

R #3

Late Backup

ORDINANCE NO.

AN ORDINANCE ESTABLISHING EARNED SICK TIME STANDARDS IN THE CITY; CREATING A CIVIL PENALTY; AND CREATING AN OFFENSE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. Findings:

- (A) The council finds that most workers in the City of Austin will at some time during each year need limited time off from work to care for their own health and safety needs or the health and safety needs of a close family member.
- (B) The council further finds that denying earned sick time to employees:
 - (1) is unjust;
 - (2) is detrimental to the health, safety, and welfare of the residents of the City; and
 - (3) contributes to employee turnover and unemployment, and harms the local economy.

The council further finds that it is within the police power and the responsibility of the City to remedy the problems enumerated in parts (A) and (B) of this Section.

PART 2. Title 4 of the City Code is amended by adding a new Chapter 4-19 to read:

CHAPTER 4-19. EARNED SICK TIME.

§4-19-1. DEFINITIONS.

In this Chapter:

- (A) **EARNED SICK TIME** means a period of paid leave from work accrued by an employee in accord with this Chapter.

34 (B) EEO/FHO means the City of Austin Equal Employment Opportunity/ Fair
35 Housing Office.

36
37 (C) EMPLOYEE means an individual who performs at least 80 hours of work
38 for pay within the City of Austin in a calendar year for an employer, including
39 work performed through the services of a temporary or employment agency.
40 "Employee" does not include an individual who is an independent contractor
41 according to 40 Tex. Admin. Code § 821.5. "Employee" does not include unpaid
42 interns.

43
44 (D) EMPLOYER means any person, company, corporation, firm, partnership,
45 labor organization, non-profit organization or association that pays an
46 employee to perform work for an employer and exercises control over the
47 employee's wages, hours and working conditions. The term does not include:

48
49 (1) the United States;

50
51 (2) a corporation wholly owned by the government of the United
52 States;

53
54 (3) the state or a state agency; or

55
56 (4) a political subdivision of the state, or other agency that cannot legally
57 be regulated by City ordinance.

58
59 (E) FAMILY MEMBER means an employee's spouse, child, parent, or any other
60 individual related by blood or whose close association with the employee is
61 the equivalent of a family relationship.

62
63 (F) MEDIUM OR LARGE EMPLOYER is an employer with more than 15
64 employees at any time in the preceding 12 months, excluding family
65 members.

66
67 (G) PREDECESSOR means an employer that employs at least one individual
68 covered by this Chapter, and for which a controlling interest in such employer
69 or a recognized division of such employer is acquired by a successor.
70

71 (H) SMALL EMPLOYER is an employer with no more than 15 employees at any
72 time in the preceding 12 months, excluding family members.

73
74 (I) SUCCESSOR means an employer that acquires a controlling interest in a
75 predecessor or a controlling interest in a recognized division of a predecessor.
76

77
78 **§4-19-2. EARNED SICK TIME STANDARDS.**
79

80 (A) An employer shall grant an employee one hour of earned sick time for every 30
81 hours worked for the employer in the City of Austin. Earned sick time shall
82 accrue only in hour-unit increments. There shall be no accrual of a fraction of
83 an hour of earned sick time.
84

85 (B) Earned sick time shall accrue starting at the commencement of employment or
86 the date this Chapter is effective, whichever is later.
87

88 (C) Earned sick time shall be available for an employee to use in accord with this
89 Chapter as soon as it is accrued. Provided, that an employer may restrict an
90 employee from using earned sick time during the employee's first 60 days of
91 employment if the employer establishes that the employee's term of
92 employment is at least one year.
93

94 (D) An employee may request earned sick time from an employer for an absence
95 from the employee's scheduled work time caused by:
96

97 (1) the employee's physical or mental illness or injury, preventative medical or
98 health care, or health condition; or
99

100 (2) the employee's need to care for a family member's physical or mental
101 illness, preventative medical or health care, injury, or health condition;
102 or
103

104 (3) the employee's need to seek medical attention, seek relocation,
105 obtain services of a victim services organization, or to participate in legal
106 or court ordered action related to an incident of victimization from domestic

107 abuse, sexual assault, or stalking involving the employee or employee's
108 family member.

109
110 (E) An employer may adopt reasonable verification procedures to establish that an
111 employee's request for earned sick time meets the requirements of Subsection
112 (D) for a request to use earned sick time for more than three consecutive work
113 days.

114
115 (F) An employer shall provide earned sick time for an employee's absence from
116 the employee's scheduled work time if the employee has available earned sick
117 time and makes a timely request for use of earned sick time before their
118 scheduled work time. An employer may not prevent an employee from using
119 earned sick time for an unforeseeable qualified absence as established in
120 Subsection (D).

