretion in this matter.
23	Rule Part 5(G)	Robert Henneke, General Counsel and Director of Litigation, Texas Public Policy Foundation	Fifth, in reference to proposed Rule section 5(G), parties to an investigation should be provided an opportunity for judicial review of any final determination by the Administrator. The lack of any appellate review process denies all parties to the investigation due process and an opportunity to be heard.	Against	Thank you for your comment. The Ordinance does not authorize the Administrator to create an appeal process, and the Rules cannot exceed the authority found in the Ordinance. The Rules expressly separate investigative functions, assigned to an Investigator, from review and decision-making functions, assigned to the Administrator.

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

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24	Rule Part 6(B)(1)(c)	Robert Henneke, General Counsel and Director of Litigation, Texas Public Policy Foundation	Sixth, proposed Rule section 6(B)(1)(c) only compounds the constitutional injuries of employers subject to the Ordinance. This section provides that the Administrator may consider a Respondent/employer's indifference toward or disregard of its obligations under the Paid Sick Leave Ordinance when deciding whether to increase or decrease the amount of a proposed civil penalty. This is a subjective determination that permits the Administrator to punish employers by increasing the amount of a civil penalty for exercising their constitutionally-protected free speech rights to express an opinion about the Ordinance with which the Administrator disagrees. The right to free speech is a fundamental right enjoyed by all Austin employers. Numerous courts, up to and including the United States Supreme Court, have Ruled that governmental entities may not engage in viewpoint discrimination. The freedom of speech is protected by the First Amendment to the United States Constitution, and by Article I, Section 8 of the Texas Constitution. It is within your power to remedy this defect in the proposed Rules.	Against	Thank you for your comment. The Rules are interpreted within the limits of the Earned Sick Time Ordinance, which regulates workplace conduct of covered employers and employees.
25	Rule Part 6	Sherry Leiwant, Co-President, and Jared Make, Senior Staff Attorney, A Better Balance	Recommendation #1: Remove the Distinction in Penalty Amounts Based Upon Business Size. Part 6 of the proposed Rules provides different penalty amounts depending on business size. In our experience working on earned sick time laws and other labor standards, it is highly unusual to tie penalties to business size in the manner proposed. Rather, it is more common to maintain different violation amounts depending on historical or multiple violations. Austin's earned sick time law currently provides a grace period of 10 business days before any penalties will be assessed. This provision of Austin's Ordinance provides sufficient flexibility for employers of all sizes—including smaller employers—to remedy a violation, come into compliance, and avoid a penalty. As a result, we recommend removing the distinction in penalty amounts based upon business size.	Against	Thank you for your comment. The Ordinance authorizes the Equal Employment/Fair Housing Office to exercise discretion and independent judgment in assessing a penalty in any amount up to \$500. The Rules are designed to assist the Administrator with guidelines that have the intended effect of consistent, even-handed application of the Ordinance across a wide range of varying fact settings. The Rules at Part 6(B) authorize the Administrator to take into account other factors in consideration of increasing or decreasing a penalty established by the general guidelines in Part 6(A), so long as the Administrator does not engage in negotiations with either party or exceed the \$500 limit established in the Ordinance. However, all penalties have been increased by \$100, and small businesses now have a 3 violation structure, instead of 4.

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
26	Ordinance §4-19-5, Rule Part 6	Sherry Leiwant, Co-President, and Jared Make, Senior Staff Attorney, A Better Balance	Recommendation #2: Simplify and Increase Penalty Amounts, and Impose the Maximum Penalty of \$500 for Retaliation. In order to appropriately deter and address violations of the law and ensure that workers will take the risk to come forward, the law's penalty amounts are critical. We recommend two key changes on penalty amounts. First, we recommend imposing the maximum penalty of \$500 in cases of retaliation (under Section 4-19-5 of the law), especially since employers have a grace period for coming into compliance voluntarily. Apart from cases of retaliation as detailed above, we recommend that first-time violations lead to a \$250 civil penalty (regardless of business size), with any subsequent violations leading to a \$500 penalty.	Against	Thank you for your comment. The Ordinance authorizes the Equal Employment/Fair Housing Office to exercise discretion and independent judgment in assessing a penalty in any amount up to \$500. The Rules are designed to assist the Administrator with guidelines that have the intended effect of consistent, even-handed application of the Ordinance across a wide range of varying fact settings. The Rules at Part 6(B) authorize the Administrator to take into account other factors in consideration of increasing or decreasing a penalty established by the general guidelines in Part 6(A), so long as the Administrator does not engage in negotiations with either party or exceed the \$500 limit established in the Ordinance. However, all penalties have been increased by \$100, and small businesses now have a 3 violation structure, instead of 4.
27	Rule Part 6(B)	Sherry Leiwant, Co-President, and Jared Make, Senior Staff Attorney, A Better Balance	Recommendation #3: Remove the Administrator's Discretion to Reduce Penalties Due to Hardship, Including Business Size. We recommend removing the ability of the Administrator, under Part 6(B) of the proposed Rules, to decrease penalties due to hardship, which the Rules further state includes the number of employees working for a Respondent employer. The civil penalty is the means of enforcing this law, so it is important to maintain a clear penalty that will deter and appropriately respond to violations of workers' legal rights. As mentioned earlier in these comments, Austin's law already provides a period of 10 business days where any employer, including a smaller business or one experiencing hardship, can voluntarily comply and avoid civil penalties. As a result of the law's existing flexibility and grace period, the civil penalty should not be decreased due to hardship and particularly due to business size.	Against	Thank you for your comment. The Ordinance authorizes the Equal Employment/Fair Housing Office to exercise discretion and independent judgment in assessing a penalty in any amount up to \$500. The Rules are designed to assist the Administrator with guidelines that have the intended effect of consistent, even-handed application of the Ordinance across a wide range of varying fact settings. The Rules at Part 6(B) authorize the Administrator to take into account other factors in consideration of increasing or decreasing a penalty established by the general guidelines in Part 6(A), so long as the Administrator does not engage in negotiations with either party or exceed the \$500 limit established in the Ordinance. However, all penalties have been increased by \$100, and small businesses now have a 3 violation structure, instead of 4.
28	Rule Part 5(G)	Sherry Leiwant, Co-President, and Jared Make, Senior Staff Attorney, A Better Balance	Recommendation #4: Add the Right to Appeal Determinations and Seek Independent Review. Under the proposed language in Part 5(G) of the proposed Rules, the Administrator's decision is final with no right of appeal. We recommend the right to an independent appeal that allows parties to seek review of the Administrator's determination. Such a right to appeal is extremely common with administrative determinations and will ensure a fairer enforcement process.	Against	Thank you for your comment. The Ordinance does not authorize the Administrator to create an appeal process, and the Rules cannot exceed the authority found in the Ordinance. The Rules expressly separate investigative functions, assigned to an Investigator, from review and decision-making functions, assigned to the Administrator.

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
29	Rule Part 5(H)	Sherry Leiwant, Co-President, and Jared Make, Senior Staff Attorney, A Better Balance	Recommendation #5: Establish the Right to Keep the Complainant Informed. We recommend language to make it clearer that the EE/FHO office will keep the complainant updated as to the status of his or her complaint and other language indicating the office's responsibility to keep the complainant informed. A worker who complains is taking a risk and should at least know the status of his or her complaint. The proposed Rules only address this in Part 5(H), which says that the Administrator will try to close complaints within 120 days and if not able to do so, he or she will notify the complainant and respondent in writing of the reasons for delay. It would be ideal to keep the complainant more informed prior to the closing of the complaint.	Against	Thank you for your comment. The Rules balance timely and thorough investigations, and are based on lengthy, substantial experience gained from the administration of regulatory complaint investigations. However, we have reduced the deadlines throughout the Rules.
30	Rule Parts 4 & 5	Sherry Leiwant, Co-President, and Jared Make, Senior Staff Attorney, A Better Balance	Recommendation #6: Ensure that Complaints Are Handled in a More Timely Fashion. Parties benefit when complaints are resolved in a timely manner. As a result, we recommend that the final Rules decrease the 120-day window for closing complaints to 90 days.	Against	Thank you for your comment. We considered the potential complexity involved in examining and analyzing attendance records and payroll records inherent in Earned Sick Time complaints, and we proposed investigation closure standards that we believe are achievable, responsive to the needs of the individuals who file complaints, and sensitive to the legitimate interests of employers that are striving in good faith to comply with a new Ordinance. However, we have reduced the deadlines throughout the Rules: <ul style="list-style-type: none"> o Investigators now have 8 days to schedule interviews with Complainants and serve Respondents with a request for information (down from 10-effectively making the initial contact within 10 days of receiving the complaint) o Investigators now have 75 days to recommend a final determination to the Administrator (down from 90) o Administrators now have 105 days to close complaints (down from 120)

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31	Rule Parts 3(B) & 4(B)	Sherry Leiwant, Co-President, and Jared Make, Senior Staff Attorney, A Better Balance	Recommendation #7: Ensure that the Complaint and Investigatory Process is Accessible to Workers in Austin. Many workers have limited proficiency in English and/or low literacy. Moreover, it is difficult for many workers to gain access to a computer to submit online complaints and/or to make telephone calls or in-person complaints during regular workday hours. It is essential for the EE/FHO office to ensure a complaint and Investigatory process that accounts for these factors. Complaint forms should be as simple as possible to complete, offered in Spanish and other languages, prominently displayed on the city's website and available to complete online, and accepted as well by mail, fax, email, and in person.	Neutral	Thank you for your comment. Serving Limited English Proficient customers is already a City of Austin priority independent of the Proposed Rules. EE/FHO will make best efforts to translate the complaint form into Spanish and other languages as soon as possible after the forms are finalized. Final forms will be available at the City of Austin Equal Employment/Fair Housing Office ("EEFHO"), located at 1050 East 11th Street, Suite 200, Austin, Texas 78702 and included on the EE/FHO Earned Sick Time Website at: https://austintexas.gov/earnedsicktime . City of Austin customer service standards, embodied in the City's Vision and Values, require all City of Austin services be easily accessible, and the Earned Sick Time complaint and investigation process, including all forms, will adhere to these standards.
32	Rule Parts 3(B) & 4(B)	Sherry Leiwant, Co-President, and Jared Make, Senior Staff Attorney, A Better Balance	Recommendation #7: We also recommend that procedures be designed to ensure that workers can submit complaints and be interviewed, if necessary, outside of typical business hours.	Neutral	Thank you for your comment. EE/FHO Investigators routinely work outside of standard business hours to accommodate the needs of all parties, and those practices will extend to complaint and investigation processes in connection with enforcement of the Earned Sick Time Ordinance.
33	N/A	Sherry Leiwant, Co-President, and Jared Make, Senior Staff Attorney, A Better Balance	Recommendation #8: Add Language Establishing Confidentiality. In order to ensure workers will take the risk to submit a complaint, confidentiality is very important. We recommend the addition of a provision on confidentiality, which clearly states that the EE/FHO office will endeavor to maintain confidentiality to the extent allowed by law or to facilitate resolution.	Against	Thank you for your comment. Complaint investigation records are subject to the Texas Public Information Act.
34	N/A	Sherry Leiwant, Co-President, and Jared Make, Senior Staff Attorney, A Better Balance	Recommendation #9: Issue More Detailed Rules and Regulations Beyond the Administrative Procedures. In our experience in New York City and around the country, more detailed regulations that explain and interpret the law can be very helpful in a law's implementation. Regulations can be a key source of information on the law and a source of more detail for workers, advocates, and employers. We would be happy to share model regulations from laws around the country, answer any questions, or provide feedback on more detailed Rules beyond the complaints and investigations process addressed here.	Against	Thank you for your comment. Although EE/FHO has extensive knowledge of investigative procedures, based on lengthy, substantial experience gained from the administration of regulatory complaint investigations, the Division has limited working knowledge of the extremely wide range of compensation, attendance, and leave practices utilized in private sector employment subject to the Earned Sick Time Ordinance. The Earned Sick Time website and hotline have been open for questions since March, and we recommend you reach out with your questions before the Ordinance becomes effective. http://austintexas.gov/earnedsicktime or 512-974-3200.

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35	Rule Part 3(C)(1)	Pronita Gupta, Director, Job Quality, and Tanya L. Goldman, Senior Policy Analyst/Attorney, Job Quality, Center for Law and Social Policy (CLASP)	Thank you for including Section 3(C)(1), which allows a Complainant to initiate a complaint in-person, by telephone, or by e-mail.	For	Thank you for your comment. The Rule conforms to existing City of Austin customer service standards, embodied in the City's Vision and Values, which require all City of Austin services to be easily accessible, and the Earned Sick Time complaint and investigation process, including all forms, will adhere to these standards.
36	Rule Part 4(C)	Pronita Gupta, Director, Job Quality, and Tanya L. Goldman, Senior Policy Analyst/Attorney, Job Quality, Center for Law and Social Policy (CLASP)	Thank you for including clear timelines in Section 4(C) for the investigation of Complaints.	For	Thank you for your comment. The Rule conforms to existing City of Austin customer service standards, embodied in the City's Vision and Values, which require all City of Austin services to be easily accessible, and the Earned Sick Time complaint and investigation process, including all forms, will adhere to these standards.
37	Rule Parts 5(B) & 5(H)	Pronita Gupta, Director, Job Quality, and Tanya L. Goldman, Senior Policy Analyst/Attorney, Job Quality, Center for Law and Social Policy (CLASP)	Thank you for including responsiveness to Complainants and Respondents for failure to meet determination timelines, under Section 5(B), or for delays in closing the investigation, under Section 5(H).	For	Thank you for your comment. The Rule conforms to existing City of Austin customer service standards, embodied in the City's Vision and Values, which require all City of Austin services to be easily accessible, and the Earned Sick Time complaint and investigation process, including all forms, will adhere to these standards.
38	Rule Part 5(C)	Pronita Gupta, Director, Job Quality, and Tanya L. Goldman, Senior Policy Analyst/Attorney, Job Quality, Center for Law and Social Policy (CLASP)	Thank you for including the Administrator's independent review of the Complaint and the evidence gathered, under Section 5(C).	For	Thank you for your comment. The Rule separates the investigative functions from the review and decision-making functions.
39	Ordinance §4-19-5, Rule Part 5(C)(3)(b)	Pronita Gupta, Director, Job Quality, and Tanya L. Goldman, Senior Policy Analyst/Attorney, Job Quality, Center for Law and Social Policy (CLASP)	Thank you for including reiterating that there is no phase-in period for penalty assessment for violations of Section 4-19-5, Retaliation.	For	Thank you for your comment. The Rule is intended to reinforce and communicate this aspect of the effective date of the penalties for retaliation violations.

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40	Ordinance §§4-19-7(C) & 4-19-8, Rule Parts 3(B) & 4(B)	Pronita Gupta, Director, Job Quality, and Tanya L. Goldman, Senior Policy Analyst/Attorney, Job Quality, Center for Law and Social Policy (CLASP)	Filing and investigation procedures should be strategic, accessible, and protective. Strategic workplace investigations would promote robust enforcement and protect workers. This section appears to assume each investigation will only respond to an individual complaint. It would be more strategic to evaluate payroll records for the entire workplace. The Ordinance provides that “EEO/FHO may inform employees at a worksite of any investigation of a complaint at that worksite alleging a violation of this Chapter,” illustrating an understanding that where there is one violation, there are potentially additional violations, particularly if the violation stems from an employer policy contrary to the Ordinance. To the extent the agency considers its Investigatory authority to be limited by the Ordinance, we would recommend including a discussion in the agency’s annual written report, under Section 4-19-8.	Neutral	Thank you for your comment. The Ordinance does not authorize EEFHO to initiate an investigation without a complaint on which the investigation is predicated. The worksite notification provision and the provision to prohibit retaliation envision a workforce that knows their rights and is able to make a complaint without retaliation. Complaint investigation records are available subject to the Texas Public Information Act.
41	N/A	Pronita Gupta, Director, Job Quality, and Tanya L. Goldman, Senior Policy Analyst/Attorney, Job Quality, Center for Law and Social Policy (CLASP)	Filing and investigation procedures should be strategic, accessible, and protective. Protecting complainants’ identities to prevent retaliation. Whenever feasible, the agency should maintain the confidentiality of a complainant’s identity to protect against retaliation, particularly as the Ordinance allows the agency to investigate anonymous complaints. While this will not be feasible for all individual complaints, where the allegation is about a company-wide practice or policy, or about a specific subset of workers (such as part-time employees), it should be possible and preferable to investigate and maintain anonymity.	Neutral	Thank you for your comment. As the Ordinance authorizes anonymous complaints, additional authority for anonymous complaints in the Rules is not necessary. Complaint investigation records are available subject to the Texas Public Information Act.
42	Rule Parts 3(B) & 4(B)	Pronita Gupta, Director, Job Quality, and Tanya L. Goldman, Senior Policy Analyst/Attorney, Job Quality, Center for Law and Social Policy (CLASP)	Filing and investigation procedures should be strategic, accessible, and protective. Forms and administrative procedures should prioritize accessibility. When EE/FHO prescribes forms and administrative procedures under Sections 3B and 4B, the agency should strive to make the submission of these forms - and all forms and paperwork associated with the complaint and investigation process - as simple as possible and accessible for those without readily available access to technology or the internet, including some workers earning low wages. This can be done by providing, for example, that complaints can be made online, by hard copy, or initiated by phone and later memorialized in a written statement, consistent with the Ordinance.	Neutral	Thank you for your comment. Final forms will be available at the City of Austin Equal Employment/Fair Housing Office (“EEFHO”), located at 1050 East 11th Street, Suite 200, Austin, Texas 78702 and included on the EEFHO Earned Sick Time Website at: https://austintexas.gov/earnedsicktime . City of Austin customer service standards, embodied in the City's Vision and Values, require all City of Austin services be easily accessible, and the Earned Sick Time complaint and investigation process, including all forms, will adhere to these standards.

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43	Rule Parts 3(B) & 4(B)	Pronita Gupta, Director, Job Quality, and Tanya L. Goldman, Senior Policy Analyst/Attorney, Job Quality, Center for Law and Social Policy (CLASP)	Filing and investigation procedures should be strategic, accessible, and protective. Additionally, we suggest specific references to how complainants will not only receive notifications but be able to communicate in their preferred language during the investigation process, including when filling out paper application forms, using online systems, and throughout their interactions with EE/FHO. This would be consistent with the Ordinance's requirement that signs shall be posted "in at least English and Spanish." Section 4-19-4. Additionally, if an Investigator needs additional information from a complainant to determine whether there was a violation, they should advise the complainant about what additional materials they should submit and how the process works, ensuring that a miscarriage of justice does not result from a worker's unfamiliarity with legal terminology or the complaint and investigation process.	Neutral	Thank you for your comment. Serving Limited English Proficient customers is already a City of Austin priority independent of the Proposed Rules. EEFO will make best efforts to translate the complaint form into Spanish and other languages as soon as possible after the forms are finalized. Final forms will be available at the City of Austin Equal Employment/Fair Housing Office ("EEFO"), located at 1050 East 11th Street, Suite 200, Austin, Texas 78702 and included on the EEFO Earned Sick Time Website at: https://austintexas.gov/earnedsicktime . City of Austin customer service standards, embodied in the City's Vision and Values, require all City of Austin services be easily accessible, and the Earned Sick Time complaint and investigation process, including all forms, will adhere to these standards.
44	Rule Parts 3(B), 4(B), & 5(G)	Pronita Gupta, Director, Job Quality, and Tanya L. Goldman, Senior Policy Analyst/Attorney, Job Quality, Center for Law and Social Policy (CLASP)	Final Determinations should be timely and appealable, consistent with due process: Investigation timeline. We encourage you to provide a shorter timeline, however, than 120 days, or roughly four months, to close an investigation. We encourage you to expedite investigation of allegations of retaliation, which can be a significant deterrent to workers vindicating their rights. You might consider an approach similar to that of the District of Columbia, whose Accrued Safe and Sick Leave Regulations in Section 3216.1 provide for resolution of complaints within 45 days, but allow the agency reasonable extensions as consistent with the nature of the complaint.	Against	Thank you for your comment. We considered the potential complexity involved in examining and analyzing attendance records and payroll records inherent in Earned Sick Time complaints, and we proposed investigation closure standards that we believe are achievable, responsive to the needs of the individuals who file complaints, and sensitive to the legitimate interests of employers that are striving in good faith to comply with a new Ordinance. However, we have reduced the deadlines throughout the Rules: <ul style="list-style-type: none"> o Investigators now have 8 days to schedule interviews with Complainants and serve Respondents with a request for information (down from 10-effectively making the initial contact within 10 days of receiving the complaint) o Investigators now have 75 days to recommend a final determination to the Administrator (down from 90) o Administrators now have 105 days to close complaints (down from 120)

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
45	Rule Part 5(G)	Pronita Gupta, Director, Job Quality, and Tanya L. Goldman, Senior Policy Analyst/Attorney, Job Quality, Center for Law and Social Policy (CLASP)	Final Determinations should be timely and appealable, consistent with due process: Right to appeal. The provision in Section 5(G) prohibiting appeal of the Administrator's determination is problematic for employers and complainants and creates due process concerns. Opportunities to meaningfully appeal within the EE/FHO any Determinations made in error or where there might have been an abuse of discretion is an important element of due process for both employers and employees and critical to effectuate the Ordinance and improve enforcement. Allowing an appeal, or at least reconsideration of a Determination, would be consistent with the Ordinance and how other jurisdictions have implemented their earned sick time laws.	Against	Thank you for your comment. The Ordinance does not authorize the Administrator to create an appeal process, and the Rules cannot exceed the authority found in the Ordinance. The Rules expressly separate investigative functions, assigned to an Investigator, from review and decision-making functions, assigned to the Administrator.
46	Rule Part 6	Pronita Gupta, Director, Job Quality, and Tanya L. Goldman, Senior Policy Analyst/Attorney, Job Quality, Center for Law and Social Policy (CLASP)	Assessment and collection of civil penalties should ensure that complainants are made whole and employers are sufficiently deterred (Section 6). The penalties in the Proposed Rules are insufficient to deter violations of the Ordinance. For most employers, \$100.00 or \$150.00 for a first-time violation will not serve as a deterrent. It is also not clear why only violations in the preceding 12 months are taken into consideration in assessing penalties after three violations. We suggest further clarifying how penalties will be assessed. Will penalties be assessed per employee? Will the same penalties be assessed for all violations, including, for example, notice violations, retaliation, and denial of sick days? We recommend that retaliation not be subject to the same penalty structure, as the types of harm a worker may suffer will be significantly different.	Against	Thank you for your comment. The Rules provide guidelines and do not limit the discretion granted to the EEFO Administrator by the Ordinance to assess a penalty in any amount up to \$500. The guidelines in the Rules are consistent with the requirement to educate employers about the Ordinance. The 12-month standard limits the recordkeeping required to assess penalties. The Ordinance and the Rules allow penalties to be assessed on a case-specific basis, taking into consideration all of the facts and circumstances developed during the investigation. Except for immediate implementation of the provisions that prohibit retaliation, the Ordinance does not distinguish retaliation violations from other violations, and the Rules do not create any distinction in the absence of authority for such a difference found in the Ordinance. However, all penalties have been increased by \$100, and small businesses now have a 3 violation structure, instead of 4.
47	Ordinance §§4-19-6(A)(4) & 4-19-6(C)(2), Rule Part 5(D)	Pronita Gupta, Director, Job Quality, and Tanya L. Goldman, Senior Policy Analyst/Attorney, Job Quality, Center for Law and Social Policy (CLASP)	It is not clear from the Ordinance what will be sufficient for an employer to come into "voluntary compliance" with the Ordinance.	Against	Thank you for your comment. The Ordinance grants authority to the EEFO Administrator to determine if an employer has achieved voluntary compliance.

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
48	Ordinance §4-19-2(E)	Pronita Gupta, Director, Job Quality, and Tanya L. Goldman, Senior Policy Analyst/Attorney, Job Quality, Center for Law and Social Policy (CLASP)	Additional definitions and interpretive Rules will provide clarity and prevent abuse. Several terms that are undefined could lead to confusion and abuse. We suggest adding definitions or interpretive Rules. a. Reasonable verification procedure. Delineating what constitutes a reasonable verification, and requiring notice to employees, will provide clarity to employers and employees. We recommend looking to Seattle's current proposed Rules. For employers with handbooks, this type of notification is already required by the Ordinance, Section 4-19-2(L). The final Rule should also explicitly state how employees' confidential health information will be protected, consistent with applicable laws, such as the Health Insurance Portability and Accountability Act of 1996 (see, e.g., Section 3208.2 of D.C.'s regulations).	Against	Thank you for your comment. Although EE/FHO has extensive knowledge of investigative procedures, based on lengthy, substantial experience gained from the administration of regulatory complaint investigations, the Division has limited working knowledge of the extremely wide range of compensation, attendance, and leave practices utilized in private sector employment subject to the Earned Sick Time Ordinance. The City believes that the infinite variety of workplace settings affects the City's ability to impose a single verification Rule. The City will determine if any given standard is reasonable, in light of all of the facts and circumstances developed in any given investigation. The Earned Sick Time website and hotline have been open for questions since March, and we recommend you reach out with your questions before the Ordinance becomes effective. http://austintexas.gov/earnedsicktime or 512-974-3200
49	Ordinance §4-19-2(F)	Pronita Gupta, Director, Job Quality, and Tanya L. Goldman, Senior Policy Analyst/Attorney, Job Quality, Center for Law and Social Policy (CLASP)	Additional definitions and interpretive Rules will provide clarity and prevent abuse. b. Timely. We suggest clarifying that employees make a "timely request" if they request use of earned sick time within seven days before their scheduled work time for foreseeable events and as soon as practicable for unforeseeable events. Seven days is a common number of days in earned sick time laws and implementing regulations. New York's final Rules for its Earned Sick Time Act, Section 7-06, provide the following language: (d) An employer that requires notice of the need to use sick time where the need is foreseeable shall have a written policy for the employee to provide reasonable notice. Such policy shall not require more than seven days notice prior to the date such sick time is to begin. The employer may require that such notice be in writing.	Against	Thank you for your comment. Although EE/FHO has extensive knowledge of investigative procedures, based on lengthy, substantial experience gained from the administration of regulatory complaint investigations, the Division has limited working knowledge of the extremely wide range of compensation, attendance, and leave practices utilized in private sector employment subject to the Earned Sick Time Ordinance. One workplace may consider notice as soon as possible to be timely while another may consider 24 hours to be timely, and a seven-day standard, or any other standard that did not serve the interests of the employer and its workers, would be misguided. The Earned Sick Time website and hotline have been open for questions since March, and we recommend you reach out with your questions before the Ordinance becomes effective. http://austintexas.gov/earnedsicktime or 512-974-3200

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
50	Ordinance §4-19-2(F)	Pronita Gupta, Director, Job Quality, and Tanya L. Goldman, Senior Policy Analyst/Attorney, Job Quality, Center for Law and Social Policy (CLASP)	<p>Additional definitions and interpretive Rules will provide clarity and prevent abuse. c. (Un)Foreseeable. Seattle's current proposed Rules provide explicit guidance on what happens when sick and safe time is unforeseeable:</p> <p>Unforeseeable. If the need for paid sick and safe time is unforeseeable, the employer may require notice from the employee. The employee must provide notice to the employer as soon as possible before the required start time of their shift. The employee must generally comply with an employer's reasonable normal notification policies and/or call-in procedures, unless it is not practicable to do so. In the event it is impracticable for an employee to provide notice to their employer, a person on the employee's behalf may provide notice to the employer.</p> <p>This is consistent with the approach of other jurisdictions, including Massachusetts and New York:</p> <p>(b) An employer that requires notice of the need to use sick time where the need is not foreseeable shall provide a written policy that contains procedures for the employee to provide notice as soon as practicable. Examples of such procedures may include, but are not limited to, instructing the employee to: (1) call a designated phone number at which an employee can leave a message; (2) follow a uniform call-in procedure; or (3) use another reasonable and accessible means of communication identified by the employer. Such procedures for employees to give notice of the need to use sick time when the need is not foreseeable may not include any requirement that an employee appear in person at a worksite or deliver any document to the employer prior to using sick time. (c) In determining when notice is practicable in a given situation, an employer must consider the individual facts and circumstances of the situation.</p>	Against	<p>Thank you for your comment. Although EE/FHO has extensive knowledge of investigative procedures, based on lengthy, substantial experience gained from the administration of regulatory complaint investigations, the Division has limited working knowledge of the extremely wide range of compensation, attendance, and leave practices utilized in private sector employment subject to the Earned Sick Time Ordinance. At this time, foreseeability will be analyzed and interpreted on a case by case basis, in light of all of the facts and circumstances developed in any given investigation. The Earned Sick Time website and hotline have been open for questions since March, and we recommend you reach out with your questions before the Ordinance becomes effective.</p> <p>http://austintexas.gov/earnedsicktime or 512-974-3200</p>

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
51	Ordinance §4-19-1(C)	Pronita Gupta, Director, Job Quality, and Tanya L. Goldman, Senior Policy Analyst/Attorney, Job Quality, Center for Law and Social Policy (CLASP)	Include processes that address the misclassification of employees as independent contractors. Though not necessary to include in the Proposed Rules, we want to note that enforcing this labor standard requires making a threshold determination about whether a worker is an employee. It will likely be helpful for the agency to develop some internal materials or perhaps conduct cross-training with other labor standards sister agencies on this issue. EE/FHO should adopt and delineate processes during its investigation for making threshold determinations about whether workers have been misclassified. Earned sick time is a benefit misclassified workers are entitled to, but at significant risk of being denied because they work for an employer violating the law. Such processes will also benefit the City and law-abiding employers by leveling the playing field so that scofflaw employers don't have an outsized financial advantage.	Against	Thank you for your comment. §4-19-1(C) of the Ordinance provides a clear standard for determining whether a worker is a covered employee in the context of a complaint investigation, and further definition in the Rules is not necessary.
52	Ordinance §4-19-5, Rule Part 5(C)(3)(b)	Pronita Gupta, Director, Job Quality, and Tanya L. Goldman, Senior Policy Analyst/Attorney, Job Quality, Center for Law and Social Policy (CLASP)	We reiterate the need for strong retaliation protections. We recommend specifying in the regulations that employers may not discipline or assess "points" to an employee for using earned sick days under the employer's attendance policy.	Against	Thank you for your comment. The Ordinance is clear that retaliation is prohibited, and the Rules cannot enhance or diminish the standards established by the Ordinance.
53	Ordinance Part 6	Edward M. "Ted" Smith, Cornell Smith Mierl Brutocao Burton LLP	Proposed Enforcement Date of October 1, 2018. The Proposed Rules state that complaints for alleged violations of Chapter 4-19 of the City Code (the "Earned Sick Time Ordinance") will be investigated and determinations regarding proposed penalties made beginning October 1, 2018. While our client businesses wish to abide by the new requirements of the Earned Sick Time Ordinance – as they do all laws applicable to them – there simply has not been enough time and guidance provided from the date of enactment of the Earned Sick Time Ordinance for many employers to adequately prepare to a level that they can meet the requirements of the new law. To date, there have been no published Rules or guidance on critical issues related to the Earned Sick Time Ordinance, such that many employers will be unable to meet the requirements of the new law by October 1, 2018. This is vital information that employers must have before the City requires them to abide by such a wide ranging new law that is vague on these important specifics. The City should similarly delay enforcement of the Earned Sick Time Ordinance until at least six (6) months following the publishing of more detailed Rules and guidance, including the Proposed Rules.	Against	Thank you for your comment. The Ordinance was published upon enactment on February 15, 2018. EEFHO does not have the authority to delay the effective date or dates enacted in the Ordinance through the Rulemaking process. The Earned Sick Time website and hotline have been open for questions since March, and we recommend you reach out with your questions before the Ordinance becomes effective. http://austintexas.gov/earnedsicktime or 512-974-3200

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
54	Ordinance §§4-19-1(C) & 4-19-2(A)	Edward M. "Ted" Smith, Cornell Smith Mierl Brutocao Burton LLP	Employers Resident Outside of City of Austin. The Proposed Rules should specify that the City will not enforce the Earned Sick Time Ordinance requirements with regard to employers that reside outside of the City of Austin and that do not have a place of business within the City of Austin. The published guidance by the City of Minneapolis regarding the processing, interpretation, and investigation of alleged violations of the Minneapolis Sick and Safe Time Ordinance specifically states that "the Ordinance will not be enforced against any employer resident outside the City of Minneapolis." Similarly, the published Interpretive and Procedural Rules regarding the Cook County (Chicago) Earned Sick Leave Ordinance clarified that the Ordinance would be enforced against "Employers" and "Covered Employers" only if such employers had at least "one place of business within Cook County." The City should likewise clarify in the Proposed Rules and any future published guidance that the Earned Sick Time Ordinance shall not be enforced against employers that reside outside of the City of Austin and that do not have a place of business within the City of Austin.	Against	Thank you for your comment. The Ordinance covers employees, as defined by the Ordinance, and the hours worked by those workers within the City of Austin. EEFHO does not have the authority in the Rulemaking process to enhance or diminish the coverage of employees as defined in the Ordinance.
55	Ordinance §§4-19-1(C) & 4-19-2(A)	Edward M. "Ted" Smith, Cornell Smith Mierl Brutocao Burton LLP	Employees with Principal Place of Business/Employment Outside of City of Austin. The Proposed Rules and any future published guidance should specify that the City will not enforce the Earned Sick Time Ordinance requirements with regard to employees who do not have their principal place of business or employment within the City of Austin.	Against	Thank you for your comment. The Ordinance covers employees, as defined by the Ordinance, and the hours worked by those workers within the City of Austin. EEFHO does not have the authority in the Rulemaking process to enhance or diminish the coverage of employees as defined in the Ordinance.
56	Ordinance §§4-19-1(C) & 4-19-2(A)	Edward M. "Ted" Smith, Cornell Smith Mierl Brutocao Burton LLP	There is no clarification in the Proposed Rules as to what is considered "work performed" in the City of Austin that could be grounds for a violation of the new Ordinance. Is a delivery driver based out of Cedar Park "performing work" in Austin if he or she stops for gas within the city limits on the way to making a delivery in Buda? Is the same delivery driver "performing work" in Austin if they become stuck in traffic on I-35 on the way to making the Buda delivery? These types of clarifications need to be published before the City begins enforcement of the new Ordinance.	Against	Thank you for your comment. §4-19-2(A) of the Ordinance provides that earned sick time accrues at the rate of one hour for every 30 "hours worked" in the City; further clarification in the Rules is not necessary.

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
57	Ordinance §4-19-6(A)(2), Rule Part 3(C)(1)	Edward M. "Ted" Smith, Cornell Smith Mierl Brutocao Burton LLP	Verbal "Complaints." Proposed Rule 2(C) defines "Complaint" as a "written statement" by a Complainant alleging a violation of Chapter 4-19. However, Proposed Rule 3(C)(1) states that a Complaint will be deemed filed with the EE/FHO "as of the date the Complainant first contacts the EE/FHO, whether in-person or by telephone or email." Proposed Rule 3(C)(1) should be amended to clarify that a Complaint will only be deemed to be timely filed if it is written and signed by the Complainant.	Against	Thank you for your comment. The Rule language has been clarified that "Complaint" means a "written, oral, or electronic statement" and may be made in person, by telephone, by regular mail, or electronically. The Ordinance authorizes anonymous complaints, so the Rules cannot create a requirement that an anonymous complaint be signed.
58	Rule Parts 4(C)(2) & 5(B)	Edward M. "Ted" Smith, Cornell Smith Mierl Brutocao Burton LLP	Deadlines. The deadline for service of a Complaint upon a Respondent should be based upon the date the EE/FHO received the Complaint, not from when the Investigator received assignment of the Complaint. Accordingly, Proposed Rule 4(C)(2) should require that the Complaint be sent to the Respondent within 10 business days of receipt by the EE/FHO office, not within 10 business days of the Investigator receiving the assignment. Similarly, Proposed Rule 5(B) should tie the 90-day deadline to submit a recommendation to the date notice is provided to the Respondent, not to the date the Investigator receives the Complaint.	Against	Thank you for your comment. Part (4)(C) requires assignment to an Investigator "within two business days of receiving a complaint." Part 4(C)(2) now requires the Respondent to be served within 8 business days of the assignment (or 10 business days of receiving the complaint).
59	Ordinance §§4-19-2(A), (B), (C), (F), (G), (H), (J), (K), (L), (M), (N), (O), (Q), 4-19-4(A), & 4-	Edward M. "Ted" Smith, Cornell Smith Mierl Brutocao Burton LLP	Definitions of "Complainant" and "Respondent." Proposed Rules 2(B) and 2(H) define "Complainant" as an "individual" who makes an allegation of a violation of Chapter 4-19, and "Respondent" as "the employer" named in a Complaint. These definitions should be revised such that they are neutral and not assume that all Complainants will be individuals, and all Respondents employers.	Against	Thank you for your comment. These definitions are consistent with administrative enforcement practices and the Ordinance.
60	Rule Part 5(G)	Edward M. "Ted" Smith, Cornell Smith Mierl Brutocao Burton LLP	No Appeal Process. Proposed Rule 5(G) currently states that "there is no right of appeal of any determination issued by the Administrator." By not providing any administrative avenue for appeal under the Proposed Rules, the City is creating a situation in which Complainants or Respondents will be forced to bring disputes regarding the review of improper investigations and determinations of alleged Complaints through litigation. This lack of an administrative appeals process fails to provide the parties with adequate due process and will result in additional unnecessary legal costs for the City, employers and individuals.	Against	Thank you for your comment. The Ordinance does not authorize the Administrator to create an appeal process, and the Rules cannot exceed the authority found in the Ordinance. The Rules expressly separate investigative functions, assigned to an Investigator, from review and decision-making functions, assigned to the Administrator.

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
61	Ordinance §4-19-6(C) & Part 3, Rule Part 5(C)(3)	Scott Brutocao, Cornell Smith Mierl Brutocao Burton LLP	<p>Provision: (a) For violations that occur after October 1, 2018, but before June 1, 2019, the notice shall state that a civil penalty shall be assessed for a violation that occurs after June 1, 2019, if the Respondent fails to establish voluntary compliance with the Ordinance to the satisfaction of the Administrator within 10 business days after the Respondent receives the notice.</p> <p>This is confusing. You're saying that if the violation occurs between October 1 and June 1, the people will get a notice that talks about a civil penalty that shall be assessed for a violation that occurs after 6/1/19. Yet you say that civil penalty will be assessed if a respondent fails to establish voluntary compliance within 10 days after the respondent receives the notice. That doesn't make sense. The respondent could receive the notice on October 12. If they don't achieve voluntary compliance within 10 business days, we're still in October. How will that effect what penalty will be assessed after June 1?</p>	Against	Thank you for your comment. The Rules are consistent with the Ordinance. The Rule does not change the provisions of the Ordinance that violations from October 1, 2018 to June 1, 2019 will not result in assessed penalties for which a respondent will be liable to the City. §4-19-6(C) makes clear that an employer who voluntarily complies with the Ordinance upon a determination of a violation is not liable to the City for the amount of the assessed civil penalty. Rule 5(C)(3)(a) provides that violations that occur between October 1, 2018 and June 1, 2019 will result in a notice that violations that occur after June 1, 2019 will lead to the assessment of a penalty.
62	Rule Part 5(G)	Scott Brutocao, Cornell Smith Mierl Brutocao Burton LLP	<p>The Rules should include a right to appeal. Provision: (G) The decision of the Administrator under this Rule is final. There is no right of appeal of any determination issued by the Administrator.</p> <p>Comment: Why not? Shouldn't there be some oversight of the Administrator's decision? Do you want everyone who disagrees to have no choice but to sue the City?</p>	Against	Thank you for your comment. The Ordinance does not authorize the Administrator to create an appeal process, and the Rules cannot exceed the authority found in the Ordinance. The Rules expressly separate investigative functions, assigned to an Investigator, from review and decision-making functions, assigned to the Administrator.
63	Rule Part 6(B)(2)	Scott Brutocao, Cornell Smith Mierl Brutocao Burton LLP	<p>Provision: In determining the amount of a civil penalty assessment, the Administrator shall not negotiate the amount of any increase or decrease under this Part 6(B) with the Complainant or the Respondent. Comment: I disagree with this. An employer should be able to attempt to influence the appropriate amount of the penalty, especially if there is no appeal right. Given that employers could make one mistake that could affect hundreds if not thousands of employees, these penalties could be quite harsh indeed.</p>	Against	Thank you for your comment. The Rules provide guidelines and do not limit the discretion granted to the EEFHO Administrator by the Ordinance to assess a penalty in any amount up to \$500. Application of the guidelines in the Rules without the element of negotiation with individual respondents will lead to greater consistency of outcomes.

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
64	Rule Parts 3(B) & 4(B)	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	The process of accepting, investigating, and resolving Complaints must be as accessible as possible. Many of WDP's members and clients who stand to benefit from this Ordinance have limited proficiency reading or writing in English or their first language. They may not have regular access to a computer or the internet, or know how to use e-mail or a computer at all. Because of the hours they work, the nature of their employment situation, or their access to reliable transportation, these workers may not be easily reached during regular business hours or be available to attend in-person meetings during the business day. To be effective, the EE/FHO's complaint and investigation process under these Rules needs to account for and accommodate these realities.	Neutral	Thank you for your comment. Serving Limited English Proficient customers is already a City of Austin priority independent of the Proposed Rules. EEFHO will make best efforts to translate the complaint form into Spanish and other languages as soon as possible after the forms are finalized. Final forms will be available at the City of Austin Equal Employment/Fair Housing Office ("EEFHO"), located at 1050 East 11th Street, Suite 200, Austin, Texas 78702 and included on the EEFHO Earned Sick Time Website at: https://austintexas.gov/earnedsicktime . City of Austin customer service standards, embodied in the City's Vision and Values, require all City of Austin services be easily accessible, and the Earned Sick Time complaint and investigation process, including all forms, will adhere to these standards. EE/FHO Investigators routinely work outside of standard business hours to accommodate the needs of all parties, and those practices will extend to complaint and investigation processes in connection with enforcement of the Earned Sick Time Ordinance.
65	Rule Part 5(G)	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	Establishing a right to appeal is essential to ensuring that the investigation process is "fair, impartial and objective". Part 5(G) establishes that there is no right to appeal any determination issued by an Administrator under the Proposed Rules. WDP understands that the Ordinance prohibits EE/FHO from establishing an appeal process which exists outside of the agency's authority. However, WDP urges EE/FHO to establish Rules that would enable parties to request an appeal from an independent adjudicator housed within EE/FHO.	Against	Thank you for your comment. The Ordinance does not authorize the Administrator to create an appeal process, and the Rules cannot exceed the authority found in the Ordinance. The Rules expressly separate investigative functions, assigned to an Investigator, from review and decision-making functions, assigned to the Administrator.
66	Rule Part 5(G)	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	Excluding a right to appeal under the Rules establishes an adjudication process that inevitably will disadvantage workers. As the Complainant, workers who allege a violation will always have the responsibility of overcoming the preponderance of evidence requirement established by these Rules. It is always easier for an adjudicator to dismiss a Complaint than for an adjudicator to justify that an evidentiary standard has been met. It is always easier for an agency to deny alleged violations than to hold a Respondent accountable for them. This disadvantage can only be corrected through an appeal process that undertakes an independent, de novo review.	Against	Thank you for your comment. Although the Rules create a standard of proof (preponderance), neither the Ordinance nor the Rules establish any burden of proof or burden of production, except for the burden created in §4-19-2(C). The routine duties of the Investigator include the duty to make every reasonable effort to obtain all of the relevant, material, and available evidence in the course of the investigation.

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
67	Ordinance §4-19-1(C), Rule Part 5(G)	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	Workers Defense Project regularly files administrative claims on behalf of workers. Time and again, we have had to rely on our client's right to appeal to ensure that their claim is adjudicated correctly and that their rights in the workplace are defended. In our experience, the right to appeal becomes increasingly important when the agency is tasked with determining a threshold question of eligibility: is our client even eligible to claim a certain right? Is their employer even bound to honor that right? When pursuing wage claims before the Texas Workforce Commission, for example, we regularly need to appeal wrongful dismissals based on findings that our client is an "independent contractor" rather an employee. This question of worker classification is one of the many difficult issues that EE/FHO will need to address when adjudicating Complaints under this Ordinance. Human experience and principles of common sense contemplate that any investigation or adjudication process can be flawed. Mistakes happen. There will be errors in judgment and errors in law.	Against	Thank you for your comment. The Ordinance does not authorize the Administrator to create an appeal process, and the Rules cannot exceed the authority found in the Ordinance. The Rules expressly separate investigative functions, assigned to an Investigator, from review and decision-making functions, assigned to the Administrator. §4-19-1(C) of the Ordinance provides a clear standard for determining whether a given employer has correctly classified a worker as a covered in the context of a complaint investigation, and further definition in the Rules is not necessary.
68	Rule Part 5(G)	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	Chapter 4-19 defines EE/FHO's authority in §4-19-6. These duties include a mandate to "enforce this Chapter" and a mandate to "adopt Rules necessary to implement this Chapter". In the past, EE/FHO has alleged that such language does not "authorize" the agency to create an appeal process and cautioned that the Rules cannot exceed the authority found in the Ordinance. In its response to this comment, WDP specifically requests that EE/FHO provide a specific response, including citations to relevant caselaw, which substantiate how establishing a right to appeal in the manner we propose exceeds EE/FHO's authority under the Ordinance.	Against	Thank you for your comment. The Ordinance does not authorize the Administrator to create an appeal process, and the Rules cannot exceed the authority found in the Ordinance. The Rules expressly separate investigative functions, assigned to an Investigator, from review and decision-making functions, assigned to the Administrator.

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
69	Rule Parts 3(B) & 4(B)	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	The enforcement process should endeavor to make affected employees whole and resolve Complaints as soon as possible. The agency's priority should always be to conduct fair and thorough investigations of a Complaint. However, Complaints do become more difficult to resolve the longer that time passes - locating necessary evidence or testimony becomes more challenging. Respondents may disappear, Complainants may lose hope in the agency's ability to truly address the alleged violations, and achieving meaningful voluntary compliance may no longer prove practicable. Without compromising the integrity of its investigation process, WDP encourages EE/FHO to be mindful that many Complainants alleging violations are doing so in moments of dire need. Some Complaints will allege more complex violations than others, and undoubtedly will require more time to investigate, but many Complaints will allege clear violations that can be resolved expeditiously. EE/FHO owes all Complainants not only a fair and thorough investigation of the violations they allege, but a timely resolution of their Complaint as well.	Neutral	Thank you for your comment. Thank you for your comment. The City of Austin is sensitive to the impact a violation of the Earned Sick Time Ordinance could have on vulnerable populations, and we have taken that concern into account in the Proposed Rules. In addition we considered the potential complexity involved in examining and analyzing attendance records and payroll records inherent in Earned Sick Time complaints, and we proposed investigation closure standards that we believe are achievable, responsive to the needs of the individuals who file complaints, and sensitive to the legitimate interests of employers that are striving in good faith to comply with a new Ordinance.
70	Rule Part 6	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	The suggested civil penalties must be increased to effectively incentivize full compliance with the Ordinance. It is in the City's interest and in the spirit of the Ordinance to establish an enforcement scheme through these Rules that incentivizes full compliance with the requirements of the Ordinance. WDP does not believe that the suggested civil penalties in these Rules are high enough to meet that goal. WDP recommends a simplified, universal civil penalty scheme that limits the agency's discretion to adjust the established penalties solely to violations that involve bad faith or malicious conduct. WDP offers more detailed comments regarding Part 6 below.	Against	Thank you for your comment. The Rules provide guidelines and do not limit the discretion granted to the EEFHO Administrator by the Ordinance to assess a penalty in any amount up to \$500. The guidelines in the Rules are consistent with the requirement to educate employers about the Ordinance. The Rules cannot place absolute limitations on the discretion of the EEFHO Administrator to assess penalties, and the Rules cannot grant the EEFHO Administrator the authority to assess a penalty in excess of \$500. However, all penalties have been increased by \$100, and small businesses now have a 3 violation structure, instead of 4.
71	N/A	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	EE/FHO needs to establish interpretive Rules in addition to procedural Rules. Without interpretive Rules, employers do not have sufficient information to successfully comply with the Ordinance and workers do not have sufficient information to fully understand their rights under the Ordinance. Most importantly, without interpretative Rules, it is not clear what standards - if any - EE/FHO will apply when investigating Complaints. The Ordinance authorizes EE/FHO to "adopt Rules necessary to implement this chapter." Interpretive Rules are necessary for EE/FHO to implement this Ordinance.	Against	Thank you for your comment. Although EE/FHO has extensive knowledge of investigative procedures, based on lengthy, substantial experience gained from the administration of regulatory complaint investigations, the Division has limited working knowledge of the extremely wide range of compensation, attendance, and leave practices utilized in private sector employment subject to the Earned Sick Time Ordinance. The Earned Sick Time website and hotline have been open for questions since March, and we recommend you reach out with your questions before the Ordinance becomes effective. http://austintexas.gov/earnedsicktime or 512-974-3200 If

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

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72	Rule Parts 2(C) & 3(C)(1)	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	Part 2's Definitions and Additional Ordinance Terms that Require Further Clarification. Part 2(C) This Rule defines "Complaint" as a "written statement", while Part 3(C)(1) suggests that an in-person or telephone conversation could also constitute a "Complaint". WDP proposes that Part 2(C) be more expansive to capture both written statements made by a Complainant and oral statements made by a Complainant that are memorialized in writing by the Investigator or whomever else receives the Complaint at EE/FHO.	Against	Thank you for your comment. The Rule language has been clarified that "Complaint" means a "written, oral, or electronic statement" and may be made in person, by telephone, by regular mail, or electronically.
73	Ordinance §§4-19-1(C) & 4-19-2(A)	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	There are additional terms included in Chapter 4-19 that were either not defined in the final Ordinance language or were defined in the final Ordinance language but require further clarification or interpretation from EE/FHO. §4-19-1(C) defines "Employee" as "an individual who performs at least 80 hours of work for pay within the City of Austin in a calendar year for an employer." Further guidance on the definition of this term is required for employers of employees who are typically based outside of the City of Austin, but who work 80 or more hours within city limits in a calendar year. There should be a presumption that a worker who performs work duties within Austin city limits is eligible for earned sick time under Chapter 4-19 unless that employer can prove that an employee has performed less than 80 hours of work within city limits in the applicable calendar year. This presumption should not apply to employees whose work duties require them to travel through Austin but not perform work duties within the City, or who only make incidental stops inside the City of Austin that are unrelated to their work duties, such as purchasing gasoline or changing a tire. Final Rules from EE/FHO should also clarify how transit time to or from the City of Austin apply to the 80 hour employment threshold established in §4-19-1(C).	Against	Thank you for your comment. The City anticipates that the number of hours worked in the City of Austin by any given Complainant may be central to many complaint investigations.e. §4-19-2(A) of the Ordinance provides that earned sick time accrues at the rate of one hour for every 30 "hours worked" in the City. The routine duties of the Investigator include the duty to make every reasonable effort to obtain all of the relevant, material, and available evidence in the course of the investigation. Transit time outside of Austin (either to Austin or from Austin) is clearly not within the City of Austin and not regulated by City Ordinance, so clarification in the Rules is unnecessary.

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#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
74	Ordinance §4-19-1(C)	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	§4-19-1(C) further provides that “Employee does not include an individual who is an independent contractor.” The Rules, however, do not indicate how the EE/FHO will evaluate a worker’s proper employment classification. It would be helpful for the Rules to provide additional guidance on this point since controversy around a worker’s proper classification is a threshold question in almost any employment matter. Specifically, in accordance with Title 40, Section 821.5 of the Texas Administrative Code, the final Rules should articulate that (1) that an employer’s classification of a worker or even a worker’s classification of herself is not determinative of her proper status; (2) that a determination of proper worker classification shall be conducted of all Complainants, regardless of whether that worker is called an agent, contract laborer, independent contractor, subcontractor, or something else; and (3) that EE/FHO shall presume all Complainants to be employees unless or until the common law test indicates otherwise.	Against	Thank you for your comment. A complaint that includes a fact issue on worker classification will be investigated and reviewed in the same manner as any other determinative fact necessary to the resolution of a complaint investigation. The Ordinance covers employees, as defined by the Ordinance, and the hours worked by those workers within the City of Austin. EEFHO does not have the authority in the Rulemaking process to enhance or diminish the coverage of employees as defined in the Ordinance. The routine duties of the Investigator include the duty to make every reasonable effort to obtain all of the relevant, material, and available evidence in the course of the investigation.
75	Ordinance §4-19-2(A)	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	§4-19-2(A) provides that an employer shall grant an employee one hour of earned sick time for every 30 hours worked for the employer in the City of Austin. Additional guidance from EE/FHO, however, is needed to instruct employers as to how they should compute accrued earned sick time for employees who travel inside and outside of city limits to perform work duties and employees who are not always paid a regular, hourly rate.	Against	Thank you for your comment. The Ordinance requires accrual of earned sick time for only those hours worked in the City of Austin, and employers are free to track those hours using any method that they choose. The Ordinance requires earned sick time payments to be made in amounts equal to what the employee would have earned if the employee had worked the scheduled shift. Further clarification in the Rules is unnecessary at this time.
76	N/A	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	In particular, the Rules should clarify that overtime eligible employees do accrue earned sick time while working overtime hours. Salaried employees who are overtime ineligible (that is, employees who are properly exempt from the requirements of the Fair Labor Standards Act) and who regularly work 40 or more hours per week should be assumed to work 40 hours of work per week for the purposes of this section. Salaried employees who are lawfully overtime exempt who regularly work less than 40 hours per week should accrue earned sick time based on their particular regular work week.	Against	Thank you for your comment. The Ordinance does not distinguish hours worked between different classes of workers under the federal law, and the Rules will not create such a distinction.
77	N/A	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	As a general comment, other cities offer useful examples in their published Rules to demonstrate how employees with different compensation arrangements ought to accrue earned sick time. Providing such examples in the Rules would be incredibly helpful.	Neutral	Thank you for your comment. Additional content and resources are being developed. The Earned Sick Time website and hotline have been open for questions since March, and we recommend you reach out with your questions before the Ordinance becomes effective. http://austintexas.gov/earnedsicktime or 512.674.2200

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
78	Ordinance §§4-19-1(C) & 4-19-2(B)	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	§4-19-2(B) requires further clarification to explain how this provision interacts with the 80 day threshold established in §4-19-1(C). For employees whose primary place of employment is within the City of Austin, "Commencement of employment" should be defined as no later than the beginning of first day on which an employee is authorized or required by the employer to be on duty, or otherwise present at the employer's premises or prescribed workplace. For workers typically based outside of the City of Austin, "Commencement of employment" should begin when an employee works 80 hours within the City of Austin in a calendar year.	Against	Thank you for your comment. Both the Ordinance and the Rules do not consider hours worked outside of the City of Austin. A worker meets the definition of employee after completing 80 hours of work in the City of Austin. Further clarification in the Rules is unnecessary.
79	Ordinance §§4-19-1(C) & 4-19-2(B)	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	§4-19-2(C) allows for an employer to restrict an employee from using earned sick time during that employee's first 60 days of work if the employee establishes that the employee's term of employment is at least one year. The Rules should clarify that no employer shall restrict an employee's use of earned sick time under this section if the employer considers that employee to be "at will" or is otherwise able to terminate that employee at any time without cause. In order to establish an employee's term of employment under this section, the Rules should require an employer to furnish written documentation, dated on or close to the employee's commencement of employment which states that the employee has guaranteed employment for a term of one year or more. Absent any timely writing that establishes an employee's term of employment to be at least one year, an employer should not be able to restrict when earned sick time is available to an employee.	Against	Thank you for your comment. Although EE/FHO has extensive knowledge of investigative procedures, based on lengthy, substantial experience gained from the administration of regulatory complaint investigations, the Division has limited working knowledge of the extremely wide range of compensation, attendance, and leave practices utilized in private sector employment subject to the Earned Sick Time Ordinance. The routine duties of the Investigator include the duty to make every reasonable effort to obtain all of the relevant, material, and available evidence in the course of the investigation.
80	Ordinance §4-19-2(D)	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	§4-19-2(D) and other sections of the Ordinance utilize the term "scheduled work time." "Scheduled work time" should be further defined to mean hours an employee is required to work, including, but not limited to, regular hours, overtime hours (scheduled or voluntary), hours an on-call employee is required to work after being contacted by an employer, and employer-mandated training hours.	Against	Thank you for your comment. Although EE/FHO has extensive knowledge of investigative procedures, based on lengthy, substantial experience gained from the administration of regulatory complaint investigations, the Division has limited working knowledge of the extremely wide range of compensation, attendance, and leave practices utilized in private sector employment subject to the Earned Sick Time Ordinance. The routine duties of the Investigator include the duty to make every reasonable effort to obtain all of the relevant, material, and available evidence in the course of the investigation. The City will determine if any given standard is reasonable, in light of all of the facts and circumstances developed in any given investigation.

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
81	Ordinance §4-19-2(E)	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	§4-19-2(E) establishes that an employer may adopt “reasonable verification procedures” following “three consecutive work days” to verify that an employee’s request for earned sick time is for a qualifying purpose. Both the terms “reasonable verification procedures” and “use earned sick time for more than three consecutive work days” require further clarification and interpretation by EE/FHO.	Against	Thank you for your comment. Although EE/FHO has extensive knowledge of investigative procedures, based on lengthy, substantial experience gained from the administration of regulatory complaint investigations, the Division has limited working knowledge of the extremely wide range of compensation, attendance, and leave practices utilized in private sector employment subject to the Earned Sick Time Ordinance. The City believes that the infinite variety of workplace settings affects the City's ability to impose a single verification Rule. The City will determine if any given standard is reasonable, in light of all of the facts and circumstances developed in any given investigation.
82	Ordinance §4-19-2(E)	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	WDP suggest that the term “use earned sick time for more than three consecutive work days” mean earned sick time absences for three consecutive days that an employee is required or scheduled to work. For example, if an employee is scheduled to work each Monday, Wednesday, and Friday and uses earned sick time for any portion of a Monday, Wednesday and Friday in the same week, and then requests to use earned sick time the following Monday as well, only then could that employee’s employer seek verification.	Against	Thank you for your comment. Although EE/FHO has extensive knowledge of investigative procedures, based on lengthy, substantial experience gained from the administration of regulatory complaint investigations, the Division has limited working knowledge of the extremely wide range of compensation, attendance, and leave practices utilized in private sector employment subject to the Earned Sick Time Ordinance. The City will determine if any given standard is reasonable, in light of all of the facts and circumstances developed in any given investigation.
83	Ordinance §4-19-2(E)	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	The Rules should provide that any employer who adopts reasonable verification procedures under §4-19-2(E) establish such procedures in a written policy. This policy should be readily available to all employees in a language that they understand, and employers should be required to notify employees of such policy prior to requiring any employee to comply with it.	Against	Thank you for your comment. The Ordinance does not require written employer policies or procedures, and the Rules will likewise create no such requirement. The Ordinance does not require employers to communicate in any specific language, and the Rules will likewise create no such requirement.
84	Ordinance §4-19-2(E)	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	No reasonable verification procedure should require an employee to explain the nature of the domestic abuse, sexual assault, stalking, injury, illness, health condition, or other health need that necessitates their request for earned sick time. To be reasonable, an employer’s verification process must afford an employee adequate time to obtain the required verification and seek to mitigate additional burdens that the verification requirement may place on an employee. WDP recommends that the Rules provide that any verification procedures established pursuant to this section afford employee’s at least ten (10) days, beginning on the date of the employee’s first consecutive day of requesting earned sick time, to provide the required verification.	Against	Thank you for your comment. The City believes that the infinite variety of workplace settings affects the City's ability to impose a single verification Rule. The City will determine if any given standard is reasonable, in light of all of the facts and circumstances developed in any given investigation.

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85	Ordinance §4-19-2(E)	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	Employer required verification for use of earned sick time should not result in an unreasonable expense or burden on the employee. Complying with an employer's established verification procedures could result in such a burden, particularly if that employer does not provide health insurance to its employees yet expects employees to furnish a doctor's note as part of its verification process. If an employer requires verification from an employee, and the employee anticipates that this requirement will result in unreasonable burden or expense, an employee should be able to assert that to their employer, so that the employer and employee can discuss any less-burdensome alternatives that would satisfy the employer's verification requirement, or other ways that the employer can help the employee mitigate the expenses of fulfilling its verification requirement. If an employee is not offered health insurance by their employer and their employer insists that an employee furnish a doctor's note to satisfy its verification requirement, the employer and the employee should each pay half the cost of any out-of-pocket expense incurred by the employee in obtaining the requested verification for use of earned sick time, unless such cost results in an unreasonable burden on the employee.	Against	Thank you for your comment. The City believes that the infinite variety of workplace settings affects the City's ability to impose a single verification Rule. The City will determine if any given standard is reasonable, in light of all of the facts and circumstances developed in any given investigation.
86	Ordinance §4-19-2(F)	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	§4-19-2(F) requires further clarification and interpretation. "Scheduled work time" should be defined using the suggested definition mentioned above. In addition, EE/FHO should clarify what constitutes a "timely request" and provide additional guidance for employers who establish policies pursuant to this section. For a foreseeable absence, WDP recommends that a request to use earned sick time should be considered "timely" if an employee provides at least seven (7) days advance notice of their intent to use paid sick time to their employer, or otherwise notifies their employer as soon as is practical, unless the employer's policy allows for less advance notice.	Against	Thank you for your comment. Although EE/FHO has extensive knowledge of investigative procedures, based on lengthy, substantial experience gained from the administration of regulatory complaint investigations, the Division has limited working knowledge of the extremely wide range of compensation, attendance, and leave practices utilized in private sector employment subject to the Earned Sick Time Ordinance. At this time, foreseeability will be analyzed and interpreted on a case by case basis, in light of all of the facts and circumstances developed in any given investigation. One workplace may consider notice as soon as possible to be timely while another may consider 24 hours to be timely, and a seven-day standard, or any other standard that did not serve the interests of the employer and its workers, would be misguided.

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87	Ordinance §§4-19-2(E) & (F)	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	EE/FHO should clarify that employers may require employees to comply with certain procedures in order to make a request to use earned sick time, as long as such procedures do not interfere with an employee's lawful use of earned sick time.	Against	Thank you for your comment. Although EE/FHO has extensive knowledge of investigative procedures, based on lengthy, substantial experience gained from the administration of regulatory complaint investigations, the Division has limited working knowledge of the extremely wide range of compensation, attendance, and leave practices utilized in private sector employment subject to the Earned Sick Time Ordinance. The City will determine if any given standard is reasonable, in light of all of the facts and circumstances developed in any given investigation.
88	Ordinance §4-19-2(F)	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	When absence from work is unforeseeable, it is possible that it will not be practicable for an employee to provide an employee with notice of their absence. In such instances, an employer should permit someone else to provide notice of the absence to the employer on the employee's behalf as soon as it is practicable to do so.	Against	Thank you for your comment. Although EE/FHO has extensive knowledge of investigative procedures, based on lengthy, substantial experience gained from the administration of regulatory complaint investigations, the Division has limited working knowledge of the extremely wide range of compensation, attendance, and leave practices utilized in private sector employment subject to the Earned Sick Time Ordinance. At this time, foreseeability will be analyzed and interpreted on a case by case basis, in light of all of the facts and circumstances developed in any given investigation.
89	Ordinance §4-19-2(F)	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	If an employer seeks to implement policies that describe any requirements of an employee to make a "timely request" to use earned sick time or otherwise provide notice of a qualifying absence in accordance with this section, the EE/FHO should require in these Rules that such policies be established in writing. These Rules should require that an employer inform its employees of any notification policy prior to requiring that any employee complies with it. Employers should ensure that this policy is readily available to all employees in a language that they understand.	Against	Thank you for your comment. The Ordinance does not require written employer policies or procedures, and the Rules will likewise create no such requirement. The Ordinance does not require employers to communicate in any specific language, and the Rules will likewise create no such requirement.

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90	Ordinance §4-19-2(J)	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	§4-19-2(J) seeks to establish the proper rate of pay owed to employees who use earned sick time, yet requires further interpretation to capture the breadth of compensation arrangements that exist between employers and employees. The Rules should describe in further detail how employers should calculate the proper compensation due to employees who earn tips, who earn a commission, who are salaried, who are overtime eligible but paid an hourly rate, who are paid a daily rate, who earn a piece rate, or whose rate of pay fluctuates (e.g. workers on a prevailing wage site, or workers who earn a higher rate during a “night shift” vs a “day shift”). The final Rules published by the Seattle Office of Labor Standards to implement that city’s Paid Sick and Safe Time Ordinance contemplate many methods of compensation and can provide helpful guidance to EE/FHO as the agency clarifies this provision further.	Against	Thank you for your comment. Although EE/FHO has extensive knowledge of investigative procedures, based on lengthy, substantial experience gained from the administration of regulatory complaint investigations, the Division has limited working knowledge of the extremely wide range of compensation, attendance, and leave practices utilized in private sector employment subject to the Earned Sick Time Ordinance. At this time, compliance with §4-19-2(J) compensation requirements will be analyzed and interpreted on a case by case basis, in light of all of the facts and circumstances developed in any given investigation.
91	Rule Part 4(F)	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	It is important to note that vulnerable employees who have the most to gain from successful implementation of this Ordinance are also most likely to be compensated through an unconventional compensation scheme. It is also not uncommon for these workers to have no documentation of the promised wage offered by their employer, not due to any fault of their own, but because of their employer’s failure to comply with other provisions of state or federal law. When determining the proper compensation owed for an absence under this Ordinance, the EE/FHO should, like other provisions of state and federal wage and hour law, establish a rebuttable presumption in favor of the employee’s stated rate of pay if the employer is not able to provide proof of the employee’s pay rate, such as through an offer letter, employment contract, or pay stub.	Against	Thank you for your comment. Although the Rules create a standard of proof (preponderance), neither the Ordinance nor the Rules establish any burden of proof or burden of production, except for the burden created in §4-19-2(C), so any presumptions would be inappropriate. The routine duties of the Investigator include the duty to make every reasonable effort to obtain all of the relevant, material, and available evidence in the course of the investigation. Furthermore, the Rules clarify that formal Rules of evidence do not control earned sick time complaint investigations, and the investigations can consider "information that tends to prove or disprove the allegations in the complaint, regardless of whether such information would be admissible in a court of law," accommodating both workers and employers who participate in those investigation.
92	Ordinance §4-19-6(A)(1)	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	In addition to clarifying the proper rate of pay for earned sick time, EE/FHO should articulate when payment for earned sick time is due when in its education and outreach efforts undertaken pursuant to the Ordinance so that employers may avoid unintended violations of other provisions of state or federal law.	Against	Thank you for your comment. Although the employer education requirement of the Ordinance is beyond the scope of the Rules, EEFO appreciates the intention of the comment to provide comprehensive compliance information for employers.

