

## 📖 **SEC. 12W.1. TITLE.**

This Chapter shall be known as the "Sick Leave Ordinance."  
(Added by Proposition F, 11/7/2006)

## 📖 **SEC. 12W.2. DEFINITIONS.**

For purposes of this Chapter, the following definitions apply.

(a) "Agency" shall mean the Office of Labor Standards Enforcement or any department or office that by ordinance or resolution is designated the successor to the Office of Labor Standards Enforcement.

(b) "City" shall mean the City and County of San Francisco.

(c) "Employee" shall mean any person who is employed within the geographic boundaries of the City by an employer, including part-time and temporary employees. "Employee" includes a participant in a Welfare-to-Work Program when the participant is engaged in work activity that would be considered "employment" under the federal Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, and any applicable U.S. Department of Labor Guidelines. "Welfare-to-Work Program" shall include any public assistance program administered by the Human Services Agency, including but not limited to CalWORKS and the County Adult Assistance Program (CAAP), and any successor programs that are substantially similar to them, that require a public assistance applicant or recipient to work in exchange for their grant.

(d) "Employer" shall mean any person, as defined in Section 18 of the California Labor Code, including corporate officers or executives, who directly or indirectly or through an agent or any other person, including through the services of a temporary services or staffing agency or similar entity, employs or exercises control over the wages, hours, or working conditions of an employee.

(e) "Paid sick leave" shall mean paid "sick leave" as defined in California Labor Code § 233(b)(4), except that the definition extends beyond the employee's own illness, injury, medical condition, need for medical diagnosis, care including preventive care, or treatment, or other medical reason, to also encompass time taken off work by an employee for the purpose of providing care or assistance to other persons, as specified further in Section [12W.4\(a\)](#), with an illness, injury, medical condition, need for medical diagnosis, care including preventive care, or treatment, or other medical reason. "Paid sick leave" shall also include time taken off work for purposes related to domestic violence, sexual assault, or stalking, suffered by an employee, as specified in Section [12W.4\(b\)](#), and for purposes related to bone marrow donation or organ donation, as specified in Section [12W.4\(c\)](#).

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

(Added by Proposition F, 11/7/2006; amended by [Proposition E](#), 6/7/2016)

## 📖 **SEC. 12W.3. ACCRUAL OF PAID SICK LEAVE.**

(a) For employees working for an employer on or before the operative date of this Chapter, paid sick leave shall begin to accrue as of the operative date of this Chapter. For employees hired by an employer after the operative date of this Chapter but before January 1, 2017, paid sick leave shall begin to accrue 90 days after the commencement of employment with the employer, or on January 1, 2017, whichever date is earlier. For employees hired on or after January 1, 2017, paid sick leave shall begin to accrue on commencement of employment with the employer.

(b) For every 30 hours worked after paid sick leave begins to accrue for an employee, the employee shall accrue one hour of paid sick leave. Paid sick leave shall accrue only in hour-unit increments; there shall be no accrual of a fraction of an hour of paid sick leave.

(c) An employer may, in the employer's discretion, make available to an employee a lump sum of paid sick leave at the beginning of each year of employment, calendar year, or other 12-month period (an "upfront allocation"). In such cases, the Agency shall treat the upfront allocation as an advance on paid sick leave to be accrued under this Section [12W.3](#); that is, accrual of paid sick leave under this Section would temporarily halt and the employee would not continue to accrue paid sick leave until after the employee has worked the number of hours necessary to have accrued the upfront allocation amount, at which point the employee would then resume accruing paid sick leave under this Section. This subsection (c) shall not be construed to prevent an employer, in the employer's discretion, from advancing paid sick leave to an employee at other times, and shall not be construed to limit the amount of paid sick leave that may be advanced to an employee. Any advance of paid sick leave shall affect the employee's accrual of paid sick leave under this Section [12W.3](#) as described in this subsection (c). Any advance of paid sick leave shall occur pursuant to an employer's written policy or, absent an applicable written policy, shall be documented in writing to the affected employee.

(d) For employees of small businesses, there shall be a cap of 40 hours of accrued paid sick leave. For employees of other employers, there shall be a cap of 72 hours of accrued paid sick leave. Accrued paid sick leave for employees carries over from year to year (whether calendar year or fiscal year), but is limited to the aforementioned caps.

