



City of Philadelphia

City Council
Chief Clerk's Office
402 City Hall
Philadelphia, PA 19107

BILL NO. 080474

Introduced May 8, 2008

Councilmembers Clarke and Greenlee

**Re-Referred to the
Committee on Public Health and Human Services**

AN ORDINANCE

Enacting a new Chapter 9-3300, entitled "Promoting Healthy Families and Workplaces," to provide that certain employees are entitled to paid sick leave, all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. A new Chapter 9-3300 of The Philadelphia Code, entitled "Promoting Healthy Families and Workplaces," is hereby enacted, to read as follows:

CHAPTER 9-3300. PROMOTING HEALTHY FAMILIES AND WORKPLACES.

§9-3301. Findings.

Whereas the Council finds that:

(1) Most workers in the City of Philadelphia will at some time during the year need temporary time off from work to take care of their own health needs or the health needs of members of their families.

(2) There are many workers employed in the City of Philadelphia who do not have to any paid sick days, or who have an inadequate number of paid sick days, to care for their own health needs or the health needs of members of their families. Approximately 44% of workers in the Philadelphia area do not have paid sick days. Nationally, 49 % of all workers do not have paid sick days and only 30% of workers may use those sick days to care for sick children.

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(3) *Low-income workers are significantly less likely to have paid sick time than other members of the workforce. Nationally, only one in five low income workers (20%) have access to paid sick time.*

(4) *Providing workers time off to attend to their own health care and the health care of family members will ensure a healthier and more productive workforce in the City of Philadelphia.*

(5) *Paid sick days will have a positive effect on the public health of the City of Philadelphia by allowing sick workers the occasional option of staying at home to care for themselves when ill, thus lessening their recovery time and reducing the likelihood of spreading illness to other members of the workforce and to the public.*

(6) *Paid sick days will allow parents to provide personal care for their sick children. Parental care makes children's recovery faster, prevents more serious illnesses, and improves children's overall mental and physical health.*

(7) *Providing a minimal number of paid sick days is affordable for employers and good for business.*

(8) *Paid sick days are good for business. Employers who provide paid sick days have greater employee retention and avoid the problem of workers coming to work sick and lowering productivity.*

(9) *Nationally, almost 60% of those who provide unpaid care to an adult family member or friend must combine their caregiving with employment in order to provide financially for their family member and themselves.*

(10) *Employees frequently lose their jobs or are disciplined with suspensions or demerits for taking sick days to care for sick family members or even to recover from their own illnesses.*

(11) *Workers in jobs with high public contact, such as service workers and restaurant workers, are very unlikely to have paid sick days. Because of the lack of paid sick days, these workers have no choice but to come to work when they are ill, thereby increasing the risk of passing illnesses on to co-workers and customers. For example,*

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approximately 78% of food service and accommodation workers in the Philadelphia area do not have paid sick days. Employers can be held liable for the costs of diseases spread by their workers who lack paid sick days.

(12) Many employers would like to provide their workers with paid sick days but fear being at a competitive disadvantage because other employers do not.

§9-3302. Purposes.

The purposes of this Chapter are:

(1) To ensure that all workers employed in the City of Philadelphia can address their own health needs and the health needs of their families by requiring employers to provide a minimum level of paid sick days including time for family care;

(2) To diminish public and private health care costs in the City of Philadelphia by enabling workers to seek early and routine medical care for themselves and their family members;

(3) To protect workers employed in the City of Philadelphia from losing their jobs while they use sick days to care for themselves or their families;

(4) To safeguard the public welfare, health, safety and prosperity of the people of and visitors to the City of Philadelphia; and

(5) To accomplish the purposes described in paragraphs (1) – (4) in a manner that is feasible for employers.

§9-3303. Definitions.

(1) “Agency” means Mayor's Office of Labor Relations, or such other office as the Mayor or Managing Director shall designate.

(2) “Employee” is any individual as defined in 43 P.S. § 333.103(h) who is employed within the geographic boundaries of the City of Philadelphia. “Employee” does not include independent contractors, State or Federal employees.

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- (3) *“Employer” is as defined in 43 P.S. § 333.103(g).*
- (4) *“Employ” is as defined in 43 P.S. § 333.103(f).*
- (5) *“Philadelphia” is defined as the geographic boundaries of the City of Philadelphia.*
- (6) *“Small Business” is defined as an employer that employs 10 or less employees.*
- (7) *“Family member” is defined as*
- (a) A biological, adopted or foster child, stepchild or legal ward or a child to whom the employee stands in loco parentis.*
 - (b) A biological, foster, stepparent or adoptive parent or legal guardian of an employee or an employee’s spouse or a person who stood in loco parentis when the employee was a minor child.*
 - (c) A person to whom the employee is legally married under the laws of Pennsylvania.*
 - (d) A grandparent or spouse of a grandparent;*
 - (e) A grandchild;*
 - (f) A biological, foster, or adopted sibling or spouse of a biological, foster or adopted sibling;*
 - (g) A domestic partner or life partner;*
 - (h) Any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.*
- (8) *“Health care professional” means any person licensed under Federal or Pennsylvania law to provide medical or emergency services, including but not limited to doctors, nurses and emergency room personnel.*
- (9) *“Paid sick time” or “paid sick days” means time that is compensated at the same hourly rate and with the same benefits, including health care benefits, as the*

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employee normally earns during hours worked and is provided by an employer to an employee for the purposes described in Section 9-3305 of this Chapter.