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93	Ordinance §4-19-2(K)	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	§4-19-2(K) requires that employers shall, on no less than a monthly basis, provide employees a statement showing the amount of available earned sick time. EE/FHO should provide additional clarification in these Rules about the information that this statement should contain. For example, any statement prepared in accordance with this section should include the name of the employee and the employer, the statement's date (e.g. June 6, 2018), the statement period (e.g. May 1 - May 31, 2018), the number of eligible hours worked in the City of Austin during the statement's period, the amount of earned sick time accrued during the statement's period, the amount of earned sick time used during the statement's period, and the amount of earned sick time currently available to the employee.	Against	Thank you for your comment. The Ordinance is clear that the monthly statement is required to reflect "the amount of the employee's available earned sick time." §4-19-2(K) separately requires recordkeeping of the amounts or earned sick time accrued and used, but the Ordinance does not require that to be provided to an employee. The Rules cannot impose obligations upon any person that are not authorized by the Ordinance, including employer obligations with respect to the monthly statement required by §4-19-2(K).
94	Ordinance §4-19-2(K), Rule Part 4(C)(2)	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	In addition, the Rules should specify an employer's obligations to maintain and retain records under this section of the Ordinance, and the employer's obligation to retain such records during an investigation conducted under the Ordinance. The Rules should make clear that once an employer is notified by an Investigator that an investigation has commenced pursuant to Part 4(C)(2) , the employer may not destroy any employee records maintained pursuant to this section until the employer is notified by EE/FHO that the Complaint's investigation has closed under Part 7.	Against	Thank you for your comment. §4-19-2(K) of the Ordinance clearly specifies the type of records that employers are required to maintain and the retention period. Additional requirements in the Rules are not necessary. Investigations will be based on relevant, material, and available evidence, including documents in the possession of any person, whether required to be maintained by the Ordinance or not.
95	Ordinance §§4-19-2(K) & 4-19-7(B), Rule Part 4(D)	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	Part 4 authorizes EE/FHO to request or subpoena records of a Respondent as part of the investigation process. The Rules should clearly articulate that the failure of an employer to satisfy EE/FHO's requests for records which a Respondent is required to maintained under the Ordinance during the course of an investigation creates a rebuttable presumption that the employer has violated §4-19-2(K).	Against	Thank you for your comment. Although the Rules create a standard of proof (preponderance), neither the Ordinance nor the Rules establish any burden of proof or burden of production, except for the burden created in §4-19-2(C), so any presumptions would be inappropriate. The routine duties of the Investigator include the duty to make every reasonable effort to obtain all of the relevant, material, and available evidence in the course of the investigation. Furthermore, the Rules clarify that formal Rules of evidence do not control earned sick time complaint investigations, and the investigations can consider "information that tends to prove or disprove the allegations in the complaint, regardless of whether such information would be admissible in a court of law," accommodating both workers and employers who participate in those investigations. The Ordinance at §4-19-7(B) makes clear the consequence for failing to comply with a subpoena, and the Rules cannot create additional consequences.

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96	Ordinance §4-19-2(L)	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	§4-19-2(L) requires that an employer handbook include “a notice of employee rights and remedies under this Chapter.” The final Rules should further define precisely what is meant by the term “employee handbook” and “employee rights and remedies under this Chapter”. WDP suggests that the notice required in an employee handbook include: (1) that employees are entitled to earn paid sick time; (2) when an employee begins to accrue time and at what rate, whether the employer makes the yearly cap of earned sick time available to employees at the beginning of a year, and when that year begins; (3) the yearly cap of earned sick time available to employees; (4) when an employee may begin using earned sick time; (5) when the employer will (5) the employer’s procedures for an employee to make a timely request to use earned sick time or otherwise provide the employer with notice of an absence under the Ordinance, if applicable; (6) the employer’s reasonable verification procedures, if applicable; (7) how and when the employer will provide employees with notice of their available earned sick time; (8) notice that employees can file a Complaint alleging violations of the Ordinance to EE/FHO; (9) notice that employer retaliation is prohibited; and (10) the employer’s disciplinary policy for unauthorized use of earned sick time, if applicable. It would be helpful if EE/FHO developed model employee handbook language which satisfies the requirements of the Ordinance and this Rule as a resource for employers.	Against	Thank you for your comment. The City believes that the infinite variety of workplace settings affects the City's ability to impose a single standard for the employee handbook rights and remedies notice under §4-19-2(L) of the Ordinance. The City will determine if any given employee handbook notice complies with the Ordinance, in light of all of the facts and circumstances developed in any given investigation.
97	Ordinance §4-19-2(L)	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	EE/FHO should also encourage employers to inform its employees when they should expect payment for used earned sick time in the employee handbook.	Against	Thank you for your comment. The Ordinance clearly states the requirements for employee handbooks, and the Rules cannot create duties or rights that exceed the terms of the Ordinance.
98	Ordinance §4-19-2(L)	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	EE/FHO’s final Rules should also clarify that it is a violation of this section if the notice included in the employee handbook is not in a language that the employee understands, or if the employer cannot provide evidence (such as an signed acknowledgment form) that a Complainant received an employee handbook containing the required notice prior to the date of the alleged violation.	Against	Thank you for your comment. The City will determine if any given employee handbook notice complies with the Ordinance, in light of all of the facts and circumstances developed in any given investigation.

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
99	Ordinance §§4-19-2(L) & (Q)	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	§4-19-2(Q) The Rules should specify that successor employers must provide employees with all required written earned sick policies either at the time of acquisition or as soon as practicable.	Against	Thank you for your comment. The Ordinance expressly acknowledges in §4-19-2(L) that some employers have employee handbooks, while others do not. §4-19-2(Q) clearly states the duties of the successor employer, which duties do not include any duty to create or provide an employee handbook, and the Rules cannot create duties or rights that exceed the terms of the Ordinance. The City will determine if any given employee handbook notice complies with the Ordinance, in light of all of the facts and circumstances developed in any given investigation.
100	Ordinance §4-19-5	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	§4-19-5 should be clarified in the Rules to further describe what constitutes prohibited retaliation under the Ordinance. EE/FHO should consider applying an expansive definition to “retaliation” to encompass any efforts by an employer to interfere with an employee’s lawful use of earned sick time. Any attempt to discipline, demote, discharge, suspend, reduce hours or otherwise directly threaten an employee who satisfies the requirements of this Ordinance, of the Rules, and other lawful policies of an employer should constitute “retaliation” under this section.	Against	Thank you for your comment. §4-19-5 clearly identifies the adverse actions and the protected activities that are within the scope of the provisions that prohibit retaliation, and the Rules cannot create duties or rights that exceed the terms of the Ordinance.
101	Ordinance §4-19-5	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	The Rules should also provide employers with clearer guidance as to how they may address instances of unauthorized use of earned sick time without running afoul of §4-19-5. Community education efforts conducted by EE/FHO should advise employers how they can address instances of unauthorized use of earned sick time without running afoul of the Texas Payday Law or other relevant provisions of the Texas Labor Code.	Against	Thank you for your comment. §4-19-5 clearly identifies the adverse actions and the protected activities that are within the scope of the provisions that prohibit retaliation. It is beyond the scope of the Rules to describe the boundaries of any employer's authority of direction and control. Although the employer education requirement of the Ordinance is beyond the scope of the Rules, EEFO appreciates the intention of the comment to provide comprehensive compliance information for employers.
102	Ordinance §4-19-2(L)	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	WDP recommends that the Rules require that any disciplinary policy regarding the unauthorized use of earned sick time be in writing and be made readily available to all employees in a language that they understand.	Against	Thank you for your comment. The Ordinance expressly acknowledges in §4-19-2(L) that some employers have employee handbooks, while others do not. The Ordinance does not impose a duty on an employer to create or maintain an employee handbook, and the Rules cannot impose duties or create rights that exceed the terms of the Ordinance. The City will determine if any given employee handbook notice complies with the Ordinance, in light of all of the facts and circumstances developed in any given investigation.

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
103	N/A	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	WDP also suggests that the Rules forbid employers from deducting any unauthorized earned sick time hours used from an employee's legitimately accrued, unused earned sick time if the employer chooses, as part of its disciplinary policy, to lawfully withhold payment from an employee for sick time used for an unauthorized purpose.	Against	Thank you for your comment. The City will determine if any deductions from accrued sick time complies with the Ordinance, in light of all of the facts and circumstances developed in any given investigation.
104	Ordinance §4-19-6(A)(2)	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	§4-19-6(A)(2) requires EE/FHO to "investigate complaints...alleging a violation of this Chapter". The Proposed Rules are silent as to the meaning of this term "alleging a violation". WDP recommends that EE/FHO interprets the term broadly so that all Complaints which are filed in accordance with the Rules are presumed to "allege a violation" of the Ordinance until the investigation process described under Part 4 is exhausted and EE/FHO determines that issuance of written notice of dismissal pursuant to Part 5(C)(2) is appropriate. Complainants should not be expected to be experts in the Ordinance or these Rules, and should therefore not be expected to specifically allege how a Respondent has violated the requirements of the Ordinance or these Rules in order for an investigation of their Complaint to be initiated.	Against	Thank you for your comment. "Alleging a violation" as it appears in §4-19-6(A)(2) of the Ordinance is clear and requires no additional clarification in the Rules.
105	Ordinance §4-19-6(A), Rule Part 4	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	Additionally, the investigation process described in §4-19-6(A)(2) and Part 4 should not be restricted solely to allegations mentioned in a Complaint. Requests for additional information from either party during the investigation process may surface additional potential violations that merit investigation and remedy under these Rules. In seeking voluntary compliance or assessing civil penalties pursuant to §4-19-6(A)(3) and §4-19-6(A)(4), it is incumbent upon EE/FHO to address any and all violations identified in the investigation of a Complaint, regardless of whether such violations were initially alleged by the Complainant.	Against	Thank you for your comment. Requests for information in any given complaint are limited to evidence reasonably expected to prove or disprove the allegations in the complaint and nothing more. The Ordinance does not authorize generalized, operational audits.

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
106	Ordinance §4-19-6(A)(4), Rule Part 5	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	§4-19-6(A)(4) directs EE/FHO to “seek voluntary compliance” before collecting a civil penalty, and Part 5 explains, in part, how an Administrator will do this through the Complaint determination process. WDP applauds EE/FHO for proposing Rules that encourage the resolution of Complaints through the voluntary compliance process. We believe that it is in the interest of all parties to a Complaint for a violation to be remedied as soon as possible and for workers directly affected by a violation to have the opportunity to be made whole, which is often not possible if a civil penalty is assessed. To the extent that is feasible, however, we encourage EE/FHO to establish Rules that provide clearer guidelines as to how the agency will fulfill the mandate created in §4-19-6(A)(4).	For & Against	Thank you for your comment. The Earned Sick time Ordinance does not restrict EE/FHO from using any appropriate methods to seek voluntary compliance, and it is unnecessary to limit the methods available to EE/FHO in the Rules.
107	Ordinance §4-19-6(A)(4), Rule Part 5	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	Neither Part 5, or any other section of the Proposed Rules interpret what “voluntary compliance” actually means, the bounds of discretion which an Administrator has to determine what constitutes “voluntary compliance” in a particular instance, and how the Administrator might determine whether a Respondent has, in fact, adequately remedied a violation through the voluntary compliance process.	Against	Thank you for your comment. The Ordinance grants authority to the Administrator to appropriately interpret both compliance and non-compliance (violations) with the Ordinance. At this time, additional interpretive guidance in the form of a Rule is unnecessary.
108	Rule Parts 5(D) & 6	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	We encourage these guidelines to require that voluntary compliance of a violation that resulted in specific harm to a Complainant, such as violations of the Ordinance’s anti-retaliation provisions or other violations of an employee’s right to accrue or use earned sick time, be designed to provide relief to the individual affected and remedy the harm caused to them. We further suggest that these guidelines address violations that do not involve direct interference with an employee’s lawful use of earned sick time, such as failure on the part of the employer to post the required signage or satisfy the other notice provisions in the statute, be forward-looking. In order to verify whether a Respondent has established voluntary compliance with the Ordinance for the purposes of Part 5(D) , EE/FHO, whenever practicable, should communicate with the Complainant or other employees of the Respondent who may have personal knowledge of the matter.	Against	Thank you for your comment. Rule Part 6 provides clear guidance to the Administrator, within the full scope of authority provided in the Ordinance, for the purpose of determining a civil penalty assessment. The Ordinance and the guidelines in the Rule are sufficiently broad to encompass the concerns expressed in the comment.

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
109	Ordinance §§4-19-4(B) & 4-19-7(C)	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	§4-19-7(C) authorizes EE/FHO to inform employees at a worksite of any investigation of a Complaint from that worksite. The Rules should explain when EE/FHO shall exercise this authority and how. WDP suggests that informing employees under this section is especially appropriate when investigating violations suggestive of grave misconduct, especially when such violations are alleged in anonymous Complaints, unless EE/FHO has reasonable belief that doing so may cause harm to the Complainant. In circumstances like these, WDP recommends that the Rules authorize EE/FHO to post notices under this section in conspicuous locations of a worksite for a delineated period of time, such as 21 days. Notices posted under this section should (1) state that EE/FHO has received a Complaint alleging a violation of the Ordinance at this worksite; (2) provide instructions explaining how employees can report potential violations of the Ordinance to EE/FHO; (3) remind employees that the Ordinance forbids employers from retaliating against employees who report violations; and (4) clearly and conspicuously specify the earliest date that the employer can remove this posting from the prescribed location at the worksite. Similar to the signage required under §4-19-4, any postings made pursuant to §4-19-7(C) should be displayed in all appropriate languages. The size and location of notices posted under this section should equal the signage specifications prescribed by EE/FHO in accordance with §4-19-4(B).	Against	Thank you for your comment. At this time, it is unnecessary to limit or define the authority of the EE/FHO to notify employees under §4-19-7(C) of the Ordinance. Notification procedures will be subject to the discretion of the Administrator given all of the facts and circumstances involved in any given complaint investigation and limited only by relevant law and City policy.
110	Ordinance §§4-19-2(L), 4-19-4, 4-19-5, & 4-19-6(B)	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	Part 3. Filing of Complaints. Part 3(A) provides that EE/FHO will only investigate timely Complaints. We suggest that this Proposed Rule be revised to allow for late-filed Complaints to be considered if the Complainant, in writing, demonstrates good cause. Good cause should include retaliation by the employer under §4-19-5 or failure of an employer to comply with §4-19-2(L), if applicable, or §4-19-4 of the Ordinance.	Against	Thank you for your comment. §4-19-6(B) of the Ordinance establishes the deadline for filing of complaints with no provisions for good cause exceptions. The Rules cannot extend the deadlines established in the Ordinance.

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
111	Rule Part 3	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	Part 3(B) provides that an Administrator both may prescribe forms for filing a Complaint and additional administrative procedures. To ensure that the process established in Part 3 is as accessible as possible, WDP suggests that the final Rules clearly establish the Administrator's obligation to ensure that the procedures for filing a Complaint are accessible to those who speak, read, or understand languages other than English with various levels of proficiency, and to those with various degrees of access to or familiarity with computers or the Internet.	Against	Thank you for your comment. Serving Limited English Proficient customers is already a City of Austin priority independent of the Proposed Rules. EEFHO will make best efforts to translate the complaint form into Spanish and other languages as soon as possible after the forms are finalized. Final forms will be available at the City of Austin Equal Employment/Fair Housing Office ("EEFHO"), located at 1050 East 11th Street, Suite 200, Austin, Texas 78702 and included on the EEFHO Earned Sick Time Website at: https://austintexas.gov/earnedsicktime . City of Austin customer service standards, embodied in the City's Vision and Values, require all City of Austin services be easily accessible, and the Earned Sick Time complaint and investigation process, including all forms, will adhere to these standards.
112	Rule Part 3	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	WDP recommends that EE/FHO reviews earned sick time complaint forms developed by other cities and seek input from stakeholders before prescribing Austin's form. WDP would be happy to provide additional feedback regarding the content of this form. To be effective, WDP recommends that the form encourage Complainants to provide not only their own contact information but that of an emergency contact that can be reached by an Investigator or Administrator if EE/FHO is otherwise unable to reach the Complainant. The complaint form should also inquire about the preferred method of communication between EE/FHO and the Complainant (such as phone, email, snail mail, text message) and the time of day that the Complainant is most likely to be available. In WDP's experience, forms that list the potential violations under the Ordinance and allow the Complainant to indicate which of the potential violations may apply to them has proven useful in educating the public about what constitutes a violation under the Ordinance and ensuring that Investigators are provided with sufficient information at the outset to conduct a thorough investigation of all potential claims.	Neutral	Thank you for your comment. Serving Limited English Proficient customers is already a City of Austin priority independent of the Proposed Rules. EEFHO will make best efforts to translate the complaint form into Spanish and other languages as soon as possible after the forms are finalized. Final forms will be available at the City of Austin Equal Employment/Fair Housing Office ("EEFHO"), located at 1050 East 11th Street, Suite 200, Austin, Texas 78702 and included on the EEFHO Earned Sick Time Website at: https://austintexas.gov/earnedsicktime . City of Austin customer service standards, embodied in the City's Vision and Values, require all City of Austin services be easily accessible, and the Earned Sick Time complaint and investigation process, including all forms, will adhere to these standards. EEFHO has extensive experience serving external customers and responding to all forms of customer service feedback, and EEFHO will remain open and receptive to feedback on customer service concerns related to Earned Sick Time complaint investigations, including the accessibility and effectiveness of forms.
113	Ordinance §4-19-8, Rule Part 3	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	Finally, in developing the prescribed form under this Rule, EE/FHO should be mindful of how the form can assist the agency in collecting data that will be useful for its preparation of the annual report to be published under §4-19-8.	Neutral	Thank you for your comment. Although the annual report requirement of the Ordinance is beyond the scope of the Rules, EEFHO appreciates the intention of the comment to provide a comprehensive and transparent report to City Council.

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
114	Ordinance §4-19-6(A)(2), Rule Part 3	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	The Rules should include additional provisions under Part 3 to establish how the EE/FHO will receive anonymous complaints alleging a violation of the Ordinance pursuant to §4-19-6(A)(2). At the very least, Part 3 should establish that a Complainant need not disclose identifying information in order for their Complaint to be deemed filed.	Against	Thank you for your comment. Ensuring that employees understand their right to file anonymous complaints is a component of the education requirement of the Ordinance, which is beyond the scope of the Rules. EEFO appreciates the intention of the comment to provide meaningful information to employees about rights protected by the Ordinance, including the right to file anonymous complaints.
115	Rule Part 3	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	WDP also recommends that an additional provision be added under Part 3 that shall require EE/FHO, except when not practicable in the case of anonymous complaints, to provide a written notice to the Complainant to inform them (1) when EE/FHO received their Complaint (2) whether their Complaint was “timely filed”, and if so, (3) summarizes the next steps in the investigation process.	Against	Thank you for your comment. Rule Part 3(B) provides that the Administrator may prescribe forms and procedures. The Administrator's exercise of this authority is subject to established City of Austin customer service standards, embodied in the City's Vision and Values, which require all City of Austin services be easily accessible, and the Earned Sick Time complaint and investigation process, including all forms, will adhere to these standards.
116	Ordinance §4-19-6(A)(2), Rule Part 4	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	Part 4. Investigation of Complaints. Investigating Anonymous Complaints. The Proposed Rules do not seem to address how EE/FHO will fulfill the mandate established in §4-19-6(A)(2) to investigate anonymous complaints. For example, the investigation process described in Part 4(C) seems conditional on an Investigator's ability to interview a Complainant, which is not likely to be possible if a Complaint has been filed anonymously.	Against	Thank you for your comment. There is nothing to prevent an individual from filing an anonymous complaint in person, allowing a full opportunity for an intake interview by an Investigator. Additionally, an individual who files an anonymous complaint may be represented by counsel or any person, facilitating continued contact and communication with the complainant. Further clarification in the Rules is not necessary at this time.
117	Ordinance §4-19-6(A)(2), Rule Part 4	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	It would contradict the intent of §4-19-6(A)(2) if the Rules established a process that summarily rejected any Complaints filed anonymously. Whether or not a Complaint is filed anonymously, a Complainant interview is not always going to be necessary for EE/FHO to fully and fairly investigate many violations of the Ordinance.	Against	Thank you for your comment. The Rules do not authorize EEFO to reject any complaint for being made anonymously.
118	Ordinance §4-19-6(A)(2), Rule Part 4	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	To ensure that EE/FHO complies with the mandate established in §4-19-6(A)(2), the Rules should require the agency to investigate anonymous complaints to the fullest extent practicable. Furthermore, the Rules should prohibit EE/FHO from dismissing an anonymous Complaint until the agency has exhausted all reasonable efforts to investigate the anonymous Complainant's allegations.	Against	Thank you for your comment. Neither the Ordinance nor the Rules distinguish anonymous complaints from non-anonymous complaints with respect to investigations procedures. All Earned Sick Time Ordinance investigation procedures are subject to established City of Austin customer service standards, embodied in the City's Vision and Values, which require all City of Austin services be easily accessible, and the Earned Sick Time complaint and investigation process, including all forms, will adhere to these standards.

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
119	Rule Part 4	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	Ensuring Complaints Are Investigated in a Timely Manner. While ensuring a thorough investigation of Complaints is essential, Part 4 should reduce the likelihood that Complaints will languish unnecessarily with EE/FHO. EE/FHO should remain mindful that many people filing Complaints under the Ordinance may be experiencing extreme financial hardship as a result of the violations alleged in the Complaint or the circumstances that have necessitated their need for earned sick time. EE/FHO should make all reasonable efforts to resolve their Complaints expeditiously without compromising the integrity of the investigation process.	Against	Thank you for your comment. The City of Austin appreciates the impact a violation of the Earned Sick Time Ordinance could have on vulnerable populations, and we have taken that concern into account in the Proposed Rules. In addition we considered the potential complexity involved in examining and analyzing attendance records and payroll records inherent in Earned Sick Time complaints, and we proposed investigation closure standards that we believe are achievable, responsive to the needs of the individuals who file complaints, and sensitive to the legitimate interests of employers that are striving in good faith to comply with a new Ordinance. However, we have reduced the deadlines throughout the Rules: o Investigators now have 8 days to schedule interviews with Complainants and serve Respondents with a request for information (down from 10-effectively making the initial contact within 10 days of receiving the complaint) o Investigators now have 75 days to recommend a final determination to the Administrator (down from 90) o Administrators now have 105 days to close complaints (down from 120)
120	Ordinance §4-19-5, Rule Part 4	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	In addition, EE/FHO should endeavor to fast track Complaints that allege violations of §4-19-5 or otherwise allege violations that may necessitate an urgent remedy. Many other labor enforcement agencies have established protocols to ensure that retaliation investigations occur on a faster timeline than other investigations in recognition of the time-sensitive nature of these complaints.	Against	Thank you for your comment. The Ordinance is clear that retaliation is prohibited, and the Rules cannot enhance or diminish the standards established by the Ordinance.
121		Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	Ensuring that All Parties Feel Safe Participating in the Investigation Process. The Rules should reiterate that the Ordinance applies to all employees, regardless of immigration status. Part 4, in particular, should clearly state that, during the course of an investigation, parties will neither be required to provide, nor will EE/FHO request, information regarding the immigration status of any Complainant, witness, or Respondent.	Against	Thank you for your comment. EEFO staff do not inquire into immigration status of any customers. Additional clarification in the Rules is unnecessary.
122	Rule Part 4(C)(1)	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	Part 4(C)(1). WDP recommends that this section be revised to say "Within 5 business days of receiving the assignment, the Investigator will make all reasonable efforts to schedule an initial in-person or phone interview with the Complainant, unless the Complainant has filed anonymously and scheduling a follow-up interview is not possible."	Against	Thank you for your comment. We have reduced the deadlines throughout the Rules, including the reduction in an Investigator's time to schedule interviews with Complainants and serve Respondents from 10 to 8 days.

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
123	Rule Part 4(C)(2)	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	Part 4(C)(2). It is possible that the initial Complaint will contain insufficient information about the Respondent or insufficient information for a Respondent to meaningfully respond to the violations alleged in the Complaint until the Investigator is able to solicit additional information from the Complainant pursuant to Part 4(C)(1). WDP recommends the following revised language for this Rule: "Within 5 business days of receiving the assignment or confirming the employer implicated in the Complaint, the Respondent will be sent a copy of the Complaint and a request for responsive information. The Respondent will be given 14 days from the date of receipt to respond. This written response must specifically state the Respondent's position regarding the allegations set forth in the Complaint. If the Respondent admits to violating the Ordinance, their response must address how the Respondent will remedy this violation and, if applicable, make the Complainant whole. If the Respondent denies the allegations, they must specifically state how the Respondent is in compliance with the Ordinance and provide the responsive information requested. The Respondent may also provide any additional information it believes is relevant to the investigation of the Complaint."	Against	Thank you for your comment. Existing internal EEFHO procedures require that every reasonable effort be made to analyze customer complaints and inquiries and those procedures will fully apply to Earned Sick time Ordinance complaint investigations. Additional clarification in the Rules is unnecessary. We have reduced the deadlines throughout including the section related to the initial interviews and responses: Investigators now have 8 days to schedule interviews with Complainants and serve Respondents with a request for information (down from 10-effectively making the initial contact within 10 days of receiving the complaint).
124	Rule Parts 4 & 5(C)(3)	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	To ensure the timely resolution of Complaints, the Rules should permit and encourage Respondents who admit to violating the Ordinance in their written response to proactively remedy the violations alleged in the Complaint. Upon confirming satisfactory remedy of the violation in consultation with the Complainant, if possible, EE/FHO should issue a notice of dismissal so that the Respondent may avoid receiving a violation notice under Part 5(C)(3)(c).	Against	Thank you for your comment. The Ordinance does not allow for EEFHO to forego assessment of a civil penalty upon finding a violation of the Ordinance after an investigation. If voluntary compliance is achieved after a penalty is assessed, the Ordinance provides that the respondent employer is not liable to the City for the amount of the assessed civil penalty.
125	Rule Parts 3(B) & 4	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	Part 4 should require EE/FHO to send to the Complainant copies of any written response to a Complaint furnished by a Respondent under Part 4(C)(2) or Part 4(D).	Against	Thank you for your comment. Rule Part 3(B) provides that the Administrator may prescribe forms and procedures that satisfy the requirement in Rule Part 4(A) that investigations are performed in a fair, impartial, and objective manner.
126	Rule Part 4	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	Part 4 should provide additional guidance as to how a Respondent's failure to provide a written response to the Complaint or other information requested under these Rules will impact the investigation of a Complaint. Part 4 should establish that if the Respondent fails to provide a timely written response to the Investigator pursuant to Part 4(C)(2) or fails to timely provide information requested pursuant to Part 4(C)(2) or Part 4(D), the EE/FHO will rely only on the information provided to the agency when making a final determination.	Against	Thank you for your comment. Rule Part 4(F) provides that the Investigator and the Administrator may consider evidence that is not admissible in court, which includes anonymous statements. Further expansion on the proposed Rule is unnecessary.

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
127	Rule Parts 3(B) & 4	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	Part 4 should permit a Respondent to request additional time to submit the written response or the information requested under these Rules, and require such request to include the amount of additional time the Respondent needs provide its response and any requested information, and the reasons why the Respondent cannot respond in the time allowed. The Rules should establish that EE/FHO's grant or denial of this request is not appealable.	Against	Thank you for your comment. Any party's request to extend a procedural deadline is already within the discretion of the Administrator to grant or deny under Rule Part 3(B). Further expansion on the proposed Rule is unnecessary.
128	Rule Parts 3(B) & 4(E)	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	Part 4(E) should be revised to state "The Complainant and the Respondent may submit witness statement and documents during the investigation that prove or disprove the allegations of the Complainant or the Respondent. The Investigator may request additional witnesses or documents from either the Complainant or the Respondent during the investigation and shall designate the deadline in which such testimony or documents should be provided. Additional witnesses or documents must be provided to the Investigator within 21 days from the date of the Investigator's request. Prior to recommending a final determination, the Investigator will make a final request for information from the Complainant and the Respondent. Information received from either party after the deadline prescribed in these Rules will not be considered by the Investigator or the Administrator."	Against	Thank you for your comment. The revision requested in the comment is already within the discretion of the Administrator to grant or deny under Rule Part 3(B). The extremely wide variety of allegations and parties encountered in the investigation of administrative regulatory and enforcement complaints requires more flexibility than the procedure in the requested revision. Further expansion on the proposed Rule is unnecessary.
129	Rule Part 5	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	Part 5. Final Determinations on Complaints. Part 5(B) should be revised to read that the recommended final determinations shall be made to the Administrator within 45 days of assignment of the Complaint to the Investigator. The Investigator shall provide the Complainant, Respondent, and Administrator written justification concerning any Complaint for which a recommended final determination is not made within 45 days of the date the Complaint is assigned. This written justification shall include the date the Investigator needs to complete its recommended final determination of the Complaint."	Against	Thank you for your comment. We have considered the potential complexity involved in examining and analyzing attendance records and payroll records inherent in Earned Sick Time complaints, and we proposed investigation closure standards that we believe are achievable, responsive to the needs of the individuals who file complaints, and sensitive to the legitimate interests of employers that are striving in good faith to comply with a new Ordinance. However, we have reduced the deadlines throughout the Rules: <ul style="list-style-type: none"> o Investigators now have 8 days to schedule interviews with Complainants and serve Respondents with a request for information (down from 10-effectively making the initial contact within 10 days of receiving the complaint) o Investigators now have 75 days to recommend a final determination to the Administrator (down from 90) o Administrators now have 105 days to close complaints (down from 120)

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
130	Rule Parts 3(B), 4(A), & 5(C)(2)	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	Part 5(C)(2) should require that any written notice of dismissal of a Complaint be issued to "the Complainant and the Respondent." Such notices of dismissal should include a brief statement which explains the Administrator's justification for dismissing the Complaint. In addition, written notices issued under the Rules should advise Complainants of their rights to file a future complaint with EE/FHO within the statutory period with additional evidence that supports the allegations alleged in their Complaint. Notices issued under this section should also advise of the Complainant's right to appeal the Complaint's dismissal.	Against	Thank you for your comment. Rule Part 3(B) provides that the Administrator may prescribe forms and procedures that satisfy the requirement in Rule Part 4(A) that investigations are performed in a fair, impartial, and objective manner. The Ordinance does not authorize the Administrator to create an appeal process, and the Rules cannot exceed the authority found in the Ordinance. The Rules expressly separate investigative functions, assigned to an Investigator, from review and decision-making functions, assigned to the Administrator. The Rules have been amended to require a written notice of dismissal and a written notice of violation and civil penalty assessment be mailed to the Complainant and Respondent.
131	Rule Parts 3(B), 4(A), & 5(C)(3)	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	Part 5(C)(3) should be revised to ensure that written notices issued under this Rule are sent to both the Respondent and the Complainant, include a brief statement justifying the Administrator's decision to issue a violation notice, and advise of the Respondent's right to appeal the Administrator's decision.	Against	Thank you for your comment. Rule Part 3(B) provides that the Administrator may prescribe forms and procedures that satisfy the requirement in Rule Part 4(A) that investigations are performed in a fair, impartial, and objective manner. The Ordinance does not authorize the Administrator to create an appeal process, and the Rules cannot exceed the authority found in the Ordinance. The Rules expressly separate investigative functions, assigned to an Investigator, from review and decision-making functions, assigned to the Administrator. The Rules have been amended to require a written notice of dismissal and a written notice of violation and civil penalty assessment be mailed to the Complainant and Respondent.
132	Rule Part 5(D)	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	Part 5(D): WDP reiterates its recommendation that, whenever possible, an Administrator should consult with the Complainant or other employees with personal knowledge when seeking to determine whether the Respondent has satisfactorily remedied the violation and voluntarily complied with the Ordinance within the required timeline.	Against	Thank you for your comment. The Ordinance imposes the duty of determining voluntary compliance on the Administrator. The Administrator has the discretion to consider any evidence to make that determination.

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
133	Rule Parts 3(B), 4(A), & 5(F)	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	Part 5(F) allows for an Administrator to dismiss a Complaint if it concludes that the Respondent is exempt from the Ordinance or the Ordinance does not otherwise apply to the Respondent. Any dismissal issued pursuant to this Rule should be sent to both the Complainant and the Respondent and advise the Complainant of their right to appeal. It is imperative that Complainants have the right to appeal dismissals issued pursuant to this Rule.	Against	Thank you for your comment. Rule Part 3(B) provides that the Administrator may prescribe forms and procedures that satisfy the requirement in Rule Part 4(A) that investigations are performed in a fair, impartial, and objective manner. The Ordinance does not authorize the Administrator to create an appeal process, and the Rules cannot exceed the authority found in the Ordinance. The Rules expressly separate investigative functions, assigned to an Investigator, from review and decision-making functions, assigned to the Administrator. The Rules have been amended to require a written notice of dismissal and a written notice of violation and civil penalty assessment be mailed to the Complainant and Respondent.
134	Rule Part 5	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	Part 5(G). As mentioned above, WDP recommends that this Rule be reversed and that parties have the right to appeal an initial determination of a Complaint. Because EE/FHO is not empowered to authorize Rules that exceed the bounds of the Ordinance, WDP recommends that persons assigned to adjudicate appeals under these Rules be EE/FHO personnel who do not have any involvement in the investigation of a Complaint, or any involvement in an Administrator's decision to take any of the actions described in Part 5(C)(1)-(3). WDP recommends that this appeals adjudicator: 1) Set the date for a de novo hearing and send parties appropriate notice of the hearing in writing. This notice should include a short, plain statement of the issues to be considered during the hearing; 2) Have the authority to postpone or continue a hearing for good cause; 3) Conduct a de novo hearing to ascertain the substantive rights of the parties, develop the evidence, and address all issues relevant to the appeal; 4) Issue a written decision to the parties that is restricted to the matters mentioned in the hearing notice and based exclusively on the evidence entered into the hearing's record. This decision should include findings of fact and conclusions of law reached on the noticed issues, as well as the adjudicator's decision regarding whether the determination reached under Part 5(C) is affirmed, reversed, or modified. WDP suggests that the Rules permit this hearing to be conducted either in-person or by telephone, depending on the convenience of the parties.	Against	The Ordinance does not authorize the Administrator to create an appeal process, and the Rules cannot exceed the authority found in the Ordinance. The Rules expressly separate investigative functions, assigned to an Investigator, from review and decision-making functions, assigned to the Administrator.

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
135	Rule Parts 5(C) & 5(H)	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	Part 5(H). WDP recommends that that final determination of a Complaint under Part 5(C) be made within 90 days of assignment to an Investigator and that the written justification described in this Rule be provided to both the parties and the Administrator within 90 days of the date a Complaint is assigned to an Investigator.	Against	Thank you for your comment. We considered the potential complexity involved in examining and analyzing attendance records and payroll records inherent in Earned Sick Time complaints, and we proposed investigation closure standards that we believe are achievable, responsive to the needs of the individuals who file complaints, and sensitive to the legitimate interests of employers that are striving in good faith to comply with a new Ordinance. We have reduced the deadlines throughout the Rules, and now require the written dismissals and written notices of violations be sent to Complainants and Respondents.
136	Rule Part 6	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	Part 6. Assessment and Collection of Civil Penalties. Part 6(A). We find the proposed civil penalty scheme confusing. In Part 6(A)(1)(d), does EE/FHO intend to establish that a \$500 penalty shall be assessed any time an employer commits more than one violation in a 12-month period? Or, in this Rule, does EE/FHO suggest that there shall be a \$500 penalty for the fourth and any subsequent violation found within a 12-month period? We have a similar questions about the intended interpretation of Part 6(A)(2)(c). We also are unsure how the proposed penalty scheme applies to Complaints where more than one violation is found.	Against	Thank you for your comment. All penalties have been increased by \$100, and small businesses now have a 3 violation structure, instead of 4. A determination by the Administrator of multiple violations is subject to the penalty assessment guidelines in Rule Part 6.
137	Ordinance §4-19-6(C), Rule Part 6	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	WDP also does not believe that the proposed penalties are high enough, especially when compared with the impact that many violations of the Ordinance have on employees and their families. The cost that a Respondent's violation can have on an employee - losing a day's wages, being unable to be at the bedside of a loved one, or having to forego needed medical care – are certainly greater than many of the civil penalties proposed.	Against	Thank you for your comment. The Ordinance authorizes the Equal Employment/Fair Housing Office to exercise discretion and independent judgment in assessing a penalty in any amount up to \$500. The Rules are designed to assist the Administrator with guidelines that have the intended effect of consistent, even-handed application of the Ordinance across a wide range of varying fact settings. The Rules at Part 6(B) authorize the Administrator to take into account other factors in consideration of increasing or decreasing a penalty established by the general guidelines in Part 6(A), so long as the Administrator does not engage in negotiations with either party or exceed the \$500 limit established in the Ordinance. However, all penalties have been increased by \$100, and small businesses now have a 3 violation structure, instead of 4.

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
138	Rule Part 6	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	WDP recommends removing any distinction between smaller and larger employers as a matter of fairness and practicality. By designing the civil penalty scheme based on employer size, the Proposed Rules will require EE/FHO to confirm the number employees employed by the employer on the date the Complaint is filed for every single Complaint. Determining the number of employees present at the time of Complaint filing for every single Complaint is not only time-consuming, but likely unnecessary. Many potential Complaint investigations would not otherwise require a determination of employer size. Complaint investigations that do already require a determination of employer size task the Investigator with confirming the number of employees employed potentially at a different point in time than the date established under Part 6(A).	Against	Thank you for your comment. The provisions of Rule 6 are merely guidelines for the Administrator in the assessment of penalties. The final Rules increase all penalties by \$100, and small businesses now have a 3 violation structure, instead of 4.
139	Ordinance §4-19-6(C), Rule Part 6	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	Except as provided in Part 6(B), WDP recommends that Part 6(A) establish for all employers: (1) a \$500 civil penalty for any violation of §4-19-5; (2) a \$250 civil penalty per violation for any first-time violation, other than a violation of §4-19-5; and (3) a \$500 civil penalty per violation for any subsequent violation.	Against	Thank you for your comment. The Ordinance authorizes the Equal Employment/Fair Housing Office to exercise discretion and independent judgment in assessing a penalty in any amount up to \$500. The Rules are designed to assist the Administrator with guidelines that have the intended effect of consistent, even-handed application of the Ordinance across a wide range of varying fact settings. The Rules at Part 6(B) authorize the Administrator to take into account other factors in consideration of increasing or decreasing a penalty established by the general guidelines in Part 6(A), so long as the Administrator does not engage in negotiations with either party or exceed the \$500 limit established in the Ordinance. However, all penalties have been increased by \$100, and small businesses now have a 3 violation structure, instead of 4.

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
140	Ordinance §4-19-6(C), Rule Part 6	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	Part 6(B) provides EE/FHO with discretion to increase or decrease the penalties proposed in Part 6(A). While WDP supports the Rules providing EE/FHO with some degree of discretion to adjust the penalties established in Part 6(A) , the discretion granted in the Proposed Rule seems excessive and unwieldy. WDP recommends limiting EE/FHO's discretion to increase penalties only when the determined violations indicate bad faith or malicious misconduct on the part of the Respondent. WDP does not believe that EE/FHO should have the discretion to decrease the amount of penalties proposed under 6(A).	Against	Thank you for your comment. The Ordinance authorizes the Equal Employment/Fair Housing Office to exercise discretion and independent judgment in assessing a penalty in any amount up to \$500. The Rules are designed to assist the Administrator with guidelines that have the intended effect of consistent, even-handed application of the Ordinance across a wide range of varying fact settings. The Rules at Part 6(B) authorize the Administrator to take into account other factors in consideration of increasing or decreasing a penalty established by the general guidelines in Part 6(A), so long as the Administrator does not engage in negotiations with either party or exceed the \$500 limit established in the Ordinance. The Ordinance places no restriction on the Administrator to assess a \$500 penalty in the absence of evidence of bad faith, and the Rules cannot impose such a restriction.
141	Ordinance §4-19-2(K), Rule Part 7	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	Part 7. Closure of Complaint Investigations. Part 7(A) . This Rule should require EE/FHO to issue written notice of closure to the Respondent and the Complainant. This notice should be sent within 5 days of the date an investigation is closed pursuant to this Rule, briefly state the reason for the investigation's closure, and advise the Respondent that any records retained beyond the required period pursuant to §4-19-2(K) may now be destroyed.	Against	Thank you for your comment. The investigation is closed upon the issuance of the written notice by the Administrator. The Rules authorize the Administrator to prescribe forms and procedures for the closure of investigations.
142	Ordinance §4-19-6(C)(1), Rule Parts 5(C)(3)(c) & 7(A)(1)	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	Part 7(A)(1) WDP also recommends that the Rules amend this section to account not only for instances where a Complaint is withdrawn, but also instances where a Respondent voluntarily remedies a violation prior to receiving a notice of violation and civil penalty assessment under Part 5(C)(3)(c).	Against	Thank you for your comment. n violation alleged in a complaint that is alleged to have occurred during the two-year limit for timely filing shall be investigated according to the terms of the Ordinance. Evidence of compliance after the date of the violation alleged does not relieve EE/FHO of the duty to investigate the alleged violation. Violations substantiated by evidence require an assessment of a civil penalty under §4-19-6(C)(1) of the Ordinance irrespective of whether the violation ceased at some later point in time. The Rules cannot relieve EE/FHO of duties created in the Ordinance.

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
143	Ordinance §4-19-6(A)(2), Rule Part 7(A)(2)	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	Part 7(A)(2) provides for the closure of Complaints upon a determination that the preponderance of evidence does not establish a violation of Chapter 4-19. WDP recommends that the Rules clarify that Complainants whose Complaint is closed pursuant to this section not be prejudiced from refiling within the statute of limitations.	Against	Thank you for your comment. The duty of EEFO to investigate complaints under §4-19-6(A)(2) presumes that the Investigator performs a thorough intake interview and thorough follow-up interviews with the complainant and any other witnesses to obtain all of the relevant, material, and available evidence to support a determination of violation or no violation by the Administrator. Complaints are accepted for investigation only after a thorough intake interview that develops all of the allegations within the knowledge of the complainant.
144	Rule Parts 4 & 7(A)(5)	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	Part 7(A)(5) WDP recommends that this Rule be rephrased to prevent any Complaint from being unjustly or prematurely closed. Prior to closing any Complaint pursuant to this Rule, WDP recommends that the Rule require EE/FHO to issue a written notice to the Complainant which advises the Complainant that their Complaint shall be closed unless the Complainant communicates with the EE/FHO within 21 days of receipt of the notice. If, following this 21-day period, the Complainant fails to respond to this notice and further attempts by EE/FHO to reach Complainant, the Administrator may determine that the Complainant has abandoned the Complaint. We suggest revising this Rule to state: (5) The Administrator determines that the Complainant has abandoned the Complaint. A Complainant abandons a Complaint only after: (i) The Administrator determines that the Complainant has failed to reasonably cooperate with an Investigator's attempts to reach the Complainant or obtain information from the Complainant; (ii) An Investigator sends the Complainant written notice informing Complainant that their Complaint is at risk of closure under this section unless the Complainant communicates with the Investigator within 21-days of receipt of this notice; and (iii) The Complainant fails to respond to this notice or other attempts by the Investigator to reach the Complainant during this 21-day period.	Against	Thank you for your comment. Rule Part 4 imposes a duty on EEFO to conduct investigations that are "fair, impartial, and objective," a standard that is far broader than the amendment requested by the comment. The "fair, impartial, and objective" standard extends to all aspects of investigations, including the Administrator's discretion with respect to prescribing forms and procedures.

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
145	N/A	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	Additional Comments Concerning Confidentiality and Privacy. In order to protect employees from being retaliated against for pursuing their rights under this Ordinance, EE/FHO should articulate, in these Rules, that the agency will seek to maintain the confidentiality of a Complainant whenever practicable. Suggested language for this Rule could be: " EE/FHO shall maintain the confidentiality of a Complainant unless disclosure of Complainant's identity is necessary for resolution or investigation of a Complaint, or is otherwise required by law. To the extent practicable, an Investigator or Administrator shall notify Complainant that the agency will be disclosing their identity prior to such disclosure."	Against	Thank you for your comment. Complaint investigation records are subject to the Texas Public Information Act.
146	Ordinance §4-19-6(A)(1)	Stephanie Gharkahanian, Esq., Special Counsel, Workers Defense Project	These Rules and other outreach and education efforts conducted by EE/FHO shall also advise of an employer's duties to ensure that employees' right to privacy is protected. Employers should not disclose any information they obtain about an employee's need to use earned sick time unless such disclosure is requested or consented by an employee, ordered by a court or administrative agency, or otherwise required by law. If an employer happens to obtain any health information about an employee or an employee's family member, the employer should treat such information in a confidential manner and protect such information from disclosure, as required by applicable privacy laws.	Against	Thank you for your comment. Although the employer education requirement of the Ordinance is beyond the scope of the Rules, EE/FHO appreciates the intention of the comment to provide comprehensive compliance information for employers.
147	Ordinance Part 1	Rebecca Eisenbrey, Staff Attorney, Equal Justice Center	To ensure that the Council's vision is fulfilled, the EJC urges the Department to interpret and enforce the Ordinance in a way that provides maximum coverage and encourages maximum compliance.	Neutral	Thank you for your comment. The Rules are intended to implement the full force of the Ordinance as enacted by City Council.
148	N/A	Rebecca Eisenbrey, Staff Attorney, Equal Justice Center	The EJC agrees with the comments and recommendations submitted by Workers Defense Project and our other colleagues in the Work Strong Austin coalition, and we encourage the Department to take them under serious consideration.	Neutral	Thank you for your comment. The final Rules have given careful consideration to all comments received.
149	Rule Parts 3(B) & 4	Rebecca Eisenbrey, Staff Attorney, Equal Justice Center	Part 4: Investigation of Complaints. To provide the Complainant with the most fair and complete opportunity to support her claim, the EJC encourages the Department to amend Part 4(C)(2) to require that a copy of the response be provided to the Complainant, and to amend Part 4(E) to clarify that the Complainant may submit statements and documents to dispute allegations in the response.	Against	Thank you for your comment. Rule Part 3(B) provides that the Administrator may prescribe forms and procedures that satisfy the requirement in Rule Part 4(A) that investigations are performed in a fair, impartial, and objective manner. The City complies with the Texas Public Information Act, and documents obtained during an investigation are available subject to that law.

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
150	Ordinance §4-19-1, Rule Part 4(F)	Rebecca Eisenbrey, Staff Attorney, Equal Justice Center	Part 4(F) of the Proposed Rules sets forth the standard for the consideration of evidence. The EJC agrees that this standard is appropriate for the determination of findings of fact. The investigation of complaints will also involve making conclusions and findings of law, however, and a different standard may be required for those determinations. The EJC therefore recommends that the Department add a new Part 4(G) that states: "Conclusions of law shall be made in consultation with the City Attorney's Office with reference to the definitions in City Code § 4-19-1 and relevant state and federal law."	Against	Thank you for your comment. Any internal consultation between EEFHO staff and attorneys in the Department of the City attorney are protected by the attorney-client privilege and will not be reduced to a Rule.
151	Rule Part 5	Rebecca Eisenbrey, Staff Attorney, Equal Justice Center	Part 5: Final Determination on Complaints. To ensure that the Administrator has the most complete information during his or her review of the recommendation, the EJC urges the Department to amend Part 5(A) to read: "shall state whether the evidence is sufficient or insufficient to establish a violation of Chapter 4-19 based on a preponderance of the evidence submitted during the investigation, setting forth in detail all findings of fact and conclusions of law."	Against	Thank you for your comment. The requested amendment would be appropriate if Earned Sick Time complaint determinations were subject to administrative appeal or review. Rule Part 3(B) provides that the Administrator may prescribe forms and procedures that satisfy the requirement in Rule Part 4(A) that investigations are performed in a fair, impartial, and objective manner.
152	Rule Parts 4(A) & 5	Rebecca Eisenbrey, Staff Attorney, Equal Justice Center	The EJC believes that, to ensure that all parties' due process rights are respected, the Complainant and Respondent must be provided with notice of the recommendation and an opportunity to respond. We therefore recommend that the Department add a new provision after Part 5(B) that states: "The Complainant and Respondent shall be provided with a copy of the recommended final determination on the date it is made to the Administrator. The parties shall have 10 business days to submit to the Administrator an appeal disputing any findings of fact and conclusions of law."	Against	Thank you for your comment. Rule Part 4(A) makes clear that the minimum stands for conducting investigations is "fair, impartial, and objective," which imposes a duty on the Investigator to seek to obtain all relevant, material, and available evidence to support a recommendation to the Administrator, and the Administrator's final determination. Complaint investigation records are subject to the Texas Public Information Act. The Ordinance does not authorize the Administrator to create an appeal process, and the Rules cannot exceed the authority found in the Ordinance. The Rules expressly separate investigative functions, assigned to an Investigator, from review and decision-making functions, assigned to the Administrator.
153	Rule Part 5	Rebecca Eisenbrey, Staff Attorney, Equal Justice Center	Part 5(C) and (D) refer to the establishment of "voluntary compliance" with the Ordinance. The EJC applauds the Department for encouraging voluntary compliance. However, we are concerned that the term is not defined. Is it forward-looking, a promise to come into compliance and not violate the Ordinance in the future? Or is it backward-looking, an effort to make the Complainant and other affected employees whole? We recommend that the Department adopt the latter approach and develop a clear standard for evaluating whether voluntary compliance has been established.	Against	Thank you for your comment. The Earned Sick time Ordinance does not restrict EE/FHO from using any appropriate methods to seek voluntary compliance, and it is unnecessary to limit the methods available to EE/FHO in the Rules.

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
154	Rule Parts 4 & 7	Rebecca Eisenbrey, Staff Attorney, Equal Justice Center	Part 7: Closure of Complaint Investigations. Part 7(A)(5) states that the investigation into a Complaint will be closed if “[t]he Administrator determines that the Complainant has failed to cooperate reasonably in the investigation of the Complaint, or has abandoned the Complaint.” The EJC worries that the terms “cooperate reasonably” and “abandoned” are too vague and do not give proper guidance to Complainants about their responsibilities during an investigation. In order to clarify expectations, we recommend that the provision be revised to read: “The Administrator determines that the Complainant has abandoned the Complaint, i.e., has continued to fail to respond to the City’s requests for information for more than 21 days after receipt of written notice that the investigation into the Complaint is at risk of being closed.”	Against	Thank you for your comment. Rule Part 4 imposes a duty on EE/HO to conduct investigations that are "fair, impartial, and objective," a standard that is far broader than the amendment requested by the comment. The "fair, impartial, and objective" standard extends to all aspects of investigations, including the Administrator's discretion with respect to prescribing forms and procedures.
155	N/A	Rebecca Eisenbrey, Staff Attorney, Equal Justice Center	Joint Employment. Joint employment relationships are common among low-wage employers. For example, many low-wage workers are employed by staffing agencies that assign them to work at other firms. The staffing agencies determine some of the workers’ terms of employment, such as the wage rate and job qualifications, but the other firm directs their daily tasks and their schedule and hours. Under state and federal law, because both entities co-determine and share control over the terms and conditions of employment, both businesses may be found to be joint employers who are responsible, both individually and jointly, to employees for compliance with worker protection laws. The Department should adopt Rules expressly stating that separate entities may be treated as joint employers under the Ordinance. The EJC recommends a new provision stating: “(A) Separate entities may be treated as a joint employer under City Code § 4-19. (B) Joint employers may be separate and distinct entities with separate owners, managers, and facilities. (C) If the facts establish that the Complainant is jointly employed by two or more employers, all joint employers are responsible, both individually and jointly, for compliance with all of the applicable provisions of City Code § 4-19.”	Against	Thank you for your comment. Although EE/HO has extensive knowledge of investigative procedures, based on lengthy, substantial experience gained from the administration of regulatory complaint investigations, the Division has limited working knowledge of the extremely wide range of compensation, attendance, and leave practices utilized in private sector employment subject to the Earned Sick Time Ordinance. At this time, the employer/employee relationships will be analyzed and interpreted on a case by case basis, in light of all of the facts and circumstances developed in any given investigation.

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
156	N/A	Rebecca Eisenbrey, Staff Attorney, Equal Justice Center	Immigration Status. Immigrant workers are particularly vulnerable to abuse in the workplace because employers know they are generally reluctant to report violations out of fear of being reported to immigration authorities. In order to ensure that all workers are able to enjoy the full protection of the Ordinance, the EJC encourages the Department to expressly state that § 4-19 applies to all employees regardless of immigration status and to adopt a new provision that states: "Employees are not required to provide, and the City will not request, information regarding the immigration status of any person filing a complaint."	Against	Thank you for your comment. EEFHO staff do not inquire into immigration status of any customers. Additional clarification in the Rules is unnecessary.
157	Ordinance Parts 3, 5, & 6	Eric Shapiro, Sr. VP, Global Marketing, and Nancy Fairchild, Sr. VP, Human Resources, Luminex Corp.	Luminex is opposed to the mandatory Paid Sick Leave Ordinance that will impact ALL private sector employers who operate and do business in Austin effective October 2018. My understanding is that no Austin-specific data was used to create the information used and that the data that is driving the passage of this Ordinance. As the largest biotech employer in the city of Austin, currently providing a minimum of 160 hours a year of paid time off (any of which could be used for sick leave) to our full-time team members on an annual basis, we are opposed to this Ordinance, and believe it may have a chilling effect on hiring, particularly part-time and limited assignment employees. While we strongly prefer that this Ordinance be revoked at a minimum, we request that approval of this Ordinance of this Ordinance be postponed until an unbiased, independent, third party study of the financial impact and unintended consequences of this Ordinance can be performed specifically in the Austin metro area.	Against	EEFHO does not have authority to postpone the effective date of the Ordinance in a Rule, as the effective date of Ordinance has been approved by Council.
158	Ordinance §4-19-6(C)	Rebecca Melancon, Executive Director, Austin Independent Business Alliance	The Rules fail to clarify whether a failure to pay earned sick time as required by the Ordinance on multiple, consecutive days constitutes a single violation or multiple violations.	Against	Thank you for your comment. Although EE/FHO has extensive knowledge of investigative procedures, based on lengthy, substantial experience gained from the administration of regulatory complaint investigations, the Division has limited working knowledge of the extremely wide range of compensation, attendance, and leave practices utilized in private sector employment subject to the Earned Sick Time Ordinance. At this time, potential violations will be analyzed and interpreted on a case by case basis, in light of all of the facts and circumstances developed in any given investigation.

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
159	Ordinance Part 1	Charlee Lane, MBA, SPHR, Division Director, Human Resources, Texas Association of School Boards	Texas Association of School Boards supports the spirit of the Austin Sick Leave Ordinance in terms of providing employees paid sick leave. However, the Ordinance and the proposed Rules, as written, do not appropriately take into consideration the administrative burden employers face in complying, nor do the proposed Rules offer adequate clarification on some of the requirements.	Against	Thank you for your comment. The Rules are intended to implement the full force of the Ordinance as enacted by City Council.
160	N/A	John Ratliff	I want to encourage Council to put in place enforcement mechanisms for this Ordinance that are stringent, transparent, and most importantly accessible. The considerable social benefits of this Ordinance will be nullified if it's difficult to use -- or, even more likely, those benefits will accrue to only a small privileged group who have the time and inclination to navigate the system. Rigorous enforcement of this Ordinance is good government and fulfills the intent behind it; indifferent enforcement is almost worse than no Ordinance at all.	Neutral	Thank you for your comment. The Rules are intended to implement the full force of the Ordinance as enacted by City Council.
161	Rule Part 3	Brydan McNeely	I believe that employees should be able to file a complaint as easily as possible. This means materials are available to them online, or as a hardcopy for people that don't have access to a computer (like this process). This also means materials need to be in multiple languages. Investigators should make every effort to maintain confidentiality and be available, similar to the city's 24/7 fraud and abuse hotline.	Neutral	Thank you for your comment. Serving Limited English Proficient customers is already a City of Austin priority independent of the Proposed Rules. EEFO will make best efforts to translate the complaint form into Spanish and other languages as soon as possible after the forms are finalized. Final forms will be available at the City of Austin Equal Employment/Fair Housing Office ("EEFO"), located at 1050 East 11th Street, Suite 200, Austin, Texas 78702 and included on the EEFO Earned Sick Time Website at: https://austintexas.gov/earnedsicktime . City of Austin customer service standards, embodied in the City's Vision and Values, require all City of Austin services be easily accessible, and the Earned Sick Time complaint and investigation process, including all forms, will adhere to these standards. Complaint investigation records will be available subject to the Texas Public Information Act. EEFO Investigators routinely work outside of standard business hours to accommodate the needs of all parties, and those practices will extend to complaint and investigation processes in connection with enforcement of the Earned Sick Time Ordinance.
162	Ordinance Part 1	Ryan Rosshirt	I think we need penalties for non-participation that ensure participation. I think many employers might do cold math to determine whether or not they'll participate. They need to know it's better to just go with the new program.	Against	Thank you for your comment. The Rules are intended to implement the full force of the Ordinance as enacted by City Council.

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
163	Rule Parts 3 & 4	Seneca H. Savoie, Tander Louie, Emma Boardman-Larson, David Pinkham, Patrick Larson, Michael Nachbar, Steph, Jeffrey Glass, Glenn Scott, Ashkan Jahangiri, Jeff Lafitte, Kim Varela, Lisa Steinhardt-Keely, Marina Roberts, Max Nash, Deborah L. Rod, Emma Pett, Leah Churner, James Martin Cole, Cody, Sandra Hernandez, Caleb Pritchard, Cecilia Morales, Michael Niswander, Curtis Luciani, Ryan Pollock, Margaret Clark, Bo Delp, Chris Sandoval, Brad DuBois, Allison Elsey, Danielle M Rojas, Brian Degman, Adam Schragin, Brain Scanlan, John Briggs, Dylan Rust, Sheila Frankfurt, Elizabeth Hopkins, Nicole Sturm, Blake Morris, Nick Sarlo, Jack Miller, Will Davies, Jacob Weiss, Tony Leblanc, Daniel Alvarado, Beth Link, Sarah Morris, Dylan David, Timothy Marroquin, Julia Moen, Devin James Fry, Nabil Valencia, Elias Ponvert, Marcus Denton, Brydan McNeely, Nathan Lynch, Timothy O'Brien, Michael Bonar, Caroline Adams, David Vines, Kellin McAvoy, Molly Middleton, Tuyen Thai, Masar Sakr, Elizabeth Garcia, Will Camfield, Alice Embree, Asher Elbein, Mark McCartney, Robin Derton, Ashley Beckford, William Riley, Ana Gonzalez, Marya Huerta, Jessica Wolff, Priscila Martinez, Priscilla Lugo, Juan Belman, Karen Escobedo, Sandy Romero, Alondra Johnson, Elizabeth Dorantes, Amparo H Hughes, Sophia Campos, Candelario Vazquez, Juan Pedro Munoz, Luis Olivares, Wilfredo Garcia Osorto, Alejandro Gonzalez, Luis Arredondo, Digna Cruz, Fidel Guzman, Arnulfo Vazquez, Octavio Manzanarez Puente, Carisa Lopez, Political Director, Texas Freedom Network; Julieta Garibay, Texas Director - Co-Founder, United We Dream	The complaint and investigation process should be as accessible as possible.	Neutral	Thank you for your comment. City of Austin customer service standards, embodied in the City's Vision and Values, require all City of Austin services be easily accessible, and the Earned Sick Time complaint and investigation process, including all forms, will adhere to these standards.

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
164	Rule Part 3(B)	Seneca H. Savoie, Tandra Louie, Emma Boardman-Larson, David Pinkham, Patrick Larson, Michael Nachbar, Steph, Jeffrey Glass, Glenn Scott, Ashkan Jahangiri, Jeff Lafitte, Kim Varela, Lisa Steinhardt-Keely, Marina Roberts, Max Nash, Deborah L. Rod, Emma Pett, Leah Churner, James Martin Cole, Cody, Sandra Hernandez, Caleb Pritchard, Cecilia Morales, Michael Niswander, Curtis Luciani, Ryan Pollock, Margaret Clark, Bo Delp, Chris Sandoval, Brad DuBois, Allison Elsey, Danielle M Rojas, Brian Degman, Adam Schragin, Brain Scanlan, John Briggs, Dylan Rust, Sheila Frankfurt, Elizabeth Hopkins, Nicole Sturm, Blake Morris, Nick Sarlo, Jack Miller, Will Davies, Jacob Weiss, Tony Leblanc, Daniel Alvarado, Beth Link, Sarah Morris, Dylan David, Timothy Marroquin, Julia Moen, Devin James Fry, Nabil Valencia, Elias Ponvert, Marcus Denton, Brydan McNeely, Nathan Lynch, Timothy O'Brien, Michael Bonar, Caroline Adams, David Vines, Kellin McAvoy, Molly Middleton, Tuyen Thai, Masar Sakr, Elizabeth Garcia, Will Camfield, Alice Embree, Asher Elbein, Mark McCartney, Robin Derton, Ashley Beckford, William Riley, Alex Norton, Susan Zakaib	The complaint forms developed should be 1) simple and easy to complete; 2) available in Spanish and other languages; 3) available online in an accessible format that is easy to find on the City's website AND be available in hardcopy; and 4) be accepted via mail, fax, email, and in-person.	Neutral	Thank you for your comment. Serving Limited English Proficient customers is already a City of Austin priority independent of the Proposed Rules. EEFHO will make best efforts to translate the complaint form into Spanish and other languages as soon as possible after the forms are finalized. Final forms will be available at the City of Austin Equal Employment/Fair Housing Office ("EEFHO"), located at 1050 East 11th Street, Suite 200, Austin, Texas 78702 and included on the EEFHO Earned Sick Time Website at: https://austintexas.gov/earnedsicktime . City of Austin customer service standards, embodied in the City's Vision and Values, require all City of Austin services be easily accessible, and the Earned Sick Time complaint and investigation process, including all forms, will adhere to these standards.

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
165	Rule Part 4(B)	Seneca H. Savoie, Tander Louie, Emma Boardman-Larson, David Pinkham, Patrick Larson, Michael Nachbar, Steph, Jeffrey Glass, Glenn Scott, Ashkan Jahangiri, Jeff Lafitte, Kim Varela, Lisa Steinhardt-Keely, Marina Roberts, Max Nash, Deborah L. Rod, Emma Pett, Leah Churner, James Martin Cole, Cody, Sandra Hernandez, Caleb Pritchard, Cecilia Morales, Michael Niswander, Curtis Luciani, Ryan Pollock, Margaret Clark, Bo Delp, Chris Sandoval, Brad DuBois, Allison Elsey, Danielle M Rojas, Brian Degman, Adam Schragin, Brain Scanlan, John Briggs, Dylan Rust, Sheila Frankfurt, Elizabeth Hopkins, Nicole Sturm, Blake Morris, Nick Sarlo, Jack Miller, Will Davies, Jacob Weiss, Tony Leblanc, Daniel Alvarado, Beth Link, Sarah Morris, Dylan David, Timothy Marroquin, Julia Moen, Devin James Fry, Nabil Valencia, Elias Ponvert, Marcus Denton, Brydan McNeely, Nathan Lynch, Timothy O'Brien, Michael Bonar, Caroline Adams, David Vines, Kellin McAvoy, Molly Middleton, Tuyen Thai, Masar Sakr, Elizabeth Garcia, Will Camfield, Alice Embree, Asher Elbein, Mark McCartney, Robin Derton, Ashley Beckford, William Riley, Alex Norton	In addition, EE/FHO should allow for Investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.	Neutral	Thank you for your comment. EE/FHO Investigators routinely work outside of standard business hours to accommodate the needs of all parties, and those practices will extend to complaint and investigation processes in connection with enforcement of the Earned Sick Time Ordinance.

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
166	Rule Part 5(G)	Seneca H. Savoie, Tander Louie, Emma Boardman-Larson, David Pinkham, Patrick Larson, Michael Nachbar, Steph, Jeffrey Glass, Glenn Scott, Ashkan Jahangiri, Jeff Lafitte, Kim Varela, Lisa Steinhardt-Keely, Marina Roberts, Max Nash, Deborah L. Rod, Emma Pett, Leah Churner, James Martin Cole, Cody, Sandra Hernandez, Caleb Pritchard, Cecilia Morales, Michael Niswander, Curtis Luciani, Ryan Pollock, Margaret Clark, Bo Delp, Chris Sandoval, Brad DuBois, Allison Eley, Danielle M Rojas, Brian Degman, Adam Schragin, Brain Scanlan, John Briggs, Dylan Rust, Sheila Frankfurt, Elizabeth Hopkins, Nicole Sturm, Blake Morris, Nick Sarlo, Jack Miller, Will Davies, Jacob Weiss, Tony Leblanc, Daniel Alvarado, Beth Link, Sarah Morris, Dylan David, Timothy Marroquin, Julia Moen, Devin James Fry, Nabil Valencia, Elias Ponvert, Marcus Denton, Brydan McNeely, Nathan Lynch, Timothy O'Brien, Michael Bonar, Caroline Adams, David Vines, Kellin McAvoy, Molly Middleton, Tuyen Thai, Masar Sakr, Elizabeth Garcia, Will Camfield, Alice Embree, Asher Elbein, Mark McCartney, Robin Derton, Ashley Beckford, William Riley, Ana Gonzalez, Marya Huerta, Jessica Wolff, Priscila Martinez, Priscilla Lugo, Juan Belman, Karen Escobedo, Sandy Romero, Alondra Johnson, Elizabeth Dorantes, Amparo H Hughes, Sophia Campos, Candelario Vazquez, Juan Pedro Munoz, Luis Olivares, Wilfredo Garcia Osorto, Alejandro Gonzalez, Luis Arredondo, Digna Cruz, Fidel Guzman, Arnulfo Vazquez, Octavio Manzanarez Puente, Carisa Lopez, Political Director, Texas Freedom Network; Julieta Garibay, Texas Director - Co-Founder, United We Dream	The final Rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.	Against	Thank you for your comment. The Ordinance does not authorize the Administrator to create an appeal process, and the Rules cannot exceed the authority found in the Ordinance. The Rules expressly separate investigative functions, assigned to an Investigator, from review and decision-making functions, assigned to the Administrator.

