

Legislation Text

File #: 220051-A, **Version:** 2

Amending Section 9-4116 of The Philadelphia Code, entitled “2021 Public Health Emergency Leave,” to establish additional leave time under certain circumstance, modify existing provisions concerning the paid sick leave, and make technical changes, all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

§ 9-4116. [2021 Public Health Emergency Leave.] *COVID-19 Leave.*

(1) Definitions. For the purposes of this Section 9-4116 the following definitions shall apply in place of any definition provided under Section 9-4103:

(a) “*COVID-19*” is *SARS-CoV-2* and any of its variants.

[(a)] (b) “Employer” is as defined in the Act of January 17, 1968, P.L. 11, No. 5, § 3 (43 P.S. § 333.103(g)), excluding employers who employ less than twenty-five (25) employees.

[(b)] (c) “Employee” is an individual (i) working for that Employer within Philadelphia after the effective date of this Ordinance, (ii) who normally works for that Employer within the City of Philadelphia but is currently teleworking from any other location as a result of COVID-19, or (iii) works for that Employer from multiple locations or from mobile locations, provided that 51% or more of such employee’s time is present within the City of Philadelphia.

[(c)] (d) [“Public health emergency leave”] “*COVID-19 leave*” means time that is compensated at the regular rate of pay as that term is defined under 34 Pa. Code § 231.43, and with the same benefits, including health care benefits, as the covered individual normally earns from the hiring entity at the time the covered individual uses the public health emergency leave and is provided by a hiring entity to a covered individual for the purposes described in § 9-4116 provided that in no case shall the hourly rate be less than the full minimum wage provided under 43 P.S. § 333.104.

[(d)] “Public health emergency” means a declared or proclaimed emergency related to a public health threat, risk, disaster or emergency that affects Philadelphia that is made or issued by a federal, state or local official with the authority to make or issue such a declaration or proclamation, beginning on the earliest effective date of any such declaration or proclamation and ending on the date the last such declaration or proclamation ends, whether through expiration, termination, or otherwise.]

(2)[2021 Public Health Emergency Leave.] *COVID-19 Leave.* Beginning on the effective date of the Ordinance [adding this provision to the Code,] *amending Section 4-1116 of the Code to provide for “Covid-19 Leave,”* an employer shall provide [2021 public health emergency] *COVID-19* leave to each employee in an amount pursuant to subsection (4) of this Section 9-4116. An employee may use [2021 public health emergency] *COVID-19* leave for such employee’s inability to work as due to one or more of the following purposes:

(a) A determination by a public official or public health authority having jurisdiction, a health care

provider, or an employer that the employee's presence on the job or in the community would jeopardize the health of others because of the employee's exposure to COVID-19 or because the employee is exhibiting symptoms that might jeopardize the health of others, regardless of whether the employee has been diagnosed with *or has tested positive for* COVID-19;

(b) To care for a family member of the employee due to a determination by a public official or health authority having jurisdiction, a health care provider, or the family member's employer that the presence of the family member on the job or in the community would jeopardize the health of others because of the family member's exposure to COVID-19 or a determination by the employer that the employee is a danger to the health of others because they are exhibiting symptoms that might jeopardize the health of others, regardless of whether the family member has been diagnosed or having tested positive with COVID-19;

(c) An employee's need to: (.1) self-isolate and care for oneself because the employee is diagnosed with *or has tested positive for* COVID-19; (.2) self-isolate and care for oneself because the employee is experiencing symptoms of COVID-19; (.3) seek or obtain medical diagnosis, care, or treatment if experiencing symptoms of an illness related to COVID-19;

(d) To care for a family member who: (.1) is self-isolating due to being diagnosed with *or having tested positive for* COVID-19; (.2) is self-isolating due to experiencing symptoms of COVID-19; (.3) needs medical diagnosis, care, or treatment if experiencing symptoms of an illness related to COVID-19;

(e) To care for a child if the school or place of care of the child has been closed, or the childcare provider of such child is unavailable, due to precautions taken in [accordance with the public health emergency] response *to COVID-19*;

(f) An employee's need to obtain immunization (vaccination), *including a booster*, related to COVID-19; or

(g) An employee's need to recover from any [injury, disability, illness or condition] *side effect* related to such vaccination.

(3) Timing for Use of [2021 Public Health Emergency.] *COVID-19* Leave.