(10) “Retaliatory personnel action” means the discharge, suspension, or demotion by an employer of an employee or any other adverse action taken by an employer against an employee.

§9-3304. Accrual of Paid Sick Time.

(1) All employees who are employed in Philadelphia for more than 56 hours in a year have the right to paid sick time as provided in this Chapter.

(2) All employees shall accrue a minimum of one hour of paid sick time for every 30 hours worked in Philadelphia. Employees will not accrue more than 72 hours of paid sick time in a calendar year, unless the employer selects a higher limit. Employees of small businesses will not accrue more than 40 hours of paid sick time in a calendar year unless the employer selects a higher limit.

(3) Employees who are exempt from overtime requirements under 29 U.S.C. § 213(a)(1) of the Federal Fair Labor Standards Act will be assumed to work 40 hours in each work week for purposes of paid sick time accrual unless their normal work week is less than 40 hours, in which case paid sick time accrues based upon that normal work week.

(4) Paid sick time as provided in this Section shall begin to accrue at the commencement of employment.

(5) Employees shall be entitled to use accrued paid sick time beginning on the 30th calendar day following commencement of their employment. After the 30th calendar day of employment, employees may use paid sick time as it is accrued.

(6) Paid sick time shall be carried over to the following calendar year; however, an employee’s use of paid sick time provided under this Chapter in each calendar year shall not exceed 72 hours for employees of employers with eleven or more employees and shall not exceed 40 hours for employees of small businesses.

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(7) Any employer with a paid leave policy, such as a paid time off policy, who makes available an amount of paid leave sufficient to meet the accrual requirements of this Section that may be used for the same purposes and under the same conditions as paid sick time under this Section is not required to provide additional paid sick time. However any employer with a paid leave policy, such as a paid time off policy, may not rely upon that leave to meet its obligations under this Section if employees suffer a loss of vacation time as a consequence of utilizing sick time.

(8) Nothing in this Section shall be construed as requiring financial or other reimbursement to an employee from an employer upon the employee's termination, resignation, retirement, or other separation from employment for accrued paid sick time that has not been used.

(9) When there is a separation from employment and the employee is rehired within 12 months of separation by the same employer, previously accrued paid sick time that had not been used shall be reinstated. Further, the employee shall be entitled to use accrued paid sick time and accrue additional sick time at the re-commencement of employment.

(10) At its discretion, the employer may loan sick time to the employee in advance of accrual by such employee.

§9-3305. Use of Paid Sick Time.

(1) Paid sick time shall be provided to an employee by an employer for:

(a) An employee's mental or physical illness, injury or health condition; an employee's need for medical diagnosis, care, or treatment of a mental or physical illness, injury or health condition; an employee's need for preventive medical care;

(b) Care of a family member with a mental or physical illness, injury or health condition; care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury or health condition; care of a family member who needs preventive medical care.

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(2) Paid sick time shall be provided upon the oral request of an employee. When possible, the request shall include the expected duration of the absence.

(3) When the use of paid sick time is foreseeable, the employee shall make a good faith effort to provide notice of the need for such time to the employer in advance of the use of the sick time and shall make a reasonable effort to schedule the use of sick time in a manner that does not unduly disrupt the operations of the employer.

(4) Accrued sick time may be used in the smaller of hourly increments or the smallest increment that the employer's payroll system uses to account for absences or use of other time.

(5) For sick time of more than 3 consecutive days, an employer may require reasonable documentation that the sick time is covered by subsection (1). Documentation signed by a health care professional indicating that sick time is necessary shall be considered reasonable documentation. An employer may not require that the documentation explain the nature of the illness. If an employer chooses to require documentation for sick time and the employee does not have health insurance, the employer is responsible for paying all of out of pocket expenses the employee incurs in obtaining the documentation. If the employee does have health insurance, the employer is responsible for paying any costs charged to the employee by the health care provider for providing the specific documentation required by the employer.

(6) An employer may not require, as a condition of providing paid sick time under this Chapter, that the employee search for or find a replacement worker to cover the hours during which the employee is on paid sick time.

§9-3306. Exercise of Rights Protected; Retaliation Prohibited.

(1) It shall be unlawful for an employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this Chapter.

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(2) *An employer shall not take retaliatory personnel action or discriminate against an employee because the employee has exercised rights protected under this Chapter. Such rights include but are not limited to the right to use paid sick time pursuant to this Chapter; the right to file a complaint or inform any person about any employer's alleged violation of this Chapter; the right to cooperate with the Agency in its investigations of alleged violations of this Chapter; and the right to inform any person of his or her potential rights under this Section.*

(3) *It shall be unlawful for an employer's absence control policy to count paid sick time taken under this Chapter as an absence that may lead to or result in discipline, discharge, demotion, suspension, or any other adverse action.*

(4) *Protections of this Section shall apply to any person who mistakenly but in good faith alleges violations of this Section.*

(5) *There shall be a rebuttable presumption of unlawful retaliation under this Section whenever an employer takes adverse action against a person within 90 days of when that person:*

(a) files a complaint with the Agency or a court alleging a violation of any provision of this Section;

(b) informs any person about an employer's alleged violation of this Section;

(c) cooperates with the Agency or other persons in the investigation or prosecution of any alleged violation of this Section;

(d) opposes any policy, practice, or act that is unlawful under this Section;

or

(e) informs any person of his or her rights under this Section.