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
167	Ordinance §4-19-6(C)(1), Rule Part 6	Seneca H. Savoie, Tandra Louie, Emma Boardman-Larson, David Pinkham, Patrick Larson, Michael Nachbar, Steph, Jeffrey Glass, Glenn Scott, Ashkan Jahangiri, Jeff Lafitte, Kim Varela, Lisa Steinhardt-Keely, Marina Roberts, Max Nash, Deborah L. Rod, Emma Pett, Leah Churner, James Martin Cole, Cody, Sandra Hernandez, Caleb Pritchard, Cecilia Morales, Michael Niswander, Curtis Luciani, Ryan Pollock, Margaret Clark, Bo Delp, Chris Sandoval, Brad DuBois, Allison Elsey, Danielle M Rojas, Brian Degman, Adam Schragin, Brain Scanlan, John Briggs, Dylan Rust, Sheila Frankfurt, Elizabeth Hopkins, Nicole Sturm, Blake Morris, Nick Sarlo, Jack Miller, Will Davies, Jacob Weiss, Tony Leblanc, Daniel Alvarado, Beth Link, Sarah Morris, Dylan David, Timothy Marroquin, Julia Moen, Devin James Fry, Nabil Valencia, Elias Ponvert, Marcus Denton, Brydan McNeely, Nathan Lynch, Timothy O'Brien, Michael Bonar, Caroline Adams, David Vines, Kellin McAvoy, Molly Middleton, Tuyen Thai, Masar Sakr, Elizabeth Garcia, Will Camfield, Alice Embree, Asher Elbein, Mark McCartney, Robin Derton, Ashley Beckford, William Riley, Aubrey Lethbridge, Marina Roberts, Ana Gonzalez, Marya Huerta, Jessica Wolff, Priscila Martinez, Priscilla Lugo, Juan Belman, Karen Escobedo, Sandy Romero, Alondra Johnson, Elizabeth Dorantes, Amparo H Hughes, Sophia Campos, Candelario Vazquez, Juan Pedro Munoz, Luis Olivares, Wilfredo Garcia Osorto, Alejandro Gonzalez, Luis Arredondo, Digna Cruz, Fidel Guzman, Arnulfo Vazquez, Octavio Manzanarez Puente, Carisa Lopez, Political Director, Texas Freedom Network; Julieta Garibay, Texas Director - Co-Founder, United We Dream	Penalties under the Ordinance should be higher to encourage compliance. Penalties assessed under this Ordinance should be designed with deterrence in mind. The final Rules should simplify the fee schedule and ensure that it applies equitably to all employers regardless of their size.	Against	Thank you for your comment. The provisions of Rule 6 are merely guidelines for the Administrator in the assessment of penalties. The final Rules increase all penalties by \$100, and small businesses now have a 3 violation structure, instead of 4.

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
168	Rule Part 6	Seneca H. Savoie, Tander Louie, Emma Boardman-Larson, David Pinkham, Patrick Larson, Michael Nachbar, Steph, Jeffrey Glass, Glenn Scott, Ashkan Jahangiri, Jeff Lafitte, Kim Varela, Lisa Steinhardt-Keely, Marina Roberts, Max Nash, Deborah L. Rod, Emma Pett, Leah Churner, James Martin Cole, Cody, Sandra Hernandez, Caleb Pritchard, Cecilia Morales, Michael Niswander, Curtis Luciani, Ryan Pollock, Margaret Clark, Bo Delp, Chris Sandoval, Brad DuBois, Allison Elsey, Danielle M Rojas, Brian Degman, Adam Schragin, Brain Scanlan, John Briggs, Dylan Rust, Sheila Frankfurt, Elizabeth Hopkins, Nicole Sturm, Blake Morris, Nick Sarlo, Jack Miller, Will Davies, Jacob Weiss, Tony Leblanc, Daniel Alvarado, Beth Link, Sarah Morris, Dylan David, Timothy Marroquin, Julia Moen, Devin James Fry, Nabil Valencia, Elias Ponvert, Marcus Denton, Brydan McNeely, Nathan Lynch, Timothy O'Brien, Michael Bonar, Caroline Adams, David Vines, Kellin McAvoy, Molly Middleton, Tuyen Thai, Masar Sakr, Elizabeth Garcia, Will Camfield, Alice Embree, Asher Elbein, Mark McCartney, Robin Derton, Ashley Beckford, William Riley, Aubrey Lethbridge, Juan Luna	Absent cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250. Civil penalties for any subsequent violation by an employer, regardless of the size of the employer or when this subsequent violation occurred, should be \$500. Any violation of the retaliation provision, whether it be a first or subsequent violation, should result in the assessment of a \$500 penalty. In addition, the final Rules should limit EE/FHO's discretion to adjust these penalties so that they may never be lowered, but may be increased for cases involving bad faith or malicious conduct.	Against	Thank you for your comment. The Ordinance authorizes the Equal Employment/Fair Housing Office to exercise discretion and independent judgment in assessing a penalty in any amount up to \$500. The Rules are designed to assist the Administrator with guidelines that have the intended effect of consistent, even-handed application of the Ordinance across a wide range of varying fact settings. The Rules at Part 6(B) authorize the Administrator to take into account other factors in consideration of increasing or decreasing a penalty established by the general guidelines in Part 6(A), so long as the Administrator does not engage in negotiations with either party or exceed the \$500 limit established in the Ordinance. The final Rules increase all penalties by \$100, and small businesses now have a 3 violation structure, instead of 4.

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
169	Rule Part 5(H)	Seneca H. Savoie, Tander Louie, Emma Boardman-Larson, David Pinkham, Patrick Larson, Michael Nachbar, Steph, Jeffrey Glass, Glenn Scott, Ashkan Jahangiri, Jeff Lafitte, Kim Varela, Lisa Steinhardt-Keely, Marina Roberts, Max Nash, Deborah L. Rod, Emma Pett, Leah Churner, James Martin Cole, Cody, Sandra Hernandez, Caleb Pritchard, Cecilia Morales, Michael Niswander, Curtis Luciani, Ryan Pollock, Margaret Clark, Bo Delp, Chris Sandoval, Brad DuBois, Allison Elsey, Danielle M Rojas, Brian Degman, Adam Schragin, Brain Scanlan, John Briggs, Dylan Rust, Sheila Frankfurt, Elizabeth Hopkins, Nicole Sturm, Blake Morris, Nick Sarlo, Jack Miller, Will Davies, Jacob Weiss, Tony Leblanc, Daniel Alvarado, Beth Link, Sarah Morris, Dylan David, Timothy Marroquin, Julia Moen, Devin James Fry, Nabil Valencia, Elias Ponvert, Marcus Denton, Brydan McNeely, Nathan Lynch, Timothy O'Brien, Michael Bonar, Caroline Adams, David Vines, Kellin McAvoy, Molly Middleton, Tuyen Thai, Masar Sakr, Elizabeth Garcia, Will Camfield, Alice Embree, Asher Elbein, Mark McCartney, Robin Derton, Ashley Beckford, William Riley, Thomas Sheehy, Juan Pedro Munoz, Luis Olivares, Wilfredo Garcia Osorto, Alejandro Gonzalez, Luis Arredondo, Digna Cruz, Fidel Guzman, Arnulfo Vazquez, Octavio Manzanarez Puente, Carisa Lopez, Political Director, Texas Freedom Network; Julieta Garibay, Texas Director - Co-Founder, United We Dream	The enforcement process should prioritize making workers whole in as timely a manner as possible. The final Rules should endeavor to close investigations within 90 days, not 120 days.	Against	Thank you for your comment. We considered the potential complexity involved in examining and analyzing attendance records and payroll records inherent in Earned Sick Time complaints, and we proposed investigation closure standards that we believe are achievable, responsive to the needs of the individuals who file complaints, and sensitive to the legitimate interests of employers that are striving in good faith to comply with a new Ordinance. However, we have reduced the deadlines throughout the Rules: o Investigators now have 8 days to schedule interviews with Complainants and serve Respondents with a request for information (down from 10-effectively making the initial contact within 10 days of receiving the complaint) o Investigators now have 75 days to recommend a final determination to the Administrator (down from 90) o Administrators now have 105 days to close complaints (down from 120)

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
170	Ordinance §§4-19-6(A)(4) & 4-19-6(C)(2), Rule Part 7(A)(3)	Seneca H. Savoie, Tandra Louie, Emma Boardman-Larson, David Pinkham, Patrick Larson, Michael Nachbar, Steph, Jeffrey Glass, Glenn Scott, Ashkan Jahangiri, Jeff Lafitte, Kim Varela, Lisa Steinhardt-Keely, Marina Roberts, Max Nash, Deborah L. Rod, Emma Pett, Leah Churner, James Martin Cole, Cody, Sandra Hernandez, Caleb Pritchard, Cecilia Morales, Michael Niswander, Curtis Luciani, Ryan Pollock, Margaret Clark, Bo Delp, Chris Sandoval, Brad DuBois, Allison Elsey, Danielle M Rojas, Brian Degman, Adam Schragin, Brain Scanlan, John Briggs, Dylan Rust, Sheila Frankfurt, Elizabeth Hopkins, Nicole Sturm, Blake Morris, Nick Sarlo, Jack Miller, Will Davies, Jacob Weiss, Tony Leblanc, Daniel Alvarado, Beth Link, Sarah Morris, Dylan David, Timothy Marroquin, Julia Moen, Devin James Fry, Nabil Valencia, Elias Ponvert, Marcus Denton, Brydan McNeely, Nathan Lynch, Timothy O'Brien, Michael Bonar, Caroline Adams, David Vines, Kellin McAvoy, Molly Middleton, Tuyen Thai, Masar Sakr, Elizabeth Garcia, Will Camfield, Alice Embree, Asher Elbein, Mark McCartney, Robin Derton, Ashley Beckford, William Riley	Furthermore, the final Rules should outline EE/FHO's guidelines for seeking voluntary compliance of a complaint.	Against	Thank you for your comment. The Earned Sick time Ordinance does not restrict EE/FHO from using any appropriate methods to seek voluntary compliance, and it is unnecessary to limit the methods available to EE/FHO in the Rules.

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
171	Ordinance §§4-19-1(C), 4-19-2(E), & 4-19-4	Seneca H. Savoie, Tandra Louie, Emma Boardman-Larson, David Pinkham, Patrick Larson, Michael Nachbar, Steph, Jeffrey Glass, Ashkan Jahangiri, Jeff Lafitte, Kim Varela, Lisa Steinhardt-Keely, Marina Roberts, Max Nash, Deborah L. Rod, Emma Pett, Leah Churner, James Martin Cole, Cody, Sandra Hernandez, Caleb Pritchard, Cecilia Morales, Michael Niswander, Curtis Luciani, Ryan Pollock, Margaret Clark, Bo Delp, Chris Sandoval, Brad DuBois, Allison Elsey, Danielle M Rojas, Brian Degman, Adam Schragin, Brain Scanlan, John Briggs, Dylan Rust, Sheila Frankfurt, Elizabeth Hopkins, Nicole Sturm, Blake Morris, Nick Sarlo, Jack Miller, Will Davies, Jacob Weiss, Tony Leblanc, Daniel Alvarado, Beth Link, Sarah Morris, Dylan David, Timothy Marroquin, Julia Moen, Devin James Fry, Nabil Valencia, Elias Ponvert, Marcus Denton, Brydan McNeely, Nathan Lynch, Timothy O'Brien, Michael Bonar, Caroline Adams, David Vines, Kellin McAvoy, Molly Middleton, Tuyen Thai, Masar Sakr, Elizabeth Garcia, Will Camfield, Alice Embree, Asher Elbein, Mark McCartney, Robin Derton, Ashley Beckford, William Riley, Cassandra Hayes, Tyler Jordan, Tom Philpott, Ana Gonzalez, Marya Huerta, Jessica Wolff, Priscila Martinez, Priscilla Lugo, Juan Belman, Karen Escobedo, Sandy Romero, Alondra Johnson, Elizabeth Dorantes, Amparo H Hughes, Sophia Campos, Candelario Vazquez, Juan Pedro Munoz, Luis Olivares, Wilfredo Garcia Osorto, Alejandro Gonzalez, Luis Arredondo, Digna Cruz, Fidel Guzman, Arnulfo Vazquez, Octavio Manzanarez Puente, Susan Zakaib, Carisa Lopez, Political Director, Texas Freedom Network; Julieta Garibay, Texas Director - Co-Founder, United We Dream	EE/FHO must release both interpretive Rules as well as procedural Rules. These interpretive Rules should, at the very least, clarify 1) the rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this Ordinance; 2) the Ordinance's signage requirement; and 3) what constitutes reasonable verification procedures to vet an employee's request to use accrued time. For further guidance on what interpretative Rules to publish, EE/FHO should look to earned paid sick time administrative Rules published by other benchmark cities across the country.	Against	Thank you for your comment. Although EE/FHO has extensive knowledge of investigative procedures, based on lengthy, substantial experience gained from the administration of regulatory complaint investigations, the Division has limited working knowledge of the extremely wide range of compensation, attendance, and leave practices utilized in private sector employment subject to the Earned Sick Time Ordinance. We considered the potential complexity involved in examining and analyzing attendance records and payroll records inherent in Earned Sick Time complaints, and we proposed investigation closure standards that we believe are achievable, responsive to the needs of the individuals who file complaints, and sensitive to the legitimate interests of employers that are striving in good faith to comply with a new Ordinance. §4-19-1(C) of the Ordinance provides a clear standard for determining whether a given employer has correctly classified a worker as a covered employee in the context of a complaint investigation, and further definition in the Rules is not necessary. The City will create and distribute the signage required by §4-19-4 of the Ordinance. An interpretive Rule is not necessary to fulfill this responsibility. The use of "reasonable" at §4-19-2(E) of the Ordinance requires an investigation and analysis of all of the facts and circumstances that may arise in any given complaint, and those facts and circumstances can vary widely from one workplace setting to the next. If actual experience from investigating live complaints indicates a genuine need for additional interpretive Rules for any reason, the City has the ability to propose additional Rules in the future.

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
172	Ordinance Part 1 & §4-19-6(A)(1)	Glenn Scott	I am very concerned that the Rules adopted to implement the paid sick Ordinance be written in the spirit of the Council's action. That is the Rules should be designed to help workers obtain their rights to PSD quickly if denied and that a violation by an employer be investigated quickly and compliance with the Ordinance the main goal. Deterrence can send a message that this is a right that should not be violated without consequences.	Neutral	Thank you for your comment. The Rules are intended to implement the full force of the Ordinance as enacted by City Council. The City of Austin appreciates the impact a violation of the Earned Sick Time Ordinance could have on vulnerable populations, and we have taken that concern into account in the Proposed Rules. In addition we considered the potential complexity involved in examining and analyzing attendance records and payroll records inherent in Earned Sick Time complaints, and we proposed investigation closure standards that we believe are achievable, responsive to the needs of the individuals who file complaints, and sensitive to the legitimate interests of employers that are striving in good faith to comply with a new Ordinance. However, we have reduced the deadlines throughout the Rules: <ul style="list-style-type: none"> o Investigators now have 8 days to schedule interviews with Complainants and serve Respondents with a request for information (down from 10-effectively making the initial contact within 10 days of receiving the complaint) o Investigators now have 75 days to recommend a final determination to the Administrator (down from 90) o Administrators now have 105 days to close complaints (down from 120)
173	Rule Parts 3(B) & 4(B)	Kara Sheehan, Nicolas Lamori, Luis Figueroa, Alex Seubert, Jonathan Lewis, Rafael Aguilar, Taylor Foody, Graham Douglas, Patrick Jones, Hanna Mitchell, Madeline Detelich, Mario Morales, Sarah Swallow, Virginia Badillo, Heiwa Salovitz, Mark McKim, Laura Olvera, Amanda Cavazos Weems, Hope Harrison, Michael Schmidt, Hannah Noori, Sarah Gonzalez Claytor, Mark Maldonado, Maria Thomas, Emily Speight, Edward Sills, Rene Lara, Andrew Dysert, Susan Zakaib	The complaint and investigation process should be as accessible as possible. Many of Austin's workers - especially those most likely to experience violations of the paid sick Ordinance - may have limited English proficiency or low literacy. They may not have regular access to a computer or the internet, or know how to use e-mail or a computer at all. Because of the hours they work or the nature of their employment situation, these workers may not be easily reached during regular business hours or be available to attend in-person meetings during the business day. To be effective, the EE/FHO's complaint and investigation process for the earned paid sick time Ordinance needs to account for and accommodate these realities.	Neutral	Thank you for your comment. Serving Limited English Proficient customers is already a City of Austin priority independent of the Proposed Rules. EEFO will make best efforts to translate the complaint form into Spanish and other languages as soon as possible after the forms are finalized. Final forms will be available at the City of Austin Equal Employment/Fair Housing Office ("EEFO"), located at 1050 East 11th Street, Suite 200, Austin, Texas 78702 and included on the EEFO Earned Sick Time Website at: https://austintexas.gov/earnedsicktime . City of Austin customer service standards, embodied in the City's Vision and Values, require all City of Austin services be easily accessible, and the Earned Sick Time complaint and investigation process, including all forms, will adhere to these standards. EE/FHO Investigators routinely work outside of standard business hours to accommodate the needs of all parties, and those practices will extend to complaint and investigation processes in connection with enforcement of the Earned Sick Time Ordinance.

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
174	Rule Part 3(B)	Kara Sheehan, Nicolas Lamori, Luis Figueroa, Alex Seubert, Jonathan Lewis, Rafael Aguilar, Taylor Foody, Graham Douglas, Patrick Jones, Hanna Mitchell, Madeline Detelich, Mario Morales, Sarah Swallow, Virginia Badillo, Heiwa Salovitz, Mark McKim, Laura Olvera, Amanda Cavazos Weems, Hope Harrison, Michael Schmidt, Hannah Noori, Sarah Gonzalez Claytor, Mark Maldonado, Maria Thomas, Emily Speight, Edward Sills, Rene Lara, Andrew Dysert	The complaint forms developed should be 1) simple and easy to complete; 2) available in Spanish and other languages; 3) available online in an accessible format that is easy to find on the City's website AND be available in hardcopy; and 4) be accepted via mail, fax, email, and in-person.	Neutral	Thank you for your comment. Serving Limited English Proficient customers is already a City of Austin priority independent of the Proposed Rules. EEFHO will make best efforts to translate the complaint form into Spanish and other languages as soon as possible after the forms are finalized. Final forms will be available at the City of Austin Equal Employment/Fair Housing Office ("EEFHO"), located at 1050 East 11th Street, Suite 200, Austin, Texas 78702 and included on the EEFHO Earned Sick Time Website at: https://austintexas.gov/earnedsicktime . City of Austin customer service standards, embodied in the City's Vision and Values, require all City of Austin services be easily accessible, and the Earned Sick Time complaint and investigation process, including all forms, will adhere to these standards.
175	N/A	Kara Sheehan, Nicolas Lamori, Luis Figueroa, Alex Seubert, Jonathan Lewis, Rafael Aguilar, Taylor Foody, Graham Douglas, Patrick Jones, Hanna Mitchell, Madeline Detelich, Mario Morales, Sarah Swallow, Virginia Badillo, Heiwa Salovitz, Mark McKim, Laura Olvera, Amanda Cavazos Weems, Hope Harrison, Michael Schmidt, Hannah Noori, Sarah Gonzalez Claytor, Mark Maldonado, Maria Thomas, Emily Speight, Edward Sills, Rene Lara, Andrew Dysert	In addition, EE/FHO should allow for Investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.	Neutral	Thank you for your comment. EE/FHO Investigators routinely work outside of standard business hours to accommodate the needs of all parties, and those practices will extend to complaint and investigation processes in connection with enforcement of the Earned Sick Time Ordinance.
176	Rule Part 5(G)	Kara Sheehan, Nicolas Lamori, Luis Figueroa, Alex Seubert, Jonathan Lewis, Rafael Aguilar, Taylor Foody, Graham Douglas, Patrick Jones, Hanna Mitchell, Madeline Detelich, Mario Morales, Sarah Swallow, Virginia Badillo, Heiwa Salovitz, Mark McKim, Laura Olvera, Amanda Cavazos Weems, Hope Harrison, Michael Schmidt, Hannah Noori, Sarah Gonzalez Claytor, Mark Maldonado, Maria Thomas, Emily Speight, Edward Sills, Rene Lara, Andrew Dysert, Juan Luna, Susan Zakaib	Parties should have the right to appeal an initial determination on their complaint. Under the proposed Rules, once the EE/FHO reaches its decision on a complaint, neither party has any chance to appeal that decision. We know that people make mistakes. The right to appeal is essential to ensure that all parties to a complaint are treated fairly in the investigation and enforcement process. The final Rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.	Against	Thank you for your comment. The Ordinance does not authorize the Administrator to create an appeal process, and the Rules cannot exceed the authority found in the Ordinance. The Rules expressly separate investigative functions, assigned to an Investigator, from review and decision-making functions, assigned to the Administrator.

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
177	Ordinance §4-19-6(C)(1), Rule Part 6	Kara Sheehan, Nicolas Lamori, Luis Figeroa, Alex Seubert, Jonathan Lewis, Rafael Aguilar, Taylor Foody, Graham Douglas, Patrick Jones, Hanna Mitchell, Madeline Detelich, Mario Morales, Sarah Swallow, Virginia Badillo, Heiwa Salovitz, Mark McKim, Laura Olvera, Amanda Cavazos Weems, Hope Harrison, Michael Schmidt, Hannah Noori, Sarah Gonzalez Claytor, Mark Maldonado, Maria Thomas, Emily Speight, Edward Sills, Rene Lara, Andrew Dysert	Penalties under the Ordinance should be higher to encourage compliance. Penalties assessed under this Ordinance should be designed with deterrence in mind. The proposed penalties - \$100 for small employers and \$150 for all other employers for a first time violation - are far too low. Indeed, they are so low that they likely create a financial incentive for employers to violate the Ordinance and risk getting caught than actually comply. Furthermore, the proposed Rules give the EE/FHO wide discretion to increase or decrease the penalty assessed. The final Rules should simplify the fee schedule and ensure that it applies equitably to all employers regardless of their size.	Against	Thank you for your comment. The Ordinance authorizes the Equal Employment/Fair Housing Office to exercise discretion and independent judgment in assessing a penalty in any amount up to \$500. The Rules are designed to assist the Administrator with guidelines that have the intended effect of consistent, even-handed application of the Ordinance across a wide range of varying fact settings. The Rules at Part 6(B) authorize the Administrator to take into account other factors in consideration of increasing or decreasing a penalty established by the general guidelines in Part 6(A), so long as the Administrator does not engage in negotiations with either party or exceed the \$500 limit established in the Ordinance. However, all penalties have been increased by \$100, and small businesses now have a 3 violation structure, instead of 4.
178	Ordinance §4-19-6(C)(1), Rule Part 6	Kara Sheehan, Nicolas Lamori, Luis Figeroa, Alex Seubert, Jonathan Lewis, Rafael Aguilar, Taylor Foody, Graham Douglas, Patrick Jones, Hanna Mitchell, Madeline Detelich, Mario Morales, Sarah Swallow, Virginia Badillo, Heiwa Salovitz, Mark McKim, Laura Olvera, Amanda Cavazos Weems, Hope Harrison, Michael Schmidt, Hannah Noori, Sarah Gonzalez Claytor, Mark Maldonado, Maria Thomas, Emily Speight, Edward Sills, Rene Lara, Andrew Dysert, Susan Zakaib	Absent cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250. Civil penalties for any subsequent violation by an employer - regardless of the size of the employer or when this subsequent violation occurred - should be \$500. Any violation of the retaliation provision - whether it be a first or subsequent violation - should result in the assessment of a \$500 penalty. In addition, the final Rules should limit EE/FHO's discretion to adjust these penalties so that they may never be lowered, but may be increased for cases involving bad faith or malicious conduct.	Against	Thank you for your comment. The Ordinance authorizes the Equal Employment/Fair Housing Office to exercise discretion and independent judgment in assessing a penalty in any amount up to \$500. The Rules are designed to assist the Administrator with guidelines that have the intended effect of consistent, even-handed application of the Ordinance across a wide range of varying fact settings. The Rules at Part 6(B) authorize the Administrator to take into account other factors in consideration of increasing or decreasing a penalty established by the general guidelines in Part 6(A), so long as the Administrator does not engage in negotiations with either party or exceed the \$500 limit established in the Ordinance. However, all penalties have been increased by \$100, and small businesses now have a 3 violation structure, instead of 4.

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
179	Rule Part 5(H)	Kara Sheehan, Nicolas Lamori, Luis Figueroa, Alex Seubert, Jonathan Lewis, Rafael Aguilar, Taylor Foody, Graham Douglas, Patrick Jones, Hanna Mitchell, Madeline Detelich, Mario Morales, Sarah Swallow, Virginia Badillo, Heiwa Salovitz, Mark McKim, Laura Olvera, Amanda Cavazos Weems, Hope Harrison, Michael Schmidt, Hannah Noori, Sarah Gonzalez Claytor, Mark Maldonado, Maria Thomas, Emily Speight, Edward Sills, Rene Lara, Andrew Dysert, Ana Gonzalez, Marya Huerta, Jessica Wolff, Priscila Martinez, Priscilla Lugo, Juan Belman, Karen Escobedo, Sandy Romero, Alondra Johnson, Elizabeth Dorantes, Amparo H Hughes, Sophia Campos, Candelario Vazquez	The enforcement process should prioritize making workers whole in as timely a manner as possible. Violations of this Ordinance can have grave consequences for an employee and their family and many people filing complaints may be doing so in moments of personal crisis. The proposed Rules say that EE/FHO should try to close an investigation within 120 days, yet provide no guidance on how EE/FHO is supposed to seek voluntary compliance. The enforcement process should attempt to resolve complaints as expeditiously as possible in a way that makes employees whole. The final Rules should endeavor to close investigations within 90 days, not 120 days.	Against	Thank you for your comment. The Earned Sick time Ordinance does not restrict EE/FHO from using any appropriate methods to seek voluntary compliance, and it is unnecessary to limit the methods available to EE/FHO in the Rules. The City of Austin appreciates the impact a violation of the Earned Sick Time Ordinance could have on vulnerable populations, and we have taken that concern into account in the Proposed Rules. In addition we considered the potential complexity involved in examining and analyzing attendance records and payroll records inherent in Earned Sick Time complaints, and we proposed investigation closure standards that we believe are achievable, responsive to the needs of the individuals who file complaints, and sensitive to the legitimate interests of employers that are striving in good faith to comply with a new Ordinance. However, we have reduced the deadlines throughout the Rules: o Investigators now have 8 days to schedule interviews with Complainants and serve Respondents with a request for information (down from 10-effectively making the initial contact within 10 days of receiving the complaint) o Investigators now have 75 days to recommend a final determination to the Administrator (down from 90) o Administrators now have 105 days to close complaints (down from 120)
180	Ordinance §§4-19-6(A)(4) & 4-19-6C)(2), Rule Part 7(A)(3)	Kara Sheehan, Nicolas Lamori, Luis Figueroa, Alex Seubert, Jonathan Lewis, Rafael Aguilar, Taylor Foody, Graham Douglas, Patrick Jones, Hanna Mitchell, Madeline Detelich, Mario Morales, Sarah Swallow, Virginia Badillo, Heiwa Salovitz, Mark McKim, Laura Olvera, Amanda Cavazos Weems, Hope Harrison, Michael Schmidt, Hannah Noori, Sarah Gonzalez Claytor, Mark Maldonado, Maria Thomas, Emily Speight, Edward Sills, Rene Lara, Andrew Dysert, Thomas Sheehy	Furthermore, the final Rules should outline EE/FHO's guidelines for seeking voluntary compliance of a complaint.	Against	Thank you for your comment. The Earned Sick time Ordinance does not restrict EE/FHO from using any appropriate methods to seek voluntary compliance, and it is unnecessary to limit the methods available to EE/FHO in the Rules.

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
181	Ordinance §§4-19-1(C), 4-19-2(E), & 4-19-4	Kara Sheehan, Nicolas Lamori, Luis Figeroa, Alex Seubert, Jonathan Lewis, Rafael Aguilar, Taylor Foody, Graham Douglas, Patrick Jones, Hanna Mitchell, Madeline Detelich, Mario Morales, Sarah Swallow, Virginia Badillo, Heiwa Salovitz, Mark McKim, Laura Olvera, Amanda Cavazos Weems, Hope Harrison, Michael Schmidt, Hannah Noori, Sarah Gonzalez Claytor, Mark Maldonado, Maria Thomas, Emily Speight, Edward Sills, Rene Lara, Andrew Dysert	EE/FHO must release both interpretive Rules as well as procedural Rules. The proposed Rules released by EE/FHO outlines a process for receiving, investigating, and resolving complaints, but provide no guidance on how the agency will actually interpret the Ordinance. Without interpretative Rules, it will be difficult for employers to successfully comply with the Ordinance, for workers to fully understand their rights under the Ordinance, and for EE/FHO to enforce the Ordinance fairly and effectively. The final Rules published by EE/FHO should include both procedural Rules and interpretive Rules. These interpretive Rules should, at the very least, clarify 1) the rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this Ordinance; 2) the Ordinance's signage requirement; and 3) what constitutes reasonable verification procedures to vet an employee's request to use accrued time. For further guidance on what interpretative Rules to publish, EE/FHO should look to earned paid sick time administrative Rules published by other benchmark cities across the country.	Against	Thank you for your comment. Although EE/FHO has extensive knowledge of investigative procedures, based on lengthy, substantial experience gained from the administration of regulatory complaint investigations, the Division has limited working knowledge of the extremely wide range of compensation, attendance, and leave practices utilized in private sector employment subject to the Earned Sick Time Ordinance. We considered the potential complexity involved in examining and analyzing attendance records and payroll records inherent in Earned Sick Time complaints, and we proposed investigation closure standards that we believe are achievable, responsive to the needs of the individuals who file complaints, and sensitive to the legitimate interests of employers that are striving in good faith to comply with a new Ordinance. §4-19-1(C) of the Ordinance provides a clear standard for determining whether a given employer has correctly classified a worker as a covered employee in the context of a complaint investigation, and further definition in the Rules is not necessary. The City will create and distribute the signage required by §4-19-4 of the Ordinance. The use of "reasonable" at §4-19-2(E) of the Ordinance requires an investigation and analysis of all of the facts and circumstances that may arise in any given complaint, and those facts and circumstances can vary widely from one workplace setting to the next.
182	Ordinance §4-19-6(C)(1), Rule Part 6	Sarah Swallow	Note that I am asking for a \$500 fine to be applied to every business that does not quickly get into compliance with the Ordinance after a complaint is filed.	Against	Thank you for your comment. The Ordinance authorizes the Equal Employment/Fair Housing Office to exercise discretion and independent judgment in assessing a penalty in any amount up to \$500. The Rules are designed to assist the Administrator with guidelines that have the intended effect of consistent, even-handed application of the Ordinance across a wide range of varying fact settings. The Rules at Part 6(B) authorize the Administrator to take into account other factors in consideration of increasing or decreasing a penalty established by the general guidelines in Part 6(A), so long as the Administrator does not engage in negotiations with either party or exceed the \$500 limit established in the Ordinance.

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
183	Ordinance Part 1	Blake Rocap, Interim Executive Director, NARAL Pro-Choice Texas	Work Strong Austin believes that the Equal Employment/Fair Housing Office (EE/FHO) should interpret and enforce this Ordinance in a way that encourages maximum compliance, so that every worker entitled to benefit from earned sick time under this policy has the right to do so and no employer in this city is placed at a disadvantage for doing the right thing. All of us benefit - workers, employers, and the general public - when complaints under Chapter 4-19 are investigated thoroughly and handled expeditiously, and when violations of the Ordinance are taken seriously	Neutral	Thank you for your comment. The Rules are intended to implement the full force of the Ordinance as enacted by City Council.
184	Rule Parts 3(B) & 4(B)	Blake Rocap, Interim Executive Director, NARAL Pro-Choice Texas	The complaint and investigation process should be as accessible as possible. It is to the benefit of everyone for workers who believe their rights under the earned sick time Ordinance have been violated to easily be able to file complaints with the city.	Neutral	Thank you for your comment. City of Austin customer service standards, embodied in the City's Vision and Values, require all City of Austin services be easily accessible, and the Earned Sick Time complaint and investigation process, including all forms, will adhere to these standards.
185	Rule Part 3(B)	Blake Rocap, Interim Executive Director, NARAL Pro-Choice Texas	The complaint and investigation process should be as accessible as possible. EE/FHO should ensure that its complaint form is available in multiple languages and multiple formats (both digitally and in hard copy), is easy to access, easy to understand, and easy to submit.	Neutral	Thank you for your comment. Serving Limited English Proficient customers is already a City of Austin priority independent of the Proposed Rules. EE/FHO will make best efforts to translate the complaint form into Spanish and other languages as soon as possible after the forms are finalized. Final forms will be available at the City of Austin Equal Employment/Fair Housing Office ("EEFHO"), located at 1050 East 11th Street, Suite 200, Austin, Texas 78702 and included on the EEFHO Earned Sick Time Website at: https://austintexas.gov/earnedsicktime . City of Austin customer service standards, embodied in the City's Vision and Values, require all City of Austin services be easily accessible, and the Earned Sick Time complaint and investigation process, including all forms, will adhere to these standards.
186	Rule Part 3(B)	Blake Rocap, Interim Executive Director, NARAL Pro-Choice Texas	The complaint and investigation process should be as accessible as possible. Whenever possible, EE/FHO Investigators should attempt to conduct interviews over the phone and outside of regular business hours, in order to accommodate people who may not have access to reliable transportation or whose work schedules make it difficult for them to be reached during the work day.	Neutral	Thank you for your comment. EE/FHO Investigators routinely work outside of standard business hours to accommodate the needs of all parties, and those practices will extend to complaint and investigation processes in connection with enforcement of the Earned Sick Time Ordinance.

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
187	Rule Part 5(G)	Blake Rocap, Interim Executive Director, NARAL Pro-Choice Texas	Parties should be able to appeal an initial determination of a complaint. To ensure that everyone's due process rights are respected, parties should have the opportunity to appeal EE/FHO's initial determination of a complaint.	Against	Thank you for your comment. The Ordinance does not authorize the Administrator to create an appeal process, and the Rules cannot exceed the authority found in the Ordinance. The Rules expressly separate investigative functions, assigned to an Investigator, from review and decision-making functions, assigned to the Administrator.
188	Ordinance §4-19-6(C)(1), Rule Part 6	Blake Rocap, Interim Executive Director, NARAL Pro-Choice Texas	The civil penalties should be designed to deter violations and ensure consistency in enforcement. The final Rules should increase the civil penalty amounts for all violations, regardless of employer size, and limit EE/FHO's discretion in assessing penalties. Except for cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250. Civil penalties for any subsequent violation by an employer - regardless of the size of the employer or when this subsequent violation occurred - should be \$500. Any violation of the retaliation provision - whether it be a first or subsequent violation - should result in the assessment of a \$500 penalty. While the final Rules should grant EE/FHO the discretion to assess higher penalties for violations that involve bad faith or malicious conduct, this should be the sole instance when EE/FHO can exercise its discretion to adjust the penalties assessed. EE/FHO should never have the authority to assess a penalty that is lower than the penalty established in the proposed Rules.	Against	Thank you for your comment. The Ordinance authorizes the Equal Employment/Fair Housing Office to exercise discretion and independent judgment in assessing a penalty in any amount up to \$500. The Rules are designed to assist the Administrator with guidelines that have the intended effect of consistent, even-handed application of the Ordinance across a wide range of varying fact settings. The Rules at Part 6(B) authorize the Administrator to take into account other factors in consideration of increasing or decreasing a penalty established by the general guidelines in Part 6(A), so long as the Administrator does not engage in negotiations with either party or exceed the \$500 limit established in the Ordinance. However, all penalties have been increased by \$100, and small businesses now have a 3 violation structure, instead of 4.

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
189	Rule Part 5(H)	Blake Rocap, Interim Executive Director, NARAL Pro-Choice Texas	EE/FHO should resolve complaints in a timely manner and seek a resolution that makes employees whole. As I mentioned before, abortion is healthcare that is on a timeline so it is important that complaints are resolved as quickly as possible. Many workers likely to file complaints under this Ordinance do so in a moment of incredible need. Without sacrificing the thoroughness or integrity of the investigation process, EE/FHO should attempt to resolve complaints as quickly as possible, but no more than 90 days after the complaint is assigned to an Investigator.	Against	Thank you for your comment. The City of Austin appreciates the impact a violation of the Earned Sick Time Ordinance could have on vulnerable populations, and we have taken that concern into account in the Proposed Rules. In addition we considered the potential complexity involved in examining and analyzing attendance records and payroll records inherent in Earned Sick Time complaints, and we proposed investigation closure standards that we believe are achievable, responsive to the needs of the individuals who file complaints, and sensitive to the legitimate interests of employers that are striving in good faith to comply with a new Ordinance. However, we have reduced the deadlines throughout the Rules: o Investigators now have 8 days to schedule interviews with Complainants and serve Respondents with a request for information (down from 10-effectively making the initial contact within 10 days of receiving the complaint) o Investigators now have 75 days to recommend a final determination to the Administrator (down from 90) o Administrators now have 105 days to close complaints (down from 120)
190	Ordinance §§4-19-6(A)(4) & 4-19-6C(2), Rule Part 7(A)(3)	Blake Rocap, Interim Executive Director, NARAL Pro-Choice Texas	The final Rules should provide additional clarity regarding how EE/FHO will try to seek voluntary compliance to correct a violation, make workers whole, and deter additional violations in the future.	Against	Thank you for your comment. The Earned Sick time Ordinance does not restrict EE/FHO from using any appropriate methods to seek voluntary compliance, and it is unnecessary to limit the methods available to EE/FHO in the Rules. Deterrence of additional future violations will be addressed by fulfilling the requirement in the Ordinance to educate employers and employees about the Ordinance.

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
191	Ordinance §§4-19-2(E) & 4-19-4	Blake Rocab, Interim Executive Director, NARAL Pro-Choice Texas	EE/FHO's final Rules should both interpret the Ordinance and outline the agency's investigation and enforcement procedures. Without interpretative Rules, it will be difficult for employers to successfully comply with the Ordinance, for workers to fully understand their rights under the Ordinance, and for EE/FHO to enforce the Ordinance fairly and effectively. Interpretive Rules should provide additional guidance on the signs that employers are required to post under the Ordinance, how employers should compensate employees who use earned paid sick time, and how employers can ensure that their verification procedures for employees who do so for more than three consecutive work days are "reasonable".	Against	Thank you for your comment. Although EE/FHO has extensive knowledge of investigative procedures, based on lengthy, substantial experience gained from the administration of regulatory complaint investigations, the Division has limited working knowledge of the extremely wide range of compensation, attendance, and leave practices utilized in private sector employment subject to the Earned Sick Time Ordinance. We considered the potential complexity involved in examining and analyzing attendance records and payroll records inherent in Earned Sick Time complaints, and we proposed investigation closure standards that we believe are achievable, responsive to the needs of the individuals who file complaints, and sensitive to the legitimate interests of employers that are striving in good faith to comply with a new Ordinance. §4-19-1(C) of the Ordinance provides a clear standard for determining whether a given employer has correctly classified a worker as a covered employee in the context of a complaint investigation, and further definition in the Rules is not necessary. The City will create and distribute the signage required by §4-19-4 of the Ordinance. The use of "reasonable" at §4-19-2(E) of the Ordinance requires an investigation and analysis of all of the facts and circumstances that may arise in any given complaint, and those facts and circumstances can vary widely from one workplace setting to the next. If actual experience from investigating live complaints indicates a genuine need for additional interpretive Rules for any reason, the City has the ability to propose additional Rules in the future.

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
192	Ordinance §4-19-6(C)(1), Rule Part 6	Meaghan Perkins, Director of Operations, Beetnik Foods	Thank you for taking the time to review community input on the earned sick time Ordinance enforcement. As a business that provides paid sick leave, it's important to us that the enforcement be adequate to ensure that businesses breaking the law are not undermining businesses that are in compliance. We support a minimum first time violation of \$250, and subsequent violations incurring an automatic \$500 penalty. For businesses that are repeatedly in noncompliance, we ask that the city step in and increase the penalties.	Against	Thank you for your comment. The Ordinance authorizes the Equal Employment/Fair Housing Office to exercise discretion and independent judgment in assessing a penalty in any amount up to \$500. The Rules are designed to assist the Administrator with guidelines that have the intended effect of consistent, even-handed application of the Ordinance across a wide range of varying fact settings. The Rules at Part 6(B) authorize the Administrator to take into account other factors in consideration of increasing or decreasing a penalty established by the general guidelines in Part 6(A), so long as the Administrator does not engage in negotiations with either party or exceed the \$500 limit established in the Ordinance. However, all penalties have been increased by \$100, and small businesses now have a 3 violation structure, instead of 4.
193	Rule Part 5(H)	Meaghan Perkins, Director of Operations, Beetnik Foods	The investigation process needs to be quick and straightforward for both employees and businesses. We support resolving all complaints within 90 days. This is simple for both employees and employers and does not allow issues to drag out.	Against	Thank you for your comment. We considered the potential complexity involved in examining and analyzing attendance records and payroll records inherent in Earned Sick Time complaints, and we proposed investigation closure standards that we believe are achievable, responsive to the needs of the individuals who file complaints, and sensitive to the legitimate interests of employers that are striving in good faith to comply with a new Ordinance. However, we have reduced the deadlines throughout the Rules: o Investigators now have 8 days to schedule interviews with Complainants and serve Respondents with a request for information (down from 10-effectively making the initial contact within 10 days of receiving the complaint) o Investigators now have 75 days to recommend a final determination to the Administrator (down from 90) o Administrators now have 105 days to close complaints (down from 120)

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
194	Rule Part 5(G)	Meaghan Perkins, Director of Operations, Beetnik Foods	We would like to see a right to appeal and an accessible complaint and investigation process.	Neutral	Thank you for your comment. The Ordinance does not authorize the Administrator to create an appeal process, and the Rules cannot exceed the authority found in the Ordinance. The Rules expressly separate investigative functions, assigned to an Investigator, from review and decision-making functions, assigned to the Administrator. Adding an appeal process would extend the length of time necessary to complete an investigation, contrary to the principle of prompt resolution of complaints. Forms will be available at the City of Austin Equal Employment/Fair Housing Office ("EEFHO"), located at 1050 East 11th Street, Suite 200, Austin, Texas 78702 and included on the EEFHO Earned Sick Time Website at: https://austintexas.gov/earnedsicktime . City of Austin customer service standards, embodied in the City's Vision and Values, require all City of Austin services be easily accessible, and the Earned Sick Time complaint and investigation process, including all forms, will adhere to these standards.
195	N/A	Meaghan Perkins, Director of Operations, Beetnik Foods	EE/FHO needs to establish interpretive Rule in addition to procedural Rules. As an employer, we would like this clarity to ensure full compliance with the Ordinance.	Against	Thank you for your comment. Although EE/FHO has extensive knowledge of investigative procedures, based on lengthy, substantial experience gained from the administration of regulatory complaint investigations, the Division has limited working knowledge of the extremely wide range of compensation, attendance, and leave practices utilized in private sector employment subject to the Earned Sick Time Ordinance.

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
196	Ordinance §4-19-6(C)(1), Rule Parts 5 & 6	Juan Luna	I am writing to support imposing higher penalties on employers that violate the Ordinance. This will help deter bad actors. By the same token, I am in support of allowing employers appeal decisions in order to ensure the process is fair.	Against	Thank you for your comment. The Ordinance authorizes the Equal Employment/Fair Housing Office to exercise discretion and independent judgment in assessing a penalty in any amount up to \$500. The Rules are designed to assist the Administrator with guidelines that have the intended effect of consistent, even-handed application of the Ordinance across a wide range of varying fact settings. The Rules at Part 6(B) authorize the Administrator to take into account other factors in consideration of increasing or decreasing a penalty established by the general guidelines in Part 6(A), so long as the Administrator does not engage in negotiations with either party or exceed the \$500 limit established in the Ordinance. However, all penalties have been increased by \$100, and small businesses now have a 3 violation structure, instead of 4. The Ordinance does not authorize the Administrator to create an appeal process, and the Rules cannot exceed the authority found in the Ordinance. The Rules expressly separate investigative functions, assigned to an Investigator, from review and decision-making functions, assigned to the Administrator.
197	Ordinance §§4-19-1(C) & 4-19-2(A)	Gardner Webb	I wanted to thank everybody for making time to hear my thoughts about the paid sick leave. One point I would like to be made aware that it would be detrimental for workers to prove that they have worked inside city limits as paystubs do not track location. I believe there should be a format for logging hours worked inside the City of Austin that would work for both employer and worker.	Neutral	Thank you for your comment. The Ordinance does not specify methods for recording hours worked, and the Rules cannot impose requirements above and beyond the requirements in the Ordinance. The Ordinance requires a monthly statement to be issued to employees showing the available leave balance, so additional requirements in the Rules are unnecessary.
198	Ordinance §§4-19-1(C) & 4-19-2(A)	Matthew A Castlema, Ben Brenneman, Clay Johnson, Ivan Torres, Michael McKnabb	I am a member of IBEW Local 520. I feel that it is important to clarify how the Ordinance will affect workers like me who perform their work in many different cities. 1) The Rules should clarify that the Ordinance applies to workers typically based outside the City of Austin, but who work 80 or more hours inside city limits within a calendar year.	Against	Thank you for your comment. The Ordinance states that employee coverage and accrual of Earned Sick Time are based on hours worked in the City of Austin. Further clarification in the Rules is unnecessary.
199	Ordinance §§4-19-1(C) & 4-19-2(A)	Matthew A Castlema, Ben Brenneman, Clay Johnson, Ivan Torres, Michael McKnabb	2) If an employer does not provide earned paid sick time to an employee whose work duties require them to perform work within Austin city limits, it should be the responsibility of the employer to track any employee's time who performs work duties within the City of Austin to justify that the employee is not eligible for earned sick time under the Ordinance.	Against	Thank you for your comment. A covered employer is required to accrue Earned Sick Time under the Ordinance for covered employees. If a complaint is received by EEFHO, the parties to the complaint may submit evidence to establish the number of hours that were worked in the City of Austin to determine employer coverage, employee coverage, and other obligations under the Ordinance.

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
200	Ordinance Part 1 & §4-19-5	Marina Roberts	I'm very concerned that Austin's Paid Sick Ordinance currently needs stronger enforcement provisions in order to ensure that employers don't prevent workers from taking their earned sick days, and to ensure that workers don't face illegal retaliation for taking an earned sick day.	Against	Thank you for your comment. The Rules are intended to implement the full force of the Ordinance as enacted by City Council.
201	Ordinance §4-19-6(B), Rule Parts 2(C) & 3(C)(1)	Steven Garrett, Boulette Golden	Rule 3(C)(1) is antithetical to the definition of Complaint in Rule 2(C). By removing the requirement that a Complaint be filed in writing to be timely it creates a situation where an individual could alert the EE/FHO office of an alleged violation of the Ordinance, and yet the employer would not become aware of the alleged violation until months later when the Complaint is finally signed. City Code 4-19-6(B) sets out that a timely Complaint is necessary for an investigation. The current Rule 3(C)(1) could result in an employer not preserving information because it did not know there was an alleged violation. Rule 3(C)(1) should be amended to clarify that an individual has not filed a Complaint until the Complaint is reduced to writing and signed.	Against	Thank you for your comment. The Rule language has been clarified that "Complaint" means a "written, oral, or electronic statement" and may be made in person, by telephone, by regular mail, or electronically.
202	Rule Part 4 (C)(2)	Steven Garrett, Boulette Golden	Rule 4(C)(2) similarly denies the employers the assurance of timely notice. Rule 4(C)(2) should require the Complaint be sent to the employer within ten days of receipt by the EE/FHO office, not within 10 business days of the Investigator receiving the assignment. There is no reason the Investigator must receive the assignment before the employer can be notified. This would allow the employer to preserve any necessary information to assist with the investigation. Tying employer notice to the assignment of a Complaint to an Investigator permits an extended delay that could result in the loss of valuable information or records. The Rule should be amended to support the Ordinance's requirement that there be a timely Complaint and timely notice to the employer.	Against	Thank you for your comment. Investigators now have 8 days to schedule interviews with Complainants and serve Respondents with a request for information (making the initial contact within 10 days of receiving the complaint)
203	Rule Part 4(F)	Steven Garrett, Boulette Golden	Rule 4(F) undermines the integrity of the investigation and any conclusion that may be drawn from a finding (whether it establishes a violation or not). By expressly stating that the Administrator may consider information that does not meet the admissibility standards necessary to prove a violation of the law in court the Rule creates an inference that the investigation is tainted by unreliable, irrelevant, or unsubstantiated claims. Rule 4(F) should be removed or amended to only consider information that would be admissible in court.	Against	Thank you for your comment. Formal Rules of evidence will raise unnecessary technical obstacles to non-attorneys who wish to access the complaint process, either for the purpose of filing complaints or responding to complaints. EE/FHO has substantial experience conducting routine and complex investigations of equal employment opportunity, fair housing, and public accommodations complaints without the need for formal Rules of evidence.

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
204	Rule Parts 4 & 5(B)	Steven Garrett, Boulette Golden	Rule 5(B) should tie the 90 day deadline to submit a recommendation to the date notice is provided to the employer, not to the date the Investigator receives the Complaint. This will result in the Investigator having ample time to consider any evidence the employer may wish to provide, without prejudicing the employer's right to a full opportunity to present witness statements, documents, or other information relevant to the allegations in the Complaint as described in Rule 4(C).	Against	Thank you for your comment. Investigators now have 75 days from assignment to recommend a final determination to the Administrator (down from 90). This now gives the Investigator 77 days to make a final determination recommendation.
205	Ordinance §§4-19-5(C)(3)	Steven Garrett, Boulette Golden	Rule 5(C)(3) should be changed to clarify that the civil penalty will only be assessed if the employer fails to establish voluntary compliance after an additional violation is established that occurs after June 1, 2019. This will bring the Rules in compliance with Part 3 of the Ordinance (which was not codified).	Against	Thank you for your comment. §4-19-6(C)(1) of the Ordinance requires EEFHO to assess a civil penalty upon the finding of a violation and prior to seeking voluntary compliance under §4-19-6(C)(2). If voluntary compliance cannot be achieved, §4-19-6(C)(2) provides that the employer is liable for the amount of the civil penalty, implying that an employer that demonstrates voluntary compliance after receipt of a notice of violation and civil penalty is not liable to the City for the amount of the assessed civil penalty. The Rule as proposed conforms to the Ordinance.
206	Ordinance §4-19-2(M)	Steven Garrett, Boulette Golden	Rule 5(D) should be modified to include a procedure where the Administrator must find that voluntary compliance is not achieved as required by City Code 4-19-6(C) before issuing a civil penalty. City Code City Code 4-19-6(C) requires two findings before a civil penalty, first that a violation occurred, and second that voluntary compliance cannot be obtained. Accordingly, the Administrator should first issue a finding that a violation occurred, and then attempt to seek voluntary compliance. Only after finding that voluntary compliance is not achieved does the Ordinance authorize issuing a civil penalty. Without this finding, employers may be able to successfully challenge any civil penalty that is issued as violating the Ordinance.	Against	Thank you for your comment. §4-19-6(C)(1) of the Ordinance requires EEFHO to assess a civil penalty upon the finding of a violation and prior to seeking voluntary compliance under §4-19-6(C)(2). If voluntary compliance cannot be achieved, §4-19-6(C)(2) provides that the employer is liable for the amount of the civil penalty, implying that an employer that demonstrates voluntary compliance after receipt of a notice of violation and civil penalty is not liable to the City for the amount of the assessed civil penalty. The Rule as proposed conforms to the Ordinance.

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
207	Ordinance §4-19-2(M)	Kenneth Besserman, General Counsel, Texas Restaurant Association	The uniqueness of the restaurant industry in allowing flexible shift changes and shift trades is one important quality of the industry that attracts people to the industry. Requiring restaurants to provide paid sick leave will significantly diminish the ability of businesses to allow for the free or unencumbered shift trading that is prevalent in the industry. In addition, unlike many other business settings, if a person does not show up for work in a restaurant, the work must still be done (waiting tables, running the cash register, cooking meals, cleaning up) and cannot be put off for another day. The Ordinance will require restaurants to pay for the sick time and to call in additional staffing to do the work for the person that is out sick.	Against	Thank you for your comment. Neither the Ordinance nor the Rules limit an employer's ability to implement a free and unencumbered system of employee replacements for absences, as long as it is voluntary for employees and therefore genuinely free and unencumbered. The Ordinance merely provides that an employer may not require an employee to find a replacement to cover the hours of earned sick time as a condition of using earned sick time. The Rules cannot create a restriction or limitation of this provision of the Ordinance.
208	Ordinance §4-19-(6)	Kenneth Besserman, General Counsel, Texas Restaurant Association	The Rules lack a definition of what a "violation of Chapter 4-19" is. The lack of clarity of what a violation is or might be does not provide sufficient notice or understanding to employers and employees of what is expected under the Ordinance and the Rules. The Ordinance is very broad and there are many issues that might arise in the implementation and of a paid sick leave plan and the lack of a definition creates more uncertainty rather than less uncertainty.	Against	Thank you for your comment. Although EE/FHO has extensive knowledge of investigative procedures, based on lengthy, substantial experience gained from the administration of regulatory complaint investigations, the Division has limited working knowledge of the extremely wide range of compensation, attendance, and leave practices utilized in private sector employment subject to the Earned Sick Time Ordinance. We considered the potential complexity involved in examining and analyzing attendance records and payroll records inherent in Earned Sick Time complaints, and we proposed investigation closure standards that we believe are achievable, responsive to the needs of the individuals who file complaints, and sensitive to the legitimate interests of employers that are striving in good faith to comply with a new Ordinance. At this time, the Ordinance grants discretion to the Administrator to consider all of the facts and circumstances of each individual case to determine if the evidence establishes a single violation or multiple violations.

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
209	Rule Part 4	Kenneth Besserman, General Counsel, Texas Restaurant Association	Section 4(A) provides that investigations shall be performed in a fair, impartial and objective manner. However, Section 4(C) provides a process that is unfair, impartial and not objective in that it allows for the Investigator to interview the complaint about the alleged violation, but the same in-person interview is not afforded the Respondent. When investigations allow for in- person statements from one party and not the other party, an Investigator is not given equal opportunity to judge the complaint against the defense. Merely affording the respondent an ability to submit written statements, witness statements, and other written documentation does not provide an even playing field between the complainant and respondent. Equal in-person interviews should be afforded all parties involved which will give Investigators a better understanding of the complaint and the defense.	Against	Thank you for your comment. Rule Part 4(C) places no restriction on the Investigator from taking a statement from any individual in person, including witnesses offered by a respondent employer.
210	Rule Parts 2(C) & 2(H)	Kenneth Besserman, General Counsel, Texas Restaurant Association	The Rules define "complainant" as an individual filing a complaint and define a "respondent" as the employer. This is a biased view of the Ordinance. It presupposes that all complaints will be filed by employees for violations by employers. It is quite possible, and probably a certainty, that some employers might have complaints against employees for violations of the Ordinance including no timely notice of intent to take sick leave, taking sick leave for an unauthorized purpose, or other reasons. The definitions of a "complainant" and "respondent" should be neutral in character and not presuppose which party will file the complaint. Employers, like employees, should be allowed to file violation complaints.	Against	Thank you for your comment. The definitions are consistent with administrative enforcement practices and the Ordinance.
211	Rule Part 5(G)	Kenneth Besserman, General Counsel, Texas Restaurant Association	Section 5(G) provides that the decision of the Administrator under this Rule is final. Providing no ability to appeal a decision undermines the basic tenets of our legal system. By not providing an ability to appeal a violation of the paid sick leave Ordinance, these Rules will encourage more litigation against the city for perceived bias, unfair administration of the Ordinance and Rules, unequal administration of the Ordinance, and for wrong administrative decisions. By allowing an administrative appeal process the City may lessen the impact of harsh decisions against either employees or employers by giving them another opportunity to make their case heard. More, not less, hearing opportunities should be a foundation for the fair enforcement of an Ordinance.	Against	Thank you for your comment. The Ordinance does not authorize the Administrator to create an appeal process, and the Rules cannot exceed the authority found in the Ordinance. The Rules expressly separate investigative functions, assigned to an Investigator, from review and decision-making functions, assigned to the Administrator.

Comments and Responses to the Proposed Adoption of Administrative Rules (Earned Sick Time Ordinance)

#	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against Adoption of Rule as Proposed	Response
212	Ordinance §4-19-2(K)	Kenneth Besserman, General Counsel, Texas Restaurant Association	The Rules do not provide any guidance on how an employer is required to track, account for, and notify employees about the amount of sick time that an employee has accumulated. Lack of any guidance will create more uncertainty for both employees and employers and cause more alleged violations to be lodged.	Against	Thank you for your comment. It is not necessary for the Rules to prescribe appropriate methods for employers to maintain records given the wide variety of recordkeeping systems and methods currently in use in the workplace. The Ordinance at §4-19-2(K) makes clear the requirement for providing a monthly statement of available Earned Sick Time, and further clarification in the Rules is unnecessary.
213	Ordinance Part 1 & Ordinance §4-19-6(A)(5)	Tina Grider-Cannon	The Ordinance is preempted by state law and unconstitutional per the claims in a recent lawsuit, and these proposed regs don't fix any of the defects that make the Ordinance illegal; and Section 6(B)(1)(c) likely separately violates the First Amendment as it bases the civil penalty upon the Respondent's viewpoint about the Ordinance, which is protected speech. (Comment received on July 23, 2018)	Neutral	Thank you for your comment. §4-19-6(A)(5) of the Earned Sick Time Ordinance requires EE/FHO to adopt Rules necessary to implement the Ordinance. EE/FHO has no discretion in this matter. The Rules are interpreted within the limits of the Earned Sick Time Ordinance, which regulates workplace conduct of covered employers and employees.



RECEIVED

JUL 16 2018

CITY OF AUSTIN EE/FHO

July 12, 2018

Mr. Jonathan Babiak
City of Austin Equal Employment/Fair Housing Office
1050 East 11th Street, Suite 200
Austin, Texas 78702

RE: Comments about Proposed Adoption of Administrative Rules for Chapter 4-19 of the City Code (Earned Sick Time)

Dear Mr. Babiak,

On behalf of the Greater Austin Restaurant Association (GARA) and the Texas Restaurant Association (TRA), thank you for the opportunity to comment on the City's proposed rules for the recently adopted paid sick leave ordinance. The associations are not opposed to providing sick leave for their employees or taking care of their employees, which they every day, the city mandate will require some hard decisions for businesses in Austin. While the associations opposed the ordinance as it was drafted and ultimately enacted, we provide these comments to the rules in the hopes that they will be addressed to lessen the hardship that the ordinance places on the restaurant industry.

Without relitigating the ordinance, both associations continue to have deep concerns about the effect of the ordinance on the industry. The uniqueness of the restaurant industry in allowing flexible shift changes and shift trades is one important quality of the industry that attracts people to the industry. Requiring restaurants to provide paid sick leave will significantly diminish the ability of businesses to allow for the free or unencumbered shift trading that is prevalent in the industry. In addition, unlike many other business settings, if a person does not show up for work in a restaurant, the work must still be done (waiting tables, running the cash register, cooking meals, cleaning up) and cannot be put off for another day. The ordinance will require restaurants to pay for the sick time and to call in additional staffing to do the work for the person that is out sick.

Comments regarding proposed sick leave pay administrative rules

The rules lack a definition of what a "violation of Chapter 4-19" is. The lack of clarity of what a violation is or might be does not provide sufficient notice or understanding to employers and employees of what is expected under the ordinance and the rules. The ordinance is very broad and there are many issues that might arise in the implementation and of a paid sick leave plan and the lack of a definition creates more uncertainty rather than less uncertainty.

Section 4(A) provides that investigations shall be performed in a fair, impartial and objective manner. However, Section 4(C) provides a process that is unfair, impartial and not objective in that it allows for the Investigator to interview the complainant about the alleged violation, but the same in-person interview is not afforded the Respondent. When investigations allow for in-person statements from one party and not the other party, an Investigator is not given equal opportunity to judge the complaint against the defense. Merely affording the respondent an ability to submit written statements, witness statements, and other written documentation does not provide an even playing field between the complainant and respondent. Equal in-person interviews should be afforded all parties involved which will give investigators a better understanding of the complaint and the defense.

The rules define "complainant" as an individual filing a complaint and define a "respondent" as the employer. This is a biased view of the ordinance. It presupposes that all complaints will be filed by employees for violations by employers. It is quite possible, and probably a certainty, that some employers might have complaints against employees for violations of the ordinance including no timely notice of intent to take sick leave, taking sick leave for an unauthorized purpose, or other reasons. The definitions of a "complainant" and "respondent" should be neutral in character and not presuppose which party will file the complaint. Employers, like employees, should be allowed to file violation complaints.

Section 5(G) provides that the decision of the Administrator under this Rule is final. Providing no ability to appeal a decision undermines the basic tenets of our legal system. By not providing an ability to appeal a violation of the paid sick leave ordinance, these rules will encourage more litigation against the city for perceived bias, unfair administration of the ordinance and rules, unequal administration of the ordinance, and for wrong administrative decisions. By allowing an administrative appeal process the City may lessen the impact of harsh decisions against either employees or employers by giving them another opportunity to make their case heard. More, not less, hearing opportunities should be a foundation for the fair enforcement of an ordinance.

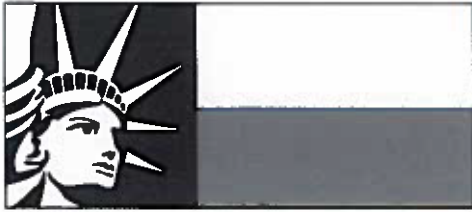
The rules do not provide any guidance on how an employer is required to track, account for, and notify employees about the amount of sick time that an employee has accumulated. Lack of any guidance will create more uncertainty for both employees and employers and cause more alleged violations to be lodged.

Thank you for your consideration of these comments. Please feel free to contact me for more information or clarification of these issues.

Sincerely,



Kenneth Besserman
General Counsel – Texas Restaurant Association



NARAL
Pro-Choice Texas

RECEIVED

JUL 23 2018

CITY OF AUSTIN EE/FHO

July 17, 2018

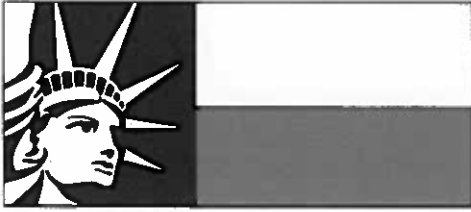
ATTN: Jonathan Babiak
City of Austin Equal Employment/Fair Housing Office
1050 East 11th Street, Suite 200
Austin, Texas 78702
(512) 974-3200

**RE: Comments on Notice of Proposed Adoption of Administrative Rules for
Investigation of
Complaints and Assessment Of Civil Penalties under City Code Chapter 4-19**

To Whom It May Concern:

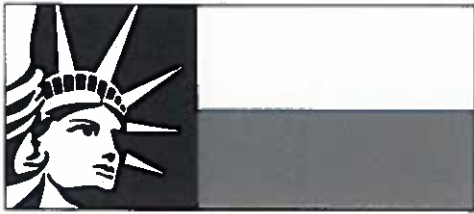
I write as a member of Work Strong Austin, a coalition of community organizations dedicated to improving the lives of working families in Austin. As a representative of NARAL Pro-Choice Texas and an Austin resident, I believe paid sick days are key to improving the public health of our city. NARAL Pro-Choice Texas advocates for the rights of all Texans to access reproductive healthcare, including abortion, in a timely, stigma-free manner and therefore we see paid sick days as one key factor to increasing healthcare access. Abortion is a two day procedure, a restriction put in place by our state legislature, and many patients often cite taking two days off work as a barrier due to the loss of wages or fear of losing their job. The loss of wages is particularly important since insurance is prohibited from covering abortion care in Texas, another restriction passed by the legislature, and the procedure is quite costly.