(e) If an employer has a paid leave policy, such as a paid time off policy, that makes available to employees an amount of paid leave that may be used for the same purposes as paid sick leave under this Chapter and that is sufficient to meet the requirements for accrued paid sick leave as stated in subsections (a)-(c), the employer is not required to provide additional paid sick leave.

(f) On the same written notice that an employer is required to provide under Section 246(h) of the California Labor Code, an employer shall set forth the amount of paid sick leave that is available to the employee under this Section [12W.3](#), or paid time off an employer provides in lieu of sick leave. If an employer provides unlimited paid sick leave or unlimited paid time off to an employee, the employer may satisfy this subsection by indicating on the notice or the employee's itemized wage statement "unlimited." This subsection (f) shall apply only to employers that are required by state law to provide such notice to employees regarding paid sick leave available under state law.

(g) An employer is not required to provide financial or other reimbursement to an employee upon the employee's termination, resignation, retirement, or other separation from employment, for accrued paid sick leave that the employee has not used. But if an employee separates from an employer for any reason and is rehired by the employer within one year from the date of separation, previously accrued and unused paid sick leave shall be reinstated. The employee shall be entitled to use the previously accrued and unused paid sick leave and to accrue additional paid sick leave upon rehiring. This subsection (g) shall not apply if and to the extent that, upon the employee's separation from employment, the employee received cash compensation for previously accrued and unused paid sick leave.

(h) For the purposes of this Chapter, an employer shall calculate paid sick leave using any of the following calculations:

(1) Paid sick leave for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick leave, whether or not the employee actually works overtime in that workweek.

(2) Paid sick leave for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

(3) Paid sick leave for exempt employees shall be calculated in the same manner as the employer calculates wages for other forms of paid leave time.

(4) In no circumstance may paid sick leave be provided at less than the minimum wage rate required by the Minimum Wage Ordinance, Administrative Code [Chapter 12R](#).

(Added by Proposition F, 11/7/2006; amended by [Proposition E](#), 6/7/2016)

## **SEC. 12W.4. USE OF PAID SICK LEAVE.**

(a) An employee may use paid sick leave not only when he or she is ill or injured or for the purpose of the employee's receiving medical care, treatment, or diagnosis, as specified more fully in California Labor Code Section 233(b)(4) and Section [12W.2\(e\)](#) of this Code, but also to aid or care for the following persons when they are likewise ill or injured or receiving medical care, treatment, or diagnosis: Child; parent; legal guardian or ward; sibling; grandparent; grandchild; and spouse, registered domestic partner under any state or local law, or designated person. The employee may use all or any percentage of his or her paid sick leave to aid or care for the aforementioned persons.

(1) "Child," "parent," "sibling," "grandparent," "grandchild." The aforementioned child, parent, sibling, grandparent, and grandchild relationships include not only biological relationships but also relationships resulting from adoption; step-relationships; and foster care relationships.

(2) "Child" also includes a child of a domestic partner and a child of a person standing in loco parentis.

(3) "Parent" also includes a person who stood in loco parentis when the employee was a minor child, and a person who is a biological, adoptive, or foster parent, stepparent, or guardian of the employee's spouse or registered domestic partner.

(4) "Designated person." If the employee has no spouse or registered domestic partner, the employee may designate one person as to whom the employee may use paid sick leave to aid or care for the person. The opportunity to make such a designation shall be extended to the employee no later than the date on which the employee has worked 30 hours after paid sick leave begins to accrue pursuant to Section [12W.3\(a\)](#). There shall be a window of 10 work days for the employee to make this designation. Thereafter, the opportunity to make such a designation, including the opportunity to change such a designation previously made, shall be extended to the employee on an annual basis, with a window of 10 work days for the employee to make the designation.

(b) In addition to the purposes for which an employee may use paid sick leave under subsection (a), an employee who is a victim of domestic violence, sexual assault, or stalking may use paid sick leave for the purposes described in Sections 230(c) and 231.1(a) of the California Labor Code.

(c) An employee may use paid sick leave for purposes related to donating the employee's bone marrow or an organ of the employee to another person. Further, an employee may use paid sick leave to care for or assist a person, as specified in Section [12W.4\(a\)](#), for purposes related to that person's donating bone marrow or an organ to another person.