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§9-3307. Notice and Posting.

(1) Employers shall give notice that employees are entitled to paid sick time, the amount of paid sick time, and the terms of its use guaranteed under this Chapter, that retaliation against employees who request or use paid sick time is prohibited and that each employee has the right to file a complaint or bring a civil action if sick time as required by this Section is denied by the employer or the employee is retaliated against for requesting or taking paid sick time.

(2) Employers may comply with this Section by supplying each of their employees with a notice in English and in any language that is the first language spoken by at least 5% of the employer's workforce that contains the information required in subsection (1).

(3) Employers may comply with this Section by displaying a poster in a conspicuous and accessible place in each establishment where such employees are employed which contains in English and in any language that is the first language spoken by at least 5% of the employer's workforce, all information required under subsection (1).

(4) The Agency shall create and make available to employers posters that contain the information required under subsection (1) for their use in complying with this subsection.

(5) An employer who willfully violates the notice and posting requirements of this Section shall be subject to a civil fine in an amount not to exceed \$100 for each separate offense.

§9-3308. Employer Records.

Employers shall retain records documenting hours worked by employees and paid sick time taken by employees, for a period of five years, and shall allow the Agency access to such records, with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of this Chapter. When an issue arises as to an employee's entitlement to paid sick time under this Section, if the employer does not

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maintain or retain adequate records documenting hours worked by the employee and paid sick time taken by the employee, or does not allow the Agency reasonable access to such records, it shall be presumed that the employer has violated the Chapter, absent clear and convincing evidence otherwise.

§9-3309. Regulations.

The Agency shall be authorized to coordinate implementation and enforcement of this Section and shall promulgate appropriate guidelines or regulations for such purposes.

§9-3310. Section 8. Enforcement.

(1) An employee or other person may report to the Agency any suspected violation of this Chapter.

(2) The Agency is authorized to take appropriate steps to enforce this Section.

(3) The Agency, the City Attorney, any person aggrieved by a violation of this Chapter, or any entity a member of which is aggrieved by a violation of this Chapter may bring a civil action in a court of competent jurisdiction against an employer violating this Chapter. Such action may be brought by a person aggrieved by a violation of this Section without first filing an administrative complaint.

(a) Upon prevailing in an action brought pursuant to this Section, aggrieved persons shall recover the full amount of any unpaid sick time plus any actual damages suffered as the result of the employer's violation of this Chapter plus an equal amount of liquidated damages. Aggrieved persons shall also be entitled to reasonable attorney's fees.

(b) Upon prevailing in an action brought pursuant to this Section, aggrieved persons shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation, including, without limitation, reinstatement in employment, back pay and injunctive relief.

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(c) The City Attorney may bring a civil action to enforce this Chapter. The City Attorney may seek injunctive relief. In addition to injunctive relief, or in lieu thereof, for any employer or other person found to have willfully violated this Chapter, the City Attorney may seek to impose a fine payable to the City.

(d) The statute of limitations for a civil action brought pursuant to this Section shall be for a period of 2 years from the date the alleged violation occurred.

(e) Actions brought pursuant to this Section may be brought as a class action pursuant to the laws of Pennsylvania.

§9-3311. Confidentiality and Nondisclosure.

An employer may not require disclosure of details relating to an employee's medical condition or the medical condition of an employee's family member as a condition of providing paid sick time under this Chapter. If an employer possesses health information about an employee or employee's family member, such information shall be treated as confidential in accordance with Pennsylvania state laws and Federal laws and not disclosed except to the affected employee or with the permission of the affected employee.

§9-3312. Encouragement of More Generous Sick Time Policies; No Effect on More Generous Policies.

(1) Nothing in this Chapter shall be construed to discourage or prohibit an employer from the adoption or retention of a paid sick time policy more generous than the one required herein.

(2) Nothing in this Chapter shall be construed as diminishing the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous sick time to an employee than required herein.

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(3) Nothing in this Chapter shall be construed as diminishing the rights of public employees regarding paid sick time or use of sick time as provided in Pennsylvania laws.

§9-3313. Other Legal Requirements.

This Chapter provides minimum requirements pertaining to paid sick time and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for greater accrual or use by employees of sick time, whether paid or unpaid, or that extends other protections to employees.

§9-3314. Severability.

If any provision of this Chapter or application thereof to any person or circumstance is judged invalid, the invalidity shall not affect other provisions or applications of the Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are declared severable.

SECTION 2. Effective Date. This Ordinance will take effect 90 days following final approval.

Explanation:

[brackets] indicate matter deleted
Italics indicate new matter added