In passing Austin's Earned Sick Time Ordinance, City Council acknowledged that denying earned sick time is an injustice that harms working people, our local economy, and the health, safety, and welfare of all Austin residents. Work Strong Austin believes that the Equal Employment/Fair Housing Office (EE/FHO) should interpret and enforce this ordinance in a way that encourages maximum compliance, so that every worker entitled to benefit from earned sick time under this policy has the right to do so and no employer in this city is placed at a disadvantage for doing the right thing. All of us benefit - workers, employers, and the general public - when complaints under Chapter 4-19 are investigated thoroughly and handled expeditiously, and when violations of the ordinance are taken seriously. For these reasons, I offer the following comments to the recent rules that EE/FHO has released for its implementation of Austin's earned sick time ordinance:



NARAL Pro-Choice Texas

1. **The complaint and investigation process should be as accessible as possible.** It is to the benefit of everyone for workers who believe their rights under the earned sick time ordinance have been violated to easily be able to file complaints with the city. EE/FHO should ensure that its complaint form is available in multiple languages and multiple formats (both digitally and in hard copy), is easy to access, easy to understand, and easy to submit. Whenever possible, EE/FHO investigators should attempt to conduct interviews over the phone and outside of regular business hours, in order to accommodate people who may not have access to reliable transportation or whose work schedules make it difficult for them to be reached during the work day.
2. **Parties should be able to appeal an initial determination of a complaint.** To ensure that everyone's due process rights are respected, parties should have the opportunity to appeal EE/FHO's initial determination of a complaint.
3. **The civil penalties should be designed to deter violations and ensure consistency in enforcement.** The final rules should increase the civil penalty amounts for all violations, regardless of employer size, and limit EE/FHO's discretion in assessing penalties. Except for cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250. Civil penalties for any subsequent violation by an employer - regardless of the size of the employer or when this subsequent violation occurred - should be \$500. Any violation of the retaliation provision - whether it be a first or subsequent violation - should result in the assessment of a \$500 penalty. While the final rules should grant EE/FHO the discretion to assess higher penalties for violations that involve bad faith or malicious conduct, this should be the sole instance when EE/FHO can exercise its discretion to adjust the penalties assessed. EE/FHO should never have the authority to assess a penalty that is lower than the penalty established in the proposed rules.
4. **EE/FHO should resolve complaints in a timely manner and seek a resolution that makes employees whole.** As I mentioned before, abortion is healthcare that is on a timeline so it is important that complaints are resolved as quickly as possible. Many workers likely to file complaints under this ordinance do so in a moment of incredible need. Without sacrificing the thoroughness or integrity of the investigation process, EE/FHO should attempt to resolve complaints as quickly as possible, but no more than 90 days after the complaint is assigned to an investigator. Furthermore, to the extent possible, the final rules should provide



NARAL Pro-Choice Texas

additional clarity regarding how EE/FHO will try to seek voluntary compliance to correct a violation, make workers whole, and deter additional violations in the future.

5. **EE/FHO's final rules should both interpret the ordinance and outline the agency's investigation and enforcement procedures.** Without interpretative rules, it will be difficult for employers to successfully comply with the ordinance, for workers to fully understand their rights under the ordinance, and for EE/FHO to enforce the ordinance fairly and effectively. In particular, these interpretive rules should provide additional guidance on the signs that employers are required to post under the ordinance, how employers should compensate employees who use earned paid sick time, and how employers can ensure that their verification procedures for employees who do so for more than three consecutive work days are "reasonable".

All workers, regardless of what kind of job they do or how much they earn, should be able to care for themselves or a loved one who needs to access abortion. When individuals and families are self-sufficient and can care for themselves we all benefit.

Sincerely,

Blake Rocap
Interim Executive Director
NARAL Pro-Choice Texas

RECEIVED

JUL 25 2018



July 19, 2018

Via Email: jonathan.babiak@austintexas.gov &

U.S. First Class Mail

Jonathan Babiak

City of Austin Equal Employment/Fair Housing Office

1050 East 11th Street, Suite 200

Austin, Texas 78702

RE: Proposed Administrative Rules for Investigation of Complaints and Assessment of Civil Penalties under City Code Chapter 4-19

Dear Mr. Babiak:

On behalf of the Texas Public Policy Foundation, this Comment addresses Proposed Administrative Rules for Investigation of Complaints and Assessment of Civil Penalties under City Code Chapter 4-19, specifically section 5(G), which provides that there is no right of appeal of any final determination issued by the Equal Employment/Fair Housing Office Administrator; section 4(D), which provides for the issuance of a subpoena during the investigation of complaints; and section 6(B)(1)(c), which provides that the Administrator may consider a Respondent/employer's indifference toward or disregard of its obligations under the Paid Sick Leave Ordinance when deciding whether to increase or decrease the amount of a proposed civil penalty. It is worth noting that this Ordinance is the subject of pending litigation in the Travis County District Court (Cause No. D-1-GN-18-001968) and the Third Court of Appeals (No. 03-18-00445-CV).

First, the Paid Sick Leave Ordinance is preempted by state statute. The Texas Minimum Wage Act explicitly preempts municipalities from setting wages in private employment. It also incorporates the standards of the federal Fair Labor Standards Act ("FLSA") into state law. The FLSA does not obligate employers to provide paid sick leave. Rather, it requires employers to pay employees wages for hours actually worked. "Wage" is defined in another section of the Labor Code, relating to protections for employees from deprivation of their justly-earned wages. There, "wage" is defined as including "compensation owed by an employer...for sick leave pay...owed to an employee under a written agreement with the employer or under a written policy of the employer." The two statutes should be read in harmony, with the definition of "wage" including sick leave pay under the state minimum wage law. By increasing the minimum wage for hours not actually worked, the City of Austin has acted outside of the scope of its legal authority under

state law. The proposed rules do not remedy this fundamental defect of preemption by Texas state law.

Second, the Paid Sick Leave Ordinance also violates rights guaranteed under the Texas Constitution. The Ordinance is unconstitutional under the Texas Constitution's Due Course of Law clause. As interpreted by the Texas Supreme Court in *Patel v. Tx Dep't of Licensing & Regulation*, this provision of the Texas Constitution requires any ordinance that restricts liberty or property to be justified by a legitimate governmental interest and not be unduly burdensome. Economic regulations are unconstitutional if, when considered as a whole, the law's actual, real-world effect, as applied to the party(ies) challenging the regulation, is so burdensome as to be oppressive in light of the governmental interest at stake. The City has provided no Austin-specific facts, data, or evidence to justify its articulated interests or assertions that a lack of mandatory paid sick leave harms the local economy. It is also unduly burdensome to employers of all sizes within the City. The proposed rules do not remedy these defects.

Third, the Texas Constitution provides for equal rights and guarantees that "no man, or set of men, is entitled to exclusive separate...privileges." The Paid Sick Leave Ordinance is unconstitutional pursuant to this clause by distinguishing between unionized and non-unionized employers, and granting unionized employers special, exclusive, separate privileges. Essentially, the ordinance allows only unionized employers subject to a collective bargaining agreement to modify the amount of paid sick leave provided to covered employees. Non-unionized employers enjoy no such freedom, and the ordinance denies them equal protection of the law. This provision of the ordinance also infringes upon the freedom of association of employers, which is also protected by the Texas Constitution. The proposed rules do not remedy these defects.

Fourth, the Texas Constitution protects citizens from unreasonable searches and seizures, and states that "no warrant to search any place, or to seize any...thing, shall issue without...probable cause." The Paid Sick Leave Ordinance violates this section of the Texas Constitution by subjecting businesses to warrantless searches and seizures of their business records, and by charging a person with a crime for failing to submit to those warrantless searches. The ordinance fails to provide for any judicial checks and balances on the City's administrative subpoena power, thereby violating the fundamental rights of employers. Proposed rule section 4(D) does not remedy any of these defects.

Fifth, in reference to proposed rule section 5(G), parties to an investigation should be provided an opportunity for judicial review of any final determination by the Administrator. The lack of any appellate review process denies all parties to the investigation due process and an opportunity to be heard.

Sixth, proposed rule section 6(B)(1)(c) only compounds the constitutional injuries of employers subject to the ordinance. This section provides that the Administrator may consider a Respondent/employer's indifference toward or disregard of its obligations under the Paid Sick Leave Ordinance when deciding whether to increase or decrease the amount of a proposed civil penalty. This is a subjective determination that permits the Administrator to punish employers by

increasing the amount of a civil penalty for exercising their constitutionally-protected free speech rights to express an opinion about the Ordinance with which the Administrator disagrees. The right to free speech is a fundamental right enjoyed by all Austin employers. Numerous courts, up to and including the United States Supreme Court, have ruled that governmental entities may not engage in viewpoint discrimination. The freedom of speech is protected by the First Amendment to the United States Constitution, and by Article I, Section 8 of the Texas Constitution. It is within your power to remedy this defect in the proposed rules.

It is important that the above matters are appropriately addressed. Failure to remedy these defects will continue to infringe upon the rights guaranteed by the Texas Constitution, violate Texas state law, and cause harm to the local economy by discouraging employers from doing business in Austin.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Henneke", with a stylized, flowing script.

Robert Henneke
General Counsel and Director of Litigation
Texas Public Policy Foundation

From: [clay.johnson](#)
To: [EarnedSickTime](#)
Subject: 520
Date: Tuesday, July 17, 2018 7:12:26 AM

This message is from Clay Johnson. [REDACTED]

€I am a member of IBEW Local 520. I feel that it is important to clarify how the ordinance will affect workers like me who perform their work in many different cities.

- 1) The rules should clarify that the ordinance applies to workers typically based outside the City of Austin, but who work 80 or more hours inside city limits within a calendar year.
- 2) If an employer does not provide earned paid sick time to an employee whose work duties require them to perform work within Austin city limits, it should be the responsibility of the employer to track any employee's time who performs work duties within the City of Austin to justify that the employee is not eligible for earned sick time under the ordinance.€

From: [Brian Scanlan](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Austin DSA
Date: Thursday, July 19, 2018 7:06:52 PM

This message is from Brian Scanlan. [REDACTED]

1. The complaint and investigation process should be as accessible as possible.

The complaint forms developed should be:

- 1) Simple and easy to complete
- 2) Available in Spanish and other languages
- 3) Available online in an accessible format that is easy to find on the City's website AND beavailable in hardcopy
- 4) Be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

2. The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

3. Penalties under the ordinance should be higher to encourage compliance. Penalties assessed under this ordinance should be designed with deterrence in mind. The final rules should simplify the fee schedule and ensure that it applies equitably to all employers regardless of their size. Absent cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250. Civil penalties for any subsequent violation by an employer ' regardless of the size of the employer or when this subsequent violation occurred ' should be \$500. Any violation of the retaliation provision ' whether it be a first or subsequent violation ' should result in the assessment of a \$500 penalty. ' In addition, the final rules should limit EE/FHO's discretion to adjust these penalties so that they may never be lowered, but may be increased for cases involving bad faith or malicious conduct.

4. The enforcement process should prioritize making workers whole in as timely a manner as possible. 'The final rules should endeavor to close investigations within 90 days, not 120 days. Furthermore, the final rules should outline EE/FHO's guidelines for seeking voluntary compliance of a complaint.

5. EE/FHO must release both interpretive rules as well as procedural rules.

These interpretive rules should, at the very least, clarify

- 1) The rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance;
- 2) The ordinance's signage requirement; and
- 3) What constitutes 'reasonable verification procedures' to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look

to earned paid sick time administrative rules published by other benchmark cities across the country.

From: [Ana Gonzalez](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Austin Earn Paid Sick Time Administrative Rules Recommendations
Date: Tuesday, July 17, 2018 1:36:57 PM

This message is from Ana Gonzalez. [REDACTED]

Mr. Babiak,

Please see below my recommendations for the Austin Earned Sick Time ordinance.

Thank you,
Ana

1. The civil penalties need to be higher to encourage compliance. The minimum penalty for a first time violation should be \$250, any subsequent violation should result in an automatic \$500 penalty. EE/FHO should have limited discretion to increase civil penalties in cases involving bad faith or retaliation, but should never have the discretion to lower the penalty.
2. The investigation process needs to be faster. The proposed rules encourage the city to resolve complaints in 120 days. That is too long. At the very least, complaints should be resolved in 90 days.
3. There should be a right to appeal. The right to appeal is fundamental to due process. The only way to ensure fair, equitable treatment in the city's administration of this ordinance is for it to allow either party the right to appeal an initial determination on a complaint.
4. The complaint and investigation process should be as accessible as possible. The process should accommodate non-English speakers, those with limited access to a computer or the Internet, those without access to reliable transportation, and those whose work schedules make it difficult to participate in in-person meetings during regular business hours
5. EE/FHO needs to establish interpretive rules in addition to procedural rules. Employers need this clarity to ensure full compliance with the ordinance, workers need this clarity to fully understand their rights under the ordinance, and the city will need this clarity to properly enforce it.

From: [Priscila Martinez](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Austin Earned Paid Sick Time Comments from a district 3 resident
Date: Wednesday, July 18, 2018 2:10:19 PM

This message is from Priscila Martinez . [REDACTED]

1. The civil penalties need to be higher to encourage compliance!!! The minimum penalty for a first time violation should be \$250, any subsequent violation should result in an automatic \$500 penalty. EE/FHO should have limited discretion to increase civil penalties in cases involving bad faith or retaliation, but should never have the discretion to lower the penalty.
2. The investigation process needs to be faster. The proposed rules encourage the city to resolve complaints in 120 days. That is too long. At the very least, complaints should be resolved in 90 days.
3. There should be a right to appeal. The right to appeal is fundamental to due process. The only way to ensure fair, equitable treatment in the city's administration of this ordinance is for it to allow either party the right to appeal an initial determination on a complaint.
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5. EE/FHO needs to establish interpretive rules in addition to procedural rules. Employers need this clarity to ensure full compliance with the ordinance, workers need this clarity to fully understand their rights under the ordinance, and the city will need this clarity to properly enforce it.

From: [Alondra Johnson](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Austin Earned Sick Time Ordinance - Comment on Proposed Rules
Date: Thursday, July 19, 2018 11:49:26 AM

This message is from Alondra Johnson. [REDACTED]

1. The civil penalties need to be higher to encourage compliance. The minimum penalty for a first time violation should be \$250, any subsequent violation should result in an automatic \$500 penalty. EE/FHO should have limited discretion to increase civil penalties in cases involving bad faith or retaliation, but should never have the discretion to lower the penalty.
2. The investigation process needs to be faster. The proposed rules encourage the city to resolve complaints in 120 days. That is too long. At the very least, complaints should be resolved in 90 days.
3. There should be a right to appeal. The right to appeal is fundamental to due process. The only way to ensure fair, equitable treatment in the city's administration of this ordinance is for it to allow either party the right to appeal an initial determination on a complaint.
4. The complaint and investigation process should be as accessible as possible. The process should accommodate non-English speakers, those with limited access to a computer or the Internet, those without access to reliable transportation, and those whose work schedules make it difficult to participate in in-person meetings during regular business hours
5. EE/FHO needs to establish interpretive rules in addition to procedural rules. Employers need this clarity to ensure full compliance with the ordinance, workers need this clarity to fully understand their rights under the ordinance, and the city will need this clarity to properly enforce it.

From: [Jeffrey Glass](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Austin paid sick time ordinance â€™ enforcement comments
Date: Saturday, July 14, 2018 10:05:59 PM

This message is from Jeffrey Glass. [REDACTED]

1. The complaint and investigation process should be as accessible as possible.

The complaint forms developed should be:

- 1) Simple and easy to complete
- 2) Available in Spanish and other languages
- 3) Available online in an accessible format that is easy to find on the Cityâ€™s website AND beavailable in hardcopy
- 4) Be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

2. The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

3. Penalties under the ordinance should be higher to encourage compliance. Penalties assessed under this ordinance should be designed with deterrence in mind. The final rules should simplify the fee schedule and ensure that it applies equitably to all employers regardless of their size. Absent cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250. Civil penalties for any subsequent violation by an employer â€™ regardless of the size of the employer or when this subsequent violation occurred â€™ should be \$500. Any violation of the retaliation provision â€™ whether it be a first or subsequent violation â€™ should result in the assessment of a \$500 penalty. â€™ In addition, the final rules should limit EE/FHOâ€™s discretion to adjust these penalties so that they may never be lowered, but may be increased for cases involving bad faith or malicious conduct.

4. The enforcement process should prioritize making workers whole in as timely a manner as possible. â€™The final rules should endeavor to close investigations within 90 days, not 120 days. Furthermore, the final rules should outline EE/FHOâ€™s guidelines for seeking voluntary compliance of a complaint.

5. EE/FHO must release both interpretive rules as well as procedural rules.

These interpretive rules should, at the very least, clarify

- 1) The rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance;
- 2) The ordinanceâ€™s signage requirement; and
- 3) What constitutes â€™reasonable verification proceduresâ€™ to vet an employeeâ€™s request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look

to earned paid sick time administrative rules published by other benchmark cities across the country.

From: [Hannah Noori](#)
To: [EarnedSickTime](#)
Subject: Austin Paid Sick Time
Date: Monday, July 16, 2018 10:03:59 PM

This message is from Hannah Noori. [REDACTED]

1. The complaint and investigation process should be as accessible as possible. Many of Austin's workers - especially those most likely to experience violations of the paid sick ordinance - may have limited English proficiency or low literacy. They may not have regular access to a computer or the internet, or know how to use e-mail or a computer at all. Because of the hours they work or the nature of their employment situation, these workers may not be easily reached during regular business hours or be available to attend in-person meetings during the business day. To be effective, the EE/FHO's complaint and investigation process for the earned paid sick time ordinance needs to account for and accommodate these realities.

WHAT DO WE RECOMMEND? The complaint forms developed by EE/FHO should be

1) simple and easy to complete 2) available in Spanish and other languages 3) available online in an accessible format that is easy to find on the City's website AND be available in hardcopy 4) be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

X2. Parties should have the right to appeal an initial determination on their complaint. Under the proposed rules, once the EE/FHO reaches its decision on a complaint, neither party has any chance to appeal that decision. We know that people make mistakes. The right to appeal is essential to ensure that all parties to a complaint are treated fairly in the investigation and enforcement process.

WHAT DO WE RECOMMEND? The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

3. Penalties under the ordinance should be higher to encourage compliance. Penalties assessed under this ordinance should be designed with deterrence in mind. The proposed penalties - \$100 for small employers and \$150 for all other employers for a first time violation - are far too low. Indeed, they are so low that they likely create a financial incentive for employers to violate the ordinance and risk "getting caught" than actually comply. Furthermore, the proposed rules give the EE/FHO wide discretion to increase or decrease the penalty assessed.

WHAT DO WE RECOMMEND? The final rules should simplify the fee schedule and ensure that it applies equitably to all employers regardless of their size. Absent cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250. Civil penalties for any subsequent violation by an employer

- regardless of the size of the employer or when this subsequent violation occurred - should be \$500. Any violation of the retaliation provision - whether it be a first or subsequent violation - should result in the assessment of a \$500 penalty. In addition, the final rules should limit EE/FHO's discretion to adjust these penalties so that they may never be lowered, but may be increased for cases involving bad faith or malicious conduct.

4. The enforcement process should prioritize making workers whole in as timely a manner as possible. Violations of this ordinance can have grave consequences for an employee and their family and many people filing complaints may be doing so in moments of personal crisis. The proposed rules say that EE/FHO should try to close an investigation within 120 days, yet provide no guidance on how EE/FHO is supposed to seek voluntary compliance.

WHAT DO WE RECOMMEND? The enforcement process should attempt to resolve complaints as expeditiously as possible in a way that makes employees whole. The final rules should endeavor to close investigations within 90 days, not 120 days. Furthermore, the final rules should outline EE/FHO's guidelines for seeking voluntary compliance of a complaint.

5. EE/FHO must release both interpretive rules as well as procedural rules. The proposed rules released by EE/FHO outlines a process for receiving, investigating, and resolving complaints, but provide no guidance on how the agency will actually interpret the ordinance. Without interpretative rules, it will be difficult for employers to successfully comply with the ordinance, for workers to fully understand their rights under the ordinance, and for EE/FHO to enforce the ordinance fairly and effectively.

WHAT DO WE RECOMMEND? The final rules published by EE/FHO should include both procedural rules and interpretive rules. These interpretive rules should, at the very least, clarify 1) the rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance; 2) the ordinance's signage requirement; and 3) what constitutes "reasonable verification procedures" to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look to earned paid sick time administrative rules published by other benchmark cities across the country.

From: [Sheila frankfurt](#)
To: [EarnedSickTime](#)
Subject: Comment on Paid sick leave enforcement
Date: Thursday, July 19, 2018 7:13:29 PM

This message is from Sheila Frankfurt . [REDACTED]

1. The complaint and investigation process should be as accessible as possible.

The complaint forms developed should be:

- 1) Simple and easy to complete
- 2) Available in Spanish and other languages
- 3) Available online in an accessible format that is easy to find on the City's website AND beavailable in hardcopy
- 4) Be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

2. The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

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- 2) The ordinance's signage requirement; and
- 3) What constitutes "reasonable verification procedures" to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look to earned paid sick time administrative rules published by other benchmark cities across the

country.

From: [Elias Ponvert](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Comment regarding proposed rules for Austin's paid sick days ordinance
Date: Thursday, July 19, 2018 7:32:08 PM

This message is from Elias Ponvert. [REDACTED]

Hello. I join Work Strong Austin in making these recommendations regarding rules for the paid sick days ordinance:

1. The complaint and investigation process should be as accessible as possible.

The complaint forms developed should be:

- 1) Simple and easy to complete
- 2) Available in Spanish and other languages
- 3) Available online in an accessible format that is easy to find on the City's website AND be available in hardcopy
- 4) Be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

2. The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

3. Penalties under the ordinance should be higher to encourage compliance. Penalties assessed under this ordinance should be designed with deterrence in mind. The final rules should simplify the fee schedule and ensure that it applies equitably to all employers regardless of their size. Absent cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250. Civil penalties for any subsequent violation by an employer ' regardless of the size of the employer or when this subsequent violation occurred ' should be \$500. Any violation of the retaliation provision ' whether it be a first or subsequent violation ' should result in the assessment of a \$500 penalty. ' In addition, the final rules should limit EE/FHO's discretion to adjust these penalties so that they may never be lowered, but may be increased for cases involving bad faith or malicious conduct.

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These interpretive rules should, at the very least, clarify

- 1) The rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance;
- 2) The ordinance's signage requirement; and

3) What constitutes “reasonable verification procedures” to vet an employee’s request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look to earned paid sick time administrative rules published by other benchmark cities across the country.

From: [Yvonne Simental](#)
To: [Babiak, Jonathan](#)
Cc: [Robert Henneke](#); [Munera Al-Fuhaid](#)
Subject: Comment to Proposed Paid Sick Leave Rules
Date: Thursday, July 19, 2018 10:44:13 AM
Attachments: [2018.07.19 TPPF Comment to Proposed PSL Rules.pdf](#)

Mr. Babiak,

Attached please find a comment on behalf of Texas Public Policy Foundation in regard to the Proposed Administrative Rules for Investigation of Complaints and Assessment of Civil Penalties under City Code Chapter 4-19.

Thank you,

Yvonne Simental
Center for the American Future
Texas Public Policy Foundation
(512) 520-6764 - cell
www.texaspolicy.com

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July 19, 2018

***Via Email: jonathan.babiak@austintexas.gov &
U.S. First Class Mail***

Jonathan Babiak
City of Austin Equal Employment/Fair Housing Office
1050 East 11th Street, Suite 200
Austin, Texas 78702

RE: Proposed Administrative Rules for Investigation of Complaints and Assessment of
Civil Penalties under City Code Chapter 4-19

Dear Mr. Babiak:

On behalf of the Texas Public Policy Foundation, this Comment addresses Proposed Administrative Rules for Investigation of Complaints and Assessment of Civil Penalties under City Code Chapter 4-19, specifically section 5(G), which provides that there is no right of appeal of any final determination issued by the Equal Employment/Fair Housing Office Administrator; section 4(D), which provides for the issuance of a subpoena during the investigation of complaints; and section 6(B)(1)(c), which provides that the Administrator may consider a Respondent/employer's indifference toward or disregard of its obligations under the Paid Sick Leave Ordinance when deciding whether to increase or decrease the amount of a proposed civil penalty. It is worth noting that this Ordinance is the subject of pending litigation in the Travis County District Court (Cause No. D-1-GN-18-001968) and the Third Court of Appeals (No. 03-18-00445-CV).

First, the Paid Sick Leave Ordinance is preempted by state statute. The Texas Minimum Wage Act explicitly preempts municipalities from setting wages in private employment. It also incorporates the standards of the federal Fair Labor Standards Act ("FLSA") into state law. The FLSA does not obligate employers to provide paid sick leave. Rather, it requires employers to pay employees wages for hours actually worked. "Wage" is defined in another section of the Labor Code, relating to protections for employees from deprivation of their justly-earned wages. There, "wage" is defined as including "compensation owed by an employer...for sick leave pay...owed to an employee under a written agreement with the employer or under a written policy of the employer." The two statutes should be read in harmony, with the definition of "wage" including sick leave pay under the state minimum wage law. By increasing the minimum wage for hours not actually worked, the City of Austin has acted outside of the scope of its legal authority under

Jonathan Babiak
July 19, 2018
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state law. The proposed rules do not remedy this fundamental defect of preemption by Texas state law.

Second, the Paid Sick Leave Ordinance also violates rights guaranteed under the Texas Constitution. The Ordinance is unconstitutional under the Texas Constitution's Due Course of Law clause. As interpreted by the Texas Supreme Court in *Patel v. Tx Dep't of Licensing & Regulation*, this provision of the Texas Constitution requires any ordinance that restricts liberty or property to be justified by a legitimate governmental interest and not be unduly burdensome. Economic regulations are unconstitutional if, when considered as a whole, the law's actual, real-world effect, as applied to the party(ies) challenging the regulation, is so burdensome as to be oppressive in light of the governmental interest at stake. The City has provided no Austin-specific facts, data, or evidence to justify its articulated interests or assertions that a lack of mandatory paid sick leave harms the local economy. It is also unduly burdensome to employers of all sizes within the City. The proposed rules do not remedy these defects.

Third, the Texas Constitution provides for equal rights and guarantees that "no man, or set of men, is entitled to exclusive separate...privileges." The Paid Sick Leave Ordinance is unconstitutional pursuant to this clause by distinguishing between unionized and non-unionized employers, and granting unionized employers special, exclusive, separate privileges. Essentially, the ordinance allows only unionized employers subject to a collective bargaining agreement to modify the amount of paid sick leave provided to covered employees. Non-unionized employers enjoy no such freedom, and the ordinance denies them equal protection of the law. This provision of the ordinance also infringes upon the freedom of association of employers, which is also protected by the Texas Constitution. The proposed rules do not remedy these defects.

Fourth, the Texas Constitution protects citizens from unreasonable searches and seizures, and states that "no warrant to search any place, or to seize any...thing, shall issue without...probable cause." The Paid Sick Leave Ordinance violates this section of the Texas Constitution by subjecting businesses to warrantless searches and seizures of their business records, and by charging a person with a crime for failing to submit to those warrantless searches. The ordinance fails to provide for any judicial checks and balances on the City's administrative subpoena power, thereby violating the fundamental rights of employers. Proposed rule section 4(D) does not remedy any of these defects.

Fifth, in reference to proposed rule section 5(G), parties to an investigation should be provided an opportunity for judicial review of any final determination by the Administrator. The lack of any appellate review process denies all parties to the investigation due process and an opportunity to be heard.

Sixth, proposed rule section 6(B)(1)(c) only compounds the constitutional injuries of employers subject to the ordinance. This section provides that the Administrator may consider a Respondent/employer's indifference toward or disregard of its obligations under the Paid Sick Leave Ordinance when deciding whether to increase or decrease the amount of a proposed civil penalty. This is a subjective determination that permits the Administrator to punish employers by

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increasing the amount of a civil penalty for exercising their constitutionally-protected free speech rights to express an opinion about the Ordinance with which the Administrator disagrees. The right to free speech is a fundamental right enjoyed by all Austin employers. Numerous courts, up to and including the United States Supreme Court, have ruled that governmental entities may not engage in viewpoint discrimination. The freedom of speech is protected by the First Amendment to the United States Constitution, and by Article I, Section 8 of the Texas Constitution. It is within your power to remedy this defect in the proposed rules.

It is important that the above matters are appropriately addressed. Failure to remedy these defects will continue to infringe upon the rights guaranteed by the Texas Constitution, violate Texas state law, and cause harm to the local economy by discouraging employers from doing business in Austin.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Henneke", with a stylized, flowing script.

Robert Henneke
General Counsel and Director of Litigation
Texas Public Policy Foundation

From: [Sophia Campos](#)
To: [EarnedSickTime](#)
Subject: Comments in relation to Paid Sick Ordinance Rules
Date: Thursday, July 19, 2018 1:29:15 PM

This message is from Sophia Campos. [REDACTED]

To whom it may concern,

My name is Sophia Campos and I am a workers right's organizer at the Workers Defense Project. I have read the proposed rules for the Paid Sick Ordinance and have a few suggestions that I believe will have a beneficial effect for the workers who stand to benefit from this ordinance as well as the employers who will have to act in accordance with it.

- 1) The civil penalties for failure to comply with the ordinance should result in a greater minimum penalty to increase the likelihood that businesses will comply. \$200 for businesses with 15 or less employees, and \$250 for businesses with 16 or more employees. \$500 for subsequent offenses.
- 2) EE/FHO should have the discretion to raise the fine if retaliation against the complainant has occurred as a result of the initial complaint or if issues of bad faith are involved. However, discretion to lower the fine should not be permitted.
- 3) Complainants should have the chance to appeal as this is fundamental to due process.
- 4) Complaints should be resolved as quickly as possible, 90 days or less, not 180 days.
- 5) EE/FHO needs to establish interpretive rules in addition to procedural rules to ensure the understanding of this ordinance by both employers and employees.

Thank you for your time,
Sophia Campos

From: [Candelario Vazquez](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Comments on Earned Sick Time
Date: Thursday, July 19, 2018 3:03:41 PM

This message is from Candelario Vazquez. [REDACTED]

The city spoke up, and we need real action on this policy, these are my comments:

1. The civil penalties need to be higher to encourage compliance. The minimum penalty for a first time violation should be \$250, any subsequent violation should result in an automatic \$500 penalty. EE/FHO should have limited discretion to increase civil penalties in cases involving bad faith or retaliation, but should never have the discretion to lower the penalty.
2. The investigation process needs to be faster. The proposed rules encourage the city to resolve complaints in 120 days. That is too long. At the very least, complaints should be resolved in 90 days.
3. There should be a right to appeal. The right to appeal is fundamental to due process. The only way to ensure fair, equitable treatment in the city's administration of this ordinance is for it to allow either party the right to appeal an initial determination on a complaint.
4. The complaint and investigation process should be as accessible as possible. The process should accommodate non-English speakers, those with limited access to a computer or the Internet, those without access to reliable transportation, and those whose work schedules make it difficult to participate in in-person meetings during regular business hours
5. EE/FHO needs to establish interpretive rules in addition to procedural rules. Employers need this clarity to ensure full compliance with the ordinance, workers need this clarity to fully understand their rights under the ordinance, and the city will need this clarity to properly enforce it.

Thank you,
Cande

From: [Rebecca Eisenbrey](#)
To: [EarnedSickTime](#)
Cc: [Babiak, Jonathan](#)
Subject: Comments on Notice of Proposed Adoption of Administrative Rules for Investigation of Complaints and Assessment of Penalties under City Code Chapter 4-19
Date: Friday, July 20, 2018 1:52:51 PM
Attachments: [2018-07-20 EJC Comment on EST Proposed Rules.pdf](#)

Please see attached!

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Rebecca Eisenbrey
Staff Attorney/Equal Justice Works Fellow
Sponsored by Texas Access to Justice Foundation
Equal Justice Center
510 S. Congress Ave., Suite 206
Austin, TX 78704
(512) 474-0007 x-132

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July 20, 2018

ATTN: Jonathan Babiak
City of Austin Equal Employment/Fair Housing Office
1050 E 11th St., Ste. 200
Austin, Texas 78702

Via email to earnedsicktime@austintexas.gov

Re: Comments on Notice of Proposed Adoption of Administrative Rules for Investigation of Complaints and Assessment of Penalties under City Code Chapter 4-19

To Whom It May Concern:

The Equal Justice Center (“EJC”) is a non-profit law firm and employment justice organization that empowers low-income families, workers, and communities across the state of Texas to achieve fair treatment in the workplace and in our shared society. We write in response to the City of Austin Human Resources Department’s (“the Department’s”) proposed “Rules for Investigation of Complaints and Assessment of Penalties under City Code Chapter 4-19” (“the Proposed Rules”).

When it passed the Earned Sick Time Ordinance (“the Ordinance”), Austin’s City Council acknowledged that earned sick time is a wise investment for employers, workers, and the general public. Without the ability to earn paid sick days, workers must choose between going to work sick (or sending a child to school sick) and losing much-needed pay. The many employers who already provide paid sick days have a more level playing field with their competitors when more workers are given the opportunity to earn paid sick time. And businesses who provide paid sick days can more easily maintain a healthy and productive workplace. To ensure that the Council’s vision is fulfilled, the EJC urges the Department to interpret and enforce the Ordinance in a way that **provides maximum coverage and encourages maximum compliance**.

The EJC agrees with the comments and recommendations submitted by Workers Defense Project and our other colleagues in the Work Strong Austin coalition, and we encourage the Department to take them under serious consideration. In addition, we make the following specific recommendations:

Part 4: Investigation of Complaints.

Part 4(C)(2) of the Proposed Rules provides that the Respondent may submit a written response to a Complaint, and Part 4(E) provides that the Complainant and the Respondent “may submit witness statements and documents during the investigation that prove or disprove the allegations in the Complaint.” To provide the Complainant with the most fair and complete opportunity to support her claim, the EJC encourages the Department to amend Part 4(C)(2) to require that a copy of the response be provided to the Complainant, and to amend Part 4(E) to clarify that the Complainant may submit statements and documents to dispute allegations in the response.

Part 4(F) of the Proposed Rules sets forth the standard for the consideration of evidence. The EJC agrees that this standard is appropriate for the determination of findings of fact. The investigation of complaints will also involve making conclusions and findings of law, however, and a different standard may be required for those determinations. The EJC therefore recommends that the Department add a new Part 4(G) that states: “Conclusions of law shall be made in consultation with the City Attorney’s Office with reference to the definitions in City Code § 4-19-1 and relevant state and federal law.”

Part 5: Final Determination on Complaints.

Part 5(A) of the Proposed Rules requires the Investigator to submit a recommended final determination to the Administrator, stating whether the evidence is sufficient or insufficient to establish a violation. To ensure that the Administrator has the most complete information during his or her review of the recommendation, the EJC urges the Department to amend Part 5(A) to read: “shall state whether the evidence is sufficient or insufficient to establish a violation of Chapter 4-19 based on a preponderance of the evidence submitted during the investigation, setting forth in detail all findings of fact and conclusions of law.”

Part 5(B) of the Proposed Rules governs the submission of the recommended final determination to the Administrator. The EJC believes that, to ensure that all parties’ due process rights are respected, the Complainant and Respondent must be provided with notice of the recommendation and an opportunity to respond. We therefore recommend that the Department add a new provision after Part 5(B) that states: “The Complainant and Respondent shall be provided with a copy of the recommended final determination on the date it is made to the Administrator. The parties shall have 10 business days to submit to the Administrator an appeal disputing any findings of fact and conclusions of law.”

Part 5(C) and (D) refer to the establishment of “voluntary compliance” with the Ordinance. The EJC applauds the Department for encouraging voluntary compliance. However, we are concerned that the term is not defined. Is it forward-looking, a promise to come into compliance and not violate the Ordinance in the future? Or is it backward-looking, an effort to make the Complainant and other affected employees whole? We recommend that the Department adopt the latter

approach and develop a clear standard for evaluating whether voluntary compliance has been established.

Part 7: Closure of Complaint Investigations.

Part 7(A)(5) states that the investigation into a Complaint will be closed if “[t]he Administrator determines that the Complainant has failed to cooperate reasonably in the investigation of the Complaint, or has abandoned the Complaint.” The EJC worries that the terms “cooperate reasonably” and “abandoned” are too vague and do not give proper guidance to Complainants about their responsibilities during an investigation. In order to clarify expectations, we recommend that the provision be revised to read: “The Administrator determines that the Complainant has abandoned the Complaint, i.e., has continued to fail to respond to the City’s requests for information for more than 21 days after receipt of written notice that the investigation into the Complaint is at risk of being closed.”

Other Issues.

Joint Employment. Joint employment relationships are common among low-wage employers. For example, many low-wage workers are employed by staffing agencies that assign them to work at other firms. The staffing agencies determine some of the workers’ terms of employment, such as the wage rate and job qualifications, but the other firm directs their daily tasks and their schedule and hours. Under state and federal law, because both entities co-determine and share control over the terms and conditions of employment, both businesses may be found to be joint employers who are responsible, both individually and jointly, to employees for compliance with worker protection laws.

The Department should adopt rules expressly stating that separate entities may be treated as joint employers under the Ordinance. The EJC recommends a new provision stating: “(A) Separate entities may be treated as a joint employer under City Code § 4-19. (B) Joint employers may be separate and distinct entities with separate owners, managers, and facilities. (C) If the facts establish that the Complainant is jointly employed by two or more employers, all joint employers are responsible, both individually and jointly, for compliance with all of the applicable provisions of City Code § 4-19.”

Immigration Status. Immigrant workers are particularly vulnerable to abuse in the workplace because employers know they are generally reluctant to report violations out of fear of being reported to immigration authorities. In order to ensure that all workers are able to enjoy the full protection of the Ordinance, the EJC encourages the Department to expressly state that § 4-19 applies to all employees regardless of immigration status and to adopt a new provision that states: “Employees are not required to provide, and the City will not request, information regarding the immigration status of any person filing a complaint.”

Conclusion

To ensure that all eligible workers have access to earned sick time, the Department must interpret and enforce the Ordinance in a way that provides maximum coverage and encourages maximum compliance. To that end, the EJC hopes that the Department will adopt our recommendations and those of our colleagues in the Work Strong Alliance. We thank you for your consideration.

Sincerely,

THE EQUAL JUSTICE CENTER

A handwritten signature in blue ink, appearing to read 'Rebecca Eisenbrey', is positioned above the typed name.

By: Rebecca Eisenbrey
Staff Attorney
512-474-0007 ext. 132

From: [Emily Speight](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Comments on Paid Sick Days Rules
Date: Tuesday, July 17, 2018 9:56:25 AM

This message is from Emily Speight. [REDACTED]

1. The complaint and investigation process should be as accessible as possible. Many of Austin's workers - especially those most likely to experience violations of the paid sick ordinance - may have limited English proficiency or low literacy. They may not have regular access to a computer or the internet, or know how to use e-mail or a computer at all. Because of the hours they work or the nature of their employment situation, these workers may not be easily reached during regular business hours or be available to attend in-person meetings during the business day. To be effective, the EE/FHO's complaint and investigation process for the earned paid sick time ordinance needs to account for and accommodate these realities.

WHAT DO WE RECOMMEND? The complaint forms developed by EE/FHO should be 1) simple and easy to complete 2) available in Spanish and other languages 3) available online in an accessible format that is easy to find on the City's website AND be available in hardcopy 4) be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

X2. Parties should have the right to appeal an initial determination on their complaint. Under the proposed rules, once the EE/FHO reaches its decision on a complaint, neither party has any chance to appeal that decision. We know that people make mistakes. The right to appeal is essential to ensure that all parties to a complaint are treated fairly in the investigation and enforcement process.

WHAT DO WE RECOMMEND? The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

3. Penalties under the ordinance should be higher to encourage compliance. Penalties assessed under this ordinance should be designed with deterrence in mind. The proposed penalties - \$100 for small employers and \$150 for all other employers for a first time violation - are far too low. Indeed, they are so low that they likely create a financial incentive for employers to violate the ordinance and risk "getting caught" than actually comply. Furthermore, the proposed rules give the EE/FHO wide discretion to increase or decrease the penalty assessed.

WHAT DO WE RECOMMEND? The final rules should simplify the fee schedule and ensure that it applies equitably to all employers regardless of their size. Absent cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250. Civil penalties for any subsequent violation by an employer - regardless of the size of the employer or when this subsequent violation occurred -

should be \$500. Any violation of the retaliation provision - whether it be a first or subsequent violation - should result in the assessment of a \$500 penalty. In addition, the final rules should limit EE/FHO's discretion to adjust these penalties so that they may never be lowered, but may be increased for cases involving bad faith or malicious conduct.

4. The enforcement process should prioritize making workers whole in as timely a manner as possible. Violations of this ordinance can have grave consequences for an employee and their family and many people filing complaints may be doing so in moments of personal crisis. The proposed rules say that EE/FHO should try to close an investigation within 120 days, yet provide no guidance on how EE/FHO is supposed to seek voluntary compliance.

WHAT DO WE RECOMMEND? The enforcement process should attempt to resolve complaints as expeditiously as possible in a way that makes employees whole. The final rules should endeavor to close investigations within 90 days, not 120 days. Furthermore, the final rules should outline EE/FHO's guidelines for seeking voluntary compliance of a complaint.

5. EE/FHO must release both interpretive rules as well as procedural rules. The proposed rules released by EE/FHO outlines a process for receiving, investigating, and resolving complaints, but provide no guidance on how the agency will actually interpret the ordinance. Without interpretative rules, it will be difficult for employers to successfully comply with the ordinance, for workers to fully understand their rights under the ordinance, and for EE/FHO to enforce the ordinance fairly and effectively.

WHAT DO WE RECOMMEND? The final rules published by EE/FHO should include both procedural rules and interpretive rules. These interpretive rules should, at the very least, clarify 1) the rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance; 2) the ordinance's signage requirement; and 3) what constitutes a reasonable verification procedure to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look to earned paid sick time administrative rules published by other benchmark cities across the country.

From: [Danielle M Rojas](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Comments on Paid Sick Leave
Date: Thursday, July 19, 2018 7:02:28 PM

This message is from Danielle M Rojas. [REDACTED]

The complaint and investigation process should be as accessible as possible.

The complaint forms developed should be:

- 1) Simple and easy to complete
 - 2) Available in Spanish and other languages
 - 3) Available online in an accessible format that is easy to find on the City's website AND beavailable in hardcopy
 - 4) Be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.
2. The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.
3. Penalties under the ordinance should be higher to encourage compliance. Penalties assessed under this ordinance should be designed with deterrence in mind. The final rules should simplify the fee schedule and ensure that it applies equitably to all employers regardless of their size. Absent cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250. Civil penalties for any subsequent violation by an employer ' regardless of the size of the employer or when this subsequent violation occurred ' should be \$500. Any violation of the retaliation provision ' whether it be a first or subsequent violation ' should result in the assessment of a \$500 penalty. ' In addition, the final rules should limit EE/FHO's discretion to adjust these penalties so that they may never be lowered, but may be increased for cases involving bad faith or malicious conduct.
4. The enforcement process should prioritize making workers whole in as timely a manner as possible. 'The final rules should endeavor to close investigations within 90 days, not 120 days. Furthermore, the final rules should outline EE/FHO's guidelines for seeking voluntary compliance of a complaint.
5. EE/FHO must release both interpretive rules as well as procedural rules.

These interpretive rules should, at the very least, clarify

- 1) The rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance;
- 2) The ordinance's signage requirement; and
- 3) What constitutes 'reasonable verification procedures' to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look to earned paid sick time administrative rules published by other benchmark cities across the


country.

From: [Tanya Goldman](#)
To: [Babiak, Jonathan](#)
Cc: [Pronita Gupta](#)
Subject: Comments on Proposed Rules for Investigation of Complaints and Assessment of Penalties (Chapter 4-19)
Date: Thursday, July 19, 2018 2:25:46 PM
Attachments: [CLASP comments on Austin PSDs Rules Final 7.19.18.pdf](#)

Dear Mr. Babiak,

I attach comments from the Center for Law and Social Policy (CLASP) on the Department's Proposed Rules for Investigation of Complaints and Assessment of Penalties under City Code Chapter 4-19. Thank you for your consideration of our comments. Please do not hesitate to reach out if we can be of assistance to you or your team as you implement the Earned Sick Time Ordinance.

Best,
Tanya

Tanya L. Goldman
Senior Policy Analyst/Attorney, Job Quality
Center for Law and Social Policy (CLASP)
1200 18th Street NW | Suite 200 | Washington, DC 20036
(202) 906-8074 |  | www.clasp.org



Policy solutions that work for low-income people

Jonathan Babiak
City of Austin Equal Employment/Fair Housing Office
1050 East 11th Street, Suite 200
Austin, Texas 78702

Via e-mail: Jonathan.Babiak@austintexas.gov

Dear Mr. Babiak:

Thank you for the opportunity to comment on the Human Resources Department's Proposed Rules for Investigation of Complaints and Assessment of Penalties under Austin's Earned Sick Time Ordinance, City Code Chapter 4-19 (Proposed Rules). We appreciate Austin's leadership on establishing earned sick and safe time standards. As you know, this will provide a critical benefit for workers. Low-wage workers who take needed sick time to care for themselves or a loved one often lose wages or even their jobs – outcomes that are harmful to any family's economic security, but that are devastating to those already barely making ends meet on low wages.

The Center for Law and Social Policy (CLASP) is a national organization that works to improve the lives of low-income people by developing practical yet visionary strategies for reducing poverty, promoting economic opportunity, and addressing barriers faced by people of color. We advocate for and conduct research and analysis on improving jobs, including through paid sick days, paid family and medical leave, and fair scheduling. We also work with community and government partners to promote effective implementation and enforcement of labor standards. In particular, we work extensively on paid sick days, partnering with and advising state and local groups working to pass or expand workers' access to this essential benefit.¹ Based on our experience working with government and community partners in other jurisdictions, we offer the Equal Employment/Fair Housing Office (EE/FHO) the following comments on the Proposed Rules to ensure maximum compliance with the law.

Thank you for including the following provisions in the proposed rule, which will help ensure that low-wage workers are aware of and able to access their rights to earned sick days:

- Section 3(C)(1), which allows a Complainant to initiate a complaint in-person, by telephone, or by e-mail.
- Clear timelines in Section 4(C) for the investigation of Complaints.
- Responsiveness to Complainants and Respondents for failure to meet determination timelines, under Section 5(B), or for delays in closing the investigation, under Section 5(H).
- The Administrator's independent review of the Complaint and the evidence gathered, under Section 5(C).
- Reiterating that there is no phase-in period for penalty assessment for violations of Section 4-19-5, Retaliation.

We have concerns, however, about whether the Proposed Rules are sufficiently protective of and accessible to all workers, including lower income workers, immigrants, and people of color. For example, we are concerned about (1) whether the filing and investigation procedures are sufficiently accessible to and protective of workers and promote ongoing and overall workplace compliance with the Ordinance; (2) whether determinations will be timely and appealable; (3) whether the penalty assessments will provide restitution and deterrence; (4) missing definitions that will add clarity and prevent abuse; and (5) finally, we encourage the EE/FHO to consider the impact of misclassification on full enforcement of the Ordinance. Incorporating these considerations will ensure that low-income workers also benefit from this important Ordinance. We urge the EE/FHO to make the following changes to the Proposed Rules:

(1) Filing and investigation procedures should be strategic, accessible, and protective (Sections 3 and 4)

- a. Strategic workplace investigations would promote robust enforcement and protect workers

This section appears to assume each investigation will only respond to an individual complaint. It would be more strategic to evaluate payroll records for the entire workplace. If there are violations as to one individual, there are likely violations as to others. Additionally, a single complaint-driven approach leaves behind many vulnerable workers. Investigating the whole workplace helps protect the identity of the complainant and prevent retaliation. Some workers may not be aware of their rights, fear reprisal if they speak up, or think their complaints won't be considered. Unfortunately, most workers' fears of retaliation are well-founded.

The Ordinance provides that "EEO/FHO may inform employees at a worksite of any investigation of a complaint at that worksite alleging a violation of this Chapter," illustrating an understanding that where there is one violation, there are potentially additional violations, particularly if the violation stems from an employer policy contrary to the Ordinance. To the extent the agency considers its investigatory authority to be limited by the Ordinance, we would recommend including a discussion in the agency's annual written report, under Section 4-19-8.

- b. Protecting complainants' identities to prevent retaliation

Whenever feasible, the agency should maintain the confidentiality of a complainant's identity to protect against retaliation, particularly as the Ordinance allows the agency to investigate anonymous complaints. While this will not be feasible for all individual complaints, where the allegation is about a company-wide practice or policy, or about a specific subset of workers (such as part-time employees), it should be possible and preferable to investigate and maintain anonymity.

- c. Forms and administrative procedures should prioritize accessibility

When EE/FHO prescribes forms and administrative procedures under Sections 3B and 4B, the agency should strive to make the submission of these forms - and all forms and paperwork associated with the complaint and investigation process - as simple as possible and accessible for those without readily available access to technology or the internet, including some workers

earning low wages. This can be done by providing, for example, that complaints can be made online, by hard copy, or initiated by phone and later memorialized in a written statement, consistent with the Ordinance.

Additionally, we suggest specific references to how complainants will not only receive notifications but be able to communicate in their preferred language during the investigation process, including when filling out paper application forms, using online systems, and throughout their interactions with EE/FHO. This would be consistent with the Ordinance's requirement that signs shall be posted "in at least English and Spanish." Section 4-19-4.

Additionally, if an investigator needs additional information from a complainant to determine whether there was a violation, they should advise the complainant about what additional materials they should submit and how the process works, ensuring that a miscarriage of justice does not result from a worker's unfamiliarity with legal terminology or the complaint and investigation process.

(2) Final Determinations should be timely and appealable, consistent with due process (Section 5)

a. Investigation timeline

We commend the inclusion of clear timelines for the investigation of complaints, which should encourage expeditious resolution of complaints. We encourage you to provide a shorter timeline, however, than 120 days, or roughly four months, to close an investigation. This is a significant amount of time for a worker to wait on compliance with the Ordinance, particularly at a time when the worker is already experiencing a health or safety need for him or herself or a close family member. We encourage you to expedite investigation of allegations of retaliation, which can be a significant deterrent to workers vindicating their rights.

We appreciate that there is a balance with ensuring a thorough and comprehensive investigation, and expeditious processing, particularly where an investigation looks at a company-wide policy or the investigator has difficulty reaching parties or obtaining documents. You might consider an approach similar to that of the District of Columbia, whose [Accrued Safe and Sick Leave Regulations](#) in Section 3216.1 provide for resolution of complaints within 45 days, but allow the agency reasonable extensions as consistent with the nature of the complaint:

Complaints shall be investigated and resolved in an expeditious manner consistent with the nature of the complaint. The Director shall make all reasonable efforts to resolve all complaints within forty-five (45) business days of their filing and shall notify all parties if that time period cannot be met and shall make a good faith estimate of the expected resolution date.

57 DCR 5231, 5238 (June 18, 2010).² This language is similar to that in Section 5(H) but additionally provides an estimated resolution date. If the EE/FHO were to do company-wide investigations or calculate more complex penalties, that would understandably take longer than resolving a single complaint.

b. Right to appeal

The provision in Section 5(G) prohibiting appeal of the Administrator's determination is problematic for employers and complainants and creates due process concerns. Opportunities to meaningfully appeal within the EE/FHO any Determinations made in error or where there might have been an abuse of discretion is an important element of due process for both employers and employees and critical to effectuate the Ordinance and improve enforcement. Allowing an appeal, or at least reconsideration of a Determination, would be consistent with the Ordinance and how other jurisdictions have implemented their earned sick time laws.

(3) Assessment and collection of civil penalties should ensure that complainants are made whole and employers are sufficiently deterred (Section 6)

The penalties in the Proposed Rules are insufficient to deter violations of the Ordinance. For most employers, \$100.00 or \$150.00 for a first-time violation will not serve as a deterrent. Other jurisdictions have penalties that begin at \$500, as the Ordinance allows. For example, the District of Columbia's [Accrued Safe and Sick Leave Regulations](#) provide for a \$500 civil penalty for a first-time willfull violation, with subsequent violations increasing up to \$1,000. 57 DCR 5231, 5239, Section 3217.1 (June 18, 2010). It is also not clear why only violations in the preceding 12 months are taken into consideration in assessing penalties after three violations.

In addition to raising the amount of the penalties, we suggest further clarifying how penalties will be assessed. Will penalties be assessed per employee? Will the same penalties be assessed for all violations, including, for example, notice violations, retaliation, and denial of sick days? We recommend that retaliation not be subject to the same penalty structure, as the types of harm a worker may suffer will be significantly different. A worker who is fired after taking or requesting earned sick days suffers a different type and magnitude of harm than a worker who is denied leave for one day. We recognize the current legislation does not allow for compensatory damages, but in our experience an effective policy makes complainants whole and deters noncompliance. Additional clarifying language will benefit the agency, Complainants, and Respondents.

Finally, it is not clear from the Ordinance what will be sufficient for an employer to come into "voluntary compliance" with the Ordinance.

(4) Additional definitions and interpretive rules will provide clarity and prevent abuse

The Ordinance and Proposed Rules provide several helpful definitions, but several terms that are undefined could lead to confusion and abuse. We suggest adding definitions or interpretive rules, consistent with regulations other jurisdictions have adopted, around reasonable verification procedures; timely requests for use of earned sick time; and procedures to determine when a qualified absence is unforeseeable.

a. Reasonable verification procedure

The Ordinance states that employers "may adopt reasonable verification procedures," for a request to use earned sick time for more than three consecutive work days but does not further define this

terminology. Delineating what constitutes a reasonable verification, and requiring notice to employees, will provide clarity to employers and employees. We recommend looking to Seattle's **current proposed rules**, which strike a careful balance between not interfering with employer operations but protecting employee rights by requiring advance written notice to employees of verification procedures and providing specific guidelines for alleviating any unreasonable burdens or expenses for employees in seeking verification. For employers with handbooks, this type of notification is already required by the Ordinance, Section 4-19-2(L).

The final rule should also explicitly state how employees' confidential health information will be protected, consistent with applicable laws, such as the Health Insurance Portability and Accountability Act of 1996 (*see, e.g.*, Section 3208.2 **of D.C.'s regulations**).

b. Timely

We suggest clarifying that employees make a "timely request" if they request use of earned sick time within seven days before their scheduled work time for foreseeable events and as soon as practicable for unforeseeable events. Seven days is a common number of days in earned sick time laws and implementing regulations. New York's **final rules** for its Earned Sick Time Act, Section 7-06, provide the following language:

(d) An employer that requires notice of the need to use sick time where the need is foreseeable shall have a written policy for the employee to provide reasonable notice. Such policy shall not require more than seven days notice prior to the date such sick time is to begin. The employer may require that such notice be in writing.³

c. (Un)Foreseeable

Seattle's **current proposed rules** provide explicit guidance on what happens when sick and safe time is unforeseeable:

Unforeseeable. If the need for paid sick and safe time is unforeseeable, the employer may require notice from the employee. The employee must provide notice to the employer as soon as possible before the required start time of their shift. The employee must generally comply with an employer's reasonable normal notification policies and/or call-in procedures, unless it is not practicable to do so. In the event it is impracticable for an employee to provide notice to their employer, a person on the employee's behalf may provide notice to the employer.⁴

This is consistent with the approach of other jurisdictions, including **Massachusetts**⁵ and New York:

(b) An employer that requires notice of the need to use sick time where the need is not foreseeable shall provide a written policy that contains procedures for the employee to provide notice as soon as practicable. Examples of such procedures may include, but are not limited to, instructing the employee to: (1) call a designated phone number at which an employee can leave a message; (2) follow a uniform call-in procedure; or (3) use another reasonable and accessible means of communication identified by the employer. Such

procedures for employees to give notice of the need to use sick time when the need is not foreseeable may not include any requirement that an employee appear in person at a worksite or deliver any document to the employer prior to using sick time.

(c) In determining when notice is practicable in a given situation, an employer must consider the individual facts and circumstances of the situation.

(5) Include processes that address the misclassification of employees as independent contractors

Though not necessary to include in the Proposed Rules, we want to note that enforcing this labor standard requires making a threshold determination about whether a worker is an employee. It will likely be helpful for the agency to develop some internal materials or perhaps conduct cross-training with other labor standards sister agencies on this issue. Misclassification occurs when employers treat employees as independent contractors. Misclassified employees often are denied access to critical benefits and protections they are entitled to by law, including earned sick and safe time. Misclassification significantly impacts low-wage workers. It is common in industries where it is profitable (such as construction, where workers' compensation insurance premiums are high), and in industries with dispersed worksites where work is performed in isolation, such as housecleaning and in-home care. Additionally, there are numerous lawsuits around the country challenging the classification of "on-demand" workers as independent contractors.

EE/FHO should adopt and delineate processes during its investigation for making threshold determinations about whether workers have been misclassified. Earned sick time is a benefit misclassified workers are entitled to, but at significant risk of being denied because they work for an employer violating the law. Such processes will also benefit the City and law-abiding employers by leveling the playing field so that scofflaw employers don't have an outsized financial advantage.

Finally, we reiterate the need for strong retaliation protections. Retaliation against workers who speak out or raise concerns about their rights continues to be widespread. Immigrant workers are particularly vulnerable to threats and other forms of retaliation. We recommend specifying in the regulations that employers may not discipline or assess "points" to an employee for using earned sick days under the employer's attendance policy. Low-wage, vulnerable workers literally cannot afford to lose their jobs and may be hesitant to come forward without substantial protections.

Conclusion

Thank you for considering our feedback on the Proposed Rules. We look forward to supporting the EE/FHO's implementation of the Earned Sick Time Ordinance. Please do not hesitate to contact us if we can be of any assistance.

Sincerely,

Pronita Gupta

Director, Job Quality

Phone: (202) 906-8003

E-mail: [REDACTED]

Tanya L. Goldman

Senior Policy Analyst/Attorney, Job Quality

Phone: 202-906-8074

E-mail: [REDACTED]

¹ We have a website specifically focused on improving enforcement of earned sick days laws, available at <http://enforcingsickdays.org/>.

² District of Columbia, Accrued Safe and Sick Leave Regulations, available at https://does.dc.gov/sites/default/files/dc/sites/does/publication/attachments/Accrued_Sick_and_Safe_Final_Rules.pdf

³ New York City Department of Consumer Affairs Final Rules for Earned Sick Time Act, available at http://rules.cityofnewyork.us/sites/default/files/adopted_rules_pdf/amendment_of_earned_sick_time_rules_1_27_16_-_final_approval_-_legal_6360439_4.pdf

⁴ Seattle Office of Labor Standards, Proposed Rules for Notice and Comment, available at http://www.seattle.gov/Documents/Departments/LaborStandards/2018%20DRAFT%20PSST%20Rule%20Revisions_04-23-18.pdf

⁵ Massachusetts Office of the Attorney General Final Regulations for Earned Sick Time, available at <https://www.mass.gov/files/documents/2016/10/oz/940-cmr-33-00.pdf>

From: [Jared Make](#)
To: [Babiak, Jonathan](#)
Cc: [Sherry Leiwant](#)
Subject: Comments on the Proposed Rules for Complaints and Penalties Under Austin's Sick Time Law
Date: Thursday, July 19, 2018 2:06:15 PM
Attachments: [Comments on Proposed Sick Time Investigation and Complaint Rules from A Better Balance.pdf](#)

Dear Mr. Babiak,

On behalf of A Better Balance, we are writing to submit the attached comments, in response to the proposed administrative rules for investigation of complaints and assessment of penalties under Austin's earned sick time ordinance (City Code Chapter 4-19).

Thank you for the opportunity to comment on these proposed rules. If you have any follow up questions or we can be helpful in any way, my colleague Sherry (copied here) and I would be happy to help.

Best regards,
Jared

--

Jared Make, Senior Staff Attorney
Director, LGBTQ Rights and Defending Local Democracy Projects
Pronouns: He/his

A Better Balance
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Anne Weisberg

Yolanda Wu

July 19, 2018

Attention: Mr. Jonathan Babiak
City of Austin Equal Employment / Fair Housing Office
1050 East 11th Street, Suite 200
Austin, Texas 78702

Re: Comments Regarding Proposed Administrative Rules for Investigation of
Complaints and Assessment of Penalties Under City Code Chapter 4-19

Dear Mr. Babiak,

On behalf of A Better Balance, we are writing to submit comments on the proposed administrative rules for investigation of complaints and assessment of penalties under Austin's earned sick time ordinance, City Code Chapter 4-19 (the "Proposed Rules"). Thank you for the opportunity to share our recommendations.

A Better Balance is a national legal advocacy organization dedicated to promoting fairness in the workplace and helping workers meet the conflicting demands of work and family. We believe that workers should not have to face impossible choices between earning a paycheck and caring for themselves or their loved ones.

Our organization provides legal and policy support to sick leave campaigns in cities and states around the country, and we have worked on many of the laws that are now in effect. Together with the National Partnership for Women & Families, we drafted a model earned sick time bill that has formed the basis of almost all enacted paid sick time laws. We have helped to tailor this model bill to the needs of individual jurisdictions and have worked on subsequent regulations in dozens of cities and states. Because we are based in New York, we helped to lead the successful campaign for New York City's earned sick time law, in addition to working on legal issues, drafting, regulations, and implementation related to the law. We are now working on the ground in New York City to enforce the law and represent workers with complaints. Based on this experience, we have several suggestions regarding the proposed rules, as outlined below:

Recommendation #1: Remove the Distinction in Penalty Amounts Based Upon Business Size. Part 6 of the proposed rules provides different penalty amounts depending on business size. In our experience working on earned sick time laws and other labor standards, it is highly unusual to tie penalties to business size in the manner proposed. Rather, it is more common to maintain different violation amounts depending on historical or multiple violations.

Austin's earned sick time law currently provides a grace period of 10 business days

before any penalties will be assessed. This provision of Austin's ordinance provides sufficient flexibility for employers of all sizes—including smaller employers—to remedy a violation, come into compliance, and avoid a penalty. As a result, we recommend removing the distinction in penalty amounts based upon business size.

Recommendation #2: Simplify and Increase Penalty Amounts, and Impose the Maximum Penalty of \$500 for Retaliation. In order to appropriately deter and address violations of the law and ensure that workers will take the risk to come forward, the law's penalty amounts are critical. We recommend two key changes on penalty amounts:

- First, we recommend imposing the maximum penalty of \$500 in cases of retaliation (under Section 4-19-5 of the law), especially since employers have a grace period for coming into compliance voluntarily.
- Apart from cases of retaliation as detailed above, we recommend that first-time violations lead to a \$250 civil penalty (regardless of business size), with any subsequent violations leading to a \$500 penalty.

Recommendation #3: Remove the Administrator's Discretion to Reduce Penalties Due to Hardship, Including Business Size. We recommend removing the ability of the Administrator, under Part 6(B) of the proposed rules, to decrease penalties due to hardship, which the rules further state includes the number of employees working for a Respondent employer. The civil penalty is the means of enforcing this law, so it is important to maintain a clear penalty that will deter and appropriately respond to violations of workers' legal rights. As mentioned earlier in these comments, Austin's law already provides a period of 10 business days where any employer, including a smaller business or one experiencing hardship, can voluntarily comply and avoid civil penalties. As a result of the law's existing flexibility and grace period, the civil penalty should not be decreased due to hardship and particularly due to business size.

Recommendation #4: Add the Right to Appeal Determinations and Seek Independent Review. Under the proposed language in Part 5(G) of the proposed rules, the Administrator's decision is final with no right of appeal. We recommend the right to an independent appeal that allows parties to seek review of the Administrator's determination. Such a right to appeal is extremely common with administrative determinations and will ensure a fairer enforcement process.

Recommendation #5: Establish the Right to Keep the Complainant Informed. We recommend language to make it clearer that the EE/FHO office will keep the complainant updated as to the status of his or her complaint and other language indicating the office's responsibility to keep the complainant informed. A worker who complains is taking a risk and should at least know the status of his or her complaint. The proposed rules only address this in Part 5(H), which says that the Administrator will try to close complaints within 120 days and if not able to do so, he or she will notify the complainant and respondent in writing of the reasons for delay. It would be ideal to keep the complainant more informed *prior* to the closing of the complaint.

Recommendation #6: Ensure that Complaints Are Handled in a More Timely Fashion. Parties benefit when complaints are resolved in a timely manner. As a result, we recommend that the final rules decrease the 120-day window for closing complaints to 90 days.

Recommendation #7: Ensure that the Complaint and Investigatory Process is Accessible to Workers in Austin. Many workers have limited proficiency in English and/or low literacy. Moreover, it is difficult for many workers to gain access to a computer to submit online complaints and/or to make telephone calls or in-person complaints during regular workday hours. It is essential for the EE/FHO office to ensure a complaint and investigatory process that accounts for these factors. Complaint forms should be as simple as possible to complete, offered in Spanish and other languages, prominently displayed on the city's website and available to complete online, and accepted as well by mail, fax, email, and in-person. We also recommend that procedures be designed to ensure that workers can submit complaints and be interviewed, if necessary, outside of typical business hours.

Recommendation #8: Add Language Establishing Confidentiality. In order to ensure workers will take the risk to submit a complaint, confidentiality is very important. We recommend the addition of a provision on confidentiality, which clearly states that the EE/FHO office will endeavor to maintain confidentiality to the extent allowed by law or to facilitate resolution.

Recommendation #9: Issue More Detailed Rules and Regulations Beyond the Administrative Procedures. In our experience in New York City and around the country, more detailed regulations that explain and interpret the law can be very helpful in a law's implementation. Regulations can be a key source of information on the law and a source of more detail for workers, advocates, and employers. We would be happy to share model regulations from laws around the country, answer any questions, or provide feedback on more detailed rules beyond the complaints and investigations process addressed here.

In conclusion, A Better Balance strongly supports the EE/FHO's efforts to provide more guidance regarding enforcement of Austin's earned sick time law. Based on our experience around the country, earned sick time laws can be implemented successfully, and agency regulations and guidance provide a key component in the outreach, education, and implementation process.

Thank you again for the opportunity to submit written comments on the proposed rules. If you have any questions or would like additional information, please contact us at 212-430-5982 (Extensions 168 or 151). We can also be reached by email at [REDACTED] or [REDACTED].

Sincerely,

Sherry Leiwant
Co-President
A Better Balance

Jared Make
Senior Staff Attorney
A Better Balance

From: [Ted Smith](#)
To: [Babiak, Jonathan](#)
Cc: [Ted Smith](#)
Subject: Comments to Proposed Administrative Rules for the City of Austin's Earned Sick Time Ordinance
Date: Thursday, July 19, 2018 4:52:44 PM
Attachments: [image001.png](#)
[image002.png](#)
[2018 07 19 Comments to City of Austin re Sick Time Ordinance.pdf](#)

Mr. Babiak:

Attached are comments to the proposed Administrative Rules for the City of Austin's Earned Sick Time Ordinance.