(d) An employee shall be entitled to use accrued paid sick leave beginning on the 90th day of employment, after which day the employee may use paid sick leave as it is accrued.

(e) An employer may not require, as a condition of an employee's taking paid sick leave, that the employee search for or find a replacement worker to cover the hours during which the employee is on paid sick leave.

(f) An employer may not require, as a condition of an employee's taking paid sick leave, that the employee take paid sick leave in increments of more than one hour, unless the Agency, by rule or regulation, authorizes a larger increment in particular circumstances provided that the increment is no larger than the employer may require under state law.

(g) An employer may require employees to give reasonable notification of an absence from work for which paid sick leave is or will be used.

(h) An employer may only take reasonable measures to verify or document that an employee's use of paid sick leave is lawful.

(i) An employer shall provide payment for sick leave taken by an employee no later than the payday for the next regular payroll period after the sick leave was taken.

(Added by Proposition F, 11/7/2006; amended by [Proposition E](#), 6/7/2016)

## **SEC. 12W.5. NOTICE AND POSTING OF RIGHTS.**

(a) The Agency shall, by the operative date of this Chapter, publish and make available to employers, in all languages spoken by more than 5% of the San Francisco workforce, a notice suitable for posting by employers in the workplace informing employees of their rights under this Chapter. The Agency shall update this notice on December 1 of any year in which there is a change in the languages spoken by more than 5% of the San Francisco workforce. In its discretion, the Agency may combine the notice required herein with the notice required by Section [12R.5\(a\)](#) of the Administrative Code. In addition, the Agency shall combine into one document the notice required by this subsection (a) with the poster required by California Labor Code Section 247, provided that such a combined notice fulfills all the requirements of this subsection and that the Agency has received written assurance from the appropriate State authority that the combined notice satisfies the requirements of California Labor Code Section 247.

(b) Every employer shall post in a conspicuous place at any workplace or job site where any employee works the notice required by subsection (a). Every employer shall post this notice in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the workplace or job site.

(Added by Proposition F, 11/7/2006; amended by [Proposition E](#), 6/7/2016)

## **SEC. 12W.6. EMPLOYER RECORDS.**

Employers shall retain records documenting hours worked by employees and paid sick leave taken by employees, for a period of four 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 leave under this Chapter, if the employer does not maintain or retain adequate records documenting hours worked by the employee and paid sick leave taken by the employee, or does not allow the Agency reasonable access to such records, it shall be presumed that the employer has violated this Chapter, absent clear and convincing evidence otherwise.

(Added by Proposition F, 11/7/2006)

## **SEC. 12W.7. EXERCISE OF RIGHTS PROTECTED; RETALIATION PROHIBITED.**

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.

It shall be unlawful for an employer or any other person to discharge, threaten to discharge, demote, suspend, or in any manner discriminate or take adverse action against any person in retaliation for exercising rights protected under this Chapter. Such rights include but are not limited to the right to use paid sick leave 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 Chapter.

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

Protections of this Chapter shall apply to any person who mistakenly but in good faith alleges violations of this Chapter.

Taking adverse action against a person within 90 days of the person's filing a complaint with the Agency or a court alleging a violation of any provision of this Chapter; informing any person about an employer's alleged violation of this Chapter; cooperating with the Agency or other persons in the investigation or prosecution of any alleged violation of this Chapter; opposing any policy, practice, or act that is unlawful under this Chapter; or informing any person of his or her rights under this Chapter shall raise a rebuttable presumption that such adverse action was taken in retaliation for the exercise of one or more of the aforementioned rights.

(Added by Proposition F, 11/7/2006)

## **SEC. 12W.8. IMPLEMENTATION AND ENFORCEMENT.**

(a) **Implementation.** The Agency shall be authorized to coordinate implementation and enforcement of this Chapter and may promulgate appropriate guidelines or rules for such purposes. Any guidelines or rules promulgated by the Agency shall have the force and effect of law and may be relied on by employers, employees, and other persons to determine their rights and responsibilities under this Chapter. Any guidelines or rules may establish procedures for ensuring fair, efficient, and cost-effective implementation of this Chapter, including supplementary procedures for helping to inform employees of their rights under this Chapter, for monitoring employer compliance with this Chapter, and for providing administrative hearings to determine whether an employer or other person has violated the requirements of this Chapter. As of January 1, 2017, in promulgating guidelines and rules pursuant to this subsection (a), the Agency shall consider any relevant guidelines, rules, or interpretations issued by the California Department of Labor Standards Enforcement pertaining to the Healthy Workplaces, Healthy Families Act of 2014, as amended, California Labor Code Sections 245-249, but shall not be bound by such guidelines, rules, or interpretations.