121 (G) This Chapter does not require an employer to provide more than a yearly
122 cap of earned sick time to an employee in a calendar year. This Chapter does
123 not require an employer to allow an employee to accrue more than the yearly
124 cap of earned sick time. All available earned sick time up to the yearly cap of
125 earned sick time shall be carried over to the following year. An employer may
126 inform an employee that leave requested in excess of the employee's available
127 earned sick time will not be paid.

128 (1) For a medium or large employer the yearly cap of earned sick time
129 is 64 hours of earned sick time.

130 (2) For a small employer the yearly cap of earned sick time is 48 hours
131 of earned sick time.

132 (H) All available earned sick time up to the yearly cap of earned sick time shall be
133 carried over to the following year. Provided, that an employer that makes at
134 least the yearly cap of earned sick time available to an employee at the
135 beginning of the year under the purpose and usage requirements of this Chapter
136 shall not be required to carry over earned sick time under this Chapter for that
137 year.

138 (I) This Chapter does not require any employer to allow an employee to utilize
139 earned sick time on more than 8 calendar days in a given calendar year.

140 (J) An employer shall provide an employee with earned sick time that meets the
141 requirements under this Section in an amount up to the employee's available
142 earned sick time. The employer shall pay earned sick time in an amount equal
143 to what the employee would have earned if the employee had worked the
144 scheduled work time, exclusive of any overtime premium, tips, or commissions,
145 but no less than the state minimum wage.

146 (K) On no less than a monthly basis, an employer shall provide electronically or in
147 writing to each employee a statement showing the amount of the employee's
148 available earned sick time. For the period required for maintenance of records
149 under Title 29, Section 516(a), Code of Federal Regulations, an employer shall
150 maintain records establishing the amount of earned sick time accrued and used
151 by each covered employee. This section does not create a new requirement for
152 certified payroll.

153 (L) An employer that provides an employee handbook to its employees must
154 include in the handbook notice of employee rights and remedies under this
155 chapter.

156 (M) An employer may not require an employee to find a replacement to cover the
157 hours of earned sick time as a condition of using earned sick time.

158
159 (N) Neither the amount of earned sick time nor the right to use earned sick time
160 shall be affected by an employee's transfer to a different facility, location,
161 division, or job position with the same employer.

162 (O) An employee who is rehired by an employer within 6 months following
163 separation of employment from that employer may use any earned sick leave
164 available to the employee at the time of separation.

165
166 (P) A written contract between an employer and a labor organization made
167 pursuant to 29 U.S.C. Section 158d may modify the yearly cap of earned sick
168 time for the employees covered by the contract if the yearly cap is explicitly
169 modified in the contract.

170
171 (Q) A successor must provide to an employee who was employed by a predecessor
172 at the time of an acquisition and hired by the successor at the time of the
173 acquisition all earned sick time available to the employee immediately before
174 the acquisition.

175
176 **§4-19-3. No Change To More Generous Earned Sick Time Policies**
177

178 (A) An employer may provide paid leave benefits that exceed the
179 requirements of this Chapter. This Chapter does not require an employer
180 who makes paid time off available to an employee under conditions that
181 meet the accrual, purpose, and usage requirements of this Chapter to
182 provide additional earned sick time to the employee.

183
184 (B) This Chapter does not require an employer to provide additional
185 earned sick time to an employee if the employee has used paid time off that
186 meets the requirements of this chapter for a purpose not specified in Section
187 2-D of this Chapter.

188
189 (C) This Chapter does not prohibit an employer from granting earned
190 sick time to an employee prior to accrual by the employee.

191
192 (D) This Chapter does not prohibit an employer from permitting an
193 employee to donate unused accrued earned sick time to another employee.

194
195 (E) This Chapter does not prohibit an employer from establishing a
196 policy whereby employees may voluntarily exchange hours or trade shifts,
197 a policy whereby employees may donate unused accrued earned sick time
198 to another employee, or an incentive program whereby employees are
199 incentivized to exchange hours or trade shifts.

200 **§4-19-4. SIGNAGE REQUIRED.**

201 (A) An employer shall display a sign describing the requirements of this Chapter
202 in at least English and Spanish in a conspicuous place or places where notices
203 to employees are customarily posted. An employer is not required to post
204 such signage until the City of Austin makes such signage available publicly
205 on its website.
206

(B) EEO/FHO shall prescribe by rule the size, content, and location of signs required under Subsection (A) of this Section.

§4-19-5. RETALIATION PROHIBITED. An employer may not transfer, demote, discharge, suspend, reduce hours, or directly threaten these actions against an employee for requesting or using earned sick time, or for reporting a violation or participating in an administrative proceeding under this Chapter.

§4-19-6. ADMINISTRATION.