Thank you for your consideration of these comments, and please do not hesitate to contact me directly should you need further information or clarification regarding these issues.

Ted Smith

Attorney



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Edward M. "Ted" Smith

512-334-2246

July 19, 2018

VIA ELECTRONIC MAIL (Jonathan.Babiak@austintexas.gov)

Jonathan Babiak
City of Austin Equal Employment/Fair Housing Office
1050 East 11th Street, Suite 200
Austin, Texas 78702

Re: Comments re Proposed Administrative Rules for the City of Austin's Earned Sick Time Ordinance

Dear Mr. Babiak:

Our law firm represents a wide array of employers with regard to labor and employment law matters, ranging from small "Mom and Pop shops" to large multi-state and international corporations. I am submitting these comments to the proposed Administrative Rules for the City of Austin's Earned Sick Time Ordinance ("Proposed Rules") based upon input received from several of our clients across this wide spectrum.

1. Proposed Enforcement Date of October 1, 2018

The Proposed Rules state that complaints for alleged violations of Chapter 4-19 of the City Code (the "Earned Sick Time Ordinance") will be investigated and determinations regarding proposed penalties made beginning October 1, 2018. While our client businesses wish to abide by the new requirements of the Earned Sick Time Ordinance – as they do all laws applicable to them – there simply has not been enough time and guidance provided from the date of enactment of the Earned Sick Time Ordinance for many employers to adequately prepare to a level that they can meet the requirements of the new law. To date, there have been no published rules or guidance on critical issues related to the Earned Sick Time Ordinance, such that many employers will be unable to meet the requirements of the new law by October 1, 2018.

Other cities with similar paid sick time ordinances, such as Minneapolis, Cook County, Illinois (Chicago) and Seattle, have published detailed rules and guidance regarding definitions of covered employers and employees, as well as how an employer is required to track, account for, and notify employees about the amount of sick time that an employee has accumulated. This is vital information that employers must have before the City requires them to abide by such a wide ranging new law that is vague on these important specifics.



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An analogous situation occurred following the enactment of the Affordable Care Act (“ACA”). The federal government realized that implementation of the new requirements under the ACA to define, track, account for, and notify employees was complicated and expensive, and therefore employers would need time after the more detailed rules and guidance were published before they could reasonably be expected to meet the requirements of the new law. Therefore, the enforcement date of the ACA requirements was extended accordingly.

The City should similarly delay enforcement of the Earned Sick Time Ordinance until at least six (6) months following the publishing of more detailed rules and guidance, including the Proposed Rules.

2. Employers Resident Outside of City of Austin

The Proposed Rules should specify that the City will not enforce the Earned Sick Time Ordinance requirements with regard to employers that reside outside of the City of Austin and that do not have a place of business within the City of Austin.

The published guidance by the City of Minneapolis regarding the processing, interpretation, and investigation of alleged violations of the Minneapolis Sick and Safe Time Ordinance specifically states that “the Ordinance will not be enforced against any employer resident outside the City of Minneapolis.”

Similarly, the published Interpretive and Procedural Rules regarding the Cook County (Chicago) Earned Sick Leave Ordinance clarified that the ordinance would be enforced against “Employers” and “Covered Employers” only if such employers had at least “one place of business within Cook County.”

The City should likewise clarify in the Proposed Rules and any future published guidance that the Earned Sick Time Ordinance shall not be enforced against employers that reside outside of the City of Austin and that do not have a place of business within the City of Austin.

3. Employees with Principal Place of Business/Employment Outside of City of Austin

Similarly to Comment 2 above, the Proposed Rules and any future published guidance should specify that the City will not enforce the Earned Sick Time Ordinance



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requirements with regard to employees who do not have their principal place of business or employment within the City of Austin.

It is unreasonable to require employers with employees who are principally employed outside of the City of Austin to track and account for the occasional time that such employees may spend performing services for the employer in Austin. Further, it is unreasonable to then require an employer to provide paid time off for its employees who are not principally employed within the City of Austin that is different from the employers' other employees in the same locality, simply because they occasionally provide sporadic services within the Austin city limits.

Moreover, there is no clarification in the Proposed Rules as to what is considered "work performed" in the City of Austin that could be grounds for a violation of the new Ordinance. Is a delivery driver based out of Cedar Park "performing work" in Austin if he or she stops for gas within the city limits on the way to making a delivery in Buda? Is the same delivery driver "performing work" in Austin if they become stuck in traffic on I-35 on the way to making the Buda delivery? These types of clarifications need to be published before the City begins enforcement of the new Ordinance.

4. Verbal "Complaints"

Proposed Rule 2(C) defines "Complaint" as a "written statement" by a Complainant alleging a violation of Chapter 4-19. However, Proposed Rule 3(C)(1) states that a Complaint will be deemed filed with the EE/FHO "as of the date the Complainant first contacts the EE/FHO, whether in-person or by telephone or email." Proposed Rule 3(C)(1) should be amended to clarify that a Complaint will only be deemed to be timely filed if it is written and signed by the Complainant.

5. Deadlines

The deadline for service of a Complaint upon a Respondent should be based upon the date the EE/FHO received the Complaint, not from when the Investigator received assignment of the Complaint. Accordingly, Proposed Rule 4(C)(2) should require that the Complaint be sent to the Respondent within 10 business days of receipt by the EE/FHO office, not within 10 business days of the Investigator receiving the assignment.

Similarly, Proposed Rule 5(B) should tie the 90-day deadline to submit a recommendation to the date notice is provided to the Respondent, not to the date the Investigator receives the Complaint.



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6. Definitions of “Complainant” and “Respondent”

Proposed Rules 2(B) and 2(H) define “Complainant” as an “individual” who makes an allegation of a violation of Chapter 4-19, and “Respondent” as “the employer” named in a Complaint. These definitions should be revised such that they are neutral and not assume that all Complainants will be individuals, and all Respondents employers.

7. No Appeal Process

Proposed Rule 5(G) currently states that “there is no right of appeal of any determination issued by the Administrator.” By not providing any administrative avenue for appeal under the Proposed Rules, the City is creating a situation in which Complainants or Respondents will be forced to bring disputes regarding the review of improper investigations and determinations of alleged Complaints through litigation. This lack of an administrative appeals process fails to provide the parties with adequate due process and will result in additional unnecessary legal costs for the City, employers and individuals.

Thank you for your consideration of these comments, and please do not hesitate to contact me directly should you need further information or clarification regarding these issues.

Sincerely,



Edward M. “Ted” Smith



From: [Stephanie Gharakhanian](#)
To: [Babiak, Jonathan](#)
Cc: [Ana Gonzalez](#)
Subject: Comments to Proposed Rules for Chapter 4-19
Date: Friday, July 20, 2018 12:49:56 PM
Attachments: [WDP PSD Comments 7.20.18.pdf](#)

Mr. Babiak -

Please see attached WDP's comments to the Proposed Administrative Rules for Austin's Earned Sick Time Ordinance.

Stephanie

--

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Special Counsel



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July 20, 2018

ATTN: Jonathan Babiak
City of Austin Equal Employment/Fair Housing Office
1050 E. 11th St., Ste. 200
Austin, Texas 78702

Submitted via email to jonathan.babiak@austintexas.gov

Re: Comments on Notice of Proposed Adoption of Administrative Rules for the City of Austin's Earned Sick Time Ordinance

To whom it may concern:

Workers Defense Project ("WDP") is a membership-based organization that empowers low-income workers to achieve fair employment through education, direct services, organizing and strategic partnerships. Founded in 2002, WDP both provides direct legal services to low-wage workers and engages in advocacy to improve worker protections. Much of WDP's advocacy has involved working with enforcement agencies to ensure that existing legal protections are enforced to fulfill their intended benefit for working people.

We wanted to thank the City's Human Resource Department for notifying WDP when the proposed rules for the Earned Sick Time Ordinance was posted and for being so intentional in its outreach to stakeholders during this rulemaking process.

WDP's comments to the proposed Rules for Investigation of Complaints and Assessment Of Civil Penalties under City Code Chapter 4-19 ("Proposed Rules") are informed by the hundreds of workers WDP encounters each year through our direct legal services, community outreach, and community organizing programming. Many of these workers have experienced wage theft, workplace injury, and employment discrimination. Most of the workers we encounter through our legal services program, in particular, are employed by unregistered, sole proprietors, paid by the hour or by the day in cash or personal check, misclassified as "independent contractors", never given any official hiring paperwork, an employee handbook, or a regular pay stub by their employer, and never offered earned paid sick time, vacation time, or any other employment benefit, like health insurance or workers' compensation.

One common scenario that we encounter in our regular legal clinics involves a worker who is injured on the job and taken to the hospital, not paid for that day's work or any lost time thereafter, not able to reach their employer by phone call or text following their injury, unable to return to work, and, without insurance or workers' compensation, is worried how he may pay this month's rent and his mounting medical debt. In reviewing the Proposed Rules, WDP's litmus test is whether the Rules are sufficient to ensure that marginalized workers - like the

worker in this scenario - may avail themselves to the processes, protections, and remedies established.

This Ordinance was intended to benefit all private employees within city limits. EE/FHO has a responsibility to ensure that its final rules are adequate enough to fulfill the Ordinance's intended purpose of guaranteeing earned sick days for all private employees working in this city. WDP is committed to supporting EE/FHO in these efforts. Thus, we have offered extensive comments on the Proposed Rules for you to review.

While we offer more detailed comments below, we wanted to emphasize the following points first:

1. The process of accepting, investigating, and resolving Complaints must be as accessible as possible.

Many of WDP's members and clients who stand to benefit from this Ordinance have limited proficiency reading or writing in English or their first language. They may not have regular access to a computer or the internet, or know how to use e-mail or a computer at all. Because of the hours they work, the nature of their employment situation, or their access to reliable transportation, these workers may not be easily reached during regular business hours or be available to attend in-person meetings during the business day. To be effective, the EE/FHO's complaint and investigation process under these Rules needs to account for and accommodate these realities.

2. Establishing a right to appeal is essential to ensuring that the investigation process is "fair, impartial and objective".

Part 5(G) establishes that there is no right to appeal any determination issued by an Administrator under the Proposed Rules. WDP understands that the Ordinance prohibits EE/FHO from establishing an appeal process which exists outside of the agency's authority. However, WDP urges EE/FHO to establish Rules that would enable parties to request an appeal from an independent adjudicator housed within EE/FHO.

Excluding a right to appeal under the Rules establishes an adjudication process that inevitably will disadvantage workers. As the Complainant, workers who allege a violation will always have the responsibility of overcoming the preponderance of evidence requirement established by these Rules. It is always easier for an adjudicator to dismiss a Complaint than for an adjudicator to justify that an evidentiary standard has been met. It is always easier for an agency to deny alleged violations than to hold a Respondent accountable for them. This disadvantage can only be corrected through an appeal process that undertakes an independent, de novo review.

Workers Defense Project regularly files administrative claims on behalf of workers. Time and again, we have had to rely on our client's right to appeal to ensure that their claim is adjudicated correctly and that their rights in the workplace are defended. In our experience, the right to appeal becomes increasingly important when the agency is tasked with determining a threshold

question of eligibility: is our client even eligible to claim a certain right? Is their employer even bound to honor that right? When pursuing wage claims before the Texas Workforce Commission, for example, we regularly need to appeal wrongful dismissals based on findings that our client is an “independent contractor” rather an employee. This question of worker classification is one of the many difficult issues that EE/FHO will need to address when adjudicating Complaints under this Ordinance. Human experience and principles of common sense contemplate that any investigation or adjudication process can be flawed. Mistakes happen. There will be errors in judgment and errors in law.

Chapter 4-19 defines EE/FHO’s authority in §4-19-6. These duties include a mandate to “enforce this Chapter” and a mandate to “adopt rules necessary to implement this Chapter”. In the past, EE/FHO has alleged that such language does not “authorize” the agency to create an appeal process and cautioned that the Rules cannot exceed the authority found in the Ordinance.

In its response to this comment, WDP specifically requests that EE/FHO provide a specific response, including citations to relevant caselaw, which substantiate how establishing a right to appeal in the manner we propose exceeds EE/FHO’s authority under the Ordinance.

3. The enforcement process should endeavor to make affected employees whole and resolve Complaints as soon as possible.

The agency’s priority should always be to conduct fair and thorough investigations of a Complaint. However, Complaints do become more difficult to resolve the longer that time passes - locating necessary evidence or testimony becomes more challenging, Respondents may disappear, Complainants may lose hope in the agency’s ability to truly address the alleged violations, and achieving meaningful voluntary compliance may no longer prove practicable. Without compromising the integrity of its investigation process, WDP encourages EE/FHO to be mindful that many Complainants alleging violations are doing so in moments of dire need. Some Complaints will allege more complex violations than others, and undoubtedly will require more time to investigate, but many Complaints will allege clear violations that can be resolved expeditiously. EE/FHO owes all Complainants not only a fair and thorough investigation of the violations they allege, but a timely resolution of their Complaint as well.

4. The suggested civil penalties must be increased to effectively incentivize full compliance with the Ordinance.

It is in the City’s interest and in the spirit of the Ordinance to establish an enforcement scheme through these Rules that incentivizes full compliance with the requirements of the Ordinance. WDP does not believe that the suggested civil penalties in these Rules are high enough to meet that goal. WDP recommends a simplified, universal civil penalty scheme that limits the agency’s discretion to adjust the established penalties solely to violations that involve bad faith or malicious conduct. WDP offers more detailed comments regarding Part 6 below.

5. EE/FHO needs to establish interpretive rules in addition to procedural rules.

Without interpretive rules, employers do not have sufficient information to successfully comply with the Ordinance and workers do not have sufficient information to fully understand their rights under the Ordinance. Most importantly, without interpretative rules, it is not clear what standards - if any - EE/FHO will apply when investigating Complaints. The Ordinance authorizes EE/FHO to “adopt rules necessary to implement this chapter.” Interpretive rules are necessary for EE/FHO to implement this Ordinance.

WDP also offers these additional comments for your consideration:

Part 2's Definitions and Additional Ordinance Terms that Require Further Clarification

Part 2(C) This rule defines “Complaint” as a “written statement”, while Part 3(C)(1) suggests that an in-person or telephone conversation could also constitute a “Complaint”. WDP proposes that Part 2(C) be more expansive to capture both written statements made by a Complainant and oral statements made by a Complainant that are memorialized in writing by the Investigator or whomever else receives the Complaint at EE/FHO.

There are additional terms included in Chapter 4-19 that were either not defined in the final Ordinance language or were defined in the final Ordinance language but require further clarification or interpretation from EE/FHO.

§4-19-1(C) defines “Employee” as “an individual who performs at least 80 hours of work for pay within the City of Austin in a calendar year for an employer.” Further guidance on the definition of this term is required for employers of employees who are typically based outside of the City of Austin, but who work 80 or more hours within city limits in a calendar year. There should be a presumption that a worker who performs work duties within Austin city limits is eligible for earned sick time under Chapter 4-19 unless that employer can prove that an employee has performed less than 80 hours of work within city limits in the applicable calendar year. This presumption should not apply to employees whose work duties require them to travel through Austin but not perform work duties within the City, or who only make incidental stops inside the City of Austin that are unrelated to their work duties, such as purchasing gasoline or changing a tire. Final rules from EE/FHO should also clarify how transit time to or from the City of Austin apply to the 80 hour employment threshold established in §4-19-1(C).

§4-19-1(C) further provides that “Employee does not include an individual who is an independent contractor.” The Rules, however, do not indicate how the EE/FHO will evaluate a worker’s proper employment classification. It would be helpful for the Rules to provide additional guidance on this point since controversy around a worker’s proper classification is a threshold question in almost any employment matter. Specifically, in accordance with Title 40, Section 821.5 of the Texas Administrative Code, the final rules should articulate that (1) that an employer’s classification of a worker or even a worker’s classification of herself is not determinative of her proper status; (2) that a determination of proper worker classification shall be conducted of all Complainants, regardless of whether that worker is called an agent, contract laborer, independent contractor, subcontractor, or something else; and (3) that EE/FHO shall

presume all Complainants to be employees unless or until the common law test indicates otherwise.

§4-19-2(A) provides that an employer shall grant an employee one hour of earned sick time for every 30 hours worked for the employer in the City of Austin. Additional guidance from EE/FHO, however, is needed to instruct employers as to how they should compute accrued earned sick time for employees who travel inside and outside of city limits to perform work duties and employees who are not always paid a regular, hourly rate.

In particular, the Rules should clarify that overtime eligible employees do accrue earned sick time while working overtime hours. Salaried employees who are overtime ineligible (that is, employees who are properly exempt from the requirements of the Fair Labor Standards Act) and who regularly work 40 or more hours per work should be assumed to work 40 hours of work per week for the purposes of this section. Salaried employees who are lawfully overtime exempt who regularly work less than 40 hours per week should accrue earned sick time based on their particular regular work week.

As a general comment, other cities offer useful examples in their published rules to demonstrate how employees with different compensation arrangements ought to accrue earned sick time. Providing such examples in the Rules would be incredibly helpful.

§4-19-2(B) requires further clarification to explain how this provision interacts with the 80 day threshold established in §4-19-1(C). For employees whose primary place of employment is within the City of Austin, “Commencement of employment” should be defined as no later than the beginning of first day on which an employee is authorized or required by the employer to be on duty, or otherwise present at the employer’s premises or prescribed workplace. For workers typically based outside of the City of Austin, “Commencement of employment” should begin when an employee works 80 hours within the City of Austin in a calendar year.

§4-19-2(C) allows for an employer to restrict an employee from using earned sick time during that employee’s first 60 days of work if the employee establishes that the employee’s term of employment is at least one year. The Rules should clarify that no employer shall restrict an employee’s use of earned sick time under this section if the employer considers that employee to be “at will” or is otherwise able to terminate that employee at any time without cause.

In order to establish an employee’s term of employment under this section, the Rules should require an employer to furnish written documentation, dated on or close to the employee’s commencement of employment which states that the employee has guaranteed employment for a term of one year or more. Absent any timely writing that establishes an employee’s term of employment to be at least one year, an employer should not be able to restrict when earned sick time is available to an employee.

§4-19-2(D) and other sections of the Ordinance utilize the term “scheduled work time” “Scheduled work time” should be further defined to mean hours an employee is required to work, including, but not limited to, regular hours, overtime hours (scheduled or voluntary), hours

an on-call employee is required to work after being contacted by an employer, and employer-mandated training hours.

§4-19-2(E) establishes that an employer may adopt “reasonable verification procedures” following “three consecutive work days” to verify that an employee’s request for earned sick time is for a qualifying purpose. Both the terms “reasonable verification procedures” and “use earned sick time for more than three consecutive work days” require further clarification and interpretation by EE/FHO.

WDP suggest that the term “use earned sick time for more than three consecutive work days” mean earned sick time absences for three consecutive days that an employee is required or scheduled to work. For example, if an employee is scheduled to work each Monday, Wednesday, and Friday and uses earned sick time for any portion of a Monday, Wednesday and Friday in the same week, and then requests to use earned sick time the following Monday as well, only then could that employee’s employer seek verification.

The Rules should provide that any employer who adopts reasonable verification procedures under **§4-19-2(E)** establish such procedures in a written policy. This policy should be readily available to all employees in a language that they understand, and employers should be required to notify employees of such policy prior to requiring any employee to comply with it.

No reasonable verification procedure should require an employee to explain the nature of the domestic abuse, sexual assault, stalking, injury, illness, health condition, or other health need that necessitates their request for earned sick time. To be reasonable, an employer’s verification process must afford an employee adequate time to obtain the required verification and seek to mitigate additional burdens that the verification requirement may place on an employee. WDP recommends that the Rules provide that any verification procedures established pursuant to this section afford employee’s at least ten (10) days, beginning on the date of the employee’s first consecutive day of requesting earned sick time, to provide the required verification.

Employer required verification for use of earned sick time should not result in an unreasonable expense or burden on the employee. Complying with an employer’s established verification procedures could result in such a burden, particularly if that employer does not provide health insurance to its employees yet expects employees to furnish a doctor’s note as part of its verification process. If an employer requires verification from an employee, and the employee anticipates that this requirement will result in unreasonable burden or expense, an employee should be able to assert that to their employer, so that the employer and employee can discuss any less-burdensome alternatives that would satisfy the employer’s verification requirement, or other ways that the employer can help the employee mitigate the expenses of fulfilling its verification requirement. If an employee is not offered health insurance by their employer and their employer insists that an employee furnish a doctor’s note to satisfy its verification requirement, the employer and the employee should each pay half the cost of any out-of-pocket expense incurred by the employee in obtaining the requested verification for use of earned sick time, unless such cost results in an unreasonable burden on the employee.

§4-19-2(F) requires further clarification and interpretation. “Scheduled work time” should be defined using the suggested definition mentioned above. In addition, EE/FHO should clarify what constitutes a “timely request” and provide additional guidance for employers who establish policies pursuant to this section. For a foreseeable absence, WDP recommends that a request to use earned sick time should be considered “timely” if an employee provides at least seven (7) days advance notice of their intent to use paid sick time to their employer, or otherwise notifies their employer as soon as is practical, unless the employer’s policy allows for less advance notice.

EE/FHO should clarify that employers may require employees to comply with certain procedures in order to make a request to use earned sick time, as long as such procedures do not interfere with an employee’s lawful use of earned sick time.

When absence from work is unforeseeable, it is possible that it will not be practicable for an employee to provide an employee with notice of their absence. In such instances, an employer should permit someone else to provide notice of the absence to the employer on the employee’s behalf as soon as it is practicable to do so.

If an employer seeks to implement policies that describe any requirements of an employee to make a “timely request” to use earned sick time or otherwise provide notice of a qualifying absence in accordance with this section, the EE/FHO should require in these Rules that such policies be established in writing. These Rules should require that an employer inform its employees of any notification policy prior to requiring that any employee complies with it. Employers should ensure that this policy is readily available to all employees in a language that they understand.

§4-19-2(J) seeks to establish the proper rate of pay owed to employees who use earned sick time, yet requires further interpretation to capture the breadth of compensation arrangements that exist between employers and employees. The Rules should describe in further detail how employers should calculate the proper compensation due to employees who earn tips, who earn a commission, who are salaried, who are overtime eligible but paid an hourly rate, who are paid a daily rate, who earn a piece rate, or whose rate of pay fluctuates (e.g. workers on a prevailing wage site, or workers who earn a higher rate during a “night shift” vs a “day shift”). The final rules published by the Seattle Office of Labor Standards to implement that city’s Paid Sick and Safe Time Ordinance contemplate many methods of compensation and can provide helpful guidance to EE/FHO as the agency clarifies this provision further.

It is important to note that vulnerable employees who have the most to gain from successful implementation of this Ordinance are also most likely to be compensated through an unconventional compensation scheme. It is also not uncommon for these workers to have no documentation of the promised wage offered by their employer, not due to any fault of their own, but because of their employer’s failure to comply with other provisions of state or federal law. When determining the proper compensation owed for an absence under this Ordinance, the EE/FHO should, like other provisions of state and federal wage and hour law, establish a rebuttable presumption in favor of the employee’s stated rate of pay if the employer is not able to

provide proof of the employee's pay rate, such as through an offer letter, employment contract, or pay stub.

In addition to clarifying the proper rate of pay for earned sick time, EE/FHO should articulate when payment for earned sick time is due when in its education and outreach efforts undertaken pursuant to the Ordinance so that employers may avoid unintended violations of other provisions of state or federal law.

§4-19-2(K) requires that employers shall, on no less than a monthly basis, provide employees a statement showing the amount of available earned sick time. EE/FHO should provide additional clarification in these Rules about the information that this statement should contain. For example, any statement prepared in accordance with this section should include the name of the employee and the employer, the statement's date (e.g. June 6, 2018), the statement period (e.g. May 1 - May 31, 2018), the number of eligible hours worked in the City of Austin during the statement's period, the amount of earned sick time accrued during the statement's period, the amount of earned sick time used during the statement's period, and the amount of earned sick time currently available to the employee.

In addition, the Rules should specify an employer's obligations to maintain and retain records under this section of the Ordinance, and the employer's obligation to retain such records during an investigation conducted under the Ordinance. The Rules should make clear that once an employer is notified by an Investigator that an investigation has commenced pursuant to **Part 4(C)(2)**, the employer may not destroy any employee records maintained pursuant to this section until the employer is notified by EE/FHO that the Complaint's investigation has closed under **Part 7**.

Part 4 authorizes EE/FHO to request or subpoena records of a Respondent as part of the investigation process. The Rules should clearly articulate that the failure of an employer to satisfy EE/FHO's requests for records which a Respondent is required to maintain under the Ordinance during the course of an investigation creates a rebuttable presumption that the employer has violated **§4-19-2(K)**.

§4-19-2(L) requires that an employer handbook include "a notice of employee rights and remedies under this Chapter." The final rules should further define precisely what is meant by the term "employee handbook" and "employee rights and remedies under this Chapter". WDP suggests that the notice required in an employee handbook include: (1) that employees are entitled to earn paid sick time; (2) when an employee begins to accrue time and at what rate, whether the employer makes the yearly cap of earned sick time available to employees at the beginning of a year, and when that year begins; (3) the yearly cap of earned sick time available to employees; (4) when an employee may begin using earned sick time; (5) when the employer will (5) the employer's procedures for an employee to make a timely request to use earned sick time or otherwise provide the employer with notice of an absence under the Ordinance, if applicable; (6) the employer's reasonable verification procedures, if applicable; (7) how and when the employer will provide employees with notice of their available earned sick time; (8) notice that employees can file a Complaint alleging violations of the Ordinance to EE/FHO; (9)

notice that employer retaliation is prohibited; and (10) the employer's disciplinary policy for unauthorized use of earned sick time, if applicable.

It would be helpful if EE/FHO developed model employee handbook language which satisfies the requirements of the Ordinance and this Rule as a resource for employers.

EE/FHO should also encourage employers to inform its employees when they should expect payment for used earned sick time in the employee handbook.

EE/FHO's final rules should also clarify that it is a violation of this section if the notice included in the employee handbook is not in a language that the employee understands, or if the employer cannot provide evidence (such as an signed acknowledgment form) that a Complainant received an employee handbook containing the required notice prior to the date of the alleged violation.

§4-19-2(Q) The Rules should specify that successor employers must provide employees with all required written earned sick policies either at the time of acquisition or as soon as practicable.

§4-19-5 should be clarified in the Rules to further describe what constitutes prohibited retaliation under the Ordinance. EE/FHO should consider applying an expansive definition to "retaliation" to encompass any efforts by an employer to interfere with an employee's lawful use of earned sick time. Any attempt to discipline, demote, discharge, suspend, reduce hours or otherwise directly threaten an employee who satisfies the requirements of this Ordinance, of the Rules, and other lawful policies of an employer should constitute "retaliation" under this section.

The Rules should also provide employers with clearer guidance as to how they may address instances of unauthorized use of earned sick time without running afoul of **§4-19-5**. Community education efforts conducted by EE/FHO should advise employers how they can address instances of unauthorized use of earned sick time without running afoul of the Texas Payday Law or other relevant provisions of the Texas Labor Code.

WDP recommends that the Rules require that any disciplinary policy regarding the unauthorized use of earned sick time be in writing and be made readily available to all employees in a language that they understand. WDP also suggests that the Rules forbid employers from deducting any unauthorized earned sick time hours used from an employee's legitimately accrued, unused earned sick time if the employer chooses, as part of its disciplinary policy, to lawfully withhold payment from an employee for sick time used for an unauthorized purpose.

§4-19-6(A)(2) requires EE/FHO to "investigate complaints...alleging a violation of this Chapter". The Proposed Rules are silent as to the meaning of this term "alleging a violation". WDP recommends that EE/FHO interprets the term broadly so that all Complaints which are filed in accordance with the Rules are presumed to "allege a violation" of the Ordinance until the investigation process described under **Part 4** is exhausted and EE/FHO determines that issuance of written notice of dismissal pursuant to **Part 5(C)(2)** is appropriate. Complainants should not be expected to be experts in the Ordinance or these Rules, and should therefore not be expected

to specifically allege how a Respondent has violated the requirements of the Ordinance or these Rules in order for an investigation of their Complaint to be initiated.

Additionally, the investigation process described in **§4-19-6(A)(2)** and **Part 4** should not be restricted solely to allegations mentioned in a Complaint. Requests for additional information from either party during the investigation process may surface additional potential violations that merit investigation and remedy under these Rules. In seeking voluntary compliance or assessing civil penalties pursuant to **§4-19-6(A)(3)** and **§4-19-6(A)(4)**, it is incumbent upon EE/FHO to address any and all violations identified in the investigation of a Complaint, regardless of whether such violations were initially alleged by the Complainant.

§4-19-6(A)(4) directs EE/FHO to “seek voluntary compliance” before collecting a civil penalty, and **Part 5** explains, in part, how an Administrator will do this through the Complaint determination process. WDP applauds EE/FHO for proposing rules that encourage the resolution of Complaints through the voluntary compliance process. We believe that it is in the interest of all parties to a Complaint for a violation to be remedied as soon as possible and for workers directly affected by a violation to have the opportunity to be made whole, which is often not possible if a civil penalty is assessed. To the extent that is feasible, however, we encourage EE/FHO to establish rules that provide clearer guidelines as to how the agency will fulfill the mandate created in **§4-19-6(A)(4)**.

Neither Part 5, or any other section of the Proposed Rules interpret what “voluntary compliance” actually means, the bounds of discretion which an Administrator has to determine what constitutes “voluntary compliance” in a particular instance, and how the Administrator might determine whether a Respondent has, in fact, adequately remedied a violation through the voluntary compliance process.

We encourage these guidelines to require that voluntary compliance of a violation that resulted in specific harm to a Complainant, such as violations of the Ordinance’s anti-retaliation provisions or other violations of an employee’s right to accrue or use earned sick time, be designed to provide relief to the individual affected and remedy the harm caused to them. We further suggest that these guidelines address violations that do not involve direct interference with an employee’s lawful use of earned sick time, such as failure on the part of the employer to post the required signage or satisfy the other notice provisions in the statute, be forward-looking. In order to verify whether a Respondent has established voluntary compliance with the ordinance for the purposes of **Part 5(D)**, EE/FHO, whenever practicable, should communicate with the Complainant or other employees of the Respondent who may have personal knowledge of the matter.

§4-19-7(C) authorizes EE/FHO to inform employees at a worksite of any investigation of a Complaint from that worksite. The Rules should explain when EE/FHO shall exercise this authority and how.

WDP suggests that informing employees under this section is especially appropriate when investigating violations suggestive of grave misconduct, especially when such violations are

alleged in anonymous Complaints, unless EE/FHO has reasonable belief that doing so may cause harm to the Complainant.

In circumstances like these, WDP recommends that the Rules authorize EE/FHO to post notices under this section in conspicuous locations of a worksite for a delineated period of time, such as 21 days. Notices posted under this section should (1) state that EE/FHO has received a Complaint alleging a violation of the Ordinance at this worksite; (2) provide instructions explaining how employees can report potential violations of the Ordinance to EE/FHO; (3) remind employees that the Ordinance forbids employers from retaliating against employees who report violations; and (4) clearly and conspicuously specify the earliest date that the employer can remove this posting from the prescribed location at the worksite. Similar to the signage required under §4-19-4, any postings made pursuant to §4-19-7(C) should be displayed in all appropriate languages. The size and location of notices posted under this section should equal the signage specifications prescribed by EE/FHO in accordance with §4-19-4(B).

Part 3. Filing of Complaints

Part 3(A) provides that EE/FHO will only investigate timely Complaints. We suggest that this Proposed Rule be revised to allow for late-filed Complaints to be considered if the Complainant, in writing, demonstrates good cause. Good cause should include retaliation by the employer under §4-19-5 or failure of an employer to comply with §4-19-2(L), if applicable, or §4-19-4 of the Ordinance.

Part 3(B) provides that an Administrator both may prescribe forms for filing a Complaint and additional administrative procedures. To ensure that the process established in Part 3 is as accessible as possible, WDP suggests that the final rules clearly establish the Administrator's obligation to ensure that the procedures for filing a Complaint are accessible to those who speak, read, or understand languages other than English with various levels of proficiency, and to those with various degrees of access to or familiarity with computers or the Internet.

WDP recommends that EE/FHO reviews earned sick time complaint forms developed by other cities and seek input from stakeholders before prescribing Austin's form. WDP would be happy to provide additional feedback regarding the content of this form. To be effective, WDP recommends that the form encourage Complainants to provide not only their own contact information but that of an emergency contact that can be reached by an Investigator or Administrator if EE/FHO is otherwise unable to reach the Complainant. The complaint form should also inquire about the preferred method of communication between EE/FHO and the Complainant (such as phone, email, snail mail, text message) and the time of day that the Complainant is most likely to be available. In WDP's experience, forms that list the potential violations under the Ordinance and allow the Complainant to indicate which of the potential violations may apply to them has proven useful in educating the public about what constitutes a violation under the Ordinance and ensuring that investigators are provided with sufficient information at the outset to conduct a thorough investigation of all potential claims.

Finally, in developing the prescribed form under this Rule, EE/FHO should be mindful of how the form can assist the agency in collecting data that will be useful for its preparation of the annual report to be published under **§4-19-8**.

The Rules should include additional provisions under **Part 3** to establish how the EE/FHO will receive anonymous complaints alleging a violation of the Ordinance pursuant to **§4-19-6(A)(2)**. At the very least, **Part 3** should establish that a Complainant need not disclose identifying information in order for their Complaint to be deemed filed.

WDP also recommends that an additional provision be added under **Part 3** that shall require EE/FHO, except when not practicable in the case of anonymous complaints, to provide a written notice to the Complainant to inform them (1) when EE/FHO received their Complaint (2) whether their Complaint was “timely filed”, and if so, (3) summarizes the next steps in the investigation process.

Part 4. Investigation of Complaints

Investigating Anonymous Complaints

The Proposed Rules do not seem to address how EE/FHO will fulfill the mandate established in **§4-19-6(A)(2)** to investigate anonymous complaints. For example, the investigation process described in **Part 4(C)** seems conditional on an Investigator’s ability to interview a Complainant, which is not likely to be possible if a Complaint has been filed anonymously.

It would contradict the intent of **§4-19-6(A)(2)** if the Rules established a process that summarily rejected any Complaints filed anonymously. Whether or not a Complaint is filed anonymously, a Complainant interview is not always going to be necessary for EE/FHO to fully or fairly investigate many violations of the Ordinance.

To to ensure that EE/FHO complies with the mandate established in **§4-19-6(A)(2)**, the Rules should require the agency to investigate anonymous complaints to the fullest extent practicable. Furthermore, the Rules should prohibit EE/FHO from dismissing an anonymous Complaint until the agency has exhausted all reasonable efforts to investigate the anonymous Complainant’s allegations.

Ensuring Complaints Are Investigated in a Timely Manner

While ensuring a thorough investigation of Complaints is essential, **Part 4** should reduce the likelihood that Complaints will languish unnecessarily with EE/FHO. EE/FHO should remain mindful that many people filing Complaints under the Ordinance may be experiencing extreme financial hardship as a result of the violations alleged in the Complaint or the circumstances that have necessitated their need for earned sick time. EE/FHO should make all reasonable efforts to resolve their Complaints expeditiously without compromising the integrity of the investigation process.

In addition, EE/FHO should endeavor to fastrack Complaints that allege violations of **§4-19-5** or otherwise allege violations that may necessitate an urgent remedy. Many other labor

enforcement agencies have established protocols to ensure that retaliation investigations occur on a faster timeline than other investigations in recognition of the time-sensitive nature of these complaints.

Ensuring that All Parties Feel Safe Participating in the Investigation Process

The Rules should reiterate that the Ordinance applies to all employees, regardless of immigration status. **Part 4**, in particular, should clearly state that, during the course of an investigation, parties will neither be required to provide, nor will EE/FHO request, information regarding the immigration status of any Complainant, witness, or Respondent.

Part 4(C)(1). WDP recommends that this section be revised to say “Within 5 business days of receiving the assignment, the Investigator will make all reasonable efforts to schedule an initial in-person or phone interview with the Complainant, unless the Complainant has filed anonymously and scheduling a follow-up interview is not possible.”

Part 4(C)(2). It is possible that the initial Complaint will contain insufficient information about the Respondent or insufficient information for a Respondent to meaningfully respond to the violations alleged in the Complaint until the Investigator is able to solicit additional information from the Complainant pursuant to Part 4(C)(1).

WDP recommends the following revised language for this Rule:

“Within 5 business days of receiving the assignment or confirming the employer implicated in the Complaint, the Respondent will be sent a copy of the Complaint and a request for responsive information. The Respondent will be given 14 days from the date of receipt to respond.

This written response must specifically state the Respondent’s position regarding the allegations set forth in the Complaint. If the Respondent admits to violating the Ordinance, their response must address how the Respondent will remedy this violation and, if applicable, make the Complainant whole. If the Respondent denies the allegations, they must specifically state how the Respondent is in compliance with the Ordinance and provide the responsive information requested. The Respondent may also provide any additional information it believes is relevant to the investigation of the Complaint.”

To ensure the timely resolution of Complaints, the Rules should permit and encourage Respondents who admit to violating the Ordinance in their written response to proactively remedy the violations alleged in the Complaint. Upon confirming satisfactory remedy of the violation in consultation with the Complainant, if possible, EE/FHO should issue a notice of dismissal so that the Respondent may avoid receiving a violation notice under **Part 5(C)(3)(c)**.

Part 4 should require EE/FHO to send to the Complainant copies of any written response to a Complaint furnished by a Respondent under **Part 4(C)(2)** or **Part 4(D)**.

Part 4 should provide additional guidance as to how a Respondent’s failure to provide a written response to the Complaint or other information requested under these Rules will impact the

investigation of a Complaint. Part 4 should establish that if the Respondent fails to provide a timely written response to the Investigator pursuant to **Part 4(C)(2)** or fails to timely provide information requested pursuant to **Part 4(C)(2) or Part 4(D)**, the EE/FHO will rely only on the information provided to the agency when making a final determination.

Part 4 should permit a Respondent to request additional time to submit the written response or the information requested under these Rules, and require such request to include the amount of additional time the Respondent needs provide its response and any requested information, and the reasons why the Respondent cannot respond in the the time allowed. The Rules should establish that EE/FHO's grant or denial of this request is not appealable.

Part 4(E) should be revised to state "The Complainant and the Respondent may submit witness statement and documents during the investigation that prove or disprove the allegations of the Complainant or the Respondent. The Investigator may request additional witnesses or documents from either the Complainant or the Respondent during the investigation and shall designate the deadline in which such testimony or documents should be provided. Additional witnesses or documents must be provided to the Investigator within 21 days from the date of the Investigator's request. Prior to recommending a final determination, the Investigator will make a final request for information from the Complainant and the Respondent. Information received from either party after the deadline prescribed in these Rules will not be considered by the Investigator or the Administrator."

Part 5. Final Determinations on Complaints

Part 5(B) should be revised to read that the recommended final determinations shall be made to the Administrator within 45 days of assignment of the Complaint to the Investigator. The Investigator shall provide the Complainant, Respondent, and Administrator written justification concerning any Complaint for which a recommended final determination is not made within 45 days of the date the Complaint is assigned. This written justification shall include the date the Investigator needs to complete its recommended final determination of the Complaint."

Part 5(C)(2) should require that any written notice of dismissal of a Complaint be issued to "the Complainant and the Respondent." Such notices of dismissal should include a brief statement which explains the Administrator's justification for dismissing the Complaint. In addition, written notices issued under the Rules should advise Complainants of their rights to file a future complaint with EE/FHO within the statutory period with additional evidence that supports the allegations alleged in their Complaint. Notices issued under this section should also advise of the Complainant's right to appeal the Complaint's dismissal.

Part 5(C)(3) should be revised to ensure that written notices issued under this Rule are sent to both the Respondent and the Complainant, include a brief statement justifying the Administrator's decision to issue a violation notice, and advise of the Respondent's right to appeal the Administrator's decision.

Part 5(D): WDP reiterates its recommendation that, whenever possible, an Administrator should consult with the Complainant or other employees with personal knowledge when seeking to

determine whether the Respondent has satisfactorily remedied the violation and voluntarily complied with the Ordinance within the required timeline.

Part 5(F) allows for an Administrator to dismiss a Complaint if it concludes that the Respondent is exempt from the Ordinance or the Ordinance does not otherwise apply to the Respondent. Any dismissal issued pursuant to this Rule should be sent to both the Complainant and the Respondent and advise the Complainant of their right to appeal. It is imperative that Complainants have the right to appeal dismissals issued pursuant to this Rule.

Part 5(G). As mentioned above, WDP recommends that this Rule be reversed and that parties have the right to appeal an initial determination of a Complaint. Because EE/FHO is not empowered to authorize Rules that exceed the bounds of the Ordinance, WDP recommends that persons assigned to adjudicate appeals under these Rules be EE/FHO personnel who do not have any involvement in the investigation of a Complaint, or any involvement in an Administrator's decision to take any of the actions described in **Part 5(C)(1)-(3)**.

WDP recommends that this appeals adjudicator:

- Set the date for a de novo hearing and send parties appropriate notice of the hearing in writing. This notice should include a short, plain statement of the issues to be considered during the hearing;
- Have the authority to postpone or continue a hearing for good cause;
- Conduct a de novo hearing to ascertain the substantive rights of the parties, develop the evidence, and address all issues relevant to the appeal;
- Issue a written decision to the parties that is restricted to the matters mentioned in the hearing notice and based exclusively on the evidence entered into the hearing's record. This decision should include findings of fact and conclusions of law reached on the noticed issues, as well as the adjudicator's decision regarding whether the determination reached under Part 5(C) is affirmed, reversed, or modified.

WDP suggests that the Rules permit this hearing to be conducted either in-person or by telephone, depending on the convenience of the parties.

Part 5(H). WDP recommends that that final determination of a Complaint under **Part 5(C)** be made within 90 days of assignment to an Investigator and that the written justification described in this Rule be provided to both the parties and the Administrator within 90 days of the date a Complaint is assigned to an Investigator.

Part 6. Assessment and Collection of Civil Penalties.

Part 6(A). We find the proposed civil penalty scheme confusing. In **Part 6(A)(1)(d)**, does EE/FHO intend to establish that a \$500 penalty shall be assessed any time an employer commits more than one violation in a 12-month period? Or, in this Rule, does EE/FHO suggest that there shall be a \$500 penalty for the fourth and any subsequent violation found within a 12-month period? We have similar questions about the intended interpretation of **Part 6(A)(2)(c)**. We

also are unsure how the proposed penalty scheme applies to Complaints where more than one violation is found.

WDP also does not believe that the proposed penalties are high enough, especially when compared with the impact that many violations of the Ordinance have on employees and their families. The cost that a Respondent's violation can have on an employee - losing a day's wages, being unable to be at the bedside of a loved one, or having to forego needed medical care - are certainly greater than many of the civil penalties proposed.

WDP recommends removing any distinction between smaller and larger employers as a matter of fairness and practicality. By designing the civil penalty scheme based on employer size, the Proposed Rules will require EE/FHO to confirm the number employees employed by the employer on the date the Complaint is filed for every single Complaint. Determining the number of employees present at the time of Complaint filing for every single Complaint is not only time-consuming, but likely unnecessary. Many potential Complaint investigations would not otherwise require a determination of employer size. Complaint investigations that do already require a determination of employer size task the Investigator with confirming the number of employees employed potentially at a different point in time than the date established under **Part 6(A)**.

Except as provided in **Part 6(B)**, WDP recommends that **Part 6(A)** establish for all employers: (1) a \$500 civil penalty for any violation of **§4-19-5**; (2) a \$250 civil penalty per violation for any first-time violation, other than a violation of **§4-19-5**; and (3) a \$500 civil penalty per violation for any subsequent violation.

Part 6(B) provides EE/FHO with discretion to increase or decrease the penalties proposed in **Part 6(A)**. While WDP supports the Rules providing EE/FHO with some degree of discretion to adjust the penalties established in **Part 6(A)**, the discretion granted in the Proposed Rule seems excessive and unwieldy. WDP recommends limiting EE/FHO's discretion to increase penalties only when the determined violations indicate bad faith or malicious misconduct on the part of the Respondent. WDP does not believe that EE/FHO should have the discretion to decrease the amount of penalties proposed under 6(A).

Part 7. Closure of Complaint Investigations

Part 7(A). This Rule should require EE/FHO to issue written notice of closure to the Respondent and the Complainant. This notice should be sent within 5 days of the date an investigation is closed pursuant to this Rule, briefly state the reason for the investigation's closure, and advise the Respondent that any records retained beyond the required period pursuant to **§4-19-2(K)** may now be destroyed.

Part 7(A)(1) WDP also recommends that the Rules amend this section to account not only for instances where a Complaint is withdrawn, but also instances where a Respondent voluntarily remedies a violation prior to receiving a notice of violation and civil penalty assessment under **Part 5(C)(3)(c)**.

Part 7(A)(2) provides for the closure of Complaints upon a determination that the preponderance of evidence does not establish a violation of Chapter 4-19. WDP recommends that the Rules clarify that Complainants whose Complaint is closed pursuant to this section not be prejudiced from refiling within the statute of limitations.

Part 7(A)(5) WDP recommends that this Rule be rephrased to prevent any Complaint from being unjustly or prematurely closed. Prior to closing any Complaint pursuant to this Rule, WDP recommends that the Rule require EE/FHO to issue a written notice to the Complainant which advises the Complainant that their Complaint shall be closed unless the Complainant communicates with the EE/FHO within 21 days of receipt of the notice. If, following this 21-day period, the Complainant fails to respond to this notice and further attempts by EE/FHO to reach Complainant, the Administrator may determine that the Complainant has abandoned the Complaint. We suggest revising this Rule to state:

- (5) The Administrator determines that the Complainant has abandoned the Complaint. A Complainant abandons a Complaint only after:
- (i) The Administrator determines that the Complainant has failed to reasonably cooperate with an Investigator's attempts to reach the Complainant or obtain information from the Complainant;
 - (ii) An Investigator sends the Complainant written notice informing Complainant that their Complaint is at risk of closure under this section unless the Complainant communicates with the Investigator within 21-days of receipt of this notice; and
 - (iii) The Complainant fails to respond to this notice or other attempts by the Investigator to reach the Complainant during this 21-day period.

Additional Comments Concerning Confidentiality and Privacy

In order to protect employees from being retaliated against for pursuing their rights under this Ordinance, EE/FHO should articulate, in these Rules, that the agency will seek to maintain the confidentiality of a Complainant whenever practicable. Suggested language for this Rule could be: "EE/FHO shall maintain the confidentiality of a Complainant unless disclosure of Complainant's identity is necessary for resolution or investigation of a Complaint, or is otherwise required by law. To the extent practicable, an Investigator or Administrator shall notify Complainant that the agency will be disclosing their identity prior to such disclosure."

These Rules and other outreach and education efforts conducted by EE/FHO shall also advise of an employer's duties to ensure that employees' right to privacy is protected. Employers should not disclose any information they obtain about an employee's need to use earned sick time unless such disclosure is requested or consented by an employee, ordered by a court or administrative agency, or otherwise required by law. If an employer happens to obtain any health information about an employee or an employee's family member, the employer should treat such information in a confidential manner and protect such information from disclosure, as required by applicable privacy laws.

Thank you for your consideration of these comments. Austin's workers deserve access to earned sick time and faithful implementation and enforcement of this Ordinance. WDP is always eager to work with EE/FHO to ensure that all eligible workers in this City are able to avail themselves to their right to earned paid sick time.

Sincerely,

/s/ Stephanie Gharakhanian

Stephanie Gharkahanian, Esq.
Special Counsel
Workers Defense Project

From: [Allison Elsey](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Comments to the Proposed Rules For Austin's Paid Sick Time Ordinance
Date: Thursday, July 19, 2018 6:59:59 PM

This message is from Allison Elsey. [REDACTED]

1. The complaint and investigation process should be as accessible as possible.

The complaint forms developed should be:

- 1) Simple and easy to complete
- 2) Available in Spanish and other languages
- 3) Available online in an accessible format that is easy to find on the City's website AND beavailable in hardcopy
- 4) Be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

2. The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

3. Penalties under the ordinance should be higher to encourage compliance. Penalties assessed under this ordinance should be designed with deterrence in mind. The final rules should simplify the fee schedule and ensure that it applies equitably to all employers regardless of their size. Absent cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250. Civil penalties for any subsequent violation by an employer ' regardless of the size of the employer or when this subsequent violation occurred ' should be \$500. Any violation of the retaliation provision ' whether it be a first or subsequent violation ' should result in the assessment of a \$500 penalty. ' In addition, the final rules should limit EE/FHO's discretion to adjust these penalties so that they may never be lowered, but may be increased for cases involving bad faith or malicious conduct.

4. The enforcement process should prioritize making workers whole in as timely a manner as possible. 'The final rules should endeavor to close investigations within 90 days, not 120 days. Furthermore, the final rules should outline EE/FHO's guidelines for seeking voluntary compliance of a complaint.

5. EE/FHO must release both interpretive rules as well as procedural rules.

These interpretive rules should, at the very least, clarify

- 1) The rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance;
- 2) The ordinance's signage requirement; and
- 3) What constitutes 'reasonable verification procedures' to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look

to earned paid sick time administrative rules published by other benchmark cities across the country.

From: [Margaret Clark](#)
To: [EarnedSickTime](#)
Subject: Comments to the Proposed Rules For Austin's Paid Sick Time Ordinance
Date: Thursday, July 19, 2018 5:14:47 PM

This message is from Margaret Clark. [REDACTED]

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country.

From: [Ashley Beckford](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Comments to the Proposed Rules For Austin's Paid Sick Time Ordinance
Date: Thursday, July 19, 2018 10:53:44 PM

This message is from Ashley Beckford. [REDACTED]

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- 4) Be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

2. The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

3. Penalties under the ordinance should be higher to encourage compliance. Penalties assessed under this ordinance should be designed with deterrence in mind. The final rules should simplify the fee schedule and ensure that it applies equitably to all employers regardless of their size. Absent cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250. Civil penalties for any subsequent violation by an employer "regardless of the size of the employer or when this subsequent violation occurred" should be \$500. Any violation of the retaliation provision "whether it be a first or subsequent violation" should result in the assessment of a \$500 penalty. "In addition, the final rules should limit EE/FHO's discretion to adjust these penalties so that they may never be lowered, but may be increased for cases involving bad faith or malicious conduct.

4. The enforcement process should prioritize making workers whole in as timely a manner as possible. "The final rules should endeavor to close investigations within 90 days, not 120 days. Furthermore, the final rules should outline EE/FHO's guidelines for seeking voluntary compliance of a complaint.

5. EE/FHO must release both interpretive rules as well as procedural rules.

These interpretive rules should, at the very least, clarify

- 1) The rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance;
- 2) The ordinance's signage requirement; and
- 3) What constitutes "reasonable verification procedures" to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look to earned paid sick time administrative rules published by other

benchmark cities across the country.

From: [Nick Sarlo](#)
To: [EarnedSickTime](#)
Subject: Comments
Date: Thursday, July 19, 2018 7:19:04 PM

This message is from Nick Sarlo. [REDACTED]

1. The complaint and investigation process should be as accessible as possible.

The complaint forms developed should be:

- 1) Simple and easy to complete
- 2) Available in Spanish and other languages
- 3) Available online in an accessible format that is easy to find on the City's website AND beavailable in hardcopy
- 4) Be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

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country.

From: [Nick Sarlo](#)
To: [EarnedSickTime](#)
Subject: Comments
Date: Thursday, July 19, 2018 7:19:06 PM

This message is from Nick Sarlo. [REDACTED]

1. The complaint and investigation process should be as accessible as possible.

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- 1) Simple and easy to complete
- 2) Available in Spanish and other languages
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country.

From: [Mia Ibarra](#)
To: [Babiak, Jonathan](#)
Cc: [Chandra Villanueva](#)
Subject: CPPP Comments on Notice of Proposed Adoption of Administrative Rules for Earned Sick Time
Date: Wednesday, July 18, 2018 4:16:39 PM
Attachments: [CPPP Comments on Austin Paid Sick Days Rules_Final.pdf](#)

Hi Jonathan,

Thank you for speaking with me earlier this afternoon. The Center for Public Policy Priorities (CPPP) respectfully submits the attached comments to the City of Austin Equal Employment/Fair Housing Office (EE/FHO) in response to the notice of proposed adoption of administrative rules for investigation of complaints and assessment of penalties under City Code Chapter 4-19, related to the City of Austin's Earned Sick Time Ordinance, posted on June 18, 2018.

Thank you for consideration of our comments on these important rules. If you have any questions regarding these comments, please contact Mia Ibarra, Deputy Legislative and Policy Director with the Center for Public Policy Priorities at [REDACTED] or (512) 823-2880.

Sincerely,

Mia Ibarra
Deputy Legislative and Policy Director
Center for Public Policy Priorities
T 512-823-2880 | C 512-627-5279
[CPPP.org](#) | [Get Our Emails](#)
[Twitter](#) | [Facebook](#)

Follow me on Twitter [@ThatMiaIbarra](#)

CENTER for PUBLIC POLICY PRIORITIES

July 18, 2018

ATTN: Jonathan Babiak
City of Austin Equal Employment/Fair Housing Office
1050 East 11th Street, Suite 200
Austin, Texas 78702
(512) 974-3200

RE: Comments on Notice of Proposed Adoption of Administrative Rules for Investigation of Complaints and Assessment Of Civil Penalties under City Code Chapter 4-19

To Whom It May Concern:

The Center for Public Policy Priorities (CPPP) respectfully submits the following comments to the City of Austin Equal Employment/Fair Housing Office (EE/FHO) in response to the notice of proposed adoption of administrative rules for investigation of complaints and assessment of penalties under City Code Chapter 4-19, related to the City of Austin's Earned Sick Time Ordinance, posted on June 18, 2018.

The Center for Public Policy Priorities is an independent, 510(c)3 public policy organization that uses data and analysis to advocate for solutions that enable Texans of all backgrounds to reach their full potential. We believe in a Texas that offers everyone the chance to compete and succeed in life. CPPP is also a member of Work Strong Austin, a coalition of community organizations dedicated to improving the lives of working families in Austin.

CPPP appreciates the opportunity to provide comments on the proposed rules for the City of Austin's Earned Sick Time Ordinance. We strongly support the City Council's efforts through this ordinance to improve the health and well-being of working people and the health, safety, and welfare of all Austin residents. In addition to ensuring that complaints under Chapter 4-19 are taken seriously and investigated thoroughly and expeditiously, the rules adopted by the Equal Employment/Fair Housing Office (EE/FHO) should also ensure that workers understand the earned sick time benefits they are entitled to under this policy and that employers have the clarity they need to comply with the ordinance.

Accordingly, the Center for Public Policy Priorities offers the following comments to the recent rules that EE/FHO has released for its implementation of Austin's Earned Sick Time ordinance:

EE/FHO should resolve complaints in a timely manner and seek a resolution that makes employees whole. Many workers likely to file complaints under this ordinance do so in a moment of great need and put themselves in a vulnerable position by doing so. Without sacrificing the thoroughness or integrity of the investigation process, EE/FHO should attempt to resolve complaints as quickly as possible, but no more than 90 days after the complaint is assigned to an investigator.

Furthermore, to the extent possible, the final rules should provide additional clarity regarding how EE/FHO will try to seek voluntary compliance to correct a violation, deter additional violations in the future, and make workers whole if their rights under the law have been violated. Without such assurances, the draft rules provide little incentive for workers to file complaints alleging violations of the law. Without complaints from the workers who are supposed to benefit from this law, enforcement becomes all but impossible. Low-wage and part-time workers in particular are often extremely fearful of bringing complaints against their employers because they know they risk their jobs, working hours, and more if they do so.

The complaint and investigation process should be as accessible as possible. EE/FHO should ensure that its complaint form is available in multiple languages and formats (i.e., both mobile-friendly digital and hard copy), is easy to access (e.g., mobile friendly and easy to find on the city website), easy to understand (e.g., 8th grade reading level), and easy to submit. Whenever possible, EE/FHO investigators should attempt to conduct interviews over the phone and outside of regular business hours, in order to accommodate people who may not have access to reliable transportation or whose work schedules make it difficult for them to be reached during the work day.

The civil penalties should be designed to deter violations and ensure consistency in enforcement. Austin's proposed penalties are low in comparison to other cities around the country, and the proposed rules create uncertainty for employers regarding what to expect from the EE/FHO regarding assessment of penalties if a violation occurs. The final rules should both simplify and increase the civil penalty amounts for all violations. For example:

- Except for cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250.
- Civil penalties for any subsequent violation by an employer - regardless of the size of the employer or when this subsequent violation occurred - should be \$500.
- Any violation of the retaliation provision - whether it be a first or subsequent violation - should result in the assessment of a \$500 penalty.

While the final rules should grant EE/FHO the discretion to assess higher penalties for violations that involve bad faith or malicious conduct, penalties should not be lower than those established in the rules.

Parties should be able to appeal an initial determination of a complaint. To ensure that everyone's due process rights are respected, parties should have the opportunity to appeal EE/FHO's initial determination of a complaint. Benchmark cities such as Minneapolis and St. Paul offer examples for an appeal process. The administrative rules from St. Paul, MN, for example, allow either party to appeal the enforcing agency's grant or denial of a request for consideration of a complaint within 21 days of date of the department's response.ⁱ

EE/FHO's final rules should both interpret the ordinance and outline the agency's investigation and enforcement procedures. Without interpretative rules, it will be difficult for employers to successfully comply with the ordinance, for workers to fully understand their rights under the ordinance, and for EE/FHO to enforce the ordinance fairly and effectively.

For example, these interpretive rules should provide additional guidance on:

- How employers should compensate different types of employees who use earned paid sick time, including salaried workers, overtime eligible workers, on-call workers, and workers whose compensation is not based on a “regular rate” - such as workers who are “on-call,” workers who are paid piece rate, workers who can receive a differential rate, workers who are salaried but also overtime eligible and workers whose pay fluctuates based on the kind of work they are doing. The City of St. Paul includes good examples of this type of clarification.ⁱⁱ
- When compensation for earned sick time is due to an employee. For example, Seattle’s rules specify that employer must pay earned sick time to an employee no later than the payday for the pay period in which earned sick time was used by the employee. If verification is required, earned sick time must be paid to the employee no later than the payday for the pay period during which verification is provided to the employer by the employee.ⁱⁱⁱ
- What constitutes “reasonable” verification procedures for employees who request to use earned sick time for more than three consecutive work days, including clarification that “three consecutive work days” means three consecutive days on which the employee is required or scheduled to work. Again, Seattle’s paid sick and safe time rules can serve as a benchmark for providing employers with clear guidance, protecting the medical privacy of employees and their family members, and ensuring that employer-required verification does not result in an unreasonable burden or expense for the employee.^{iv}
- How much advance notice employers can require for a “timely request” from an employee to use earned sick time for foreseeable absences, the requirements for notifying employees of such a policy or agreement, and obligations of employers to ensure such a policy does not interfere with an employee’s lawful use for earned sick time for unforeseen absences. The rules for the District of Columbia’s Accrued Sick and Safe Leave Act of 2008 include helpful language.^v
- The information that should be included in an employee handbook, if the employer provides a handbook, about employee rights under Austin’s ordinance and the employer’s own policy.
- The signage that employers are required to post, including size, display specifications, required languages, and what employers should do if displaying the sign is not feasible.

Over thirty cities have passed similar policies, and the EE/FHO should review the rules of other jurisdictions to determine the appropriate approach for Austin.^{vi}

Thank you for consideration of our comments on these important rules. If you have any questions regarding these comments, please contact Mia Ibarra, Deputy Legislative and Policy Director with the Center for Public Policy Priorities at [REDACTED] or (512) 823-2880.

Sincerely,

Mia Ibarra
Deputy Legislative and Policy Director
Center for Public Policy Priorities

ⁱ City of Saint Paul – Rules for ESST Enforcement 3 Last revised October 31, 2017, effective November 30, 2017, <https://stpaul.gov/sites/default/files/Media%20Root/Human%20Rights%20%26%20Equal%20Economic%20Opportunity/ESST%20Rules%20Update.9.29.2017.pdf>.

ⁱⁱ City of Saint Paul – Rules for ESST Enforcement 3 Last revised October 31, 2017, effective November 30, 2017, <https://stpaul.gov/sites/default/files/Media%20Root/Human%20Rights%20%26%20Equal%20Economic%20Opportunity/ESST%20Rules%20Update.9.29.2017.pdf>.

ⁱⁱⁱ Seattle Office of Labor Standards Seattle Human Rights Rules (SHRR) Chapter 70 Practices for administering the Paid Sick and Safe Time Ordinance under SMC 14.16, https://seattle.gov/Documents/Departments/LaborStandards/2018%20PSST%20Rules_06-29-18.pdf.

^{iv} Seattle Office of Labor Standards Seattle Human Rights Rules (SHRR) Chapter 70 Practices for administering the Paid Sick and Safe Time Ordinance under SMC 14.16, https://seattle.gov/Documents/Departments/LaborStandards/2018%20PSST%20Rules_06-29-18.pdf.

^v District of Columbia Department of Employment Services – Notice of Final Rulemaking, Accrued Sick and Safe Leave Act of 2008, https://does.dc.gov/sites/default/files/dc/sites/does/publication/attachments/Accrued_Sick_and_Safe_Final_Rules.pdf. These rules apply to the original 2008 act.

^{vi} Center for Law and Social Policy, Inc. (CLASP), Enforcing Sick Days: Laws and Regulations, <http://enforcingsickdays.org/laws-and-regulations/>.

From: [Arnulfo Vazquez](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Earn Sick Time Recommendations/Recomendaciones dias de enfermedad pagados
Date: Tuesday, July 17, 2018 8:40:50 PM

This message is from Arnulfo Vazquez. [REDACTED]

A quien corresponda,

Por medio de la presente envio mis recomendaciones para la ordenanza de dias de enfermedad pagados.

Atentamente,

Recomendaciones dÃas de enfermedad pagados.

Las penalidades civiles tener que ser mÃs altas para que se cumpla con la ley. Una penalidad mÃnima debe ser de \$250, cualquier violaciÃn que siga debe elevarse a \$500 inmediatamente. El departamento de EE/FHO debe tener discreciÃn limitada para aumentar penalidades civiles en casos de represalias y si un empleador actuÃ de mala fe, pero bajo ninguna circunstancia el departamento de minimizar las penalidades.

La investigaciÃn necesita un proceso mÃs rÃpido. Las reglas proponen 120 dÃas para procesar quejar, esto es demasiado tiempo. Las quejas deben ser procesadas mÃnimo en 90 dÃas.

Debe haber el derecho para apelar. El poder apelar es fundamental para este proceso. De esta manera nos vamos a asegurar que sea un proceso justo y equitativo.

El procedimiento de investigaciÃn y quejas debe ser lo mÃs accesible posible. El proceso debe acomodar a personas que su idioma no es inglÃs, tambiÃn para las personas que no tienen acceso a tecnologÃa y tambiÃn para aquellos que no pueden participar en persona. EE/FHO necesita reglas interpretativas adicionalmente de reglas sobre el proceso.

Empleadores necesitan esto para aclarar dudas y asegurarse que estÃn cumpliendo con la ley, trabajadores necesitan entender claramente sus derechos bajo esta ordenanza, la ciudad necesita esto para tener claridad en cÃmo enforcing la ley.

The civil penalties need to be higher to encourage compliance. The minimum penalty for a first time violation should be \$250, any subsequent violation should result in an automatic \$500 penalty. EE/FHO should have limited discretion to increase civil penalties in cases involving bad faith or retaliation, but should never have the discretion to lower the penalty. The investigation process needs to be faster. The proposed rules encourage the city to resolve complaints in 120 days. That is too long. At the very least, complaints should be resolved in 90 days.

There should be a right to appeal. The right to appeal is fundamental to due process. The only way to ensure fair, equitable treatment in the city's administration of this ordinance is for it to allow either party the right to appeal an initial determination on a complaint.

The complaint and investigation process should be as accessible as possible. The process should accommodate non-English speakers, those with limited access to a computer or the Internet, those without access to reliable transportation, and those whose work schedules

make it difficult to participate in in-person meetings during regular business hours. EE/FHO needs to establish interpretive rules in addition to procedural rules. Employers need this clarity to ensure full compliance with the ordinance, workers need this clarity to fully understand their rights under the ordinance, and the city will need this clarity to properly enforce it.

From: [Fidel Guzman](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Earn Sick Time Recommendations/Recomendaciones dias de enfermedad pagados
Date: Tuesday, July 17, 2018 8:36:52 PM

This message is from Fidel Guzman . [REDACTED]

A quien corresponda,

Por medio de la presente envio mis recomendaciones para la ordenanza de dias de enfermedad pagados.

Atentamente,
Fidel Guzman

Recomendaciones dÃas de enfermedad pagados.
<http://austintexas.gov/email/earnedsicktime>

Las penalidades civiles tener que ser mÃs altas para que se cumpla con la ley. Una penalidad mÃnima debe ser de \$250, cualquier violaciÃn que siga debe elevarse a \$500 inmediatamente. El departamento de EE/FHO debe tener discreciÃn limitada para aumentar penalidades civiles en casos de represalias y si un empleador actuÃ de mala fe, pero bajo ninguna circunstancia el departamento de minimizar las penalidades.

La investigaciÃn necesita un proceso mÃs rÃpido. Las reglas proponen 120 dÃas para procesar quejar, esto es demasiado tiempo. Las quejas deben ser procesadas mÃnimo en 90 dÃas.

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From: [Digna Cruz](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Earn Sick Time Recommendations/Recomendaciones dias de enfermedad pagados
Date: Tuesday, July 17, 2018 8:30:37 PM

This message is from Digna Cruz . [REDACTED]

Earn Sick Time Recommendations/Recomendaciones dias de enfermedad pagados
A quien corresponda,

Por medio de la presente envio mis recomendaciones para la ordenanza de dias de enfermedad pagados.