(b) **Administrative Enforcement.** The Agency is authorized to take appropriate steps to enforce this Chapter. The Agency may investigate any possible violations of this Chapter by an employer or other person. Where the Agency has reason to believe that a violation has occurred, it may order any appropriate temporary or interim relief to mitigate the violation or maintain the status quo pending completion of a full investigation or hearing.

Where the Agency, after a hearing that affords a suspected violator due process, determines that a violation has occurred, it may order any appropriate relief including, but not limited to, reinstatement, back pay, the payment of any sick leave unlawfully withheld, and the payment of an additional sum as an administrative penalty to each employee or person whose rights under

this Chapter were violated. If any paid sick leave was unlawfully withheld, the dollar amount of paid sick leave withheld from the employee multiplied by three, or \$250.00, whichever amount is greater, shall be included in the administrative penalty paid to the employee. In addition, if a violation of this Chapter resulted in other harm to the employee or any other person, such as discharge from employment, or otherwise violated the rights of employees or other persons, such as a failure to post the notice required by Section [12W.5\(b\)](#), or an act of retaliation prohibited by Section [12W.7](#), this administrative penalty shall also include \$50.00 to each employee or person whose rights under this Chapter were violated for each day or portion thereof that the violation occurred or continued.

Where prompt compliance is not forthcoming, the Agency may take any appropriate enforcement action to secure compliance, including initiating a civil action pursuant to Section [12W.8\(c\)](#) and/or, except where prohibited by State or Federal law, requesting that City agencies or departments revoke or suspend any registration certificates, permits or licenses held or requested by the employer or person until such time as the violation is remedied. In order to compensate the City for the costs of investigating and remedying the violation, the Agency may also order the violating employer or person to pay to the City a sum of not more than \$50.00 for each day or portion thereof and for each employee or person as to whom the violation occurred or continued. Such funds shall be allocated to the agency and used to offset the costs of implementing and enforcing this Chapter.

An employee or other person may report to the agency any suspected violation of this Chapter. The Agency shall encourage reporting pursuant to this subsection by keeping confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the employee or person reporting the violation. Provided, however, that with the authorization of such person, the Agency may disclose his or her name and identifying information as necessary to enforce this Chapter or for other appropriate purposes.

(c) **Civil Enforcement.** The Agency, the City Attorney, any person aggrieved by a violation of this Chapter, any entity a member of which is aggrieved by a violation of this Chapter, or any other person or entity acting on behalf of the public as provided for under applicable State law, may bring a civil action in a court of competent jurisdiction against the employer or other person violating this Chapter and, upon prevailing, shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, but not limited to, reinstatement, back pay, the payment of any sick leave unlawfully withheld, the payment of an additional sum as liquidated damages in the amount of \$50.00 to each employee or person whose rights under this Chapter were violated for each hour or portion thereof that the violation occurred or continued, plus, where the employer has unlawfully withheld paid sick leave to an employee, the dollar amount of paid sick leave withheld from the employee multiplied by three; or \$250.00, whichever amount is greater; and reinstatement in employment and/or injunctive relief; and, further, shall be awarded reasonable attorneys' fees and costs. Provided, however, that any person or entity enforcing this Chapter on behalf of the public as provided for under applicable State law shall, upon prevailing, be entitled only to equitable, injunctive or restitutionary relief, and reasonable attorneys' fees and costs.

(d) **Interest.** In any administrative or civil action brought under this Chapter, the Agency or court, as the case may be, shall award interest on all amounts due and unpaid at the rate of interest specified in subdivision (b) of Section 3289 of the California Civil Code.

(e) **Remedies Cumulative.** The remedies, penalties, and procedures provided under this Chapter are cumulative.