(a) Immediate availability. [2021 public health emergency] *COVID-19* leave shall be provided to employees immediately without any waiting period or accrual requirements. An employee shall be entitled to use this [2021 public health emergency] *COVID-19* leave until [one (1) week following the official termination or suspension of the public health emergency] *December 31, 2023*.

(b) Other Paid Leave Benefits. Except as provided by subsections (3)(c), (3)(d), and (7), the [2021 public health emergency] *COVID-19* leave provided by this Section 9-4116 shall be in addition to all other paid leave benefits offered by an employer; and shall not be reduced by the amount of any paid leave an employee has previously [received, including any public health emergency leave provided in 2020.] *received*. An employer may not require an employee to use other paid leave available to the employee before the employee is eligible to use [2021 public health emergency] *COVID-19* leave, unless state or federal law requires otherwise.

(c) With respect only to employees who complete the majority of their work responsibilities

through telework, nothing in this [Chapter] *Section* shall be construed to require an employer to change existing policies or provide additional paid leave to such teleworking employees if the employer's existing policy provides such teleworking employees at least eighty (80) hours of paid leave in [2021] 2022 and such paid leave can be used for the same purposes and under all of the same conditions as set forth for [2021 public health emergency] *COVID-19* leave under this [Chapter.] *Section*.

(d) **Paid Time Off Policies.** Nothing in this [Chapter] *Section* shall be construed to require an employer to change an existing leave policy or provide additional paid leave to employees if the employer's existing policy provides one hundred and [sixty (160)] *twenty (120)* hours or more of paid time off in [2021] 2022 [that is not] *whether or not such leave is specifically designated as sick leave, [but] if such leave* can be used for the same purposes and under all of the same conditions as [set forth in 2021 public health emergency] *COVID-19* leave under this [Chapter.] *Section*. *Notwithstanding the forgoing, with respect to an employer that operates on a seven and a half (7.5) hour workday and considers an employee working thirty-seven and a half (37.5) hours a week to be full-time, the amount of leave necessary to exclude such employer from the requirement to change an existing leave policy or provide additional paid leave under this subsection (3)(d) shall be one-hundred twelve and a half (112.5) hours, provided the remaining requirements of this subsection (3)(d) are met.*

(4) **Amount of Leave.** The [2021 public health emergency] *COVID-19* leave required under this Section shall be provided by an employer to an employee as follows:

(a) For employees who work 40 hours or more per week, [2021 public health emergency] *COVID-19* leave shall be provided in the amount of [80] 40 hours, unless the employer designates a higher limit;

(b) For employees who work fewer than 40 hours in a week, [2021 public health emergency] *COVID-19* leave shall be provided in an amount equal to the amount of time the Employee is otherwise scheduled to work or actually works on average in a [14] 7-day period, whichever is greater and unless the employer designates a higher limit. In the case of an employee whose schedule varies from week to week, the employer shall use the following in place of such number to determine the amount of time worked on average in a [14-day] 7-day period: the average number of daily hours that the employee was scheduled over the past 90 (ninety) days of work, including hours for which the employee took leave of any type, multiplied by [fourteen] seven.

(5) **Overtime Exempted Employees.** 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 [2021 public health emergency] *COVID-19* leave unless their normal work week is less than 40 hours, in which case [2021 public health emergency] *COVID-19* leave under this Section is based upon that normal work week.

(6) **Shift Replacement.** An employer may not require, as a condition of providing [2021 public health emergency] *COVID-19* leave for an employee that the employee search for or find a replacement to cover the hours during which the employee is using [2021 public health emergency] *COVID-19* leave.

(7) **Concurrent Use.**

(a) To the extent that federal or state laws require employers to provide paid leave or paid sick time related to COVID-19, employers may substitute leave under the federal or state law for its obligations under this Section 9-4116 to the extent they coincide and the relevant federal or state law permits such concurrent use of paid leave. Employers shall provide additional [2021 public health emergency] *COVID-19* leave under this Section 9-4116 to the extent that the requirements of this Section exceed the requirements of those laws and to

the extent permitted under the federal or state law.

(b) To the extent that an employer has adopted a policy [on or after March 6, 2020] which provides its employees with additional paid time specifically for use [during the] *for* COVID-19 [pandemic in 2021], employers may substitute leave under such employer policy for the leave required under this ordinance to the extent they coincide. Employers shall be required to provide additional [2021 public health emergency] *COVID-19* leave under this Section only to the extent that the requirements of this Section exceed the requirements of its own specific COVID-19 [pandemic] paid leave policy otherwise available to a particular [employee on or after January 1, 2021.] *employee*.