Atentamente,
Digna Cruz

Recomendaciones dÃas de enfermedad pagados.

Las penalidades civiles tener que ser mÃs altas para que se cumpla con la ley. Una penalidad mÃnima debe ser de \$250, cualquier violaciÃn que siga debe elevarse a \$500 inmediatamente. El departamento de EE/FHO debe tener discreciÃn limitada para aumentar penalidades civiles en casos de represalias y si un empleador actuÃ de mala fe, pero bajo ninguna circunstancia el departamento de minimizar las penalidades.

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EE/FHO needs to establish interpretive rules in addition to procedural rules. Employers need this clarity to ensure full compliance with the ordinance, workers need this clarity to fully understand their rights under the ordinance, and the city will need this clarity to properly enforce it.

From: [Luis Arredondo](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Earn Sick Time Recommendations/Recomendaciones dias de enfermedad pagados
Date: Tuesday, July 17, 2018 8:20:46 PM

This message is from Luis Arredondo. [REDACTED]

A quien corresponda,

Por medio de la presente envio mis recomendaciones para la ordenanza de dias de enfermedad pagados.

Atentamente,
Luis Arredondo

Recomendaciones dÃas de enfermedad pagados.

Las penalidades civiles tener que ser mÃs altas para que se cumpla con la ley. Una penalidad mÃnima debe ser de \$250, cualquier violaciÃn que siga debe elevarse a \$500 inmediatamente. El departamento de EE/FHO debe tener discreciÃn limitada para aumentar penalidades civiles en casos de represalias y si un empleador actuÃ de mala fe, pero bajo ninguna circunstancia el departamento de minimizar las penalidades.

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From: [Luis Olivares](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Earn Sick Time Recommendations/Recomendaciones dias de enfermedad pagados
Date: Tuesday, July 17, 2018 7:50:25 PM

This message is from Luis Olivares. [REDACTED]

A quien corresponda,

Por medio de la presente envio mis recomendaciones para la ordenanza de dias de enfermedad pagados.

Atentamente,
Luis Olivares

Recomendaciones dÃas de enfermedad pagados.

Las penalidades civiles tener que ser mÃs altas para que se cumpla con la ley. Una penalidad mÃnima debe ser de \$250, cualquier violaciÃn que siga debe elevarse a \$500 inmediatamente. El departamento de EE/FHO debe tener discreciÃn limitada para aumentar penalidades civiles en casos de represalias y si un empleador actuÃ de mala fe, pero bajo ninguna circunstancia el departamento de minimizar las penalidades.

La investigaciÃn necesita un proceso mÃs rÃpido. Las reglas proponen 120 dÃas para procesar quejar, esto es demasiado tiempo. Las quejas deben ser procesadas mÃnimo en 90 dÃas.

Debe haber el derecho para apelar. El poder apelar es fundamental para este proceso. De esta manera nos vamos a asegurar que sea un proceso justo y equitativo.

El procedimiento de investigaciÃn y quejas debe ser lo mÃs accesible posible. El proceso debe acomodar a personas que su idioma no es inglÃs, tambiÃn para las personas que no tienen acceso a tecnologÃa y tambiÃn para aquellos que no pueden participar en persona. EE/FHO necesita reglas interpretativas adicionalmente de reglas sobre el proceso.

Empleadores necesitan esto para aclarar dudas y asegurarse que estÃn cumpliendo con la ley, trabajadores necesitan entender claramente sus derechos bajo esta ordenanza, la ciudad necesita esto para tener claridad en cÃmo enforcing la ley.

The civil penalties need to be higher to encourage compliance. The minimum penalty for a first time violation should be \$250, any subsequent violation should result in an automatic \$500 penalty. EE/FHO should have limited discretion to increase civil penalties in cases involving bad faith or retaliation, but should never have the discretion to lower the penalty. The investigation process needs to be faster. The proposed rules encourage the city to resolve complaints in 120 days. That is too long. At the very least, complaints should be resolved in 90 days.

There should be a right to appeal. The right to appeal is fundamental to due process. The only way to ensure fair, equitable treatment in the city's administration of this ordinance is for it to allow either party the right to appeal an initial determination on a complaint.

The complaint and investigation process should be as accessible as possible. The process should accommodate non-English speakers, those with limited access to a computer or the Internet, those without access to reliable transportation, and those whose work schedules

make it difficult to participate in in-person meetings during regular business hours. EE/FHO needs to establish interpretive rules in addition to procedural rules. Employers need this clarity to ensure full compliance with the ordinance, workers need this clarity to fully understand their rights under the ordinance, and the city will need this clarity to properly enforce it.

From: [Juan Pedro Munoz](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Earn Sick Time Recommendations/Recomendaciones dias de enfermedad pagados
Date: Tuesday, July 17, 2018 7:46:35 PM

This message is from Juan Pedro Munoz . [REDACTED]

A quien corresponda,

Por medio de la presente envio mis recomendaciones para la ordenanza de dias de enfermedad pagados.

Atentamente,
Juan Pedro Munoz

Recomendaciones dÃas de enfermedad pagados.

Las penalidades civiles tener que ser mÃs altas para que se cumpla con la ley. Una penalidad mÃnima debe ser de \$250, cualquier violaciÃn que siga debe elevarse a \$500 inmediatamente. El departamento de EE/FHO debe tener discreciÃn limitada para aumentar penalidades civiles en casos de represalias y si un empleador actuÃ de mala fe, pero bajo ninguna circunstancia el departamento de minimizar las penalidades.

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The complaint and investigation process should be as accessible as possible. The process should accommodate non-English speakers, those with limited access to a computer or the Internet, those without access to reliable transportation, and those whose work schedules make it difficult to participate in in-person meetings during regular business hours.

EE/FHO needs to establish interpretive rules in addition to procedural rules. Employers need this clarity to ensure full compliance with the ordinance, workers need this clarity to fully understand their rights under the ordinance, and the city will need this clarity to properly enforce it.

From: [OCTAVIO MANZANARES PUENTE](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Earn Sick Time Recommendations/Recomendaciones dias de enfermedad pagados
Date: Tuesday, July 17, 2018 8:50:16 PM

This message is from OCTAVIO MANZANARES PUENTE . [REDACTED]

A quien corresponda,

Por medio de la presente envio mis recomendaciones para la ordenanza de dias de enfermedad pagados.

Atentamente,
Octavio Manzanarez Puente

Recomendaciones dÃas de enfermedad pagados.
<http://austintexas.gov/email/earnedsicktime>

Las penalidades civiles tener que ser mÃs altas para que se cumpla con la ley. Una penalidad mÃnima debe ser de \$250, cualquier violaciÃn que siga debe elevarse a \$500 inmediatamente. El departamento de EE/FHO debe tener discreciÃn limitada para aumentar penalidades civiles en casos de represalias y si un empleador actuÃ de mala fe, pero bajo ninguna circunstancia el departamento de minimizar las penalidades.

La investigaciÃn necesita un proceso mÃs rÃpido. Las reglas proponen 120 dÃas para procesar quejar, esto es demasiado tiempo. Las quejas deben ser procesadas mÃnimo en 90 dÃas.

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There should be a right to appeal. The right to appeal is fundamental to due process. The only way to ensure fair, equitable treatment in the city's administration of this ordinance is for it to allow either party the right to appeal an initial determination on a complaint.

The complaint and investigation process should be as accessible as possible. The process

should accommodate non-English speakers, those with limited access to a computer or the Internet, those without access to reliable transportation, and those whose work schedules make it difficult to participate in in-person meetings during regular business hours.

EE/FHO needs to establish interpretive rules in addition to procedural rules. Employers need this clarity to ensure full compliance with the ordinance, workers need this clarity to fully understand their rights under the ordinance, and the city will need this clarity to properly enforce it.

From: [Sandy Romero](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Earn sick time rules recommendation
Date: Wednesday, July 18, 2018 5:27:34 PM

This message is from Sandy Romero. [REDACTED]

To whom it may concern,

I write as a member of the Work Strong Austin, a coalition of community organizations dedicated to improving the lives of working families in Austin.

Outlined here are the recommendations I would like to submit in regards to the Earned Sick Time Ordinance Rules.

1. The civil penalties need to be higher to encourage compliance. The minimum penalty for a first time violation should be \$250, any subsequent violation should result in an automatic \$500 penalty. EE/FHO should have limited discretion to increase civil penalties in cases involving bad faith or retaliation, but should never have the discretion to lower the penalty.
2. The investigation process needs to be faster. The proposed rules encourage the city to resolve complaints in 120 days. That is too long. At the very least, complaints should be resolved in 90 days.
3. There should be a right to appeal. The right to appeal is fundamental to due process. The only way to ensure fair, equitable treatment in the city's administration of this ordinance is for it to allow either party the right to appeal an initial determination on a complaint.
4. The complaint and investigation process should be as accessible as possible. The process should accommodate non-English speakers, those with limited access to a computer or the Internet, those without access to reliable transportation, and those whose work schedules make it difficult to participate in in-person meetings during regular business hours
5. EE/FHO needs to establish interpretive rules in addition to procedural rules. Employers need this clarity to ensure full compliance with the ordinance, workers need this clarity to fully understand their rights under the ordinance, and the city will need this clarity to properly enforce it.

Sincerely,

Sandy Romero

From: [Hope Harrison](#)
To: [EarnedSickTime](#)
Subject: Earned Paid Sick Days
Date: Monday, July 16, 2018 3:32:55 PM

This message is from Hope Harrison. [REDACTED]

1. The complaint and investigation process should be as accessible as possible. Many of Austin's workers - especially those most likely to experience violations of the paid sick ordinance - may have limited English proficiency or low literacy. They may not have regular access to a computer or the internet, or know how to use e-mail or a computer at all. Because of the hours they work or the nature of their employment situation, these workers may not be easily reached during regular business hours or be available to attend in-person meetings during the business day. To be effective, the EE/FHO's complaint and investigation process for the earned paid sick time ordinance needs to account for and accommodate these realities.

WHAT DO WE RECOMMEND? The complaint forms developed by EE/FHO should be

1) simple and easy to complete 2) available in Spanish and other languages 3) available online in an accessible format that is easy to find on the City's website AND be available in hardcopy 4) be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

2. Parties should have the right to appeal an initial determination on their complaint. Under the proposed rules, once the EE/FHO reaches its decision on a complaint, neither party has any chance to appeal that decision. We know that people make mistakes. The right to appeal is essential to ensure that all parties to a complaint are treated fairly in the investigation and enforcement process.

WHAT DO WE RECOMMEND? The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

3. Penalties under the ordinance should be higher to encourage compliance. Penalties assessed under this ordinance should be designed with deterrence in mind. The proposed penalties - \$100 for small employers and \$150 for all other employers for a first time violation - are far too low. Indeed, they are so low that they likely create a financial incentive for employers to violate the ordinance and risk "getting caught" than actually comply. Furthermore, the proposed rules give the EE/FHO wide discretion to increase or decrease the penalty assessed.

WHAT DO WE RECOMMEND? The final rules should simplify the fee schedule and ensure that it applies equitably to all employers regardless of their size. Absent cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250. Civil penalties for any subsequent violation by an employer - regardless of the size of the employer or when this subsequent violation occurred -

should be \$500. Any violation of the retaliation provision - whether it be a first or subsequent violation - should result in the assessment of a \$500 penalty. In addition, the final rules should limit EE/FHO's discretion to adjust these penalties so that they may never be lowered, but may be increased for cases involving bad faith or malicious conduct.

4. The enforcement process should prioritize making workers whole in as timely a manner as possible. Violations of this ordinance can have grave consequences for an employee and their family and many people filing complaints may be doing so in moments of personal crisis. The proposed rules say that EE/FHO should try to close an investigation within 120 days, yet provide no guidance on how EE/FHO is supposed to seek voluntary compliance.

WHAT DO WE RECOMMEND? The enforcement process should attempt to resolve complaints as expeditiously as possible in a way that makes employees whole. The final rules should endeavor to close investigations within 90 days, not 120 days. Furthermore, the final rules should outline EE/FHO's guidelines for seeking voluntary compliance of a complaint.

5. EE/FHO must release both interpretive rules as well as procedural rules. The proposed rules released by EE/FHO outlines a process for receiving, investigating, and resolving complaints, but provide no guidance on how the agency will actually interpret the ordinance. Without interpretative rules, it will be difficult for employers to successfully comply with the ordinance, for workers to fully understand their rights under the ordinance, and for EE/FHO to enforce the ordinance fairly and effectively.

WHAT DO WE RECOMMEND? The final rules published by EE/FHO should include both procedural rules and interpretive rules. These interpretive rules should, at the very least, clarify 1) the rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance; 2) the ordinance's signage requirement; and 3) what constitutes a reasonable verification procedures to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look to earned paid sick time administrative rules published by other benchmark cities across the country.

From: [Mario Morales](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Earned paid sick days
Date: Sunday, July 15, 2018 4:09:37 PM

This message is from Mario Morales. [REDACTED]

1. The complaint and investigation process should be as accessible as possible. Many of Austin's workers - especially those most likely to experience violations of the paid sick ordinance - may have limited English proficiency or low literacy. They may not have regular access to a computer or the internet, or know how to use e-mail or a computer at all. Because of the hours they work or the nature of their employment situation, these workers may not be easily reached during regular business hours or be available to attend in-person meetings during the business day. To be effective, the EE/FHO's complaint and investigation process for the earned paid sick time ordinance needs to account for and accommodate these realities.

WHAT DO WE RECOMMEND? The complaint forms developed by EE/FHO should be 1) simple and easy to complete 2) available in Spanish and other languages 3) available online in an accessible format that is easy to find on the City's website AND be available in hardcopy 4) be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

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WHAT DO WE RECOMMEND? The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

3. Penalties under the ordinance should be higher to encourage compliance. Penalties assessed under this ordinance should be designed with deterrence in mind. The proposed penalties - \$100 for small employers and \$150 for all other employers for a first time violation - are far too low. Indeed, they are so low that they likely create a financial incentive for employers to violate the ordinance and risk "getting caught" than actually comply. Furthermore, the proposed rules give the EE/FHO wide discretion to increase or decrease the penalty assessed.

WHAT DO WE RECOMMEND? The final rules should simplify the fee schedule and ensure that it applies equitably to all employers regardless of their size. Absent cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250. Civil penalties for any subsequent violation by an employer - regardless of the size of the employer or when this subsequent violation occurred - should be \$500. Any violation of the retaliation provision - whether it be a first or subsequent violation - should result in the assessment of a \$500 penalty. In addition, the final rules should limit EE/FHO's discretion to adjust these penalties so that they may never be lowered, but may be increased for cases involving bad faith or malicious conduct.

4. The enforcement process should prioritize making workers whole in as timely a manner as possible. Violations of this ordinance can have grave consequences for an employee and their family and many people filing complaints may be doing so in moments of personal crisis. The proposed rules say that EE/FHO should try to close an investigation within 120 days, yet provide no guidance on how EE/FHO is supposed to seek voluntary compliance.

WHAT DO WE RECOMMEND? The enforcement process should attempt to resolve complaints as expeditiously as possible in a way that makes employees whole. The final rules should endeavor to close investigations within 90 days, not 120 days. Furthermore, the final rules should outline EE/FHO's guidelines for seeking voluntary compliance of a complaint.

5. EE/FHO must release both interpretive rules as well as procedural rules.

The proposed rules released by EE/FHO outlines a process for receiving, investigating, and resolving complaints, but provide no guidance on how the agency will actually interpret the ordinance. Without interpretative rules, it will be difficult for employers to successfully comply with the ordinance, for workers to fully understand their rights under the ordinance, and for EE/FHO to enforce the ordinance fairly and effectively.

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From: [Rene Lara](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Earned Paid Sick Leave comments
Date: Tuesday, July 17, 2018 1:47:39 PM

This message is from Rene Lara. [REDACTED]

1. The complaint and investigation process should be as accessible as possible. Many of Austin's workers - especially those most likely to experience violations of the paid sick ordinance - may have limited English proficiency or low literacy. They may not have regular access to a computer or the internet, or know how to use e-mail or a computer at all. Because of the hours they work or the nature of their employment situation, these workers may not be easily reached during regular business hours or be available to attend in-person meetings during the business day. To be effective, the EE/FHO's complaint and investigation process for the earned paid sick time ordinance needs to account for and accommodate these realities.

WHAT DO WE RECOMMEND? The complaint forms developed by EE/FHO should be 1) simple and easy to complete 2) available in Spanish and other languages 3) available online in an accessible format that is easy to find on the City's website AND be available in hardcopy 4) be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

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WHAT DO WE RECOMMEND? The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

3. Penalties under the ordinance should be higher to encourage compliance. Penalties assessed under this ordinance should be designed with deterrence in mind. The proposed penalties - \$100 for small employers and \$150 for all other employers for a first time violation - are far too low. Indeed, they are so low that they likely create a financial incentive for employers to violate the ordinance and risk "getting caught" than actually comply. Furthermore, the proposed rules give the EE/FHO wide discretion to increase or decrease the penalty assessed.

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should be \$500. Any violation of the retaliation provision - whether it be a first or subsequent violation - should result in the assessment of a \$500 penalty. In addition, the final rules should limit EE/FHO's discretion to adjust these penalties so that they may never be lowered, but may be increased for cases involving bad faith or malicious conduct.

4. The enforcement process should prioritize making workers whole in as timely a manner as possible. Violations of this ordinance can have grave consequences for an employee and their family and many people filing complaints may be doing so in moments of personal crisis. The proposed rules say that EE/FHO should try to close an investigation within 120 days, yet provide no guidance on how EE/FHO is supposed to seek voluntary compliance.

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From: [Hanna Mitchell](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Earned Paid Sick Recommendations
Date: Sunday, July 15, 2018 4:07:39 PM

This message is from Hanna Mitchell. [REDACTED]

1. The complaint and investigation process should be as accessible as possible. Many of Austin's workers - especially those most likely to experience violations of the paid sick ordinance - may have limited English proficiency or low literacy. They may not have regular access to a computer or the internet, or know how to use e-mail or a computer at all. Because of the hours they work or the nature of their employment situation, these workers may not be easily reached during regular business hours or be available to attend in-person meetings during the business day. To be effective, the EE/FHO's complaint and investigation process for the earned paid sick time ordinance needs to account for and accommodate these realities.

WHAT DO WE RECOMMEND? The complaint forms developed by EE/FHO should be

1) simple and easy to complete 2) available in Spanish and other languages 3) available online in an accessible format that is easy to find on the City's website AND be available in hardcopy 4) be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

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4. The enforcement process should prioritize making workers whole in as timely a manner as possible. Violations of this ordinance can have grave consequences for an employee and their family and many people filing complaints may be doing so in moments of personal crisis. The proposed rules say that EE/FHO should try to close an investigation within 120 days, yet provide no guidance on how EE/FHO is supposed to seek voluntary compliance.

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From: [Ian A](#)
To: [EarnedSickTime](#)
Subject: Earned paid sick time public comment
Date: Thursday, July 26, 2018 4:01:11 PM

This message is from Ian A. [REDACTED]

1. The complaint and investigation process should be as accessible as possible.

The complaint forms developed should be:

- 1) Simple and easy to complete
- 2) Available in Spanish and other languages
- 3) Available online in an accessible format that is easy to find on the City's website AND beavailable in hardcopy
- 4) Be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

2. The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

3. Penalties under the ordinance should be higher to encourage compliance. Penalties assessed under this ordinance should be designed with deterrence in mind. The final rules should simplify the fee schedule and ensure that it applies equitably to all employers regardless of their size. Absent cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250. Civil penalties for any subsequent violation by an employer "regardless of the size of the employer or when this subsequent violation occurred" should be \$500. Any violation of the retaliation provision "whether it be a first or subsequent violation" should result in the assessment of a \$500 penalty. "In addition, the final rules should limit EE/FHO's discretion to adjust these penalties so that they may never be lowered, but may be increased for cases involving bad faith or malicious conduct.

4. The enforcement process should prioritize making workers whole in as timely a manner as possible. "The final rules should endeavor to close investigations within 90 days, not 120 days. Furthermore, the final rules should outline EE/FHO's guidelines for seeking voluntary compliance of a complaint.

5. EE/FHO must release both interpretive rules as well as procedural rules.

These interpretive rules should, at the very least, clarify

- 1) The rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance;
- 2) The ordinance's signage requirement; and
- 3) What constitutes "reasonable verification procedures" to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look to earned paid sick time administrative rules published by other benchmark cities across the

country.

From: [Amanda Cavazos Weems](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Earned Paid Sick Time
Date: Sunday, July 15, 2018 4:22:17 PM

This message is from Amanda Cavazos Weems. [REDACTED]

As Co-Chair of the Young Active Labor Leaders in Austin, and a member of the Work Strong Austin coalition, I have the following recommendations for how the city can implement the earned sick time rules to benefit workers in Austin.

1. The complaint and investigation process should be as accessible as possible. Many of Austin's workers - especially those most likely to experience violations of the paid sick ordinance - may have limited English proficiency or low literacy. They may not have regular access to a computer or the internet, or know how to use e-mail or a computer at all. Because of the hours they work or the nature of their employment situation, these workers may not be easily reached during regular business hours or be available to attend in-person meetings during the business day. To be effective, the EE/FHO's complaint and investigation process for the earned paid sick time ordinance needs to account for and accommodate these realities.

WHAT DO WE RECOMMEND? The complaint forms developed by EE/FHO should be 1) simple and easy to complete 2) available in Spanish and other languages 3) available online in an accessible format that is easy to find on the City's website AND be available in hardcopy 4) be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

2. Parties should have the right to appeal an initial determination on their complaint. Under the proposed rules, once the EE/FHO reaches its decision on a complaint, neither party has any chance to appeal that decision. We know that people make mistakes. The right to appeal is essential to ensure that all parties to a complaint are treated fairly in the investigation and enforcement process.

WHAT DO WE RECOMMEND? The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

3. Penalties under the ordinance should be higher to encourage compliance. Penalties assessed under this ordinance should be designed with deterrence in mind. The proposed penalties - \$100 for small employers and \$150 for all other employers for a first time violation - are far too low. Indeed, they are so low that they likely create a financial incentive for employers to violate the ordinance and risk getting caught than actually comply. Furthermore, the proposed rules give the EE/FHO wide discretion to increase or decrease the penalty assessed.

WHAT DO WE RECOMMEND? The final rules should simplify the fee schedule and ensure that it applies equitably to all employers regardless of their size. Absent cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250. Civil penalties for any subsequent violation by an employer - regardless of the size of the employer or when this subsequent violation occurred - should be \$500. Any violation of the retaliation provision - whether it be a first or subsequent violation - should result in the assessment of a \$500 penalty. In addition, the final rules should limit EE/FHO's discretion to adjust these penalties so that they may never be lowered, but may be increased for cases involving bad faith or malicious conduct.

4. The enforcement process should prioritize making workers whole in as timely a manner as possible. Violations of this ordinance can have grave consequences for an employee and their family and many people filing complaints may be doing so in moments of personal crisis. The proposed rules say that EE/FHO should try to close an investigation within 120 days, yet provide no guidance on how EE/FHO is supposed to seek voluntary compliance.

WHAT DO WE RECOMMEND? The enforcement process should attempt to resolve complaints as expeditiously as possible in a way that makes employees whole. The final rules should endeavor to close investigations within 90 days, not 120 days. Furthermore, the final rules should outline EE/FHO's guidelines for seeking voluntary compliance of a complaint.

5. EE/FHO must release both interpretive rules as well as procedural rules. The proposed rules released by EE/FHO outlines a process for receiving, investigating, and resolving complaints, but provide no guidance on how the agency will actually interpret the ordinance. Without interpretative rules, it will be difficult for employers to successfully comply with the ordinance, for workers to fully understand their rights under the ordinance, and for EE/FHO to enforce the ordinance fairly and effectively.

WHAT DO WE RECOMMEND? The final rules published by EE/FHO should include both procedural rules and interpretive rules. These interpretive rules should, at the very least, clarify 1) the rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance; 2) the ordinance's signage requirement; and 3) what constitutes a reasonable verification procedures to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look to earned paid sick time administrative rules published by other benchmark cities across the country.

From: [Chris Sandoval](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Earned Sick Leave Recommendations
Date: Thursday, July 19, 2018 5:20:06 PM

This message is from Chris Sandoval. [REDACTED]

1. The complaint and investigation process should be as accessible as possible.

The complaint forms developed should be:

- 1) Simple and easy to complete
- 2) Available in Spanish and other languages
- 3) Available online in an accessible format that is easy to find on the City's website AND beavailable in hardcopy
- 4) Be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

2. The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

3. Penalties under the ordinance should be higher to encourage compliance. Penalties assessed under this ordinance should be designed with deterrence in mind. The final rules should simplify the fee schedule and ensure that it applies equitably to all employers regardless of their size. Absent cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250. Civil penalties for any subsequent violation by an employer ' regardless of the size of the employer or when this subsequent violation occurred ' should be \$500. Any violation of the retaliation provision ' whether it be a first or subsequent violation ' should result in the assessment of a \$500 penalty. ' In addition, the final rules should limit EE/FHO's discretion to adjust these penalties so that they may never be lowered, but may be increased for cases involving bad faith or malicious conduct.

4. The enforcement process should prioritize making workers whole in as timely a manner as possible. 'The final rules should endeavor to close investigations within 90 days, not 120 days. Furthermore, the final rules should outline EE/FHO's guidelines for seeking voluntary compliance of a complaint.

5. EE/FHO must release both interpretive rules as well as procedural rules.

These interpretive rules should, at the very least, clarify

- 1) The rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance;
- 2) The ordinance's signage requirement; and
- 3) What constitutes 'reasonable verification procedures' to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look

to earned paid sick time administrative rules published by other benchmark cities across the country.

From: [Carisa Lopez](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Earned Sick Proposed Rules Comments
Date: Thursday, July 19, 2018 3:24:40 PM

This message is from Carisa Lopez. [REDACTED]

To Whom It May Concern:

I write as a member of Work Strong Austin, a coalition of community organizations dedicated to improving the lives of working families in Austin. My organization, Texas Freedom Network, wholeheartedly supports Austin's Earned Sick Time Ordinance. No person should have to make the decision between taking care of themselves or their child and paying their bills. Lack of earned sick leave disproportionately affects low income residents and residents of color and this policy begins to level the playing field. Everyone is entitled to the dignity of taking care of their health, whether that be a student working in the service industry, a parent being able to stay home to take care of their sick child or a woman being able to take care of her reproductive health. I'm proud to live in a city that shares these values and passes proactive policies. However, without proper enforcement mechanisms this policy is toothless and I urge the city to implement the recommendations listed below so we can make a real difference in the lives of Austin citizens.

In passing Austin's Earned Sick Time Ordinance, City Council acknowledged that denying earned sick time is an injustice that harms working people, our local economy, and the health, safety, and welfare of all Austin residents. Work Strong Austin believes that the Equal Employment/Fair Housing Office (EE/FHO) should interpret and enforce this ordinance in a way that encourages maximum compliance, so that every worker entitled to benefit from earned sick time under this policy has the right to do so and no employer in this city is placed at a disadvantage for doing the right thing. All of us benefit - workers, employers, and the general public - when complaints under Chapter 4-19 are investigated thoroughly and handled expeditiously, and when violations of the ordinance are taken seriously. For these reasons, I offer the following comments to the recent rules that EE/FHO has released for its implementation of Austin's earned sick time ordinance:

1. The complaint and investigation process should be as accessible as possible. It is to the benefit of everyone for workers who believe their rights under the earned sick time ordinance have been violated to easily be able to file complaints with the city. EE/FHO should ensure that its complaint form is available in multiple languages and multiple formats (both digitally and in hard copy), is easy to access, easy to understand, and easy to submit. Whenever possible, EE/FHO investigators should attempt to conduct interviews over the phone and outside of regular business hours, in order to accommodate people who may not have access to reliable transportation or whose work schedules make it difficult for them to be reached during the work day.
2. Parties should be able to appeal an initial determination of a complaint. To ensure that everyone's due process rights are respected, parties should have the opportunity to appeal EE/FHO's initial determination of a complaint
3. The civil penalties should be designed to deter violations and ensure consistency in enforcement. The final rules should increase the civil penalty amounts for all violations,

regardless of employer size, and limit EE/FHO's discretion in assessing penalties. Except for cases involving retaliation or bad faith, civil penalties for a first-time violation by any employer should be \$250. Civil penalties for any subsequent violation by an employer - regardless of the size of the employer or when this subsequent violation occurred - should be \$500. Any violation of the retaliation provision - whether it be a first or subsequent violation - should result in the assessment of a \$500 penalty. While the final rules should grant EE/FHO the discretion to assess higher penalties for violations that involve bad faith or malicious conduct, this should be the sole instance when EE/FHO can exercise its discretion to adjust the penalties assessed. EE/FHO should never have the authority to assess a penalty that is lower than the penalty established in the proposed rules.

4. EE/FHO should resolve complaints in a timely manner and seek a resolution that makes employees whole. Many workers likely to file complaints under this ordinance do so in a moment of incredible need as taking a sick day is not a planned occasion. Without sacrificing the thoroughness or integrity of the investigation process, EE/FHO should attempt to resolve complaints as quickly as possible, but no more than 90 days after the complaint is assigned to an investigator. Furthermore, to the extent possible, the final rules should provide additional clarity regarding how EE/FHO will try to seek voluntary compliance to correct a violation, make workers whole, and deter additional violations in the future.

5. EE/FHO's final rules should both interpret the ordinance and outline the agency's investigation and enforcement procedures. Without interpretative rules, it will be difficult for employers to successfully comply with the ordinance, for workers to fully understand their rights under the ordinance, and for EE/FHO to enforce the ordinance fairly and effectively. In particular, these interpretive rules should provide additional guidance on the signs that employers are required to post under the ordinance, how employers should compensate employees who use earned paid sick time, and how employers can ensure that their verification procedures for employees who do so for more than three consecutive work days are ~~are~~ reasonable .

Sincerely,

Carisa Lopez
Political Director
Texas Freedom Network


From: [Jeff Lafitte](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Earned Sick Time Complaints and Enforcement
Date: Sunday, July 15, 2018 4:03:49 PM

This message is from Jeff Lafitte. [REDACTED]

1. The complaint and investigation process should be as accessible as possible.

The complaint forms developed should be:

- 1) Simple and easy to complete
- 2) Available in Spanish and other languages
- 3) Available online in an accessible format that is easy to find on the City's website AND beavailable in hardcopy
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2. The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

3. Penalties under the ordinance should be higher to encourage compliance. Penalties assessed under this ordinance should be designed with deterrence in mind. The final rules should simplify the fee schedule and ensure that it applies equitably to all employers regardless of their size. Absent cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250. Civil penalties for any subsequent violation by an employer ' regardless of the size of the employer or when this subsequent violation occurred ' should be \$500. Any violation of the retaliation provision ' whether it be a first or subsequent violation ' should result in the assessment of a \$500 penalty. ' In addition, the final rules should limit EE/FHO's discretion to adjust these penalties so that they may never be lowered, but may be increased for cases involving bad faith or malicious conduct.

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- 1) The rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance;
- 2) The ordinance's signage requirement; and
- 3) What constitutes 'reasonable verification procedures' to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look

to earned paid sick time administrative rules published by other benchmark cities across the country.

From: [Heiwa Salovitz](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Earned Sick Time Enforcement Suggestions
Date: Sunday, July 15, 2018 4:12:59 PM

This message is from Heiwa Salovitz. [REDACTED]

1. The complaint and investigation process should be as accessible as possible. Many of Austin's workers - especially those most likely to experience violations of the paid sick ordinance - may have limited English proficiency or low literacy. They may not have regular access to a computer or the internet, or know how to use e-mail or a computer at all. Because of the hours they work or the nature of their employment situation, these workers may not be easily reached during regular business hours or be available to attend in-person meetings during the business day. To be effective, the EE/FHO's complaint and investigation process for the earned paid sick time ordinance needs to account for and accommodate these realities.

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2. Parties should have the right to appeal an initial determination on their complaint. Under the proposed rules, once the EE/FHO reaches its decision on a complaint, neither party has any chance to appeal that decision. We know that people make mistakes. The right to appeal is essential to ensure that all parties to a complaint are treated fairly in the investigation and enforcement process.

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From: [Andrew Dysert](#)
To: [EarnedSickTime](#)
Subject: earned sick time enforcement
Date: Wednesday, July 18, 2018 9:54:54 PM

This message is from Andrew Dysert. [REDACTED]

1. The complaint and investigation process should be as accessible as possible. Many of Austin's workers - especially those most likely to experience violations of the paid sick ordinance - may have limited English proficiency or low literacy. They may not have regular access to a computer or the internet, or know how to use e-mail or a computer at all. Because of the hours they work or the nature of their employment situation, these workers may not be easily reached during regular business hours or be available to attend in-person meetings during the business day. To be effective, the EE/FHO's complaint and investigation process for the earned paid sick time ordinance needs to account for and accommodate these realities.

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WHAT DO WE RECOMMEND? The final rules should simplify the fee schedule and ensure that it applies equitably to all employers regardless of their size. Absent cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250. Civil penalties for any subsequent violation by an employer - regardless of the size of the employer or when this subsequent violation occurred - should be \$500. Any violation of the retaliation provision - whether it be a first or subsequent violation - should result in the assessment of a \$500 penalty. In addition, the final rules should limit EE/FHO's discretion to adjust these penalties so that they may never be lowered, but may

be increased for cases involving bad faith or malicious conduct.

4. The enforcement process should prioritize making workers whole in as timely a manner as possible. â€Violations of this ordinance can have grave consequences for an employee and their family and many people filing complaints may be doing so in moments of personal crisis. The proposed rules say that EE/FHO should try to close an investigation within 120 days, yet provide no guidance on how EE/FHO is supposed to seek voluntary compliance.

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5. EE/FHO must release both interpretive rules as well as procedural rules. The proposed rules released by EE/FHO outlines a process for receiving, investigating, and resolving complaints, but provide no guidance on how the agency will actually interpret the ordinance. Without interpretative rules, it will be difficult for employers to successfully comply with the ordinance, for workers to fully understand their rights under the ordinance, and for EE/FHO to enforce the ordinance fairly and effectively.

WHAT DO WE RECOMMEND? â€The final rules published by EE/FHO should include both procedural rules and interpretive rules. These interpretive rules should, at the very least, clarify 1) the rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance; 2) the ordinanceâ€™s signage requirement; and 3) what constitutes â€reasonable verification proceduresâ€to vet an employeeâ€™s request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look to earned paid sick time administrative rules published by other benchmark cities across the country.

Thank you for making this the best and most effective enforcement policy that benefits workers.

With gratitude, Andrew

From: [Juan Belman](#)
To: [EarnedSickTime](#)
Subject: Earned Sick Time Ordinance - Comments to these proposed rules
Date: Wednesday, July 18, 2018 3:24:02 PM

This message is from Juan Belman. []

1. The civil penalties need to be higher to encourage compliance. The minimum penalty for a first time violation should be \$250, any subsequent violation should result in an automatic \$500 penalty. EE/FHO should have limited discretion to increase civil penalties in cases involving bad faith or retaliation, but should never have the discretion to lower the penalty.
2. The investigation process needs to be faster. The proposed rules encourage the city to resolve complaints in 120 days. That is too long. At the very least, complaints should be resolved in 90 days.
3. There should be a right to appeal. The right to appeal is fundamental to due process. The only way to ensure fair, equitable treatment in the city's administration of this ordinance is for it to allow either party the right to appeal an initial determination on a complaint.
4. The complaint and investigation process should be as accessible as possible. The process should accommodate non-English speakers, those with limited access to a computer or the Internet, those without access to reliable transportation, and those whose work schedules make it difficult to participate in in-person meetings during regular business hours
5. EE/FHO needs to establish interpretive rules in addition to procedural rules. Employers need this clarity to ensure full compliance with the ordinance, workers need this clarity to fully understand their rights under the ordinance, and the city will need this clarity to properly enforce it.

From: [Steven Garrett](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Earned Sick Time Proposed Rules
Date: Friday, July 20, 2018 8:20:10 AM

This message is from Steven Garrett. [REDACTED]

Dear Mr. Babiak:

I am writing to comment on the proposed Rules for Investigation of Complaints and Assessment of Civil Penalties under City Code Chapter 4-19.

Rule 3(C)(1) is antithetical to the definition of Complaint in Rule 2(C). By removing the requirement that a Complaint be filed in writing to be “timely” it creates a situation where an individual could alert the EE/FHO office of an alleged violation of the ordinance, and yet the employer would not become aware of the alleged violation until months later when the Complaint is finally signed. City Code 4-19-6(B) sets out that a timely Complaint is necessary for an investigation. The current Rule 3(C)(1) could result in an employer not preserving information because it did not know there was an alleged violation. Rule 3(C)(1) should be amended to clarify that an individual has not filed a Complaint until the Complaint is reduced to writing and signed.

Rule 4(C)(2) similarly denies the employers the assurance of timely notice. Rule 4(C)(2) should require the Complaint be sent to the employer within ten days of receipt by the EE/FHO office, not within 10 business days of the investigator receiving the assignment. There is no reason the investigator must receive the assignment before the employer can be notified. This would allow the employer to preserve any necessary information to assist with the investigation. Tying employer notice to the assignment of a Complaint to an Investigator permits an extended delay that could result in the loss of valuable information or records. The rule should be amended to support the ordinance’s requirement that there be a timely Complaint and timely notice to the employer.

Rule 4(F) undermines the integrity of the investigation and any conclusion that may be drawn from a finding (whether it establishes a violation or not). By expressly stating that the Administrator may consider information that does not meet the admissibility standards necessary to prove a violation of the law in court the rule creates an inference that the investigation is tainted by unreliable, irrelevant, or unsubstantiated claims. Rule 4(F) should be removed or amended to only consider information that would be admissible in court.

Rule 5(B) should tie the 90 day deadline to submit a recommendation to the date notice is provided to the employer, not to the date the Investigator receives the Complaint. This will result in the Investigator having ample time to consider any evidence the employer may wish to provide, without prejudicing the employer’s right to a “full opportunity to present witness statements, documents, or other information relevant to the allegations in the Complaint” as described in Rule 4(C).

Rule 5(C)(3) should be changed to clarify that the civil penalty will only be assessed if the employer fails to establish voluntary compliance after an additional violation is established that occurs after June 1, 2019. This will bring the rules in compliance with Part 3 of the Ordinance (which was not codified).

Rule 5(D) should be modified to include a procedure where the Administrator must find that â€œvoluntary compliance is not achievedâ€ as required by City Code 4-19-6(C) before issuing a civil penalty. City Code City Code 4-19-6(C) requires two findings before a civil penalty, first that a violation occurred, and second that voluntary compliance cannot be obtained. Accordingly, the Administrator should first issue a finding that a violation occurred, and then attempt to seek voluntary compliance. Only after finding that voluntary compliance is not achieved does the ordinance authorize issuing a civil penalty. Without this finding, employers may be able to successfully challenge any civil penalty that is issued as violating the ordinance.

From: [Alice Embree](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Earned Sick Time Recommendation
Date: Thursday, July 19, 2018 9:12:16 PM

This message is from Alice Embree. [REDACTED]

1. The complaint and investigation process should be as accessible as possible.

The complaint forms developed should be:

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2. The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

3. Penalties under the ordinance should be higher to encourage compliance. Penalties assessed under this ordinance should be designed with deterrence in mind. The final rules should simplify the fee schedule and ensure that it applies equitably to all employers regardless of their size. Absent cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250. Civil penalties for any subsequent violation by an employer ' regardless of the size of the employer or when this subsequent violation occurred ' should be \$500. Any violation of the retaliation provision ' whether it be a first or subsequent violation ' should result in the assessment of a \$500 penalty. ' In addition, the final rules should limit EE/FHO's discretion to adjust these penalties so that they may never be lowered, but may be increased for cases involving bad faith or malicious conduct.

4. The enforcement process should prioritize making workers whole in as timely a manner as possible. 'The final rules should endeavor to close investigations within 90 days, not 120 days. Furthermore, the final rules should outline EE/FHO's guidelines for seeking voluntary compliance of a complaint.

5. EE/FHO must release both interpretive rules as well as procedural rules.

These interpretive rules should, at the very least, clarify

- 1) The rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance;
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to earned paid sick time administrative rules published by other benchmark cities across the country.

From: [Timothy O'Brien](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Earned Sick Time Recommendations
Date: Thursday, July 19, 2018 8:17:20 PM

This message is from Timothy O'Brien. [REDACTED]

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4. The enforcement process should prioritize making workers whole in as timely a manner as possible. 'The final rules should endeavor to close investigations within 90 days, not 120 days. Furthermore, the final rules should outline EE/FHO's guidelines for seeking voluntary compliance of a complaint.

5. EE/FHO must release both interpretive rules as well as procedural rules.

These interpretive rules should, at the very least, clarify

- 1) The rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance;
- 2) The ordinance's signage requirement; and
- 3) What constitutes 'reasonable verification procedures' to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look

to earned paid sick time administrative rules published by other benchmark cities across the country.

From: [Caleb Pritchard](#)
To: [EarnedSickTime](#)
Subject: Earned sick time recommendations
Date: Thursday, July 19, 2018 2:07:47 PM

This message is from Caleb Pritchard. [REDACTED]

1. The complaint and investigation process should be as accessible as possible.

The complaint forms developed should be:

- 1) Simple and easy to complete
- 2) Available in Spanish and other languages
- 3) Available online in an accessible format that is easy to find on the City's website AND beavailable in hardcopy
- 4) Be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

2. The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

3. Penalties under the ordinance should be higher to encourage compliance. Penalties assessed under this ordinance should be designed with deterrence in mind. The final rules should simplify the fee schedule and ensure that it applies equitably to all employers regardless of their size. Absent cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250. Civil penalties for any subsequent violation by an employer "regardless of the size of the employer or when this subsequent violation occurred" should be \$500. Any violation of the retaliation provision "whether it be a first or subsequent violation" should result in the assessment of a \$500 penalty. "In addition, the final rules should limit EE/FHO's discretion to adjust these penalties so that they may never be lowered, but may be increased for cases involving bad faith or malicious conduct.

4. The enforcement process should prioritize making workers whole in as timely a manner as possible. "The final rules should endeavor to close investigations within 90 days, not 120 days. Furthermore, the final rules should outline EE/FHO's guidelines for seeking voluntary compliance of a complaint.

5. EE/FHO must release both interpretive rules as well as procedural rules.

These interpretive rules should, at the very least, clarify

- 1) The rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance;
- 2) The ordinance's signage requirement; and
- 3) What constitutes "reasonable verification procedures" to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look to earned paid sick time administrative rules published by other benchmark cities across the

country.

From: [Karen Escobedo](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Earned Sick Time Rules Recommendation
Date: Wednesday, July 18, 2018 4:23:21 PM

This message is from Karen Escobedo. [REDACTED]

To whom it may concern,

I write as a member of the Work Strong Austin, a coalition of community organizations dedicated to improving the lives of working families in Austin.

Outlined here are the recommendations I would like to submit in regards to the Earned Sick Time Ordinance Rules.

1. The civil penalties need to be higher to encourage compliance. The minimum penalty for a first time violation should be \$250, any subsequent violation should result in an automatic \$500 penalty. EE/FHO should have limited discretion to increase civil penalties in cases involving bad faith or retaliation, but should never have the discretion to lower the penalty.
2. The investigation process needs to be faster. The proposed rules encourage the city to resolve complaints in 120 days. That is too long. At the very least, complaints should be resolved in 90 days.
3. There should be a right to appeal. The right to appeal is fundamental to due process. The only way to ensure fair, equitable treatment in the city's administration of this ordinance is for it to allow either party the right to appeal an initial determination on a complaint.
4. The complaint and investigation process should be as accessible as possible. The process should accommodate non-English speakers, those with limited access to a computer or the Internet, those without access to reliable transportation, and those whose work schedules make it difficult to participate in in-person meetings during regular business hours
5. EE/FHO needs to establish interpretive rules in addition to procedural rules. Employers need this clarity to ensure full compliance with the ordinance, workers need this clarity to fully understand their rights under the ordinance, and the city will need this clarity to properly enforce it.

Sincerely,

Karen Escobedo

From: [Alex Norton](#)
To: [EarnedSickTime](#)
Subject: Earned Sick Time
Date: Friday, July 20, 2018 9:54:34 AM

This message is from Alex Norton. [REDACTED]

The complaint forms developed should be:

- 1) Simple and easy to complete
- 2) Available in Spanish and other languages
- 3) Available online in an accessible format that is easy to find on the City's website AND beavailable in hardcopy
- 4) Be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

From: [Dylan Rust](#)
To: [EarnedSickTime](#)
Subject: Earned sick time
Date: Thursday, July 19, 2018 7:08:12 PM

This message is from Dylan Rust. [REDACTED]

1. The complaint and investigation process should be as accessible as possible.

The complaint forms developed should be:

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- 2) Available in Spanish and other languages
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- 4) Be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

2. The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

3. Penalties under the ordinance should be higher to encourage compliance. Penalties assessed under this ordinance should be designed with deterrence in mind. The final rules should simplify the fee schedule and ensure that it applies equitably to all employers regardless of their size. Absent cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250. Civil penalties for any subsequent violation by an employer "regardless of the size of the employer or when this subsequent violation occurred" should be \$500. Any violation of the retaliation provision "whether it be a first or subsequent violation" should result in the assessment of a \$500 penalty. "In addition, the final rules should limit EE/FHO's discretion to adjust these penalties so that they may never be lowered, but may be increased for cases involving bad faith or malicious conduct.

4. The enforcement process should prioritize making workers whole in as timely a manner as possible. "The final rules should endeavor to close investigations within 90 days, not 120 days. Furthermore, the final rules should outline EE/FHO's guidelines for seeking voluntary compliance of a complaint.

5. EE/FHO must release both interpretive rules as well as procedural rules.

These interpretive rules should, at the very least, clarify

- 1) The rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance;
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- 3) What constitutes "reasonable verification procedures" to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look to earned paid sick time administrative rules published by other benchmark cities across the

country.

From: [Wilfredo Garcia Osorto](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Earned Sick Time/Días de Enfermedad Pagados
Date: Tuesday, July 17, 2018 8:08:31 PM

This message is from Wilfredo Garcia Osorto. [REDACTED]

A quien corresponda,

Por medio de la presente envio mis recomendaciones para la ordenanza de dias de enfermedad pagados.

Atentamente,
Wilfredo Garcia Osorto

Recomendaciones dÃas de enfermedad pagados.

Las penalidades civiles tener que ser mÃs altas para que se cumpla con la ley. Una penalidad mÃnima debe ser de \$250, cualquier violaciÃn que siga debe elevarse a \$500 inmediatamente. El departamento de EE/FHO debe tener discreciÃn limitada para aumentar penalidades civiles en casos de represalias y si un empleador actuÃ de mala fe, pero bajo ninguna circunstancia el departamento de minimizar las penalidades.

La investigaciÃn necesita un proceso mÃs rÃpido. Las reglas proponen 120 dÃas para procesar quejar, esto es demasiado tiempo. Las quejas deben ser procesadas mÃnimo en 90 dÃas.

Debe haber el derecho para apelar. El poder apelar es fundamental para este proceso. De esta manera nos vamos a asegurar que sea un proceso justo y equitativo.

El procedimiento de investigaciÃn y quejas debe ser lo mÃs accesible posible. El proceso debe acomodar a personas que su idioma no es inglÃs, tambiÃn para las personas que no tienen acceso a tecnologÃa y tambiÃn para aquellos que no pueden participar en persona. EE/FHO necesita reglas interpretativas adicionalmente de reglas sobre el proceso.

Empleadores necesitan esto para aclarar dudas y asegurarse que estÃn cumpliendo con la ley, trabajadores necesitan entender claramente sus derechos bajo esta ordenanza, la ciudad necesita esto para tener claridad en cÃmo enforcing la ley.

The civil penalties need to be higher to encourage compliance. The minimum penalty for a first time violation should be \$250, any subsequent violation should result in an automatic \$500 penalty. EE/FHO should have limited discretion to increase civil penalties in cases involving bad faith or retaliation, but should never have the discretion to lower the penalty. The investigation process needs to be faster. The proposed rules encourage the city to resolve complaints in 120 days. That is too long. At the very least, complaints should be resolved in 90 days.

There should be a right to appeal. The right to appeal is fundamental to due process. The only way to ensure fair, equitable treatment in the city's administration of this ordinance is for it to allow either party the right to appeal an initial determination on a complaint.

The complaint and investigation process should be as accessible as possible. The process should accommodate non-English speakers, those with limited access to a computer or the Internet, those without access to reliable transportation, and those whose work schedules make it difficult to participate in in-person meetings during regular business hours.

EE/FHO needs to establish interpretive rules in addition to procedural rules. Employers need this clarity to ensure full compliance with the ordinance, workers need this clarity to fully understand their rights under the ordinance, and the city will need this clarity to properly enforce it.

From: [Deborah L Rod](#)
To: [EarnedSickTime](#)
Subject: Enforcing Paid Sick Leave
Date: Wednesday, July 18, 2018 12:46:58 PM

This message is from Deborah L Rod. [REDACTED]

1. The complaint and investigation process should be as accessible as possible.

The complaint forms developed should be:

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- 2) Available in Spanish and other languages
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2. The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

3. Penalties under the ordinance should be higher to encourage compliance. Penalties assessed under this ordinance should be designed with deterrence in mind. The final rules should simplify the fee schedule and ensure that it applies equitably to all employers regardless of their size. Absent cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250. Civil penalties for any subsequent violation by an employer "regardless of the size of the employer or when this subsequent violation occurred" should be \$500. Any violation of the retaliation provision "whether it be a first or subsequent violation" should result in the assessment of a \$500 penalty. "In addition, the final rules should limit EE/FHO's discretion to adjust these penalties so that they may never be lowered, but may be increased for cases involving bad faith or malicious conduct.

4. The enforcement process should prioritize making workers whole in as timely a manner as possible. "The final rules should endeavor to close investigations within 90 days, not 120 days. Furthermore, the final rules should outline EE/FHO's guidelines for seeking voluntary compliance of a complaint.

5. EE/FHO must release both interpretive rules as well as procedural rules.

These interpretive rules should, at the very least, clarify

- 1) The rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance;
- 2) The ordinance's signage requirement; and
- 3) What constitutes "reasonable verification procedures" to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look to earned paid sick time administrative rules published by other benchmark cities across the

country.

From: [Cody](#)
To: [EarnedSickTime](#)
Subject: Feedback & recommendations for paid sick leave
Date: Thursday, July 19, 2018 1:48:54 PM

This message is from Cody. [REDACTED]

1. The complaint and investigation process should be as accessible as possible.

The complaint forms developed should be:

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- 2) Available in Spanish and other languages
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country.

From: [Lia Steinhardt-Keely](#)
To: [EarnedSickTime](#)
Subject: Feedback on Enforcement
Date: Sunday, July 15, 2018 9:51:14 PM

This message is from Lia Steinhardt-Keely. [REDACTED]

1. The complaint and investigation process should be as accessible as possible.

The complaint forms developed should be:

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These interpretive rules should, at the very least, clarify

- 1) The rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance;
- 2) The ordinance's signage requirement; and
- 3) What constitutes "reasonable verification procedures" to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look to earned paid sick time administrative rules published by other benchmark cities across the

country.

From: [Jack Miller](#)
To: [EarnedSickTime](#)
Subject: Feedback on paid sick time
Date: Thursday, July 19, 2018 7:22:02 PM

This message is from Jack Miller. [REDACTED]

1. The complaint and investigation process should be as accessible as possible.

The complaint forms developed should be:

- 1) Simple and easy to complete
- 2) Available in Spanish and other languages
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- 4) Be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

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country.

From: [Curtis Luciani](#)
To: [EarnedSickTime](#)
Subject: feedback re: Proposed Rules For Austin's Paid Sick Time Ordinance
Date: Thursday, July 19, 2018 3:06:54 PM

This message is from Curtis Luciani. [REDACTED]

1. The complaint and investigation process should be as accessible as possible.

The complaint forms developed should be:

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- 2) Available in Spanish and other languages
- 3) Available online in an accessible format that is easy to find on the City's website AND beavailable in hardcopy
- 4) Be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

2. The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

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- 3) What constitutes "reasonable verification procedures" to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look to earned paid sick time administrative rules published by other benchmark cities across the

country.

From: [Sarah Gonzalez Claytor](#)
To: [EarnedSickTime](#)
Subject: I support paid sick leave!
Date: Tuesday, July 17, 2018 12:02:58 AM

This message is from Sarah Gonzalez Claytor. [REDACTED]

I am an Austinite and I strongly support the paid sick leave ordinance. In order for it to be effective, I would like the city to adopt the following points:

Click this link to go to the City page to make recommendations: <http://bit.ly/ATXPaidSick>

Copy and paste the below into the "message" portion on the page

1. The complaint and investigation process should be as accessible as possible. Many of Austin's workers - especially those most likely to experience violations of the paid sick ordinance - may have limited English proficiency or low literacy. They may not have regular access to a computer or the internet, or know how to use e-mail or a computer at all. Because of the hours they work or the nature of their employment situation, these workers may not be easily reached during regular business hours or be available to attend in-person meetings during the business day. To be effective, the EE/FHO's complaint and investigation process for the earned paid sick time ordinance needs to account for and accommodate these realities.

WHAT DO WE RECOMMEND? The complaint forms developed by EE/FHO should be

1) simple and easy to complete 2) available in Spanish and other languages 3) available online in an accessible format that is easy to find on the City's website AND be available in hardcopy 4) be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

X2. Parties should have the right to appeal an initial determination on their complaint. Under the proposed rules, once the EE/FHO reaches its decision on a complaint, neither party has any chance to appeal that decision. We know that people make mistakes. The right to appeal is essential to ensure that all parties to a complaint are treated fairly in the investigation and enforcement process.

WHAT DO WE RECOMMEND? The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

3. Penalties under the ordinance should be higher to encourage compliance. Penalties assessed under this ordinance should be designed with deterrence in mind. The proposed penalties - \$100 for small employers and \$150 for all other employers for a first time violation - are far too low. Indeed, they are so low that they likely create a financial incentive for employers to violate the ordinance and risk "getting caught" than actually comply. Furthermore, the proposed rules give the EE/FHO wide

discretion to increase or decrease the penalty assessed.

WHAT DO WE RECOMMEND? The final rules should simplify the fee schedule and ensure that it applies equitably to all employers regardless of their size. Absent cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250. Civil penalties for any subsequent violation by an employer - regardless of the size of the employer or when this subsequent violation occurred - should be \$500. Any violation of the retaliation provision - whether it be a first or subsequent violation - should result in the assessment of a \$500 penalty. In addition, the final rules should limit EE/FHO's discretion to adjust these penalties so that they may never be lowered, but may be increased for cases involving bad faith or malicious conduct.

4. The enforcement process should prioritize making workers whole in as timely a manner as possible. Violations of this ordinance can have grave consequences for an employee and their family and many people filing complaints may be doing so in moments of personal crisis. The proposed rules say that EE/FHO should try to close an investigation within 120 days, yet provide no guidance on how EE/FHO is supposed to seek voluntary compliance.

WHAT DO WE RECOMMEND? The enforcement process should attempt to resolve complaints as expeditiously as possible in a way that makes employees whole. The final rules should endeavor to close investigations within 90 days, not 120 days. Furthermore, the final rules should outline EE/FHO's guidelines for seeking voluntary compliance of a complaint.

5. EE/FHO must release both interpretive rules as well as procedural rules. The proposed rules released by EE/FHO outlines a process for receiving, investigating, and resolving complaints, but provide no guidance on how the agency will actually interpret the ordinance. Without interpretative rules, it will be difficult for employers to successfully comply with the ordinance, for workers to fully understand their rights under the ordinance, and for EE/FHO to enforce the ordinance fairly and effectively.

WHAT DO WE RECOMMEND? The final rules published by EE/FHO should include both procedural rules and interpretive rules. These interpretive rules should, at the very least, clarify 1) the rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance; 2) the ordinance's signage requirement; and 3) what constitutes a reasonable verification procedures to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look to earned paid sick time administrative rules published by other benchmark cities across the country.

From: [Asher Elbein](#)
To: [EarnedSickTime](#)
Subject: In favor of legal protections for paid sick leave
Date: Thursday, July 19, 2018 9:28:42 PM

This message is from Asher Elbein. [REDACTED]

1. The complaint and investigation process should be as accessible as possible.

The complaint forms developed should be:

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- 2) Available in Spanish and other languages
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- 1) The rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance;
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country.

From: [Susan Zakaib](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Make paid sick leave enforceable
Date: Wednesday, July 18, 2018 2:20:04 PM

This message is from Susan Zakaib. [REDACTED]

Hello,

I am writing to ask the EE/FHO to ensure that the rules for the new paid sick leave policy ensure proper enforcement of this important new law. These rules need to make it easy for working people to defend their rights, and make it hard to employers to avoid full compliance.

Specifically, the rules should include:

- 1) High civil penalties, including a minimum \$250 fine for a first-time violation
- 2) A right to appeal, to ensure fair, equitable treatment
- 3) A quick investigation process, which enables complaints to be resolved in 90 days at the most.
- 4) An accessible complaint and investigation process that accommodates non-English speakers, individuals without internet access, individuals without reliable transportation, and individuals with strict work schedules.
- 5) Interpretive rules that completely clarify workers' rights and employers' responsibilities under the ordinance.

Without clear and equitable enforcement mechanisms, this important and historic ordinance will not have its intended impact, and will not ensure paid sick leave for the populations that need it most. With this in mind, I hope you will consider the above recommendations.

Best,
Susan Zakaib
District 1

From: [Daniel Alvarado](#)
To: [EarnedSickTime](#)
Subject: Paid Leave Recommendations
Date: Thursday, July 19, 2018 7:23:46 PM

This message is from Daniel Alvarado. [REDACTED]

1. The complaint and investigation process should be as accessible as possible.

The complaint forms developed should be:

- 1) Simple and easy to complete
- 2) Available in Spanish and other languages
- 3) Available online in an accessible format that is easy to find on the City's website AND beavailable in hardcopy
- 4) Be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

2. The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

3. Penalties under the ordinance should be higher to encourage compliance. Penalties assessed under this ordinance should be designed with deterrence in mind. The final rules should simplify the fee schedule and ensure that it applies equitably to all employers regardless of their size. Absent cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250. Civil penalties for any subsequent violation by an employer "regardless of the size of the employer or when this subsequent violation occurred" should be \$500. Any violation of the retaliation provision "whether it be a first or subsequent violation" should result in the assessment of a \$500 penalty. "In addition, the final rules should limit EE/FHO's discretion to adjust these penalties so that they may never be lowered, but may be increased for cases involving bad faith or malicious conduct.

4. The enforcement process should prioritize making workers whole in as timely a manner as possible. "The final rules should endeavor to close investigations within 90 days, not 120 days. Furthermore, the final rules should outline EE/FHO's guidelines for seeking voluntary compliance of a complaint.

5. EE/FHO must release both interpretive rules as well as procedural rules.

These interpretive rules should, at the very least, clarify

- 1) The rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance;
- 2) The ordinance's signage requirement; and
- 3) What constitutes "reasonable verification procedures" to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look to earned paid sick time administrative rules published by other benchmark cities across the

country.

From: [Dylan David](#)
To: [EarnedSickTime](#)
Subject: Paid leave
Date: Thursday, July 19, 2018 7:25:11 PM

This message is from Dylan David. [REDACTED]

1. The complaint and investigation process should be as accessible as possible.

The complaint forms developed should be:

- 1) Simple and easy to complete
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4. The enforcement process should prioritize making workers whole in as timely a manner as possible. "The final rules should endeavor to close investigations within 90 days, not 120 days. Furthermore, the final rules should outline EE/FHO's guidelines for seeking voluntary compliance of a complaint.

5. EE/FHO must release both interpretive rules as well as procedural rules

From: [Adam Schragin](#)
To: [EarnedSickTime](#)
Subject: paid sick comments
Date: Thursday, July 19, 2018 7:04:38 PM

This message is from Adam Schragin. [REDACTED]

1. The complaint and investigation process should be as accessible as possible.

The complaint forms developed should be:

- 1) Simple and easy to complete
- 2) Available in Spanish and other languages
- 3) Available online in an accessible format that is easy to find on the City's website AND beavailable in hardcopy
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5. EE/FHO must release both interpretive rules as well as procedural rules.

From: [Priscilla Lugo](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Paid Sick Comments
Date: Wednesday, July 18, 2018 2:20:18 PM

This message is from Priscilla Lugo. [REDACTED]

1. The civil penalties need to be higher to encourage compliance. The minimum penalty for a first time violation should be \$250, any subsequent violation should result in an automatic \$500 penalty. EE/FHO should have limited discretion to increase civil penalties in cases involving bad faith or retaliation, but should never have the discretion to lower the penalty.
2. The investigation process needs to be faster. The proposed rules encourage the city to resolve complaints in 120 days. That is too long. At the very least, complaints should be resolved in 90 days.
3. There should be a right to appeal. The right to appeal is fundamental to due process. The only way to ensure fair, equitable treatment in the city's administration of this ordinance is for it to allow either party the right to appeal an initial determination on a complaint.
4. The complaint and investigation process should be as accessible as possible. The process should accommodate non-English speakers, those with limited access to a computer or the Internet, those without access to reliable transportation, and those whose work schedules make it difficult to participate in in-person meetings during regular business hours
5. EE/FHO needs to establish interpretive rules in addition to procedural rules. Employers need this clarity to ensure full compliance with the ordinance, workers need this clarity to fully understand their rights under the ordinance, and the city will need this clarity to properly enforce it.

From: [Kim Varela](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Paid sick data enforcement suggestions
Date: Sunday, July 15, 2018 4:30:09 PM

This message is from Kim Varela. [REDACTED]

1. The complaint and investigation process should be as accessible as possible.

The complaint forms developed should be:

- 1) Simple and easy to complete
- 2) Available in Spanish and other languages
- 3) Available online in an accessible format that is easy to find on the City's website AND be available in hardcopy
- 4) Be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

2. The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

3. Penalties under the ordinance should be higher to encourage compliance. Penalties assessed under this ordinance should be designed with deterrence in mind. The final rules should simplify the fee schedule and ensure that it applies equitably to all employers regardless of their size. Absent cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250. Civil penalties for any subsequent violation by an employer "regardless of the size of the employer or when this subsequent violation occurred" should be \$500. Any violation of the retaliation provision "whether it be a first or subsequent violation" should result in the assessment of a \$500 penalty. "In addition, the final rules should limit EE/FHO's discretion to adjust these penalties so that they may never be lowered, but may be increased for cases involving bad faith or malicious conduct.

4. The enforcement process should prioritize making workers whole in as timely a manner as possible. "The final rules should endeavor to close investigations within 90 days, not 120 days. Furthermore, the final rules should outline EE/FHO's guidelines for seeking voluntary compliance of a complaint.

5. EE/FHO must release both interpretive rules as well as procedural rules.

These interpretive rules should, at the very least, clarify

- 1) The rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance;
- 2) The ordinance's signage requirement; and
- 3) What constitutes "reasonable verification procedures" to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look

to earned paid sick time administrative rules published by other benchmark cities across the country.

From: [Blake Rocap](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Paid Sick Day Recommendations
Date: Wednesday, July 18, 2018 9:33:56 AM

This message is from Blake Rocap. [REDACTED]

To Whom It May Concern:

I write as a member of Work Strong Austin, a coalition of community organizations dedicated to improving the lives of working families in Austin. As a representative of NARAL Pro-Choice Texas and an Austin resident, I believe paid sick days are key to improving the public health of our city. NARAL Pro-Choice Texas advocates for the rights of all Texans to access reproductive healthcare, including abortion, in a timely, stigma-free manner and therefore we see paid sick days as one key factor to increasing healthcare access. Abortion is a two day procedure, a restriction put in place by our state legislature, and many patients often cite taking two days off work as a barrier due to the loss of wages or fear of losing their job. The loss of wages is particularly important since insurance is prohibited from covering abortion care in Texas, another restriction passed by the legislature, and the procedure is quite costly.

In passing Austin's Earned Sick Time Ordinance, City Council acknowledged that denying earned sick time is an injustice that harms working people, our local economy, and the health, safety, and welfare of all Austin residents. Work Strong Austin believes that the Equal Employment/Fair Housing Office (EE/FHO) should interpret and enforce this ordinance in a way that encourages maximum compliance, so that every worker entitled to benefit from earned sick time under this policy has the right to do so and no employer in this city is placed at a disadvantage for doing the right thing. All of us benefit - workers, employers, and the general public - when complaints under Chapter 4-19 are investigated thoroughly and handled expeditiously, and when violations of the ordinance are taken seriously. For these reasons, I offer the following comments to the recent rules that EE/FHO has released for its implementation of Austin's earned sick time ordinance:

1. The complaint and investigation process should be as accessible as possible. It is to the benefit of everyone for workers who believe their rights under the earned sick time ordinance have been violated to easily be able to file complaints with the city. EE/FHO should ensure that its complaint form is available in multiple languages and multiple formats (both digitally and in hard copy), is easy to access, easy to understand, and easy to submit. Whenever possible, EE/FHO investigators should attempt to conduct interviews over the phone and outside of regular business hours, in order to accommodate people who may not have access to reliable transportation or whose work schedules make it difficult for them to be reached during the work day.
2. Parties should be able to appeal an initial determination of a complaint. To ensure that everyone's due process rights are respected, parties should have the opportunity to appeal EE/FHO's initial determination of a complaint.
3. The civil penalties should be designed to deter violations and ensure consistency in enforcement. The final rules should increase the civil penalty amounts for all violations, regardless of employer size, and limit EE/FHO's discretion in assessing penalties. Except for cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250. Civil penalties for any subsequent violation by an employer - regardless of the size of the employer or when this subsequent violation occurred - should be

\$500. Any violation of the retaliation provision - whether it be a first or subsequent violation - should result in the assessment of a \$500 penalty. While the final rules should grant EE/FHO the discretion to assess higher penalties for violations that involve bad faith or malicious conduct, this should be the sole instance when EE/FHO can exercise its discretion to adjust the penalties assessed. EE/FHO should never have the authority to assess a penalty that is lower than the penalty established in the proposed rules.