(A) The EEO/FHO shall:

- (1) educate employers and employees about this Chapter;
- (2) receive and investigate complaints, including anonymous complaints, alleging a violation of this Chapter;
- (3) enforce this Chapter;
- (4) seek voluntary compliance with this Chapter before collecting a civil penalty; and
- (5) adopt rules necessary to implement this Chapter.

(B) A complaint alleging a violation of this Chapter must be filed with the EEO/FHO by or on behalf of an aggrieved employee within two years from the date of the violation.

(C) If the EEO/FHO finds after investigation of a timely complaint that a violation of this Chapter has occurred:

- (1) the EEO/FHO shall assess a civil penalty up to \$500 against the employer for each violation of this Chapter, and shall provide written notice of the assessment to the employer; and

- 242 (2) the EEO/FHO shall seek voluntary compliance from the employer to
243 remedy any violation of this Chapter. If voluntary compliance is not
244 achieved within 10 business days following the employer's receipt of
245 the written civil penalty assessment, the employer shall be liable to the
246 City for the amount of the assessed civil penalty.

247
248 (D) This Section does not create a criminal offense.
249

250 **§4-19-7. INVESTIGATION OF COMPLAINTS.**

251 (A) The director of the EEO/FHO may subpoena information relevant during the
252 investigation of a complaint under this Chapter. Relevant information
253 includes, and is limited to, only the information necessary to determine
254 whether a violation of the Earned Sick Time ordinance has occurred. This
255 section is not creating a new requirement for certified payroll. A subpoena
256 shall:

- 257
258 (1) be directed to a person with knowledge or information relevant to a
259 complaint under this Chapter, or to a custodian of records relevant to
260 a complaint under this Chapter;
261
262 (2) be in writing and signed by the director of the EEO/FHO;
263
264 (3) identify the records or testimony to be produced under the subpoena;
265
266 (4) direct the person to whom it is issued to produce the records or provide
267 the testimony identified in the subpoena at a specific place and time,
268 which shall be not earlier than 10 business days from the date of
269 service of the subpoena;
270
271 (5) identify the individual complaint made under this Chapter to which the
272 subpoena relates;
273
274 (6) state that the subpoena is issued under the authority of this Chapter for
275 purposes of investigating a complaint under this Chapter;
276
277 (7) state that failure to comply with the subpoena is an offense and
278 punishable as a Class C misdemeanor under this Code; and

279
280 (8) be served on the person to whom it is directed by certified mail or
281 personal delivery.
282

283 (B) A person commits an offense if the person fails to comply with a subpoena
284 issued and served on the person as provided in Part (A). The offense is
285 punishable as a Class C misdemeanor as provided in Section 1-1-99 of this
286 Code. A culpable mental state is not a necessary element of the offense.
287

288 (C) The EEO/FHO may inform employees at a worksite of any investigation of
289 a complaint at that worksite alleging a violation of this Chapter.
290
291

292 **§4-19-8. ANNUAL REPORT.**
293

294 (A) Beginning in 2019, and each year thereafter, the EEO/FHO shall provide
295 by October 1st a written report to the City Council regarding this chapter. The
296 report shall include, but not be limited to, a discussion of the implementation
297 and enforcement of this Chapter, including the number and nature of violations,
298 specific violations, industries and occupations with high rates of violations,
299 penalties assessed in the prior year, and the impact on businesses and
300 employees. The report shall also include recommendations for possible
301 improvements to this chapter.
302

303 **PART 3. For a violation of Chapter 4-19 that occurs after the effective date of this**
304 **ordinance, but before June 1, 2019, the EEO/FHO shall issue a notice to the**
305 **employer that a civil penalty may be assessed for a violation that occurs at any**
306 **time after June 1, 2019, except that a civil penalty under 4-19-5 (Retaliation) may**
307 **be assessed for a violation at any time after the effective date.**
308

309 **PART 4.** The council directs the city manager to design and provide a multilingual
310 public education campaign to inform employers and residents of the requirements
311 of Chapter 4-19, such as a website with best practices for employers, and an
312 educational outreach strategy for informing employees and residents of the earned
313 sick time ordinance.
314

315 **PART 5.** For an employer with no more than 5 employees at any time in the
316 preceding 12 months, excluding family members, this ordinance is not effective
317 until October 1, 2020.
318

319 **PART 6.** Except as provided in Part 3 and Part 5 this ordinance takes effect
320 on October 1, 2018.
321

322 **PASSED AND APPROVED**

323
324 §
325 §
326 _____, 2018 § _____
327 Steve Adler
328 Mayor
329

330
331 **APPROVED:** _____ **ATTEST:** _____
332 Anne L. Morgan Jannette S. Goodall
333 City Attorney City Clerk
334