(Added by Proposition F, 11/7/2006; amended by [Proposition E](#), 6/7/2016)

## **SEC. 12W.9. WAIVER THROUGH COLLECTIVE BARGAINING.**

All or any portion of the applicable requirements of this Chapter shall not apply to employees covered by a bona fide collective bargaining agreement to the extent that such requirements are expressly waived in the collective bargaining agreement in clear and unambiguous terms.

(Added by Proposition F, 11/7/2006)

## **SEC. 12W.10. OTHER LEGAL REQUIREMENTS.**

This Chapter provides minimum requirements pertaining to paid sick leave 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 leave, whether paid or unpaid, or that extends other protections to employees.

(Added by Proposition F, 11/7/2006)

## **SEC. 12W.11. MORE GENEROUS EMPLOYER LEAVE POLICIES.**

This Chapter provides minimum requirements pertaining to paid sick leave and shall not be construed to prevent employers from adopting or retaining leave policies that are more generous than policies that comply with this Chapter. Employers are encouraged to provide more generous leave policies than required by this Chapter.

(Added by Proposition F, 11/7/2006)

## **SEC. 12W.12. OPERATIVE DATE.**

(a) This Chapter shall become operative 90 days after its adoption by the voters at the November 7, 2006 election. This Chapter shall have prospective effect only.

(b) Amendments to this Chapter adopted by the voters at the June 7, 2016 election shall become operative on January 1, 2017. These amendments shall have prospective effect only.

(Added by Proposition F, 11/7/2006; amended by [Proposition E](#), 6/7/2016)

## **SEC. 12W.13. PREEMPTION.**

Nothing in this Chapter shall be interpreted or applied so as to create any power or duty in conflict with federal or state law. The term “conflict,” as used in this Section 12W.13, means a conflict that is preemptive under federal or state law. For purposes of this Section, consistent with California Labor Code Section 249(d), a difference between this Chapter and the provisions of the Healthy Workplaces, Healthy Families Act of 2014, as amended, California Labor Code Sections 245-249, is not a preemptive conflict under state law.

(Added by Proposition F, 11/7/2006; amended by [Proposition E](#), 6/7/2016)

## **SEC. 12W.14. CITY UNDERTAKING LIMITED TO PROMOTION OF GENERAL WELFARE.**

In undertaking the adoption and enforcement of this Chapter, the City is undertaking only to promote the general welfare. The City is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury. This Chapter does not create a legally enforceable right by any member of the public against the City.

(Added by Proposition F, 11/7/2006)

## **SEC. 12W.15. SEVERABILITY.**

If any part or provision of this Chapter, or the application of this Chapter to any person or circumstance, is held invalid, the remainder of this Chapter, including the application of such

part or provision to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the provisions of this Chapter are severable.

(Added by Proposition F, 11/7/2006)

## **SEC. 12W.16. AMENDMENT BY THE BOARD OF SUPERVISORS.**

(a) The Board of Supervisors may amend this Chapter with respect to matters relating to its implementation and enforcement (including but not limited to those matters addressed in Section [12W.8](#)) and matters relating to employer requirements for verification or documentation of an employee's use of sick leave, but not with respect to this Chapter's substantive requirements or scope of coverage, except as stated in subsections (b) and (c); provided, however, that, in the event any provision in this Chapter is held legally invalid, the Board retains the power to adopt legislation concerning the subject matter that was covered in the invalid provision.

(b) The Board of Supervisors may amend this Chapter's substantive requirements or scope of coverage for the purpose of adopting provisions parallel to state or federal law, if and to the extent state or federal law provides greater or additional substantive requirements, or broader coverage, than this Chapter.

(c) Notwithstanding subsection (b), the Board of Supervisors may amend this Chapter's substantive requirements or scope of coverage as to the amendments adopted by the voters at the June 7, 2016 election, for the purpose of adopting provisions that parallel any changes in State law regarding those provisions of State law on which those amendments are based. This subsection (c) shall not be construed to authorize any other amendment of this Chapter or to reduce the substantive requirements or scope of coverage of this Chapter below that which existed before the amendments adopted at the June 7, 2016 election.

(Added by Proposition F, 11/7/2006; amended by [Proposition E](#), 6/7/2016)