4. EE/FHO should resolve complaints in a timely manner and seek a resolution that makes employees whole. As I mentioned before, abortion is healthcare that is on a timeline so it is important that complaints are resolved as quickly as possible. Many workers likely to file complaints under this ordinance do so in a moment of incredible need. Without sacrificing the thoroughness or integrity of the investigation process, EE/FHO should attempt to resolve complaints as quickly as possible, but no more than 90 days after the complaint is assigned to an investigator. Furthermore, to the extent possible, the final rules should provide additional clarity regarding how EE/FHO will try to seek voluntary compliance to correct a violation, make workers whole, and deter additional violations in the future.

5. EE/FHO's final rules should both interpret the ordinance and outline the agency's investigation and enforcement procedures. Without interpretative rules, it will be difficult for employers to successfully comply with the ordinance, for workers to fully understand their rights under the ordinance, and for EE/FHO to enforce the ordinance fairly and effectively. In particular, these interpretive rules should provide additional guidance on the signs that employers are required to post under the ordinance, how employers should compensate employees who use earned paid sick time, and how employers can ensure that their verification procedures for employees who do so for more than three consecutive work days are "reasonable".

All workers, regardless of what kind of job they do or how much they earn, should be able to care for themselves or a loved one who needs to access abortion. When individuals and families are self-sufficient and can care for themselves we all benefit.

Sincerely,

Blake Rocap
Interim Executive Director
NARAL Pro-Choice Texas



From: [Nikole Sturm](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Paid Sick Day
Date: Thursday, July 19, 2018 7:15:47 PM

This message is from Nikole Sturm. [REDACTED]

1. The complaint and investigation process should be as accessible as possible.

The complaint forms developed should be:

- 1) Simple and easy to complete
- 2) Available in Spanish and other languages
- 3) Available online in an accessible format that is easy to find on the City's website AND beavailable in hardcopy
- 4) Be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

2. The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

3. Penalties under the ordinance should be higher to encourage compliance. Penalties assessed under this ordinance should be designed with deterrence in mind. The final rules should simplify the fee schedule and ensure that it applies equitably to all employers regardless of their size. Absent cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250. Civil penalties for any subsequent violation by an employer ' regardless of the size of the employer or when this subsequent violation occurred ' should be \$500. Any violation of the retaliation provision ' whether it be a first or subsequent violation ' should result in the assessment of a \$500 penalty. ' In addition, the final rules should limit EE/FHO's discretion to adjust these penalties so that they may never be lowered, but may be increased for cases involving bad faith or malicious conduct.

4. The enforcement process should prioritize making workers whole in as timely a manner as possible. 'The final rules should endeavor to close investigations within 90 days, not 120 days. Furthermore, the final rules should outline EE/FHO's guidelines for seeking voluntary compliance of a complaint.

5. EE/FHO must release both interpretive rules as well as procedural rules.

These interpretive rules should, at the very least, clarify

- 1) The rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance;
- 2) The ordinance's signage requirement; and
- 3) What constitutes 'reasonable verification procedures' to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look

to earned paid sick time administrative rules published by other benchmark cities across the country.

From: [David Vines](#)
To: [EarnedSickTime](#)
Subject: Paid Sick Days Enforcement
Date: Thursday, July 19, 2018 8:39:04 PM

This message is from David Vines. [REDACTED]

1. The complaint and investigation process should be as accessible as possible.

The complaint forms developed should be:

- 1) Simple and easy to complete
- 2) Available in Spanish and other languages
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- 3) What constitutes "reasonable verification procedures" to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look to earned paid sick time administrative rules published by other benchmark cities across the

country.

Thank you for considering these recommendations and please make sure that our hard-earned paid sick days rights are enforced!

- David Vines

From: [Max Nash](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Paid Sick Days Enforcement
Date: Tuesday, July 17, 2018 9:08:04 PM

This message is from Max Nash. [REDACTED]

1. The complaint and investigation process should be as accessible as possible.

The complaint forms developed should be:

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- 2) The ordinance's signage requirement; and
- 3) What constitutes 'reasonable verification procedures' to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look

to earned paid sick time administrative rules published by other benchmark cities across the country.

From: [David Vines](#)
To: [EarnedSickTime](#)
Subject: Paid Sick Days Enforcement
Date: Thursday, July 19, 2018 8:39:05 PM

This message is from David Vines. [REDACTED]

1. The complaint and investigation process should be as accessible as possible.

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- 1) Simple and easy to complete
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- 3) What constitutes "reasonable verification procedures" to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look to earned paid sick time administrative rules published by other benchmark cities across the

country.

Thank you for considering these recommendations and please make sure that our hard-earned paid sick days rights are enforced!

- David Vines

From: [Michael Niswander](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Paid Sick Days Ordinance
Date: Thursday, July 19, 2018 2:38:16 PM

This message is from Michael Niswander. [REDACTED]

The complaint forms developed should be:

- 1) Simple and easy to complete
 - 2) Available in Spanish and other languages
 - 3) Available online in an accessible format that is easy to find on the City's website AND be available in hardcopy
 - 4) Be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.
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- 1) The rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance;
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From: [tony leblanc](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: paid sick days proposal
Date: Thursday, July 19, 2018 7:22:21 PM

This message is from Tony Leblanc. [REDACTED]

1. The complaint and investigation process should be as accessible as possible.

The complaint forms developed should be:

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to earned paid sick time administrative rules published by other benchmark cities across the country.

From: [Laura Olvera](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Paid Sick Days Recommendation
Date: Sunday, July 15, 2018 4:14:56 PM

This message is from Laura Olvera. [REDACTED]

To whom it may concern, here are my recommendations for the rules process of the paid sick ordinance,

1. The complaint and investigation process should be as accessible as possible.

Many of Austin's workers - especially those most likely to experience violations of the paid sick ordinance - may have limited English proficiency or low literacy. They may not have regular access to a computer or the internet, or know how to use e-mail or a computer at all. Because of the hours they work or the nature of their employment situation, these workers may not be easily reached during regular business hours or be available to attend in-person meetings during the business day. To be effective, the EE/FHO's complaint and investigation process for the earned paid sick time ordinance needs to account for and accommodate these realities.

WHAT DO WE RECOMMEND? The complaint forms developed by EE/FHO should be 1)

simple and easy to complete 2) available in Spanish and other languages 3) available online in an accessible format that is easy to find on the City's website AND be available in hardcopy 4) be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

2. Parties should have the right to appeal an initial determination on their complaint. Under the proposed rules, once the EE/FHO reaches its decision on a complaint, neither party has any chance to appeal that decision. We know that people make mistakes. The right to appeal is essential to ensure that all parties to a complaint are treated fairly in the investigation and enforcement process.

WHAT DO WE RECOMMEND? The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

3. Penalties under the ordinance should be higher to encourage compliance.

Penalties assessed under this ordinance should be designed with deterrence in mind. The proposed penalties - \$100 for small employers and \$150 for all other employers for a first time violation - are far too low. Indeed, they are so low that they likely create a financial incentive for employers to violate the ordinance and risk getting caught than actually comply. Furthermore, the proposed rules give the EE/FHO wide discretion to increase or decrease the penalty assessed.

WHAT DO WE RECOMMEND? The final rules should simplify the fee schedule and ensure that it applies equitably to all employers regardless of their size. Absent cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250. Civil penalties for any subsequent violation by an employer - regardless of the size of the employer or when this subsequent violation occurred - should be \$500. Any violation of the retaliation provision - whether it be a first or

subsequent violation - should result in the assessment of a \$500 penalty. In addition, the final rules should limit EE/FHO's discretion to adjust these penalties so that they may never be lowered, but may be increased for cases involving bad faith or malicious conduct.

4. The enforcement process should prioritize making workers whole in as timely a manner as possible. Violations of this ordinance can have grave consequences for an employee and their family and many people filing complaints may be doing so in moments of personal crisis. The proposed rules say that EE/FHO should try to close an investigation within 120 days, yet provide no guidance on how EE/FHO is supposed to seek voluntary compliance.

WHAT DO WE RECOMMEND? The enforcement process should attempt to resolve complaints as expeditiously as possible in a way that makes employees whole. The final rules should endeavor to close investigations within 90 days, not 120 days.

Furthermore, the final rules should outline EE/FHO's guidelines for seeking voluntary compliance of a complaint.

5. EE/FHO must release both interpretive rules as well as procedural rules.

The proposed rules released by EE/FHO outlines a process for receiving, investigating, and resolving complaints, but provide no guidance on how the agency will actually interpret the ordinance. Without interpretative rules, it will be difficult for employers to successfully comply with the ordinance, for workers to fully understand their rights under the ordinance, and for EE/FHO to enforce the ordinance fairly and effectively.

WHAT DO WE RECOMMEND? The final rules published by EE/FHO should include both

procedural rules and interpretive rules. These interpretive rules should, at the very least, clarify 1) the rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance; 2) the ordinance's signage requirement; and 3) what constitutes a reasonable verification procedures to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look to earned paid sick time administrative rules published by other benchmark cities across the country.

Thanks,

Laura Olvera

From: [Cassandra Hayes](#)
To: [EarnedSickTime](#)
Subject: Paid Sick Days recommendation
Date: Thursday, July 19, 2018 7:31:15 PM

This message is from Cassandra Hayes. [REDACTED]

These interpretive rules should, at the very least, clarify

- 1) The rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance;
- 2) The ordinance's signage requirement; and
- 3) What constitutes "reasonable verification procedures" to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look to earned paid sick time administrative rules published by other benchmark cities across the country

From: [Masar Sakr](#)
To: [EarnedSickTime](#)
Subject: Paid Sick days Rules
Date: Thursday, July 19, 2018 8:50:44 PM

This message is from Masar Sakr. [REDACTED]

1. The complaint and investigation process should be as accessible as possible.

The complaint forms developed should be:

- 1) Simple and easy to complete
- 2) Available in Spanish and other languages
- 3) Available online in an accessible format that is easy to find on the City's website AND beavailable in hardcopy
- 4) Be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

2. The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

3. Penalties under the ordinance should be higher to encourage compliance. Penalties assessed under this ordinance should be designed with deterrence in mind. The final rules should simplify the fee schedule and ensure that it applies equitably to all employers regardless of their size. Absent cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250. Civil penalties for any subsequent violation by an employer "regardless of the size of the employer or when this subsequent violation occurred" should be \$500. Any violation of the retaliation provision "whether it be a first or subsequent violation" should result in the assessment of a \$500 penalty. "In addition, the final rules should limit EE/FHO's discretion to adjust these penalties so that they may never be lowered, but may be increased for cases involving bad faith or malicious conduct.

4. The enforcement process should prioritize making workers whole in as timely a manner as possible. "The final rules should endeavor to close investigations within 90 days, not 120 days. Furthermore, the final rules should outline EE/FHO's guidelines for seeking voluntary compliance of a complaint.

5. EE/FHO must release both interpretive rules as well as procedural rules.

From: [Ashkan Jahangiri](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Paid Sick Days Rules
Date: Sunday, July 15, 2018 3:57:18 PM

This message is from Ashkan Jahangiri. [REDACTED]

1. The complaint and investigation process should be as accessible as possible.

The complaint forms developed should be:

- 1) Simple and easy to complete
- 2) Available in Spanish and other languages
- 3) Available online in an accessible format that is easy to find on the City's website AND beavailable in hardcopy
- 4) Be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

2. The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

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5. EE/FHO must release both interpretive rules as well as procedural rules.

These interpretive rules should, at the very least, clarify

- 1) The rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance;
- 2) The ordinance's signage requirement; and
- 3) What constitutes 'reasonable verification procedures' to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look

to earned paid sick time administrative rules published by other benchmark cities across the country.

From: [Glenn Scott](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Paid Sick Days rules
Date: Sunday, July 15, 2018 8:05:03 AM

This message is from Glenn Scott. [REDACTED]

To Whom it May Concern,

I am a 44 yr resident of Austin and have been a homeowner and voted at 7012 Burnell Dr 78723 in District 1. I am very concerned that the rules adopted to implement the paid sick ordinance be written in the spirit of the Council's action. That is the rules should be designed to help workers obtain their rights to PSD quickly if denied and that a violation by an employer be investigated quickly and compliance with the ordinance the main goal. Deterrence can send a message that this is a right that should not be violated without consequences. 1. The complaint and investigation process should be as accessible as possible.

The complaint forms developed should be:

- 1) Simple and easy to complete
 - 2) Available in Spanish and other languages
 - 3) Available online in an accessible format that is easy to find on the City's website AND be available in hardcopy
 - 4) Be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.
2. The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.
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4. The enforcement process should prioritize making workers whole in as timely a manner as possible. 'The final rules should endeavor to close investigations within 90 days, not 120 days. Furthermore, the final rules should outline EE/FHO's guidelines for seeking voluntary compliance of a complaint.

From: [Nicolas Lamori](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Paid Sick Days Suggested Rule
Date: Sunday, July 15, 2018 4:02:14 PM

This message is from Nicolas Lamori. [REDACTED]

1. The complaint and investigation process should be as accessible as possible. Many of Austin's workers - especially those most likely to experience violations of the paid sick ordinance - may have limited English proficiency or low literacy. They may not have regular access to a computer or the internet, or know how to use e-mail or a computer at all. Because of the hours they work or the nature of their employment situation, these workers may not be easily reached during regular business hours or be available to attend in-person meetings during the business day. To be effective, the EE/FHO's complaint and investigation process for the earned paid sick time ordinance needs to account for and accommodate these realities.

WHAT DO WE RECOMMEND? The complaint forms developed by EE/FHO should be 1) simple and easy to complete 2) available in Spanish and other languages 3) available online in an accessible format that is easy to find on the City's website AND be available in hardcopy 4) be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

2. Parties should have the right to appeal an initial determination on their complaint. Under the proposed rules, once the EE/FHO reaches its decision on a complaint, neither party has any chance to appeal that decision. We know that people make mistakes. The right to appeal is essential to ensure that all parties to a complaint are treated fairly in the investigation and enforcement process.

WHAT DO WE RECOMMEND? The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

3. Penalties under the ordinance should be higher to encourage compliance. Penalties assessed under this ordinance should be designed with deterrence in mind. The proposed penalties - \$100 for small employers and \$150 for all other employers for a first time violation - are far too low. Indeed, they are so low that they likely create a financial incentive for employers to violate the ordinance and risk "getting caught" than actually comply. Furthermore, the proposed rules give the EE/FHO wide discretion to increase or decrease the penalty assessed.

WHAT DO WE RECOMMEND? The final rules should simplify the fee schedule and ensure that it applies equitably to all employers regardless of their size. Absent cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250. Civil penalties for any subsequent violation by an employer - regardless of the size of the employer or when this subsequent violation occurred - should be \$500. Any violation of the retaliation provision - whether it be a first or subsequent violation - should result in the assessment of a \$500 penalty. In addition, the final rules should limit EE/FHO's discretion to adjust these penalties so that they may never be lowered, but may be increased for cases involving bad faith or malicious conduct.

4. The enforcement process should prioritize making workers whole in as timely a manner as possible. Violations of this ordinance can have grave consequences for an employee and their family and many people filing complaints may be doing so in moments of personal crisis. The proposed rules say that EE/FHO should try to close an investigation within 120 days, yet provide no guidance on how EE/FHO is supposed to seek voluntary compliance.

WHAT DO WE RECOMMEND? The enforcement process should attempt to resolve complaints as expeditiously as possible in a way that makes employees whole. The final rules should endeavor to close investigations within 90 days, not 120 days. Furthermore, the final rules should outline EE/FHO's guidelines for seeking voluntary compliance of a complaint.

5. EE/FHO must release both interpretive rules as well as procedural rules.

The proposed rules released by EE/FHO outlines a process for receiving, investigating, and resolving complaints, but provide no guidance on how the agency will actually interpret the ordinance. Without interpretative rules, it will be difficult for employers to successfully comply with the ordinance, for workers to fully understand their rights under the ordinance, and for EE/FHO to enforce the ordinance fairly and effectively. **WHAT DO WE RECOMMEND?** The final rules published by EE/FHO should include both procedural rules and interpretive rules. These interpretive rules should, at the very least, clarify 1) the rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance; 2) the ordinance's signage requirement; and 3) what constitutes "reasonable verification procedures" to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look to earned paid sick time administrative rules published by other benchmark cities across the country

From: [Devin James Fry](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Paid Sick Days
Date: Thursday, July 19, 2018 7:30:07 PM

This message is from Devin James Fry. [REDACTED]

1. The complaint and investigation process should be as accessible as possible.

The complaint forms developed should be:

- 1) Simple and easy to complete
- 2) Available in Spanish and other languages
- 3) Available online in an accessible format that is easy to find on the City's website AND beavailable in hardcopy
- 4) Be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

2. The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

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These interpretive rules should, at the very least, clarify

- 1) The rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance;
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to earned paid sick time administrative rules published by other benchmark cities across the country.

From: [Ryan Pollock](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Paid Sick Days
Date: Thursday, July 19, 2018 3:16:48 PM

This message is from Ryan Pollock. [REDACTED]

1. The complaint and investigation process should be as accessible as possible.

The complaint forms developed should be:

- 1) Simple and easy to complete
- 2) Available in Spanish and other languages
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- 3) What constitutes 'reasonable verification procedures' to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look

to earned paid sick time administrative rules published by other benchmark cities across the country.

From: [Brian Degman](#)
To: [EarnedSickTime](#)
Subject: Paid sick days
Date: Thursday, July 19, 2018 7:04:32 PM

This message is from Brian Degman. [REDACTED]

America

Austin Democratic Socialists of America

Earned Paid Sick Days Start in Austin on October 1st!

Want to learn more? Join us for a Paid Sick Days town hall on July 15 at Worker's Defense Project. Refreshments provided, everyone welcome.

RSVP

¡Haga clic aquí para español!

On February 15th, 2018, Austin City Council voted to pass an ordinance requiring that all employees of private businesses and nonprofits begin to earn paid sick time. This makes Austin the first city in the South to have paid sick days for all workers!

What Can You Do?

The more that people know about their rights, the harder it is to take them away.

Paid sick time only became an issue because of the many groups that organized together to fight for it. Groups like Austin DSA and Work Strong Austin put enough pressure on the city council to vote for a reform that will improve the lives of 223,000 workers who didn't previously have paid sick time.

You can start by telling your friends about the upcoming changes

Give feedback on enforcement

Now that we've won, it's time to make sure the ordinance gets enforced fairly for workers across the city. Through July 19th, the city is accepting feedback on administrative rules, which will dictate how the City will interpret the earned paid sick time ordinance, receive and investigate complaints of any violations of the policy, determine whether violations of the ordinance have occurred, and respond to employers found to be in violation of the law.

This is our opportunity to send a unified, loud message to City staff that this ordinance needs to be interpreted and enforced to the benefit of the very people that fought to win this ordinance in the first place – Austin's working people and their families.

Work Strong Austin has reviewed the proposed rules and identified 5 specific recommendations that we think are most important for you to emphasize in the comments you submit to the city. These are our suggestions, but feel free to add additional comments as you see fit.

Recommended Comments to the Proposed Rules For Austin's Paid Sick Time Ordinance

1. The complaint and investigation process should be as accessible as possible.

The complaint forms developed should be:

- 1) Simple and easy to complete
- 2) Available in Spanish and other languages

3) Available online in an accessible format that is easy to find on the City's website AND be available in hardcopy

4) Be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

2. The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

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4. The enforcement process should prioritize making workers whole in as timely a manner as possible. 'The final rules should endeavor to close investigations within 90 days, not 120 days. Furthermore, the final rules should outline EE/FHO's guidelines for seeking voluntary compliance of a complaint.

5. EE/FHO must release both interpretive rules as well as procedural rules.

These interpretive rules should, at the very least, clarify

1) The rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance;

2) The ordinance's signage requirement; and

3) What constitutes 'reasonable verification procedures' to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look

to earned paid sick time administrative rules published by other benchmark cities across the country.

From: [Elizabeth Garcia](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Paid Sick Days
Date: Thursday, July 19, 2018 8:55:12 PM

This message is from Elizabeth Garcia. [REDACTED]

1. The complaint and investigation process should be as accessible as possible.

The complaint forms developed should be:

- 1) Simple and easy to complete
- 2) Available in Spanish and other languages
- 3) Available online in an accessible format that is easy to find on the City's website AND beavailable in hardcopy
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- 1) The rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance;
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- 3) What constitutes 'reasonable verification procedures' to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look

to earned paid sick time administrative rules published by other benchmark cities across the country.

From: [James Martin Cole](#)
To: [EarnedSickTime](#)
Subject: Paid Sick Enforcement
Date: Thursday, July 19, 2018 1:48:31 PM

This message is from James Martin Cole. [REDACTED]

1. The complaint and investigation process should be as accessible as possible.

The complaint forms developed should be:

- 1) Simple and easy to complete
- 2) Available in Spanish and other languages
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4. The enforcement process should prioritize making workers whole in as timely a manner as possible. The final rules should endeavor to close investigations within 60 days, not 120 days. Furthermore, the final rules should outline EE/FHO's guidelines for seeking voluntary compliance of a complaint.

5. EE/FHO must release both interpretive rules as well as procedural rules.

These interpretive rules should, at the very least, clarify

- 1) The rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance;
- 2) The ordinance's signage requirement; and
- 3) What constitutes "reasonable verification procedures" to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look to earned paid sick time administrative rules published by other benchmark cities across the

country.

From: [Marcus Denton](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Paid sick feedback
Date: Thursday, July 19, 2018 7:32:14 PM

This message is from Marcus Denton. [REDACTED]

1. The complaint and investigation process should be as accessible as possible.

The complaint forms developed should be:

- 1) Simple and easy to complete
- 2) Available in Spanish and other languages
- 3) Available online in an accessible format that is easy to find on the City's website AND beavailable in hardcopy
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5. EE/FHO must release both interpretive rules as well as procedural rules.

From: [Elizabeth Dorantes](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: PAID SICK FEEDBACK
Date: Thursday, July 19, 2018 1:08:45 PM

This message is from Elizabeth Dorantes. [REDACTED]

Hi,

The following should be reviewed:

1. The civil penalties need to be higher to encourage compliance. The minimum penalty for a first time violation should be \$250, any subsequent violation should result in an automatic \$500 penalty. EE/FHO should have limited discretion to increase civil penalties in cases involving bad faith or retaliation, but should never have the discretion to lower the penalty.
2. The investigation process needs to be faster. The proposed rules encourage the city to resolve complaints in 120 days. That is too long. At the very least, complaints should be resolved in 90 days.
3. There should be a right to appeal. The right to appeal is fundamental to due process. The only way to ensure fair, equitable treatment in the city's administration of this ordinance is for it to allow either party the right to appeal an initial determination on a complaint.
4. The complaint and investigation process should be as accessible as possible. The process should accommodate non-English speakers, those with limited access to a computer or the Internet, those without access to reliable transportation, and those whose work schedules make it difficult to participate in in-person meetings during regular business hours
5. EE/FHO needs to establish interpretive rules in addition to procedural rules. Employers need this clarity to ensure full compliance with the ordinance, workers need this clarity to fully understand their rights under the ordinance, and the city will need this clarity to properly enforce it.

From: [Will Camfield](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Paid sick leave - WHC
Date: Thursday, July 19, 2018 9:02:54 PM

This message is from Will Camfield. [REDACTED]

. The complaint and investigation process should be as accessible as possible.

The complaint forms developed should be:

- 1) Simple and easy to complete
- 2) Available in Spanish and other languages
- 3) Available online in an accessible format that is easy to find on the City's website AND beavailable in hardcopy
- 4) Be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

2. The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

3. Penalties under the ordinance should be higher to encourage compliance. Penalties assessed under this ordinance should be designed with deterrence in mind. The final rules should simplify the fee schedule and ensure that it applies equitably to all employers regardless of their size. Absent cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250. Civil penalties for any subsequent violation by an employer ' regardless of the size of the employer or when this subsequent violation occurred ' should be \$500. Any violation of the retaliation provision ' whether it be a first or subsequent violation ' should result in the assessment of a \$500 penalty. ' In addition, the final rules should limit EE/FHO's discretion to adjust these penalties so that they may never be lowered, but may be increased for cases involving bad faith or malicious conduct.

4. The enforcement process should prioritize making workers whole in as timely a manner as possible. 'The final rules should endeavor to close investigations within 90 days, not 120 days. Furthermore, the final rules should outline EE/FHO's guidelines for seeking voluntary compliance of a complaint.

5. EE/FHO must release both interpretive rules as well as procedural rules.

These interpretive rules should, at the very least, clarify

- 1) The rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance;
- 2) The ordinance's signage requirement; and
- 3) What constitutes 'reasonable verification procedures' to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look

to earned paid sick time administrative rules published by other benchmark cities across the country.

From: [Tom Philpott](#)
To: [EarnedSickTime](#)
Subject: Paid sick leave ... now
Date: Thursday, July 19, 2018 8:40:25 PM

This message is from Tom Philpott. [REDACTED]

These interpretive rules should, at the very least, clarify

- 1) The rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance;
- 2) The ordinance's signage requirement; and
- 3) What constitutes "reasonable verification procedures" to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look to earned paid sick time administrative rules published by other benchmark cities across the country.

From: [Matthew A Castlema](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Paid sick leave clarification
Date: Monday, July 16, 2018 8:51:47 PM

This message is from Matthew A Castlema . [[REDACTED]]

I am a member of IBEW Local 520. I feel that it is important to clarify how the ordinance will affect workers like me who perform their work in many different cities.

- 1) The rules should clarify that the ordinance applies to workers typically based outside the City of Austin, but who work 80 or more hours inside city limits within a calendar year.
- 2) If an employer does not provide earned paid sick time to an employee whose work duties require them to perform work within Austin city limits, it should be the responsibility of the employer to track any employee's time who performs work duties within the City of Austin to justify that the employee is not eligible for earned sick time under the ordinance.

From: [Julia Moen](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Paid Sick Leave Comments
Date: Thursday, July 19, 2018 7:27:17 PM

This message is from Julia Moen. [REDACTED]

Please find below my comments about Paid Sick Leave.

1. The complaint and investigation process should be as accessible as possible.

The complaint forms developed should be:

- 1) Simple and easy to complete
- 2) Available in Spanish and other languages
- 3) Available online in an accessible format that is easy to find on the City's website AND beavailable in hardcopy
- 4) Be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

2. The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

3. Penalties under the ordinance should be higher to encourage compliance. Penalties assessed under this ordinance should be designed with deterrence in mind. The final rules should simplify the fee schedule and ensure that it applies equitably to all employers regardless of their size. Absent cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250. Civil penalties for any subsequent violation by an employer "regardless of the size of the employer or when this subsequent violation occurred" should be \$500. Any violation of the retaliation provision "whether it be a first or subsequent violation" should result in the assessment of a \$500 penalty. "In addition, the final rules should limit EE/FHO's discretion to adjust these penalties so that they may never be lowered, but may be increased for cases involving bad faith or malicious conduct.

4. The enforcement process should prioritize making workers whole in as timely a manner as possible. "The final rules should endeavor to close investigations within 90 days, not 120 days. Furthermore, the final rules should outline EE/FHO's guidelines for seeking voluntary compliance of a complaint.

5. EE/FHO must release both interpretive rules as well as procedural rules.

These interpretive rules should, at the very least, clarify

- 1) The rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance;
- 2) The ordinance's signage requirement; and
- 3) What constitutes "reasonable verification procedures" to vet an employee's

request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look to earned paid sick time administrative rules published by other benchmark cities across the country.

Sincerely,

Julia Moen

From: [Michael Bonar](#)
To: [EarnedSickTime](#)
Subject: Paid sick leave comments
Date: Thursday, July 19, 2018 8:37:35 PM

This message is from Michael Bonar. [REDACTED]

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- 1) The rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance;
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- 3) What constitutes "reasonable verification procedures" to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look to earned paid sick time administrative rules published by other benchmark cities across the

country.

From: [Will Davies](#)
To: [EarnedSickTime](#)
Subject: Paid Sick Leave Enforcement
Date: Thursday, July 19, 2018 7:22:09 PM

This message is from Will Davies. [REDACTED]

1. The complaint and investigation process should be as accessible as possible.

The complaint forms developed should be:

- 1) Simple and easy to complete
- 2) Available in Spanish and other languages
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- 4) Be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

2. The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

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These interpretive rules should, at the very least, clarify

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- 3) What constitutes "reasonable verification procedures" to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look to earned paid sick time administrative rules published by other benchmark cities across the

country.

From: [John Ratliff](#)
To: [EarnedSickTime](#)
Subject: paid sick leave enforcement
Date: Friday, July 20, 2018 10:04:14 AM

This message is from John Ratliff. [REDACTED]

I want to encourage Council to put in place enforcement mechanisms for this ordinance that are stringent, transparent, and most importantly accessible. The considerable social benefits of this ordinance will be nullified if it's difficult to use -- or, even more likely, those benefits will accrue to only a small privileged group who have the time and inclination to navigate the system. Rigorous enforcement of this ordinance is good government and fulfills the intent behind it; indifferent enforcement is almost worse than no ordinance at all.

From: [Aubrey Lethbridge](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Paid Sick leave is essential to healthy communities
Date: Thursday, July 19, 2018 7:24:13 PM

This message is from Aubrey Lethbridge. [REDACTED]

3. Penalties under the ordinance should be higher to encourage compliance. Penalties assessed under this ordinance should be designed with deterrence in mind. The final rules should simplify the fee schedule and ensure that it applies equitably to all employers regardless of their size. Absent cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250. Civil penalties for any subsequent violation by an employer ‘ regardless of the size of the employer or when this subsequent violation occurred ‘ should be \$500. Any violation of the retaliation provision ‘ whether it be a first or subsequent violation ‘ should result in the assessment of a \$500 penalty. ‘ In addition, the final rules should limit EE/FHO’s discretion to adjust these penalties so that they may never be lowered, but may be increased for cases involving bad faith or malicious conduct.

From: [Edward Sills](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Paid Sick Leave Ordinance
Date: Tuesday, July 17, 2018 10:20:34 AM

This message is from Edward Sills. [REDACTED]

I am in support of these Working Texans for Paid Sick Time recommendations:

1. The complaint and investigation process should be as accessible as possible. Many of Austin's workers - especially those most likely to experience violations of the paid sick ordinance - may have limited English proficiency or low literacy. They may not have regular access to a computer or the internet, or know how to use e-mail or a computer at all. Because of the hours they work or the nature of their employment situation, these workers may not be easily reached during regular business hours or be available to attend in-person meetings during the business day. To be effective, the EE/FHO's complaint and investigation process for the earned paid sick time ordinance needs to account for and accommodate these realities.

WHAT DO WE RECOMMEND? The complaint forms developed by EE/FHO should be 1) simple and easy to complete 2) available in Spanish and other languages 3) available online in an accessible format that is easy to find on the City's website AND be available in hardcopy 4) be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

X2. Parties should have the right to appeal an initial determination on their complaint. Under the proposed rules, once the EE/FHO reaches its decision on a complaint, neither party has any chance to appeal that decision. We know that people make mistakes. The right to appeal is essential to ensure that all parties to a complaint are treated fairly in the investigation and enforcement process.

WHAT DO WE RECOMMEND? The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

3. Penalties under the ordinance should be higher to encourage compliance. Penalties assessed under this ordinance should be designed with deterrence in mind. The proposed penalties - \$100 for small employers and \$150 for all other employers for a first time violation - are far too low. Indeed, they are so low that they likely create a financial incentive for employers to violate the ordinance and risk "getting caught" than actually comply. Furthermore, the proposed rules give the EE/FHO wide discretion to increase or decrease the penalty assessed.

WHAT DO WE RECOMMEND? The final rules should simplify the fee schedule and ensure that it applies equitably to all employers regardless of their size. Absent cases involving retaliation or bad faith, civil penalties for a first time violation by any

employer should be \$250. Civil penalties for any subsequent violation by an employer - regardless of the size of the employer or when this subsequent violation occurred - should be \$500. Any violation of the retaliation provision - whether it be a first or subsequent violation - should result in the assessment of a \$500 penalty. In addition, the final rules should limit EE/FHO's discretion to adjust these penalties so that they may never be lowered, but may be increased for cases involving bad faith or malicious conduct.

4. The enforcement process should prioritize making workers whole in as timely a manner as possible. Violations of this ordinance can have grave consequences for an employee and their family and many people filing complaints may be doing so in moments of personal crisis. The proposed rules say that EE/FHO should try to close an investigation within 120 days, yet provide no guidance on how EE/FHO is supposed to seek voluntary compliance.

WHAT DO WE RECOMMEND? The enforcement process should attempt to resolve complaints as expeditiously as possible in a way that makes employees whole. The final rules should endeavor to close investigations within 90 days, not 120 days. Furthermore, the final rules should outline EE/FHO's guidelines for seeking voluntary compliance of a complaint.

5. EE/FHO must release both interpretive rules as well as procedural rules. The proposed rules released by EE/FHO outlines a process for receiving, investigating, and resolving complaints, but provide no guidance on how the agency will actually interpret the ordinance. Without interpretative rules, it will be difficult for employers to successfully comply with the ordinance, for workers to fully understand their rights under the ordinance, and for EE/FHO to enforce the ordinance fairly and effectively.

WHAT DO WE RECOMMEND? The final rules published by EE/FHO should include both procedural rules and interpretive rules. These interpretive rules should, at the very least, clarify 1) the rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance; 2) the ordinance's signage requirement; and 3) what constitutes "reasonable verification procedures" to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look to earned paid sick time administrative rules published by other benchmark cities across the country.

From: [William Riley](#)
To: [EarnedSickTime](#)
Subject: Paid Sick Leave Ordinance
Date: Friday, July 20, 2018 12:12:12 PM

This message is from William Riley. [REDACTED]

1. The complaint and investigation process should be as accessible as possible.

The complaint forms developed should be:

- 1) Simple and easy to complete
- 2) Available in Spanish and other languages
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- 4) Be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

2. The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

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country.

From: [Ryan Rosshirt](#)
To: [EarnedSickTime](#)
Subject: Paid sick leave policy
Date: Thursday, July 19, 2018 7:49:33 PM

This message is from Ryan Rosshirt. [REDACTED]

I think we need penalties for non-participation that ensure participation. I think many employers might do cold math to determine whether or not they'll participate. They need to know it's better to just go with the new program.

From: [Jonathan Lewis](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Paid Sick Leave Rule Recommendations
Date: Sunday, July 15, 2018 4:05:26 PM

This message is from Jonathan Lewis. [REDACTED]

1. The complaint and investigation process should be as accessible as possible. Many of Austin's workers - especially those most likely to experience violations of the paid sick ordinance - may have limited English proficiency or low literacy. They may not have regular access to a computer or the internet, or know how to use e-mail or a computer at all. Because of the hours they work or the nature of their employment situation, these workers may not be easily reached during regular business hours or be available to attend in-person meetings during the business day. To be effective, the EE/FHO's complaint and investigation process for the earned paid sick time ordinance needs to account for and accommodate these realities.

WHAT DO WE RECOMMEND? The complaint forms developed by EE/FHO should be

1) simple and easy to complete 2) available in Spanish and other languages 3) available online in an accessible format that is easy to find on the City's website AND be available in hardcopy 4) be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

2. Parties should have the right to appeal an initial determination on their complaint. Under the proposed rules, once the EE/FHO reaches its decision on a complaint, neither party has any chance to appeal that decision. We know that people make mistakes. The right to appeal is essential to ensure that all parties to a complaint are treated fairly in the investigation and enforcement process.

WHAT DO WE RECOMMEND? The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

3. Penalties under the ordinance should be higher to encourage compliance. Penalties assessed under this ordinance should be designed with deterrence in mind. The proposed penalties - \$100 for small employers and \$150 for all other employers for a first time violation - are far too low. Indeed, they are so low that they likely create a financial incentive for employers to violate the ordinance and risk ~~getting~~ caught than actually comply. Furthermore, the proposed rules give the EE/FHO wide discretion to increase or decrease the penalty assessed.

WHAT DO WE RECOMMEND? The final rules should simplify the fee schedule and ensure that it applies equitably to all employers regardless of their size. Absent cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250. Civil penalties for any subsequent violation by an employer

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4. The enforcement process should prioritize making workers whole in as timely a manner as possible. Violations of this ordinance can have grave consequences for an employee and their family and many people filing complaints may be doing so in moments of personal crisis. The proposed rules say that EE/FHO should try to close an investigation within 120 days, yet provide no guidance on how EE/FHO is supposed to seek voluntary compliance.

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From: [Graham Douglas](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Paid Sick Leave Rule Recommendations
Date: Sunday, July 15, 2018 4:06:07 PM

This message is from Graham Douglas. [REDACTED]

1. The complaint and investigation process should be as accessible as possible. Many of Austin's workers - especially those most likely to experience violations of the paid sick ordinance - may have limited English proficiency or low literacy. They may not have regular access to a computer or the internet, or know how to use e-mail or a computer at all. Because of the hours they work or the nature of their employment situation, these workers may not be easily reached during regular business hours or be available to attend in-person meetings during the business day. To be effective, the EE/FHO's complaint and investigation process for the earned paid sick time ordinance needs to account for and accommodate these realities.

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From: [Emma Pett](#)
To: [EarnedSickTime](#)
Subject: Paid sick leave
Date: Thursday, July 19, 2018 3:28:53 PM

This message is from Emma Pett. [REDACTED]

1. The complaint and investigation process should be as accessible as possible.

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- 1) Simple and easy to complete
- 2) Available in Spanish and other languages
- 3) Available online in an accessible format that is easy to find on the City's website AND beavailable in hardcopy
- 4) Be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

2. The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

3. Penalties under the ordinance should be higher to encourage compliance. Penalties assessed under this ordinance should be designed with deterrence in mind. The final rules should simplify the fee schedule and ensure that it applies equitably to all employers regardless of their size. Absent cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250. Civil penalties for any subsequent violation by an employer "regardless of the size of the employer or when this subsequent violation occurred" should be \$500. Any violation of the retaliation provision "whether it be a first or subsequent violation" should result in the assessment of a \$500 penalty. "In addition, the final rules should limit EE/FHO's discretion to adjust these penalties so that they may never be lowered, but may be increased for cases involving bad faith or malicious conduct.

4. The enforcement process should prioritize making workers whole in as timely a manner as possible. "The final rules should endeavor to close investigations within 90 days, not 120 days. Furthermore, the final rules should outline EE/FHO's guidelines for seeking voluntary compliance of a complaint.

5. EE/FHO must release both interpretive rules as well as procedural rules.

These interpretive rules should, at the very least, clarify

- 1) The rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance;
- 2) The ordinance's signage requirement; and
- 3) What constitutes "reasonable verification procedures" to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look to earned paid sick time administrative rules published by other benchmark cities across the

country.

From: [tyler.jordan](#)
To: [EarnedSickTime](#)
Subject: Paid Sick Leave
Date: Thursday, July 19, 2018 8:38:03 PM

This message is from Tyler Jordan. [REDACTED]

These interpretive rules should, at the very least, clarify

- 1) The rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance;
- 2) The ordinance's signage requirement; and
- 3) What constitutes "reasonable verification procedures" to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look to earned paid sick time administrative rules published by other benchmark cities across the country.

From: [Tuyen Thai](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: paid sick leave
Date: Thursday, July 19, 2018 8:49:02 PM

This message is from Tuyen Thai. [REDACTED]

1. The complaint and investigation process should be as accessible as possible.

The complaint forms developed should be:

- 1) Simple and easy to complete
- 2) Available in Spanish and other languages
- 3) Available online in an accessible format that is easy to find on the City's website AND be available in hardcopy
- 4) Be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

2. The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

3. Penalties under the ordinance should be higher to encourage compliance. Penalties assessed under this ordinance should be designed with deterrence in mind. The final rules should simplify the fee schedule and ensure that it applies equitably to all employers regardless of their size. Absent cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250. Civil penalties for any subsequent violation by an employer "regardless of the size of the employer or when this subsequent violation occurred" should be \$500. Any violation of the retaliation provision "whether it be a first or subsequent violation" should result in the assessment of a \$500 penalty. "In addition, the final rules should limit EE/FHO's discretion to adjust these penalties so that they may never be lowered, but may be increased for cases involving bad faith or malicious conduct.

4. The enforcement process should prioritize making workers whole in as timely a manner as possible. "The final rules should endeavor to close investigations within 90 days, not 120 days. Furthermore, the final rules should outline EE/FHO's guidelines for seeking voluntary compliance of a complaint.

5. EE/FHO must release both interpretive rules as well as procedural rules.

These interpretive rules should, at the very least, clarify

- 1) The rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance;
- 2) The ordinance's signage requirement; and
- 3) What constitutes "reasonable verification procedures" to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look

to earned paid sick time administrative rules published by other benchmark cities across the country.

From: [Beth Link](#)
To: [EarnedSickTime](#)
Subject: Paid sick leave
Date: Thursday, July 19, 2018 7:24:21 PM

This message is from Beth Link. [REDACTED]

1. The complaint and investigation process should be as accessible as possible.

The complaint forms developed should be:

- 1) Simple and easy to complete
- 2) Available in Spanish and other languages
- 3) Available online in an accessible format that is easy to find on the City's website AND beavailable in hardcopy
- 4) Be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

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4. The enforcement process should prioritize making workers whole in as timely a manner as possible. "The final rules should endeavor to close investigations within 90 days, not 120 days. Furthermore, the final rules should outline EE/FHO's guidelines for seeking voluntary compliance of a complaint.

5. EE/FHO must release both interpretive rules as well as procedural rules.

From: [Juan Luna](#)
To: [EarnedSickTime](#)
Subject: Paid Sick Ordinance
Date: Tuesday, July 17, 2018 4:43:19 PM

This message is from Juan Luna. [REDACTED]

Hello,

I am writing to support imposing higher penalties on employers that violate the ordinance. This will help deter bad actors. By the same token, I am in support of allowing employers appeal decisions in order to ensure the process is fair.

From: [Amparo H Hughes](#)
To: [EarnedSickTime](#)
Subject: Paid Sick Proposed Rules
Date: Thursday, July 19, 2018 1:16:41 PM

This message is from Amparo H Hughes. [REDACTED]

I would like to submit recommendations to the process regarding the paid sick ordinance:

1. The civil penalties need to be higher to encourage compliance. The minimum penalty for a first time violation should be \$250, any subsequent violation should result in an automatic \$500 penalty. EE/FHO should have limited discretion to increase civil penalties in cases involving bad faith or retaliation, but should never have the discretion to lower the penalty.
2. The investigation process needs to be faster. The proposed rules encourage the city to resolve complaints in 120 days. That is too long. At the very least, complaints should be resolved in 90 days.
3. There should be a right to appeal. The right to appeal is fundamental to due process. The only way to ensure fair, equitable treatment in the city's administration of this ordinance is for it to allow either party the right to appeal an initial determination on a complaint.
4. The complaint and investigation process should be as accessible as possible. The process should accommodate non-English speakers, those with limited access to a computer or the Internet, those without access to reliable transportation, and those whose work schedules make it difficult to participate in in-person meetings during regular business hours
5. EE/FHO needs to establish interpretive rules in addition to procedural rules. Employers need this clarity to ensure full compliance with the ordinance, workers need this clarity to fully understand their rights under the ordinance, and the city will need this clarity to properly enforce it.

Thanks for your time!

From: [Robin Derton](#)
To: [EarnedSickTime](#)
Subject: Paid Sick Recommendations
Date: Thursday, July 19, 2018 9:39:01 PM

This message is from Robin Derton. [REDACTED]

1. The complaint and investigation process should be as accessible as possible.

The complaint forms developed should be:

- 1) Simple and easy to complete
- 2) Available in Spanish and other languages
- 3) Available online in an accessible format that is easy to find on the City's website AND beavailable in hardcopy
- 4) Be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

2. The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

3. Penalties under the ordinance should be higher to encourage compliance. Penalties assessed under this ordinance should be designed with deterrence in mind. The final rules should simplify the fee schedule and ensure that it applies equitably to all employers regardless of their size. Absent cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250. Civil penalties for any subsequent violation by an employer "regardless of the size of the employer or when this subsequent violation occurred" should be \$500. Any violation of the retaliation provision "whether it be a first or subsequent violation" should result in the assessment of a \$500 penalty. "In addition, the final rules should limit EE/FHO's discretion to adjust these penalties so that they may never be lowered, but may be increased for cases involving bad faith or malicious conduct.

4. The enforcement process should prioritize making workers whole in as timely a manner as possible. "The final rules should endeavor to close investigations within 90 days, not 120 days. Furthermore, the final rules should outline EE/FHO's guidelines for seeking voluntary compliance of a complaint.

5. EE/FHO must release both interpretive rules as well as procedural rules.

These interpretive rules should, at the very least, clarify

- 1) The rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance;
- 2) The ordinance's signage requirement; and
- 3) What constitutes "reasonable verification procedures" to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look to earned paid sick time administrative rules published by other benchmark cities across the

country.

From: [John Briggs](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Paid sick recommendations
Date: Thursday, July 19, 2018 7:07:42 PM

This message is from John Briggs. [REDACTED]

1. The complaint and investigation process should be as accessible as possible.

The complaint forms developed should be:

- 1) Simple and easy to complete
- 2) Available in Spanish and other languages
- 3) Available online in an accessible format that is easy to find on the City's website AND beavailable in hardcopy
- 4) Be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

2. The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

3. Penalties under the ordinance should be higher to encourage compliance. Penalties assessed under this ordinance should be designed with deterrence in mind. The final rules should simplify the fee schedule and ensure that it applies equitably to all employers regardless of their size. Absent cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250. Civil penalties for any subsequent violation by an employer ' regardless of the size of the employer or when this subsequent violation occurred ' should be \$500. Any violation of the retaliation provision ' whether it be a first or subsequent violation ' should result in the assessment of a \$500 penalty. ' In addition, the final rules should limit EE/FHO's discretion to adjust these penalties so that they may never be lowered, but may be increased for cases involving bad faith or malicious conduct.

4. The enforcement process should prioritize making workers whole in as timely a manner as possible. 'The final rules should endeavor to close investigations within 90 days, not 120 days. Furthermore, the final rules should outline EE/FHO's guidelines for seeking voluntary compliance of a complaint.

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- 1) The rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance;
- 2) The ordinance's signage requirement; and
- 3) What constitutes 'reasonable verification procedures' to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look

to earned paid sick time administrative rules published by other benchmark cities across the country.

From: [Mayra Huerta](#)
To: [EarnedSickTime](#)
Subject: Paid Sick Rule Making
Date: Tuesday, July 17, 2018 2:46:16 PM

This message is from Mayra Huerta. [REDACTED]

1. The civil penalties need to be higher to encourage compliance. The minimum penalty for a first time violation should be \$250, any subsequent violation should result in an automatic \$500 penalty. EE/FHO should have limited discretion to increase civil penalties in cases involving bad faith or retaliation, but should never have the discretion to lower the penalty.
2. The investigation process needs to be faster. The proposed rules encourage the city to resolve complaints in 120 days. That is too long. At the very least, complaints should be resolved in 90 days.
3. There should be a right to appeal. The right to appeal is fundamental to due process. The only way to ensure fair, equitable treatment in the city's administration of this ordinance is for it to allow either party the right to appeal an initial determination on a complaint.
4. The complaint and investigation process should be as accessible as possible. The process should accommodate non-English speakers, those with limited access to a computer or the Internet, those without access to reliable transportation, and those whose work schedules make it difficult to participate in in-person meetings during regular business hours
5. EE/FHO needs to establish interpretive rules in addition to procedural rules. Employers need this clarity to ensure full compliance with the ordinance, workers need this clarity to fully understand their rights under the ordinance, and the city will need this clarity to properly enforce it.

From: [patrick.jones](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Paid Sick Rules
Date: Sunday, July 15, 2018 4:06:57 PM

This message is from Patrick Jones. [REDACTED]

1. The complaint and investigation process should be as accessible as possible. Many of Austin's workers - especially those most likely to experience violations of the paid sick ordinance - may have limited English proficiency or low literacy. They may not have regular access to a computer or the internet, or know how to use e-mail or a computer at all. Because of the hours they work or the nature of their employment situation, these workers may not be easily reached during regular business hours or be available to attend in-person meetings during the business day. To be effective, the EE/FHO's complaint and investigation process for the earned paid sick time ordinance needs to account for and accommodate these realities.

WHAT DO WE RECOMMEND? The complaint forms developed by EE/FHO should be 1) simple and easy to complete 2) available in Spanish and other languages 3) available online in an accessible format that is easy to find on the City's website AND be available in hardcopy 4) be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

2. Parties should have the right to appeal an initial determination on their complaint. Under the proposed rules, once the EE/FHO reaches its decision on a complaint, neither party has any chance to appeal that decision. We know that people make mistakes. The right to appeal is essential to ensure that all parties to a complaint are treated fairly in the investigation and enforcement process.

WHAT DO WE RECOMMEND? The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

3. Penalties under the ordinance should be higher to encourage compliance. Penalties assessed under this ordinance should be designed with deterrence in mind. The proposed penalties - \$100 for small employers and \$150 for all other employers for a first time violation - are far too low. Indeed, they are so low that they likely create a financial incentive for employers to violate the ordinance and risk "getting caught" than actually comply. Furthermore, the proposed rules give the EE/FHO wide discretion to increase or decrease the penalty assessed.

WHAT DO WE RECOMMEND? The final rules should simplify the fee schedule and ensure that it applies equitably to all employers regardless of their size. Absent cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250. Civil penalties for any subsequent violation by an employer - regardless of the size of the employer or when this subsequent violation occurred - should be \$500. Any violation of the retaliation provision - whether it be a first or subsequent violation - should result in the assessment of a \$500 penalty. In addition, the final rules should limit EE/FHO's discretion to adjust these penalties so that they may never be lowered, but may be increased for cases involving bad faith or malicious conduct.

4. The enforcement process should prioritize making workers whole in as timely a manner as possible. Violations of this ordinance can have grave consequences for an employee and their family and many people filing complaints may be doing so in moments of personal crisis. The proposed rules say that EE/FHO should try to close an investigation within 120 days, yet provide no guidance on how EE/FHO is supposed to seek voluntary compliance.

WHAT DO WE RECOMMEND? The enforcement process should attempt to resolve complaints as expeditiously as possible in a way that makes employees whole. The final rules should endeavor to close investigations within 90 days, not 120 days. Furthermore, the final rules should outline EE/FHO's guidelines for seeking voluntary compliance of a complaint.

5. EE/FHO must release both interpretive rules as well as procedural rules.

The proposed rules released by EE/FHO outlines a process for receiving, investigating, and resolving complaints, but provide no guidance on how the agency will actually interpret the ordinance. Without interpretative rules, it will be difficult for employers to successfully comply with the ordinance, for workers to fully understand their rights under the ordinance, and for EE/FHO to enforce the ordinance fairly and effectively. **WHAT DO WE RECOMMEND?** The final rules published by EE/FHO should include both procedural rules and interpretive rules. These interpretive rules should, at the very least, clarify 1) the rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance; 2) the ordinance's signage requirement; and 3) what constitutes "reasonable verification procedures" to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look to earned paid sick time administrative rules published by other benchmark cities across the country

From: [Mark McKim](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Paid Sick Time Enforcement
Date: Sunday, July 15, 2018 4:13:25 PM

This message is from Mark McKim. [REDACTED]

1. The complaint and investigation process should be as accessible as possible.

Many of Austin's workers - especially those most likely to experience violations of the paid sick ordinance - may have limited English proficiency or low literacy. They may not have regular access to a computer or the internet, or know how to use e-mail or a computer at all. Because of the hours they work or the nature of their employment situation, these workers may not be easily reached during regular business hours or be available to attend in-person meetings during the business day. To be effective, the EE/FHO's complaint and investigation process for the earned paid sick time ordinance needs to account for and accommodate these realities.

WHAT DO WE RECOMMEND? The complaint forms developed by EE/FHO should be 1) simple and easy to complete 2) available in Spanish and other languages 3) available online in an accessible format that is easy to find on the City's website AND be available in hardcopy 4) be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

2. Parties should have the right to appeal an initial determination on their complaint.

Under the proposed rules, once the EE/FHO reaches its decision on a complaint, neither party has any chance to appeal that decision. We know that people make mistakes. The right to appeal is essential to ensure that all parties to a complaint are treated fairly in the investigation and enforcement process.

WHAT DO WE RECOMMEND? The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

3. Penalties under the ordinance should be higher to encourage compliance.

Penalties assessed under this ordinance should be designed with deterrence in mind. The proposed penalties - \$100 for small employers and \$150 for all other employers for a first time violation - are far too low. Indeed, they are so low that they likely create a financial incentive for employers to violate the ordinance and risk "getting caught" than actually comply. Furthermore, the proposed rules give the EE/FHO wide discretion to increase or decrease the penalty assessed.

WHAT DO WE RECOMMEND? The final rules should simplify the fee schedule and ensure that it applies equitably to all employers regardless of their size. Absent cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250. Civil penalties for any subsequent violation by an employer - regardless of the size of the employer or when this subsequent violation occurred - should be \$500. Any violation of the retaliation provision - whether it be a first or subsequent violation - should result in the assessment of a \$500 penalty. In addition, the final rules should limit

EE/FHO's discretion to adjust these penalties so that they may never be lowered, but may be increased for cases involving bad faith or malicious conduct.

4. The enforcement process should prioritize making workers whole in as timely a manner as possible. Violations of this ordinance can have grave consequences for an employee and their family and many people filing complaints may be doing so in moments of personal crisis. The proposed rules say that EE/FHO should try to close an investigation within 120 days, yet provide no guidance on how EE/FHO is supposed to seek voluntary compliance.

WHAT DO WE RECOMMEND? The enforcement process should attempt to resolve complaints as expeditiously as possible in a way that makes employees whole. The final rules should endeavor to close investigations within 90 days, not 120 days. Furthermore, the final rules should outline EE/FHO's guidelines for seeking voluntary compliance of a complaint.

5. EE/FHO must release both interpretive rules as well as procedural rules. The proposed rules released by EE/FHO outlines a process for receiving, investigating, and resolving complaints, but provide no guidance on how the agency will actually interpret the ordinance. Without interpretative rules, it will be difficult for employers to successfully comply with the ordinance, for workers to fully understand their rights under the ordinance, and for EE/FHO to enforce the ordinance fairly and effectively.

WHAT DO WE RECOMMEND? The final rules published by EE/FHO should include both procedural rules and interpretive rules. These interpretive rules should, at the very least, clarify 1) the rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance; 2) the ordinance's signage requirement; and 3) what constitutes a reasonable verification procedures to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look to earned paid sick time administrative rules published by other benchmark cities across the country.

Thank you for making this the best and most effective enforcement policy that benefits workers.

With gratitude,

From: [tandera louie](#)
To: [EarnedSickTime](#)
Subject: Paid Sick time enforcement
Date: Friday, July 13, 2018 10:42:08 AM

This message is from Tandra Louie. [REDACTED]

As an educator working in a field with weak benefits (childcare and pre-school), I have a direct interest in the fair and equitable enforcement of this ordinance. I echo and support the position of Work Strong Austin on the ordinance.

1. The complaint and investigation process should be as accessible as possible.

The complaint forms developed should be

1) simple and easy to complete 2) available in Spanish and other languages 3) available online in an accessible format that is easy to find on the City's website AND be available in hardcopy 4) be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

2. The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

3. Penalties under the ordinance should be higher to encourage compliance.

Penalties assessed under this ordinance should be designed with deterrence in mind.

The final rules should simplify the fee schedule and ensure that it applies equitably to all employers regardless of their size. Absent cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250. Civil penalties for any subsequent violation by an employer "regardless of the size of the employer or when this subsequent violation occurred" should be \$500. Any violation of the retaliation provision "whether it be a first or subsequent violation" should result in the assessment of a \$500 penalty. "In addition, the final rules should limit EE/FHO's discretion to adjust these penalties so that they may never be lowered, but may be increased for cases involving bad faith or malicious conduct.

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5. EE/FHO must release both interpretive rules as well as procedural rules.

These interpretive rules should, at the very least, clarify 1) the rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance; 2) the ordinance's signage requirement; and 3) what constitutes "reasonable verification procedures" to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look

to earned paid sick time administrative rules published by other benchmark cities across the country.

From: [Thomas Sheehy](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Paid Sick Time Enforcement
Date: Sunday, July 15, 2018 4:18:40 PM

This message is from Thomas Sheehy. [REDACTED]

The enforcement process should attempt to resolve complaints as expeditiously as possible in a way that makes employees whole. The final rules should endeavor to close investigations within at least 90 days, not 120 days. Furthermore, the final rules should outline EE/FHO's guidelines for seeking voluntary compliance of a complaint.

From: [seneca.h.savoie](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Paid Sick Time enforcement
Date: Friday, July 13, 2018 10:25:47 AM

This message is from Seneca H Savoie. [REDACTED]

1. The complaint and investigation process should be as accessible as possible. The complaint forms developed should be
1) simple and easy to complete 2) available in Spanish and other languages 3) available online in an accessible format that is easy to find on the City's website AND be available in hardcopy 4) be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.
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From: [LUIS FIGEROA](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: PAID SICK TIME RECOMMENDATIONS
Date: Sunday, July 15, 2018 4:03:21 PM

This message is from LUIS FIGEROA. [REDACTED]

1. The complaint and investigation process should be as accessible as possible. Many of Austin's workers - especially those most likely to experience violations of the paid sick ordinance - may have limited English proficiency or low literacy. They may not have regular access to a computer or the internet, or know how to use e-mail or a computer at all. Because of the hours they work or the nature of their employment situation, these workers may not be easily reached during regular business hours or be available to attend in-person meetings during the business day. To be effective, the EE/FHO's complaint and investigation process for the earned paid sick time ordinance needs to account for and accommodate these realities.

WHAT DO WE RECOMMEND? The complaint forms developed by EE/FHO should be

1) simple and easy to complete 2) available in Spanish and other languages 3) available online in an accessible format that is easy to find on the City's website AND be available in hardcopy 4) be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

2. Parties should have the right to appeal an initial determination on their complaint. Under the proposed rules, once the EE/FHO reaches its decision on a complaint, neither party has any chance to appeal that decision. We know that people make mistakes. The right to appeal is essential to ensure that all parties to a complaint are treated fairly in the investigation and enforcement process.

WHAT DO WE RECOMMEND? The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

3. Penalties under the ordinance should be higher to encourage compliance. Penalties assessed under this ordinance should be designed with deterrence in mind. The proposed penalties - \$100 for small employers and \$150 for all other employers for a first time violation - are far too low. Indeed, they are so low that they likely create a financial incentive for employers to violate the ordinance and risk getting caught than actually comply. Furthermore, the proposed rules give the EE/FHO wide discretion to increase or decrease the penalty assessed.

WHAT DO WE RECOMMEND? The final rules should simplify the fee schedule and ensure that it applies equitably to all employers regardless of their size. Absent cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250. Civil penalties for any subsequent violation by an employer

- regardless of the size of the employer or when this subsequent violation occurred - should be \$500. Any violation of the retaliation provision - whether it be a first or subsequent violation - should result in the assessment of a \$500 penalty. In addition, the final rules should limit EE/FHO's discretion to adjust these penalties so that they may never be lowered, but may be increased for cases involving bad faith or malicious conduct.

4. The enforcement process should prioritize making workers whole in as timely a manner as possible. Violations of this ordinance can have grave consequences for an employee and their family and many people filing complaints may be doing so in moments of personal crisis. The proposed rules say that EE/FHO should try to close an investigation within 120 days, yet provide no guidance on how EE/FHO is supposed to seek voluntary compliance.

WHAT DO WE RECOMMEND? The enforcement process should attempt to resolve complaints as expeditiously as possible in a way that makes employees whole. The final rules should endeavor to close investigations within 90 days, not 120 days. Furthermore, the final rules should outline EE/FHO's guidelines for seeking voluntary compliance of a complaint.

5. EE/FHO must release both interpretive rules as well as procedural rules. The proposed rules released by EE/FHO outlines a process for receiving, investigating, and resolving complaints, but provide no guidance on how the agency will actually interpret the ordinance. Without interpretative rules, it will be difficult for employers to successfully comply with the ordinance, for workers to fully understand their rights under the ordinance, and for EE/FHO to enforce the ordinance fairly and effectively.

WHAT DO WE RECOMMEND? The final rules published by EE/FHO should include both procedural rules and interpretive rules. These interpretive rules should, at the very least, clarify 1) the rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance; 2) the ordinance's signage requirement; and 3) what constitutes "reasonable verification procedures" to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look to earned paid sick time administrative rules published by other benchmark cities across the country.

From: [Emma Boardman-Larson](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Paid Sick Time Rules Comments
Date: Friday, July 13, 2018 3:03:38 PM

This message is from Emma Boardman-Larson. [REDACTED]

1. The complaint and investigation process should be as accessible as possible. The complaint forms developed should be:
 - 1) Simple and easy to complete
 - 2) Available in Spanish and other languages
 - 3) Available online in an accessible format that is easy to find on the City's website AND be available in hard copy
 - 4) Be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.
2. The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.
3. Penalties under the ordinance should be higher to encourage compliance. Penalties assessed under this ordinance should be designed with deterrence in mind. The final rules should simplify the fee schedule and ensure that it applies equitably to all employers regardless of their size. Absent cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250. Civil penalties for any subsequent violation by an employer ' regardless of the size of the employer or when this subsequent violation occurred ' should be \$500. Any violation of the retaliation provision ' whether it be a first or subsequent violation ' should result in the assessment of a \$500 penalty. ' In addition, the final rules should limit EE/FHO's discretion to adjust these penalties so that they may never be lowered, but may be increased for cases involving bad faith or malicious conduct.
4. The enforcement process should prioritize making workers whole in as timely a manner as possible. 'The final rules should endeavor to close investigations within 90 days, not 120 days. Furthermore, the final rules should outline EE/FHO's guidelines for seeking voluntary compliance of a complaint.
5. EE/FHO must release both interpretive rules as well as procedural rules.

These interpretive rules should, at the very least, clarify

- 1) The rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance;
- 2) The ordinance's signage requirement; and
- 3) What constitutes 'reasonable verification procedures' to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look to earned paid sick time administrative rules published by other benchmark cities across the country.

From: [Sarah Swallow](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Paid Sick Time Rules
Date: Sunday, July 15, 2018 4:09:57 PM

This message is from Sarah Swallow. [REDACTED]

****NOTE THAT I AM ASKING FOR A \$500 FINE TO BE APPLIED TO EVERY BUSINESS THAT DOES NOT QUICKLY GET INTO COMPLIANCE WITH THE ORDINANCE AFTER A COMPLAINT IS FILED****

1. The complaint and investigation process should be as accessible as possible. Many of Austin's workers - especially those most likely to experience violations of the paid sick ordinance - may have limited English proficiency or low literacy. They may not have regular access to a computer or the internet, or know how to use e-mail or a computer at all. Because of the hours they work or the nature of their employment situation, these workers may not be easily reached during regular business hours or be available to attend in-person meetings during the business day. To be effective, the EE/FHO's complaint and investigation process for the earned paid sick time ordinance needs to account for and accommodate these realities.

WHAT DO WE RECOMMEND? The complaint forms developed by EE/FHO should be

1) simple and easy to complete 2) available in Spanish and other languages 3) available online in an accessible format that is easy to find on the City's website AND be available in hardcopy 4) be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

2. Parties should have the right to appeal an initial determination on their complaint. Under the proposed rules, once the EE/FHO reaches its decision on a complaint, neither party has any chance to appeal that decision. We know that people make mistakes. The right to appeal is essential to ensure that all parties to a complaint are treated fairly in the investigation and enforcement process.

WHAT DO WE RECOMMEND? The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

3. Penalties under the ordinance should be higher to encourage compliance.

Penalties assessed under this ordinance should be designed with deterrence in mind. The proposed penalties - \$100 for small employers and \$150 for all other employers for a first time violation - are far too low. Indeed, they are so low that they likely create a financial incentive for employers to violate the ordinance and risk getting caught than actually comply. Furthermore, the proposed rules give the EE/FHO wide discretion to increase or decrease the penalty assessed.

WHAT DO WE RECOMMEND?

I want to see a \$500 fine for all incidences of non-compliance that are not resolved quickly by the employer.

In addition,

the final rules should limit EE/FHO's discretion to adjust these penalties so that they

may never be lowered, but may be increased for cases involving bad faith or malicious conduct.

4. The enforcement process should prioritize making workers whole in as timely a manner as possible. “Violations of this ordinance can have grave consequences for an employee and their family and many people filing complaints may be doing so in moments of personal crisis. The proposed rules say that EE/FHO should try to close an investigation within 120 days, yet provide no guidance on how EE/FHO is supposed to seek voluntary compliance.

WHAT DO WE RECOMMEND? “The enforcement process should attempt to resolve complaints as expeditiously as possible in a way that makes employees whole. The final rules should endeavor to close investigations within 90 days, not 120 days.

Furthermore, the final rules should outline EE/FHO’s guidelines for seeking voluntary compliance of a complaint.

5. EE/FHO must release both interpretive rules as well as procedural rules.

The proposed rules released by EE/FHO outlines a process for receiving, investigating, and resolving complaints, but provide no guidance on how the agency will actually interpret the ordinance. Without interpretative rules, it will be difficult for employers to successfully comply with the ordinance, for workers to fully understand their rights under the ordinance, and for EE/FHO to enforce the ordinance fairly and effectively.

WHAT DO WE RECOMMEND? “The final rules published by EE/FHO should include both

procedural rules and interpretive rules. These interpretive rules should, at the very least, clarify 1) the rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance; 2) the ordinance’s signage requirement; and 3) what constitutes “reasonable verification procedures” to vet an employee’s request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look to earned paid sick time administrative rules published by other benchmark cities across the country

From: [Jacob Weiss](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Paid Sick Time
Date: Thursday, July 19, 2018 7:22:15 PM

This message is from Jacob Weiss. [REDACTED]

1. The complaint and investigation process should be as accessible as possible.

The complaint forms developed should be:

- 1) Simple and easy to complete
- 2) Available in Spanish and other languages
- 3) Available online in an accessible format that is easy to find on the City's website AND beavailable in hardcopy
- 4) Be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

2. The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

3. Penalties under the ordinance should be higher to encourage compliance. Penalties assessed under this ordinance should be designed with deterrence in mind. The final rules should simplify the fee schedule and ensure that it applies equitably to all employers regardless of their size. Absent cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250. Civil penalties for any subsequent violation by an employer ' regardless of the size of the employer or when this subsequent violation occurred ' should be \$500. Any violation of the retaliation provision ' whether it be a first or subsequent violation ' should result in the assessment of a \$500 penalty. ' In addition, the final rules should limit EE/FHO's discretion to adjust these penalties so that they may never be lowered, but may be increased for cases involving bad faith or malicious conduct.

4. The enforcement process should prioritize making workers whole in as timely a manner as possible. 'The final rules should endeavor to close investigations within 90 days, not 120 days. Furthermore, the final rules should outline EE/FHO's guidelines for seeking voluntary compliance of a complaint.

5. EE/FHO must release both interpretive rules as well as procedural rules.

From: [Leah Churner](#)
To: [EarnedSickTime](#)
Subject: Paid Sick Time
Date: Thursday, July 19, 2018 4:11:24 PM

This message is from Leah Churner . [REDACTED]

1. The complaint and investigation process should be as accessible as possible.

The complaint forms developed should be:

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- 2) Available in Spanish and other languages
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- 2) The ordinance's signage requirement; and
- 3) What constitutes "reasonable verification procedures" to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look to earned paid sick time administrative rules published by other benchmark cities across the

country.

From: [Kellin McAvoy](#)
To: [EarnedSickTime](#)
Subject: Paid Sick Time
Date: Thursday, July 19, 2018 8:40:34 PM

This message is from Kellin McAvoy. [REDACTED]

1. The complaint and investigation process should be as accessible as possible.

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- 3) What constitutes "reasonable verification procedures" to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look to earned paid sick time administrative rules published by other benchmark cities across the

country.

From: [Michael McKnabb](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: PAID SICK TIME
Date: Tuesday, July 17, 2018 10:06:08 AM

This message is from Michael McKnabb. [REDACTED]

I am a member of IBEW Local 520. I feel that it is important to clarify how the ordinance will affect workers like me who perform their work in many different cities.

- 1) The rules should clarify that the ordinance applies to workers typically based outside the City of Austin, but who work 80 or more hours inside city limits within a calendar year.
- 2) If an employer does not provide earned paid sick time to an employee whose work duties require them to perform work within Austin city limits, it should be the responsibility of the employer to track any employee's time who performs work duties within the City of Austin to justify that the employee is not eligible for earned sick time under the ordinance.â€

From: [Steph](#)
To: [EarnedSickTime](#)
Subject: Paid sick time
Date: Saturday, July 14, 2018 3:00:50 PM

This message is from Steph . [REDACTED]

1. The complaint and investigation process should be as accessible as possible.

The complaint forms developed should be:

- 1) Simple and easy to complete
- 2) Available in Spanish and other languages
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4. The enforcement process should prioritize making workers whole in as timely a manner as possible. "The final rules should endeavor to close investigations within 90 days, not 120 days. Furthermore, the final rules should outline EE/FHO's guidelines for seeking voluntary compliance of a complaint.

5. EE/FHO must release both interpretive rules as well as procedural rules.

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- 1) The rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance;
- 2) The ordinance's signage requirement; and
- 3) What constitutes "reasonable verification procedures" to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look to earned paid sick time administrative rules published by other benchmark cities across the

country.

From: [Caroline Adams](#)
To: [EarnedSickTime](#)
Subject: Paid Sick
Date: Thursday, July 19, 2018 8:37:56 PM

This message is from Caroline Adams. [REDACTED]

1. The complaint and investigation process should be as accessible as possible.

The complaint forms developed should be:

- 1) Simple and easy to complete
- 2) Available in Spanish and other languages
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5. EE/FHO must release both interpretive rules as well as procedural rules.

From: [Ben Brenneman](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Paid Sick
Date: Tuesday, July 17, 2018 6:37:57 AM

This message is from Ben Brenneman. [REDACTED]

â€œI am a member of IBEW Local 520. I feel that it is important to clarify how the ordinance will affect workers like me who perform their work in many different cities.

- 1) The rules should clarify that the ordinance applies to workers typically based outside the City of Austin, but who work 80 or more hours inside city limits within a calendar year.
- 2) If an employer does not provide earned paid sick time to an employee whose work duties require them to perform work within Austin city limits, it should be the responsibility of the employer to track any employee's time who performs work duties within the City of Austin to justify that the employee is not eligible for earned sick time under the ordinance.â€œ

From: [timothy.marroquin](#)
To: [EarnedSickTime](#)
Subject: Paid-sick leave
Date: Thursday, July 19, 2018 7:26:39 PM

This message is from Timothy Marroquin. [REDACTED]

1. The complaint and investigation process should be as accessible as possible.

The complaint forms developed should be:

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- 2) Available in Spanish and other languages
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- 4) Be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

2. The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

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These interpretive rules should, at the very least, clarify

- 1) The rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance;
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- 3) What constitutes "reasonable verification procedures" to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look to earned paid sick time administrative rules published by other benchmark cities across the

country.

From: [gardner webb](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: payed sick leave
Date: Tuesday, July 17, 2018 4:32:05 PM

This message is from Gardner Webb. [REDACTED]

hello to all, I wanted to thank everybody for making time to hear my thoughts about the paid sick leave. one point i would like to be made aware that it would be detrimental for workers to prove that they have worked inside city limits as paystubs do not track location. i believe there should be a format for logging hours worked inside city of austin that would work for both employer and worker.

From: [Sebastian Chilco](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Proposed Earned Sick Time Ordinance Rules
Date: Thursday, June 21, 2018 5:39:54 PM

This message is from Sebastian Chilco. [REDACTED]

I see proposed rules for investigating alleged violations of, and enforcing, the Earned Sick Time Ordinance have been proposed. Will separate proposed rules be issued that will interpret and/or clarify the Ordinance's requirements? If so, is there an estimated time frame for when that will occur?

Thank you for your assistance concerning this matter.

From: [Elizabeth Hopkins](#)
To: [EarnedSickTime](#)
Subject: Proposed Rules For Austin's Paid Sick Time Ordinance
Date: Thursday, July 19, 2018 7:15:16 PM

This message is from Elizabeth Hopkins. [REDACTED]

1. The complaint and investigation process should be as accessible as possible.

The complaint forms developed should be:

- 1) Simple and easy to complete
- 2) Available in Spanish and other languages
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5. EE/FHO must release both interpretive rules as well as procedural rules.

From: [Nathan Lynch](#)
To: [EarnedSickTime](#)
Subject: Proposed Rules For Austin's Paid Sick Time Ordinance
Date: Thursday, July 19, 2018 8:09:09 PM

This message is from Nathan Lynch. [REDACTED]

1. The complaint and investigation process should be as accessible as possible.

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- 2) Available in Spanish and other languages
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- 1) The rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance;
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- 3) What constitutes "reasonable verification procedures" to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look to earned paid sick time administrative rules published by other benchmark cities and states

across the country.

From: [David Pinkham](#)
To: [EarnedSickTime](#)
Subject: Proposed Rules for Austin's Paid Sick Time Ordinance
Date: Friday, July 13, 2018 3:11:37 PM

This message is from David Pinkham. [REDACTED]

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- 3) Available online in an accessible format that is easy to find on the City's website AND beavailable in hardcopy
- 4) Be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

2. The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

3. Penalties under the ordinance should be higher to encourage compliance. Penalties assessed under this ordinance should be designed with deterrence in mind. The final rules should simplify the fee schedule and ensure that it applies equitably to all employers regardless of their size. Absent cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250. Civil penalties for any subsequent violation by an employer "regardless of the size of the employer or when this subsequent violation occurred" should be \$500. Any violation of the retaliation provision "whether it be a first or subsequent violation" should result in the assessment of a \$500 penalty. "In addition, the final rules should limit EE/FHO's discretion to adjust these penalties so that they may never be lowered, but may be increased for cases involving bad faith or malicious conduct.

4. The enforcement process should prioritize making workers whole in as timely a manner as possible. "The final rules should endeavor to close investigations within 90 days, not 120 days. Furthermore, the final rules should outline EE/FHO's guidelines for seeking voluntary compliance of a complaint.

5. EE/FHO must release both interpretive rules as well as procedural rules.

These interpretive rules should, at the very least, clarify

- 1) The rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance;
- 2) The ordinance's signage requirement; and
- 3) What constitutes "reasonable verification procedures" to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look to earned paid sick time administrative rules published by other benchmark cities across the

country.

From: [Jessica Wolff](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Proposed Rules
Date: Wednesday, July 18, 2018 1:40:59 PM

This message is from Jessica Wolff. [REDACTED]

Good afternoon,

I am reaching out with the following recommendations for the proposed rules the city has posted around the earned sick time policy.

1. The civil penalties need to be higher to encourage compliance. The minimum penalty for a first time violation should be \$250, any subsequent violation should result in an automatic \$500 penalty. EE/FHO should have limited discretion to increase civil penalties in cases involving bad faith or retaliation, but should never have the discretion to lower the penalty.
2. The investigation process needs to be faster. The proposed rules encourage the city to resolve complaints in 120 days. That is too long. At the very least, complaints should be resolved in 90 days.
3. There should be a right to appeal. The right to appeal is fundamental to due process. The only way to ensure fair, equitable treatment in the city's administration of this ordinance is for it to allow either party the right to appeal an initial determination on a complaint.
4. The complaint and investigation process should be as accessible as possible. The process should accommodate non-English speakers, those with limited access to a computer or the Internet, those without access to reliable transportation, and those whose work schedules make it difficult to participate in in-person meetings during regular business hours
5. EE/FHO needs to establish interpretive rules in addition to procedural rules. Employers need this clarity to ensure full compliance with the ordinance, workers need this clarity to fully understand their rights under the ordinance, and the city will need this clarity to properly enforce it.

Please let me know if you have any questions!

-Jessica

From: [Brydan McNeely](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Proposed Rules
Date: Thursday, July 19, 2018 7:54:17 PM

This message is from Brydan McNeely. [REDACTED]

I believe that employees should be able to file a complaint as easily as possible. This means materials are available to them online, or as a hardcopy for people that don't have access to a computer (like this process). This also means materials need to be in multiple languages. Investigators should make every effort to maintain confidentiality and be available, similar to the city's 24/7 fraud and abuse hotline. I also agree with the following points that have been created by the same folks that fought to get this, the will of the citizens and the city council:

2. The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.
3. Penalties under the ordinance should be higher to encourage compliance. Penalties assessed under this ordinance should be designed with deterrence in mind. The final rules should simplify the fee schedule and ensure that it applies equitably to all employers regardless of their size. Absent cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250. Civil penalties for any subsequent violation by an employer "regardless of the size of the employer or when this subsequent violation occurred" should be \$500. Any violation of the retaliation provision "whether it be a first or subsequent violation" should result in the assessment of a \$500 penalty. "In addition, the final rules should limit EE/FHO's discretion to adjust these penalties so that they may never be lowered, but may be increased for cases involving bad faith or malicious conduct."
4. The enforcement process should prioritize making workers whole in as timely a manner as possible. "The final rules should endeavor to close investigations within 90 days, not 120 days. Furthermore, the final rules should outline EE/FHO's guidelines for seeking voluntary compliance of a complaint."
5. EE/FHO must release both interpretive rules as well as procedural rules.

These interpretive rules should, at the very least, clarify

- 1) The rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance;
- 2) The ordinance's signage requirement; and
- 3) What constitutes "reasonable verification procedures" to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look to earned paid sick time administrative rules published by other benchmark cities across the country.

From: [Tina Grider-Cannon](#)
To: [EarnedSickTime](#)
Subject: PSL Rules Comment
Date: Monday, July 23, 2018 11:45:07 AM

This message is from Tina Grider-Cannon. [REDACTED]

â€¢ The Ordinance is preempted by state law and unconstitutional per the claims in a recent lawsuit, and these proposed regs donâ€™t fix any of the defects that make the Ordinance illegal; and

â€¢ Section 6(B)(1)(c) likely separately violates the First Amendment as it bases the civil penalty upon the Respondentâ€™s viewpoint about the Ordinance, which is protected speech.

From: [Ivan Torres](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: PTO
Date: Tuesday, July 17, 2018 9:35:09 AM

This message is from Ivan Torres. [REDACTED]

â€œI am a member of IBEW Local 520. I feel that it is important to clarify how the ordinance will affect workers like me who perform their work in many different cities.

- 1) The rules should clarify that the ordinance applies to workers typically based outside the City of Austin, but who work 80 or more hours inside city limits within a calendar year.
- 2) If an employer does not provide earned paid sick time to an employee whose work duties require them to perform work within Austin city limits, it should be the responsibility of the employer to track any employee's time who performs work duties within the City of Austin to justify that the employee is not eligible for earned sick time under the ordinance.â€œ

From: [Julieta Garibay](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: RE: Comments on Notice of Proposed Adoption of Administrative Rules for Investigation of Complaints and Assessment Of Civil Pena
Date: Thursday, July 19, 2018 4:28:11 PM

This message is from Julieta Garibay. [REDACTED]

July 18, 2018

ATTN: Jonathan Babiak
City of Austin Equal Employment/Fair Housing Office
1050 East 11th Street, Suite 200
Austin, Texas 78702
(512) 974-3200

RE: Comments on Notice of Proposed Adoption of Administrative Rules for Investigation of Complaints and Assessment Of Civil Penalties under City Code Chapter 4-19

To Whom It May Concern:

I write as a supporter of Work Strong Austin, a coalition of community organizations dedicated to improving the lives of working families in Austin. As the Texas Director and Co-founder of United We Dream – the largest immigrant youth-led network in the country – I stand by earned paid sick time because laborers, many of whom are immigrants working in service industries like restaurants, health care or retail, are directly impacted by this issue.

In passing Austin’s Earned Sick Time Ordinance, City Council acknowledged that denying earned sick time is an injustice that harms working people, our local economy, and the health, safety, and welfare of all Austin residents. Work Strong Austin believes that the Equal Employment/Fair Housing Office (EE/FHO) should interpret and enforce this ordinance in a way that encourages maximum compliance, so that every worker entitled to benefit from earned sick time under this policy has the right to do so and no employer in this city is placed at a disadvantage for doing the right thing. All of us benefit - workers, employers, and the general public - when complaints under Chapter 4-19 are investigated thoroughly and handled expeditiously, and when violations of the ordinance are taken seriously. For these reasons, I offer the following comments to the recent rules that EE/FHO has released for its implementation of Austin’s earned sick time ordinance:

The complaint and investigation process should be as accessible as possible. It is to the benefit of everyone for workers who believe their rights under the earned sick time ordinance have been violated to easily be able to file complaints with the city. EE/FHO should ensure that its complaint form is available in multiple languages and multiple formats (both digitally and in hard copy), is easy to access, easy to understand, and easy to submit. Whenever possible, EE/FHO investigators should attempt to conduct interviews over the phone and outside of regular business hours, in order to accommodate people who may not have access to reliable transportation or whose work schedules make it difficult for them to be

reached during the work day.

Parties should be able to appeal an initial determination of a complaint.

To ensure that everyone's due process rights are respected, parties should have the opportunity to appeal EE/FHO's initial determination of a complaint.

The civil penalties should be designed to deter violations and ensure consistency in enforcement.

The final rules should increase the civil penalty amounts for all violations, regardless of employer size, and limit EE/FHO's discretion in assessing penalties. Except for cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250. Civil penalties for any subsequent violation by an employer - regardless of the size of the employer or when this subsequent violation occurred - should be \$500. Any violation of the retaliation provision - whether it be a first or subsequent violation - should result in the assessment of a \$500 penalty. While the final rules should grant EE/FHO the discretion to assess higher penalties for violations that involve bad faith or malicious conduct, this should be the sole instance when EE/FHO can exercise its discretion to adjust the penalties assessed. EE/FHO should never have the authority to assess a penalty that is lower than the penalty established in the proposed rules.

EE/FHO should resolve complaints in a timely manner and seek a resolution that makes employees whole.

Many of the workers likely to file complaints under this ordinance do so in a moment of incredible need. Without sacrificing the thoroughness or integrity of the investigation process, EE/FHO should attempt to resolve complaints as quickly as possible, but no more than 90 days after the complaint is assigned to an investigator. Furthermore, to the extent possible, the final rules should provide additional clarity regarding how EE/FHO will try to seek voluntary compliance to correct a violation, make workers whole, and deter additional violations in the future.

EE/FHO's final rules should both interpret the ordinance and outline the agency's investigation and enforcement procedures.

Without interpretative rules, it will be difficult for employers to successfully comply with the ordinance, for workers to fully understand their rights under the ordinance, and for EE/FHO to enforce the ordinance fairly and effectively. In particular, these interpretive rules should provide additional guidance on the signs that employers are required to post under the ordinance, how employers should compensate employees who use earned paid sick time, and how employers can ensure that their verification procedures for employees who do so for more than three consecutive work days are "reasonable" .

Sincerely,

Julieta Garibay
Texas Director - Co-Founder
United We Dream

From: [Juan Pedro Munoz](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Recomendaciones días de enfermedad/earn sick time
Date: Tuesday, July 17, 2018 7:57:53 PM

This message is from Juan Pedro Munoz. [REDACTED]

A quien corresponda,

Por medio de la presente envio mis recomendaciones para la ordenanza de dias de enfermedad pagados.

Atentamente,

Recomendaciones días de enfermedad pagados.

Las penalidades civiles tener que ser más altas para que se cumpla con la ley. Una penalidad mínima debe ser de \$250, cualquier violación que siga debe elevarse a \$500 inmediatamente. El departamento de EE/FHO debe tener discreción limitada para aumentar penalidades civiles en casos de represalias y si un empleador actúa de mala fe, pero bajo ninguna circunstancia el departamento de minimizar las penalidades.

La investigación necesita un proceso más rápido. Las reglas proponen 120 días para procesar quejas, esto es demasiado tiempo. Las quejas deben ser procesadas mínimo en 90 días.

Debe haber el derecho para apelar. El poder apelar es fundamental para este proceso. De esta manera nos vamos a asegurar que sea un proceso justo y equitativo.

El procedimiento de investigación y quejas debe ser lo más accesible posible. El proceso debe acomodar a personas que su idioma no es inglés, también para las personas que no tienen acceso a tecnología y también para aquellos que no pueden participar en persona. EE/FHO necesita reglas interpretativas adicionalmente de reglas sobre el proceso.

Empleadores necesitan esto para aclarar dudas y asegurarse que están cumpliendo con la ley, trabajadores necesitan entender claramente sus derechos bajo esta ordenanza, la ciudad necesita esto para tener claridad en cómo enforcing la ley.

The civil penalties need to be higher to encourage compliance. The minimum penalty for a first time violation should be \$250, any subsequent violation should result in an automatic \$500 penalty. EE/FHO should have limited discretion to increase civil penalties in cases involving bad faith or retaliation, but should never have the discretion to lower the penalty. The investigation process needs to be faster. The proposed rules encourage the city to resolve complaints in 120 days. That is too long. At the very least, complaints should be resolved in 90 days.

There should be a right to appeal. The right to appeal is fundamental to due process. The only way to ensure fair, equitable treatment in the city's administration of this ordinance is for it to allow either party the right to appeal an initial determination on a complaint.

The complaint and investigation process should be as accessible as possible. The process should accommodate non-English speakers, those with limited access to a computer or the Internet, those without access to reliable transportation, and those whose work schedules

make it difficult to participate in in-person meetings during regular business hours. EE/FHO needs to establish interpretive rules in addition to procedural rules. Employers need this clarity to ensure full compliance with the ordinance, workers need this clarity to fully understand their rights under the ordinance, and the city will need this clarity to properly enforce it.

From: [Alejandro Gonzalez](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Recomendaciones/Recommendations
Date: Tuesday, July 17, 2018 8:12:39 PM

This message is from Alejandro Gonzalez. [REDACTED]

A quien corresponda,

Por medio de la presente envio mis recomendaciones para la ordenanza de dias de enfermedad pagados.

Atentamente,
Alejandro Gonzalez

Recomendaciones dÃas de enfermedad pagados.
<http://austintexas.gov/email/earnedsicktime>

Las penalidades civiles tener que ser mÃs altas para que se cumpla con la ley. Una penalidad mÃnima debe ser de \$250, cualquier violaciÃn que siga debe elevarse a \$500 inmediatamente. El departamento de EE/FHO debe tener discreciÃn limitada para aumentar penalidades civiles en casos de represalias y si un empleador actuÃ de mala fe, pero bajo ninguna circunstancia el departamento de minimizar las penalidades.

La investigaciÃn necesita un proceso mÃs rÃpido. Las reglas proponen 120 dÃas para procesar quejar, esto es demasiado tiempo. Las quejas deben ser procesadas mÃnimo en 90 dÃas.

Debe haber el derecho para apelar. El poder apelar es fundamental para este proceso. De esta manera nos vamos a asegurar que sea un proceso justo y equitativo.

El procedimiento de investigaciÃn y quejas debe ser lo mÃs accesible posible. El proceso debe acomodar a personas que su idioma no es inglÃs, tambiÃn para las personas que no tienen acceso a tecnologÃa y tambiÃn para aquellos que no pueden participar en persona. EE/FHO necesita reglas interpretativas adicionalmente de reglas sobre el proceso.

Empleadores necesitan esto para aclarar dudas y asegurarse que estÃn cumpliendo con la ley, trabajadores necesitan entender claramente sus derechos bajo esta ordenanza, la ciudad necesita esto para tener claridad en cÃmo enforcing la ley.

The civil penalties need to be higher to encourage compliance. The minimum penalty for a first time violation should be \$250, any subsequent violation should result in an automatic \$500 penalty. EE/FHO should have limited discretion to increase civil penalties in cases involving bad faith or retaliation, but should never have the discretion to lower the penalty. The investigation process needs to be faster. The proposed rules encourage the city to resolve complaints in 120 days. That is too long. At the very least, complaints should be resolved in 90 days.

There should be a right to appeal. The right to appeal is fundamental to due process. The only way to ensure fair, equitable treatment in the city's administration of this ordinance is for it to allow either party the right to appeal an initial determination on a complaint.

The complaint and investigation process should be as accessible as possible. The process should accommodate non-English speakers, those with limited access to a computer or the

Internet, those without access to reliable transportation, and those whose work schedules make it difficult to participate in in-person meetings during regular business hours.

EE/FHO needs to establish interpretive rules in addition to procedural rules. Employers need this clarity to ensure full compliance with the ordinance, workers need this clarity to fully understand their rights under the ordinance, and the city will need this clarity to properly enforce it.

From: [Maria Thomas](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Recommendations for Paid Sick Leave
Date: Tuesday, July 17, 2018 9:35:31 AM

This message is from Maria Thomas. [REDACTED]

1. The complaint and investigation process should be as accessible as possible. Many of Austin's workers - especially those most likely to experience violations of the paid sick ordinance - may have limited English proficiency or low literacy. They may not have regular access to a computer or the internet, or know how to use e-mail or a computer at all. Because of the hours they work or the nature of their employment situation, these workers may not be easily reached during regular business hours or be available to attend in-person meetings during the business day. To be effective, the EE/FHO's complaint and investigation process for the earned paid sick time ordinance needs to account for and accommodate these realities.

WHAT DO WE RECOMMEND? The complaint forms developed by EE/FHO should be 1) simple and easy to complete 2) available in Spanish and other languages 3) available online in an accessible format that is easy to find on the City's website AND be available in hardcopy 4) be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

X2. Parties should have the right to appeal an initial determination on their complaint. Under the proposed rules, once the EE/FHO reaches its decision on a complaint, neither party has any chance to appeal that decision. We know that people make mistakes. The right to appeal is essential to ensure that all parties to a complaint are treated fairly in the investigation and enforcement process.

WHAT DO WE RECOMMEND? The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

3. Penalties under the ordinance should be higher to encourage compliance. Penalties assessed under this ordinance should be designed with deterrence in mind. The proposed penalties - \$100 for small employers and \$150 for all other employers for a first time violation - are far too low. Indeed, they are so low that they likely create a financial incentive for employers to violate the ordinance and risk "getting caught" than actually comply. Furthermore, the proposed rules give the EE/FHO wide discretion to increase or decrease the penalty assessed.

WHAT DO WE RECOMMEND? The final rules should simplify the fee schedule and ensure that it applies equitably to all employers regardless of their size. Absent cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250. Civil penalties for any subsequent violation by an employer - regardless of the size of the employer or when this subsequent violation occurred -

should be \$500. Any violation of the retaliation provision - whether it be a first or subsequent violation - should result in the assessment of a \$500 penalty. In addition, the final rules should limit EE/FHO's discretion to adjust these penalties so that they may never be lowered, but may be increased for cases involving bad faith or malicious conduct.

4. The enforcement process should prioritize making workers whole in as timely a manner as possible. Violations of this ordinance can have grave consequences for an employee and their family and many people filing complaints may be doing so in moments of personal crisis. The proposed rules say that EE/FHO should try to close an investigation within 120 days, yet provide no guidance on how EE/FHO is supposed to seek voluntary compliance.

WHAT DO WE RECOMMEND? The enforcement process should attempt to resolve complaints as expeditiously as possible in a way that makes employees whole. The final rules should endeavor to close investigations within 90 days, not 120 days. Furthermore, the final rules should outline EE/FHO's guidelines for seeking voluntary compliance of a complaint.

5. EE/FHO must release both interpretive rules as well as procedural rules. The proposed rules released by EE/FHO outlines a process for receiving, investigating, and resolving complaints, but provide no guidance on how the agency will actually interpret the ordinance. Without interpretative rules, it will be difficult for employers to successfully comply with the ordinance, for workers to fully understand their rights under the ordinance, and for EE/FHO to enforce the ordinance fairly and effectively.

WHAT DO WE RECOMMEND? The final rules published by EE/FHO should include both procedural rules and interpretive rules. These interpretive rules should, at the very least, clarify 1) the rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance; 2) the ordinance's signage requirement; and 3) what constitutes a reasonable verification procedures to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look to earned paid sick time administrative rules published by other benchmark cities across the country.

From: [Mark McCartney](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Recommendations for Paid Sick Leave
Date: Thursday, July 19, 2018 9:38:27 PM

This message is from Mark McCartney. [REDACTED]

As a member of Austin DSA, I would ask that the paid sick leave policy include the following recommendations:

1. The complaint and investigation process should be as accessible as possible.

The complaint forms developed should be:

- 1) Simple and easy to complete
- 2) Available in Spanish and other languages
- 3) Available online in an accessible format that is easy to find on the City's website AND beavailable in hardcopy
- 4) Be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

2. The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

3. Penalties under the ordinance should be higher to encourage compliance. Penalties assessed under this ordinance should be designed with deterrence in mind. The final rules should simplify the fee schedule and ensure that it applies equitably to all employers regardless of their size. Absent cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250. Civil penalties for any subsequent violation by an employer ' regardless of the size of the employer or when this subsequent violation occurred ' should be \$500. Any violation of the retaliation provision ' whether it be a first or subsequent violation ' should result in the assessment of a \$500 penalty. ' In addition, the final rules should limit EE/FHO's discretion to adjust these penalties so that they may never be lowered, but may be increased for cases involving bad faith or malicious conduct.

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5. EE/FHO must release both interpretive rules as well as procedural rules.

These interpretive rules should, at the very least, clarify

- 1) The rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance;

- 2) The ordinance's signage requirement; and
- 3) What constitutes "reasonable verification procedures" to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look to earned paid sick time administrative rules published by other benchmark cities across the country.

From: [Alex Seubert](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Recommendations for Paid Sick Time enforcement rules
Date: Sunday, July 15, 2018 4:04:12 PM

This message is from Alex Seubert. [REDACTED]

1. The complaint and investigation process should be as accessible as possible. Many of Austin's workers - especially those most likely to experience violations of the paid sick ordinance - may have limited English proficiency or low literacy. They may not have regular access to a computer or the internet, or know how to use e-mail or a computer at all. Because of the hours they work or the nature of their employment situation, these workers may not be easily reached during regular business hours or be available to attend in-person meetings during the business day. To be effective, the EE/FHO's complaint and investigation process for the earned paid sick time ordinance needs to account for and accommodate these realities.

WHAT DO WE RECOMMEND? The complaint forms developed by EE/FHO should be 1) simple and easy to complete 2) available in Spanish and other languages 3) available online in an accessible format that is easy to find on the City's website AND be available in hardcopy 4) be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

2. Parties should have the right to appeal an initial determination on their complaint. Under the proposed rules, once the EE/FHO reaches its decision on a complaint, neither party has any chance to appeal that decision. We know that people make mistakes. The right to appeal is essential to ensure that all parties to a complaint are treated fairly in the investigation and enforcement process.

WHAT DO WE RECOMMEND? The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

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WHAT DO WE RECOMMEND? The final rules should simplify the fee schedule and ensure that it applies equitably to all employers regardless of their size. Absent cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250. Civil penalties for any subsequent violation by an employer - regardless of the size of the employer or when this subsequent violation occurred - should be \$500. Any violation of the retaliation provision - whether it be a first or subsequent violation - should result in the assessment of a \$500 penalty. In addition, the final rules should limit EE/FHO's discretion to adjust these penalties so that they may never be lowered, but may be increased for cases involving bad faith or malicious conduct.

4. The enforcement process should prioritize making workers whole in as timely a manner as possible. Violations of this ordinance can have grave consequences for an employee and their family and many people filing complaints may be doing so in moments of personal crisis. The proposed rules say that EE/FHO should try to close an investigation within 120 days, yet provide no guidance on how EE/FHO is supposed to seek voluntary compliance.

WHAT DO WE RECOMMEND? The enforcement process should attempt to resolve complaints as expeditiously as possible in a way that makes employees whole. The final rules should endeavor to close investigations within 90 days, not 120 days. Furthermore, the final rules should outline EE/FHO's guidelines for seeking voluntary compliance of a complaint.

5. EE/FHO must release both interpretive rules as well as procedural rules.

The proposed rules released by EE/FHO outlines a process for receiving, investigating, and resolving complaints, but provide no guidance on how the agency will actually interpret the ordinance. Without interpretative rules, it will be difficult for employers to successfully comply with the ordinance, for workers to fully understand their rights under the ordinance, and for EE/FHO to enforce the ordinance fairly and effectively.

WHAT DO WE RECOMMEND? The final rules published by EE/FHO should include both procedural rules and interpretive rules. These interpretive rules should, at the very least, clarify 1) the rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance; 2) the ordinance's signage requirement; and 3) what constitutes "reasonable verification procedures" to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look to earned paid sick time administrative rules published by other benchmark cities across the country

From: [Mark Maldonado](#)
To: [EarnedSickTime](#)
Subject: Recommendations for Paid Sick Time
Date: Tuesday, July 17, 2018 9:32:54 AM

This message is from Mark Maldonado . [REDACTED]

1. The complaint and investigation process should be as accessible as possible. Many of Austin's workers - especially those most likely to experience violations of the paid sick ordinance - may have limited English proficiency or low literacy. They may not have regular access to a computer or the internet, or know how to use e-mail or a computer at all. Because of the hours they work or the nature of their employment situation, these workers may not be easily reached during regular business hours or be available to attend in-person meetings during the business day. To be effective, the EE/FHO's complaint and investigation process for the earned paid sick time ordinance needs to account for and accommodate these realities.

WHAT DO WE RECOMMEND? The complaint forms developed by EE/FHO should be 1)

simple and easy to complete 2) available in Spanish and other languages 3) available online in an accessible format that is easy to find on the City's website AND be available in hardcopy 4) be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

X2. Parties should have the right to appeal an initial determination on their complaint. Under the proposed rules, once the EE/FHO reaches its decision on a complaint, neither party has any chance to appeal that decision. We know that people make mistakes. The right to appeal is essential to ensure that all parties to a complaint are treated fairly in the investigation and enforcement process.

WHAT DO WE RECOMMEND? The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

3. Penalties under the ordinance should be higher to encourage compliance. Penalties assessed under this ordinance should be designed with deterrence in mind. The proposed penalties - \$100 for small employers and \$150 for all other employers for a first time violation - are far too low. Indeed, they are so low that they likely create a financial incentive for employers to violate the ordinance and risk "getting caught" than actually comply. Furthermore, the proposed rules give the EE/FHO wide discretion to increase or decrease the penalty assessed.

WHAT DO WE RECOMMEND? The final rules should simplify the fee schedule and ensure that it applies equitably to all employers regardless of their size. Absent cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250. Civil penalties for any subsequent violation by an employer - regardless of the size of the employer or when this subsequent violation occurred -

should be \$500. Any violation of the retaliation provision - whether it be a first or subsequent violation - should result in the assessment of a \$500 penalty. In addition, the final rules should limit EE/FHO's discretion to adjust these penalties so that they may never be lowered, but may be increased for cases involving bad faith or malicious conduct.

4. The enforcement process should prioritize making workers whole in as timely a manner as possible. Violations of this ordinance can have grave consequences for an employee and their family and many people filing complaints may be doing so in moments of personal crisis. The proposed rules say that EE/FHO should try to close an investigation within 120 days, yet provide no guidance on how EE/FHO is supposed to seek voluntary compliance.

WHAT DO WE RECOMMEND? The enforcement process should attempt to resolve complaints as expeditiously as possible in a way that makes employees whole. The final rules should endeavor to close investigations within 90 days, not 120 days. Furthermore, the final rules should outline EE/FHO's guidelines for seeking voluntary compliance of a complaint.

5. EE/FHO must release both interpretive rules as well as procedural rules. The proposed rules released by EE/FHO outlines a process for receiving, investigating, and resolving complaints, but provide no guidance on how the agency will actually interpret the ordinance. Without interpretative rules, it will be difficult for employers to successfully comply with the ordinance, for workers to fully understand their rights under the ordinance, and for EE/FHO to enforce the ordinance fairly and effectively.

WHAT DO WE RECOMMEND? The final rules published by EE/FHO should include both procedural rules and interpretive rules. These interpretive rules should, at the very least, clarify 1) the rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance; 2) the ordinance's signage requirement; and 3) what constitutes a reasonable verification procedures to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look to earned paid sick time administrative rules published by other benchmark cities across the country.

From: [Kara Sheehan](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Recommendations for proposed PSD rules
Date: Sunday, July 15, 2018 3:00:57 PM

This message is from Kara Sheehan. [REDACTED]

1. The complaint and investigation process should be as accessible as possible. Many of Austin's workers - especially those most likely to experience violations of the paid sick ordinance - may have limited English proficiency or low literacy. They may not have regular access to a computer or the internet, or know how to use e-mail or a computer at all. Because of the hours they work or the nature of their employment situation, these workers may not be easily reached during regular business hours or be available to attend in-person meetings during the business day. To be effective, the EE/FHO's complaint and investigation process for the earned paid sick time ordinance needs to account for and accommodate these realities.

WHAT DO WE RECOMMEND? The complaint forms developed by EE/FHO should be 1) simple and easy to complete 2) available in Spanish and other languages 3) available online in an accessible format that is easy to find on the City's website AND be available in hardcopy 4) be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

2. Parties should have the right to appeal an initial determination on their complaint. Under the proposed rules, once the EE/FHO reaches its decision on a complaint, neither party has any chance to appeal that decision. We know that people make mistakes. The right to appeal is essential to ensure that all parties to a complaint are treated fairly in the investigation and enforcement process.

WHAT DO WE RECOMMEND? The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

3. Penalties under the ordinance should be higher to encourage compliance. Penalties assessed under this ordinance should be designed with deterrence in mind. The proposed penalties - \$100 for small employers and \$150 for all other employers for a first time violation - are far too low. Indeed, they are so low that they likely create a financial incentive for employers to violate the ordinance and risk "getting caught" than actually comply. Furthermore, the proposed rules give the EE/FHO wide discretion to increase or decrease the penalty assessed.

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4. The enforcement process should prioritize making workers whole in as timely a manner as possible. Violations of this ordinance can have grave consequences for an employee and their family and many people filing complaints may be doing so in moments of personal crisis. The proposed rules say that EE/FHO should try to close an investigation within 120 days, yet provide no guidance on how EE/FHO is supposed to seek voluntary compliance.

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5. EE/FHO must release both interpretive rules as well as procedural rules.

The proposed rules released by EE/FHO outlines a process for receiving, investigating, and resolving complaints, but provide no guidance on how the agency will actually interpret the ordinance. Without interpretative rules, it will be difficult for employers to successfully comply with the ordinance, for workers to fully understand their rights under the ordinance, and for EE/FHO to enforce the ordinance fairly and effectively.

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From: [Bo Delp](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Recommendations for rules regarding Austin's earned sick time ordinance
Date: Thursday, July 19, 2018 5:18:20 PM

This message is from Bo Delp. [REDACTED]

1. The complaint forms developed by EE/FHO should be 1) simple and easy to complete 2) available in Spanish and other languages 3) available online in an accessible format that is easy to find on the City's website AND be available in hardcopy 4) be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.
2. The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.
3. The final rules should simplify the fee schedule and ensure that it applies equitably to all employers regardless of their size. Absent cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250. Civil penalties for any subsequent violation by an employer - regardless of the size of the employer or when this subsequent violation occurred - should be \$500. Any violation of the retaliation provision - whether it be a first or subsequent violation - should result in the assessment of a \$500 penalty. In addition, the final rules should limit EE/FHO's discretion to adjust these penalties so that they may never be lowered, but may be increased for cases involving bad faith or malicious conduct.
4. The enforcement process should attempt to resolve complaints as expeditiously as possible in a way that makes employees whole. The final rules should endeavor to close investigations within 90 days, not 120 days. Furthermore, the final rules should outline EE/FHO's guidelines for seeking voluntary compliance of a complaint.
5. The final rules published by EE/FHO should include both procedural rules and interpretive rules. These interpretive rules should, at the very least, clarify 1) the rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance; 2) the ordinance's signage requirement; and 3) what constitutes "reasonable verification procedures" to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look to earned paid sick time administrative rules published by other benchmark cities across the country.

From: [Sarah Morris](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Recommendations on Paid Sick Leave Ordinance
Date: Thursday, July 19, 2018 7:24:29 PM

This message is from Sarah Morris. [REDACTED]

1. The complaint and investigation process should be as accessible as possible.

The complaint forms developed should be:

- 1) Simple and easy to complete
- 2) Available in Spanish and other languages
- 3) Available online in an accessible format that is easy to find on the City's website AND beavailable in hardcopy
- 4) Be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

2. The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

3. Penalties under the ordinance should be higher to encourage compliance. Penalties assessed under this ordinance should be designed with deterrence in mind. The final rules should simplify the fee schedule and ensure that it applies equitably to all employers regardless of their size. Absent cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250. Civil penalties for any subsequent violation by an employer ' regardless of the size of the employer or when this subsequent violation occurred ' should be \$500. Any violation of the retaliation provision ' whether it be a first or subsequent violation ' should result in the assessment of a \$500 penalty. ' In addition, the final rules should limit EE/FHO's discretion to adjust these penalties so that they may never be lowered, but may be increased for cases involving bad faith or malicious conduct.

4. The enforcement process should prioritize making workers whole in as timely a manner as possible. 'The final rules should endeavor to close investigations within 90 days, not 120 days. Furthermore, the final rules should outline EE/FHO's guidelines for seeking voluntary compliance of a complaint.

5. EE/FHO must release both interpretive rules as well as procedural rules.

These interpretive rules should, at the very least, clarify

- 1) The rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance;
- 2) The ordinance's signage requirement; and
- 3) What constitutes 'reasonable verification procedures' to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look

to earned paid sick time administrative rules published by other benchmark cities across the country.

From: [Marina Roberts](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Recommendations pertaining to Enforcement of Austin's Paid Sick Days Ordinance
Date: Monday, July 16, 2018 12:15:41 PM

This message is from Marina Roberts. [REDACTED]

Hello, my name is Marina Roberts and I'm a resident of Austin. I'm very concerned that Austin's Paid Sick Ordinance currently needs stronger enforcement provisions in order to ensure that employers don't prevent workers from taking their earned sick days, and to ensure that workers don't face illegal retaliation for taking an earned sick day. Please review the following comments recommending stronger and clearer enforcement provisions for the ordinance, and thanks so much for your time.

1. The complaint and investigation process should be as accessible as possible.

The complaint forms developed should be:

- 1) Simple and easy to complete
- 2) Available in Spanish and other languages
- 3) Available online in an accessible format that is easy to find on the City's website AND be available in hardcopy
- 4) Be accepted via mail, fax, email, and in-person.

In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

2. The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

3. Penalties under the ordinance should be higher to encourage compliance. Penalties assessed under this ordinance should be designed with deterrence in mind. The final rules should simplify the fee schedule and ensure that it applies equitably to all employers regardless of their size. Absent cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250. Civil penalties for any subsequent violation by an employer "regardless of the size of the employer or when this subsequent violation occurred" should be \$500. Any violation of the retaliation provision "whether it be a first or subsequent violation" should result in the assessment of a \$500 penalty. "In addition, the final rules should limit EE/FHO's discretion to adjust these penalties so that they may never be lowered, but may be increased for cases involving bad faith or malicious conduct.

4. The enforcement process should prioritize making workers whole in as timely a manner as possible. "The final rules should endeavor to close investigations within 90 days, not 120 days. Furthermore, the final rules should outline EE/FHO's guidelines for seeking voluntary compliance of a complaint.

5. EE/FHO must release both interpretive rules as well as procedural rules.

These interpretive rules should, at the very least, clarify

1) The rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance;

2) The ordinance's signage requirement; and

3) What constitutes "reasonable verification procedures" to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish,

EE/FHO should look

to earned paid sick time administrative rules published by other benchmark cities across the country.

From: [Sandra Hernandez](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Recommendations to the Proposed Rules For Austin's Paid Sick Time Ordinance
Date: Thursday, July 19, 2018 1:56:47 PM

This message is from Sandra Hernandez. [REDACTED]

To whom it may concern,

I would like to submit the below recommendations as they pertain to Austin's Paid Sick Time Ordinance:

1. The complaint and investigation process should be as accessible as possible.

The complaint forms developed should be:

- 1) Simple and easy to complete
- 2) Available in Spanish and other languages
- 3) Available online in an accessible format that is easy to find on the City's website AND be available in hardcopy
- 4) Be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

2. The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

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4. The enforcement process should prioritize making workers whole in as timely a manner as possible. "The final rules should endeavor to close investigations within 90 days, not 120 days. Furthermore, the final rules should outline EE/FHO's guidelines for seeking voluntary compliance of a complaint.

5. EE/FHO must release both interpretive rules as well as procedural rules.

From: [Taylor Foody](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Recommendations
Date: Sunday, July 15, 2018 4:05:54 PM

This message is from Taylor Foody. [REDACTED]

To whom it may concern,

I would like to recommend the following:

The complaint and investigation process should be as accessible as possible.

Many of Austin's workers - especially those most likely to experience violations of the paid sick ordinance - may have limited English proficiency or low literacy. They may not have regular access to a computer or the internet, or know how to use e-mail or a computer at all. Because of the hours they work or the nature of their employment situation, these workers may not be easily reached during regular business hours or be available to attend in-person meetings during the business day. To be effective, the EE/FHO's complaint and investigation process for the earned paid sick time ordinance needs to account for and accommodate these realities.

WHAT DO WE RECOMMEND? The complaint forms developed by EE/FHO should be

1) simple and easy to complete 2) available in Spanish and other languages 3) available online in an accessible format that is easy to find on the City's website AND be available in hardcopy 4) be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

2. Parties should have the right to appeal an initial determination on their complaint. Under the proposed rules, once the EE/FHO reaches its decision on a complaint, neither party has any chance to appeal that decision. We know that people make mistakes. The right to appeal is essential to ensure that all parties to a complaint are treated fairly in the investigation and enforcement process.

WHAT DO WE RECOMMEND? The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

3. Penalties under the ordinance should be higher to encourage compliance.

Penalties assessed under this ordinance should be designed with deterrence in mind. The proposed penalties - \$100 for small employers and \$150 for all other employers for a first time violation - are far too low. Indeed, they are so low that they likely create a financial incentive for employers to violate the ordinance and risk getting caught than actually comply. Furthermore, the proposed rules give the EE/FHO wide discretion to increase or decrease the penalty assessed.

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4. The enforcement process should prioritize making workers whole in as timely a manner as possible. Violations of this ordinance can have grave consequences for an employee and their family and many people filing complaints may be doing so in moments of personal crisis. The proposed rules say that EE/FHO should try to close an investigation within 120 days, yet provide no guidance on how EE/FHO is supposed to seek voluntary compliance.

WHAT DO WE RECOMMEND? The enforcement process should attempt to resolve complaints as expeditiously as possible in a way that makes employees whole. The final rules should endeavor to close investigations within 90 days, not 120 days.

Furthermore, the final rules should outline EE/FHO's guidelines for seeking voluntary compliance of a complaint.

5. EE/FHO must release both interpretive rules as well as procedural rules.

The proposed rules released by EE/FHO outlines a process for receiving, investigating, and resolving complaints, but provide no guidance on how the agency will actually interpret the ordinance. Without interpretative rules, it will be difficult for employers to successfully comply with the ordinance, for workers to fully understand their rights under the ordinance, and for EE/FHO to enforce the ordinance fairly and effectively.

WHAT DO WE RECOMMEND? The final rules published by EE/FHO should include both

procedural rules and interpretive rules. These interpretive rules should, at the very least, clarify 1) the rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance; 2) the ordinance's signage requirement; and 3) what constitutes a reasonable verification procedures to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look to earned paid sick time administrative rules published by other benchmark cities across the country.

Thank you for your time and consideration.

Best,
Taylor Foody

From: [Michael Nachbar](#)
To: [EarnedSickTime](#)
Subject: Recommended Comments to the Proposed Rules For Austin's Paid Sick Time Ordinance
Date: Friday, July 13, 2018 5:50:59 PM

This message is from Michael Nachbar. [REDACTED]

1. The complaint and investigation process should be as accessible as possible.

The complaint forms developed should be:

- 1) Simple and easy to complete
- 2) Available in Spanish and other languages
- 3) Available online in an accessible format that is easy to find on the City's website AND beavailable in hardcopy
- 4) Be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

2. The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

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- 1) The rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance;
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- 3) What constitutes "reasonable verification procedures" to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look to earned paid sick time administrative rules published by other benchmark cities across the

country.

From: [Rafael Aguilar](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: RECOMMENDED COMMENTS TO THE PROPOSED RULES FOR AUSTIN'S PAID SICK TIME ORDINANCE
Date: Sunday, July 15, 2018 4:05:40 PM

This message is from Rafael Aguilar. [REDACTED]

To Whom Whom It May Concern:

I am an Austin resident and taxpayer. I am writing to you regarding your intake of comments for the proposed rules for the upcoming paid sick time ordinance in October. Please read below.

Thank you for your time.

- Rafael

1. The complaint and investigation process should be as accessible as possible. Many of Austin's workers - especially those most likely to experience violations of the paid sick ordinance - may have limited English proficiency or low literacy. They may not have regular access to a computer or the internet, or know how to use e-mail or a computer at all. Because of the hours they work or the nature of their employment situation, these workers may not be easily reached during regular business hours or be available to attend in-person meetings during the business day. To be effective, the EE/FHO's complaint and investigation process for the earned paid sick time ordinance needs to account for and accommodate these realities.

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create a financial incentive for employers to violate the ordinance and risk ~~â€~~getting caught~~â€~~ than actually comply. Furthermore, the proposed rules give the EE/FHO wide discretion to increase or decrease the penalty assessed.

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From: [Rafael Aguilar](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: RECOMMENDED COMMENTS TO THE PROPOSED RULES FOR AUSTIN'S PAID SICK TIME ORDINANCE
Date: Sunday, July 15, 2018 4:05:39 PM

This message is from Rafael Aguilar. [REDACTED]

To Whom Whom It May Concern:

I am an Austin resident and taxpayer. I am writing to you regarding your intake of comments for the proposed rules for the upcoming paid sick time ordinance in October. Please read below.

Thank you for your time.

- Rafael

1. The complaint and investigation process should be as accessible as possible. Many of Austin's workers - especially those most likely to experience violations of the paid sick ordinance - may have limited English proficiency or low literacy. They may not have regular access to a computer or the internet, or know how to use e-mail or a computer at all. Because of the hours they work or the nature of their employment situation, these workers may not be easily reached during regular business hours or be available to attend in-person meetings during the business day. To be effective, the EE/FHO's complaint and investigation process for the earned paid sick time ordinance needs to account for and accommodate these realities.

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3. Penalties under the ordinance should be higher to encourage compliance.

Penalties assessed under this ordinance should be designed with deterrence in mind. The proposed penalties - \$100 for small employers and \$150 for all other employers for a first time violation - are far too low. Indeed, they are so low that they likely

create a financial incentive for employers to violate the ordinance and risk ~~â€~~getting caught~~â€~~ than actually comply. Furthermore, the proposed rules give the EE/FHO wide discretion to increase or decrease the penalty assessed.

WHAT DO WE RECOMMEND? ~~â€~~ The final rules should simplify the fee schedule and ensure that it applies equitably to all employers regardless of their size. Absent cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250. Civil penalties for any subsequent violation by an employer - regardless of the size of the employer or when this subsequent violation occurred - should be \$500. Any violation of the retaliation provision - whether it be a first or subsequent violation - should result in the assessment of a \$500 penalty. ~~â€~~ In addition, the final rules should limit EE/FHO~~â€™~~s discretion to adjust these penalties so that they may never be lowered, but may be increased for cases involving bad faith or malicious conduct.

4. The enforcement process should prioritize making workers whole in as timely a manner as possible. ~~â€~~Violations of this ordinance can have grave consequences for an employee and their family and many people filing complaints may be doing so in moments of personal crisis. The proposed rules say that EE/FHO should try to close an investigation within 120 days, yet provide no guidance on how EE/FHO is supposed to seek voluntary compliance.

WHAT DO WE RECOMMEND? ~~â€~~ The enforcement process should attempt to resolve complaints as expeditiously as possible in a way that makes employees whole. The final rules should endeavor to close investigations within 90 days, not 120 days.

Furthermore, the final rules should outline EE/FHO~~â€™~~s guidelines for seeking voluntary compliance of a complaint.

5. EE/FHO must release both interpretive rules as well as procedural rules.

The proposed rules released by EE/FHO outlines a process for receiving, investigating, and resolving complaints, but provide no guidance on how the agency will actually interpret the ordinance. Without interpretative rules, it will be difficult for employers to successfully comply with the ordinance, for workers to fully understand their rights under the ordinance, and for EE/FHO to enforce the ordinance fairly and effectively.

WHAT DO WE RECOMMEND? ~~â€~~ The final rules published by EE/FHO should include both

procedural rules and interpretive rules. These interpretive rules should, at the very least, clarify 1) the rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance; 2) the ordinance~~â€™~~s signage requirement; and 3) what constitutes ~~â€~~reasonable verification procedures~~â€~~ to vet an employee~~â€™~~s request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look to earned paid sick time administrative rules published by other benchmark cities across the country.

From: [Cecilia Morales](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Recommended Comments to the Proposed Rules For Austin's Paid Sick Time Ordinance
Date: Thursday, July 19, 2018 2:10:09 PM

This message is from Cecilia Morales. [REDACTED]

1. The complaint and investigation process should be as accessible as possible.

The complaint forms developed should be:

- 1) Simple and easy to complete
- 2) Available in Spanish and other languages
- 3) Available online in an accessible format that is easy to find on the City's website AND beavailable in hardcopy
- 4) Be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

2. The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

3. Penalties under the ordinance should be higher to encourage compliance. Penalties assessed under this ordinance should be designed with deterrence in mind. The final rules should simplify the fee schedule and ensure that it applies equitably to all employers regardless of their size. Absent cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250. Civil penalties for any subsequent violation by an employer ' regardless of the size of the employer or when this subsequent violation occurred ' should be \$500. Any violation of the retaliation provision ' whether it be a first or subsequent violation ' should result in the assessment of a \$500 penalty. ' In addition, the final rules should limit EE/FHO's discretion to adjust these penalties so that they may never be lowered, but may be increased for cases involving bad faith or malicious conduct.

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These interpretive rules should, at the very least, clarify

- 1) The rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance;
- 2) The ordinance's signage requirement; and
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to earned paid sick time administrative rules published by other benchmark cities across the country.

From: [Virginia badillo](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: RECOMMENDED COMMENTS TO THE PROPOSED RULES FOR AUSTINâ€™S PAID SICK TIME ORDINANCE
Date: Sunday, July 15, 2018 4:10:18 PM

This message is from Virginia Badillo . [REDACTED]

1. The complaint and investigation process should be as accessible as possible. Many of Austinâ€™s workers - especially those most likely to experience violations of the paid sick ordinance - may have limited English proficiency or low literacy. They may not have regular access to a computer or the internet, or know how to use e-mail or a computer at all. Because of the hours they work or the nature of their employment situation, these workers may not be easily reached during regular business hours or be available to attend in-person meetings during the business day. To be effective, the EE/FHOâ€™s complaint and investigation process for the earned paid sick time ordinance needs to account for and accommodate these realities.

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2. Parties should have the right to appeal an initial determination on their complaint. Under the proposed rules, once the EE/FHO reaches its decision on a complaint, neither party has any chance to appeal that decision. We know that people make mistakes. The right to appeal is essential to ensure that all parties to a complaint are treated fairly in the investigation and enforcement process.

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From: [Madeline Detelich](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Rule Recommendations for Paid Sick Leave
Date: Sunday, July 15, 2018 4:08:54 PM

This message is from Madeline Detelich. [REDACTED]

The complaint and investigation process should be as accessible as possible. Many of Austin's workers - especially those most likely to experience violations of the paid sick ordinance - may have limited English proficiency or low literacy. They may not have regular access to a computer or the internet, or know how to use e-mail or a computer at all. Because of the hours they work or the nature of their employment situation, these workers may not be easily reached during regular business hours or be available to attend in-person meetings during the business day. To be effective, the EE/FHO's complaint and investigation process for the earned paid sick time ordinance needs to account for and accommodate these realities.

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From: [Meaghan Perkins](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Rulemaking for paid sick leave
Date: Tuesday, July 17, 2018 5:24:18 PM

This message is from Meaghan Perkins. [REDACTED]

To whom it may concern,

Thank you for taking the time to review community input on the earned sick time ordinance enforcement. As a business that provides paid sick leave, it's important to us that the enforcement be adequate to ensure that businesses breaking the law are not undermining businesses that are in compliance.

We support a minimum first time violation of \$250, and subsequent violations incurring an automatic \$500 penalty. For businesses that are repeatedly in noncompliance, we ask that the city step in and increase the penalties.

The investigation process needs to be quick and straightforward for both employees and businesses. We support resolving all complaints within 90 days. This is simple for both employees and employers and does not allow issues to drag out.

We would like to see a right to appeal and an accessible complaint and investigation process.

EE/FHO needs to establish interpretive rule in addition to procedural rules. As an employer, we would like this clarity to ensure full compliance with the ordinance.

Thanks,
Meaghan Perkins
Director of Operations
Beetnik Foods

From: [Michael Schmidt](#)
To: [EarnedSickTime](#)
Subject: Rules for Paid Sick Leave
Date: Monday, July 16, 2018 3:58:16 PM

This message is from Michael Schmidt. [REDACTED]

The complaint and investigation process should be as accessible as possible. It is possible that many of Austin's workers - especially those most likely to experience violations of the paid sick ordinance - may have limited English proficiency or low literacy. They may not have regular access to a computer or the internet, or know how to use e-mail or a computer at all. Because of the hours they work or the nature of their employment situation, these workers may not be easily reached during regular business hours or be available to attend in-person meetings during the business day. To be effective, the EE/FHO's complaint and investigation process for the earned paid sick time ordinance needs to account for and accommodate these realities.

WHAT DO WE RECOMMEND? The complaint forms developed by EE/FHO should be 1) simple and easy to complete 2) available in Spanish and other languages 3) available online in an accessible format that is easy to find on the City's website AND be available in hardcopy 4) be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

2. Parties should have the right to appeal an initial determination on their complaint. Under the proposed rules, once the EE/FHO reaches its decision on a complaint, neither party has any chance to appeal that decision. We know that people make mistakes. The right to appeal is essential to ensure that all parties to a complaint are treated fairly in the investigation and enforcement process.

WHAT DO WE RECOMMEND? The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

3. Penalties under the ordinance should be higher to encourage compliance.

Penalties assessed under this ordinance should be designed with deterrence in mind. The proposed penalties - \$100 for small employers and \$150 for all other employers for a first time violation - are far too low. Indeed, they are so low that they likely create a financial incentive for employers to violate the ordinance and risk "getting caught" than actually comply. Furthermore, the proposed rules give the EE/FHO wide discretion to increase or decrease the penalty assessed.

WHAT DO WE RECOMMEND? The final rules should simplify the fee schedule and ensure that it applies equitably to all employers regardless of their size. Absent cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$500. Civil penalties for any subsequent violation by an employer- regardless of the size of the employer or when this subsequent violation occurred -should be \$500. Any violation of the retaliation provision - whether it be a first or subsequent violation - should result in the assessment of a \$500 penalty. In addition, the final rules should limit EE/FHO's discretion to adjust these penalties so that they may never be lowered, but may be increased for cases involving bad faith or malicious conduct.

4. The enforcement process should prioritize resolving workers' complaints in as timely a manner as possible. Violations of this ordinance can have grave consequences for an

employee and their family and many people filing complaints may be doing so in moments of personal crisis. The proposed rules say that EE/FHO should try to close an investigation within 120 days, yet provide no guidance on how EE/FHO is supposed to seek voluntary compliance.

WHAT DO WE RECOMMEND? – The enforcement process should attempt to resolve complaints as expeditiously as possible. The final rules should endeavor to close investigations within 90 days, not 120 days.

Furthermore, the final rules should outline EE/FHO’s guidelines for seeking voluntary compliance of a complaint.

5. EE/FHO must release both interpretive rules as well as procedural rules.

The proposed rules released by EE/FHO outlines a process for receiving, investigating, and resolving complaints, but provide no guidance on how the agency will actually interpret the ordinance. Without interpretative rules, it will be difficult for employers to successfully comply with the ordinance, for workers to fully understand their rights under the ordinance, and for EE/FHO to enforce the ordinance fairly and effectively.

WHAT DO WE RECOMMEND? – The final rules published by EE/FHO should include both procedural rules and interpretive rules. These interpretive rules should, at the very least, clarify 1) the rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance; 2) the ordinance’s signage requirement; and 3) what constitutes a “reasonable verification procedures” to vet an employee’s request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look to earned paid sick time administrative rules published by other benchmark cities across the country.

From: [Blake Morris](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Sick Day Commentary
Date: Thursday, July 19, 2018 7:17:29 PM

This message is from Blake Morris. [REDACTED]

The complaint and investigation process should be as accessible as possible.

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These interpretive rules should, at the very least, clarify

- 1) The rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance;
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to earned paid sick time administrative rules published by other benchmark cities across the country.

From: [Brad DuBois](#)
To: [EarnedSickTime](#)
Subject: Sick Leave Feedback
Date: Thursday, July 19, 2018 6:56:55 PM

This message is from Brad DuBois. [REDACTED]

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- b) Available in Spanish and other languages
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country.

From: [Nancy Fairchild](#)
To: [EarnedSickTime](#)
Subject: Sick leave ordinance in Austin
Date: Monday, June 18, 2018 10:10:44 PM

This message is from Nancy Fairchild. [REDACTED]

Luminex is opposed to the mandatory Paid Sick Leave Ordinance that will impact ALL private sector employers who operate and do business in Austin effective October 2018. My understanding is that no Austin-specific data was used to create the information used and that the data that is driving the passage of this ordinance.

As the largest biotech employer in the city of Austin, currently providing a minimum of 160 hours a year of paid time off (any of which could be used for sick leave) to our full-time team members on an annual basis, we are opposed to this ordinance, and believe it may have a chilling effect on hiring, particularly part-time and limited assignment employees.

While we strongly prefer that this ordinance be revoked at a minimum, we request that approval of this ordinance be postponed until an unbiased, independent, third party study of the financial impact and unintended consequences of this ordinance can be performed specifically in the Austin metro area.

Respectfully,

Eric Shapiro
Senior Vice President, Global Marketing
Luminex Corporation
Austin, TX

D: 512.249.3031
M: 210.347.7366

and

Nancy Fairchild
Sr. Vice President, Human Resources
Luminex Corporation
512-336-3528

From: [Patrick Larson](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Sick Time
Date: Friday, July 13, 2018 5:11:13 PM

This message is from Patrick Larson. [REDACTED]

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to earned paid sick time administrative rules published by other benchmark cities across the country.

From: [Nabil Valencia](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Suggestions- Paid Sick Days
Date: Thursday, July 19, 2018 7:30:31 PM

This message is from Nabil Valencia. [REDACTED]

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From: [Molly Middleton](#)
To: [EarnedSickTime](#)
Cc: [REDACTED]
Subject: Support Paid Sick Leave
Date: Thursday, July 19, 2018 8:45:55 PM

This message is from Molly Middleton. [REDACTED]

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- 4) Be accepted via mail, fax, email, and in-person. In addition, EE/FHO should allow for investigators to conduct interviews both by phone and in-person, and make efforts to reach individuals both during and outside of regular business hours.

2. The final rules should create an appeal process. Under this process, either party should be able to request a fresh, independent review of their complaint. The person involved in this secondary review should be senior to and completely independent from the persons involved in the initial determination of the complaint.

3. Penalties under the ordinance should be higher to encourage compliance. Penalties assessed under this ordinance should be designed with deterrence in mind. The final rules should simplify the fee schedule and ensure that it applies equitably to all employers regardless of their size. Absent cases involving retaliation or bad faith, civil penalties for a first time violation by any employer should be \$250. Civil penalties for any subsequent violation by an employer ' regardless of the size of the employer or when this subsequent violation occurred ' should be \$500. Any violation of the retaliation provision ' whether it be a first or subsequent violation ' should result in the assessment of a \$500 penalty. ' In addition, the final rules should limit EE/FHO's discretion to adjust these penalties so that they may never be lowered, but may be increased for cases involving bad faith or malicious conduct.

4. The enforcement process should prioritize making workers whole in as timely a manner as possible. 'The final rules should endeavor to close investigations within 90 days, not 120 days. Furthermore, the final rules should outline EE/FHO's guidelines for seeking voluntary compliance of a complaint.

5. EE/FHO must release both interpretive rules as well as procedural rules.

These interpretive rules should, at the very least, clarify

- 1) The rights of misclassified employees, salaried employees, employees who work overtime, and employees with non-conventional compensation schemes under this ordinance;
- 2) The ordinance's signage requirement; and
- 3) What constitutes 'reasonable verification procedures' to vet an employee's request to use accrued time. For further guidance on what interpretative rules to publish, EE/FHO should look

to earned paid sick time administrative rules published by other benchmark cities across the country.

From: [Sara Follin](#)
To: [EarnedSickTime](#)
Subject: TASB Comment on Austin Sick Leave Ordinance
Date: Friday, July 20, 2018 3:20:50 PM
Attachments: [image002.png](#)

Texas Association of School Boards supports the spirit of the Austin Sick Leave Ordinance in terms of providing employees paid sick leave. However, the ordinance and the proposed rules, as written, do not appropriately take into consideration the administrative burden employers face in complying, nor do the proposed rules offer adequate clarification on some of the requirements.



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Division Director

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Arvelo, Monika

From: Scott Brutocao [REDACTED]
Sent: Thursday, July 19, 2018 11:18 PM
To: Arvelo, Monika
Subject: RE: Earned Sick Time Ordinance-Notice of Proposed Adoption of Administrative Rules

Follow Up Flag: Follow up
Due By: Sunday, July 22, 2018 4:00 PM
Flag Status: Completed

Here are my comments, Monica.

Provision:

(a) For violations that occur after October 1, 2018, but before June 1, 2019, the notice shall state that a civil penalty shall be assessed for a violation that occurs after June 1, 2019, if the Respondent fails to establish voluntary compliance with the Ordinance to the satisfaction of the Administrator within 10 business days after the Respondent receives the notice.

Comment: This is confusing. You're saying that if the violation occurs between October 1 and June 1, the people will get a notice that talks about a civil penalty that shall be assessed for a violation that occurs after 6/1/19. Yet you say that civil penalty will be assessed *if* a respondent fails to establish voluntary compliance within 10 days after the respondent receives the notice. That doesn't make sense. The respondent could receive the notice on October 12. If they don't achieve voluntary compliance within 10 business days, we're still in October. How will that effect what penalty will be assessed after June 1?

Provision:

(G) The decision of the Administrator under this Rule is final. There is no right of appeal of any determination issued by the Administrator.

Comment: Why not? Shouldn't there be some oversight of the Administrator's decision? Do you want everyone who disagrees to have no choice but to sue the City?

Provision:

In determining the amount of a civil penalty assessment, the Administrator shall not negotiate the amount of any increase or decrease under this Part 6(B) with the Complainant or the Respondent.

Comment: I disagree with this. An employer should be able to attempt to influence the appropriate amount of the penalty, *especially* if there is no appeal right. Given that employers could make one mistake that could affect hundreds if not thousands of employees, these penalties could be quite harsh indeed.

Respectfully,

Scott Brutocao
[Cornell Smith Mierl Brutocao Burton, LLP](#)
(512) 334-2249 (Direct)

From: Arvelo, Monika <Monika.Arvelo@austintexas.gov>
Sent: Wednesday, July 18, 2018 2:34 PM