(8) Minimum Requirements and Other Obligations. This [Chapter] *Section* provides minimum requirements pertaining to [public health emergency] *COVID-19* 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 a greater amount or use of paid leave or that extends other leave protections. Nothing in this Section 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 emergency leave or paid leave to a covered individual than required herein. Nothing in this Section shall be construed as diminishing the rights of public employees regarding paid leave or use of paid leave as provided under Pennsylvania law.

(9) Right to Return. Any employee who takes [2021 public health emergency] *COVID-19* leave pursuant to this Section 9-4116 shall be entitled, on return from such leave, to be restored by the employer to the position held when the leave commenced.

(10) Retaliation Prohibited. The provisions of Section 9-4106 of the Philadelphia Code applicable to retaliatory personnel actions shall apply to this [Chapter.] *Section*. No employer required to provide [2021 public health emergency] *COVID-19* leave may reduce the amount of any paid leave an employee entitled to [2021 public health emergency] *COVID-19* leave was otherwise entitled to use or accrue under such employer's existing policies as of [March 1, 2021] *the effective date of the Ordinance amending Section 9-4116 of the Code to provide for Covid-19 leave*.

(11) Notification of Use of Leave. For the purposes of this Section 9-4116 notice requirements are modified as follows:

(a) Notice to Employees. The provisions of Section 9-4107 of the Philadelphia Code applicable to notice and posting shall apply to this [Chapter;] *Section*; provided however, that in cases where the employee does not maintain a physical workplace, or an employee teleworks or performs work through a web-based platform, the required notification of rights under this [Chapter] *Section* shall be sent via electronic communication or a conspicuous posting in the web-based platform. All employers shall provide employees with a notice of rights as required under [paragraph 1 of subdivision a of this Section] *this subsection (11)(a)* within (15) days after the ordinance [adding] *amending* this Section 9-4116 [to] *of the Code to provide for COVID-19 leave* becomes law.

(b) Notice to Employers. Employees shall provide notice to their employer of the need for [2021 public health emergency] *COVID-19* leave as practicable and as soon as feasible, but only when the need for [2021 public health emergency] *COVID-19* leave is foreseeable. An employer is permitted only to request that an employee submit a self-certified statement, subject to the provisions of Section 1-108 of the Code (Certification), asserting that leave was used according to the purposes listed under Section 9-4116.

(12) Employer Records. The provisions of Section 9-4108 of the Philadelphia Code applicable to

employer records shall apply to this [Chapter.] *Section*.

(13) Enforcement. The provisions of Section 9-4110 of the Philadelphia Code applicable to enforcement shall apply to this [Chapter.] *Section*. [However, after a public health emergency is declared or proclaimed, an] *An* employee shall have the right to file a civil action in a court of competent jurisdiction against an employer alleging a violation of this Section 9-4116 without first filing an administrative complaint. *The Agency is authorized to periodically publish a list of the employers with all current unresolved violations, to the extent permitted by law.*

(14) No provision or provisions of this Section may be waived in a bona fide collective bargaining agreement unless: (a) the waiver is explicitly set forth in such agreement in clear and unmistakable terms; (b) the agreement provides a comparable paid leave benefit; and (c) the agreement is in effect contractually. Unilateral implementation of terms and conditions of employment by either party to a collective bargaining relationship shall not constitute, or be permitted, as a waiver of all or any part of the provisions of this [Chapter.] *Section*. *Notwithstanding the foregoing, this Section 9-4116 shall not apply to construction craft employees who are covered by a collective bargaining agreement between a labor organization and one or more employers engaged in the construction industry.*

(15) Except as provided in subsections (9) and (10) of this Section 9-4116, nothing in this Section shall be construed as requiring financial or other reimbursement to an employee from a hiring entity upon the covered individual's termination, resignation, retirement or other separation from employment for [2021 public health emergency] *COVID-19* leave that has not been used.

(16) The [2021 public health emergency] *COVID-19* leave may be used in the same increments as provided under Section 9-4105(4).

(17) Sunset Provision. [The provisions of this [Chapter] *Section* shall expire upon the expiration of the Proclamation of Disaster Emergency of the Governor of Pennsylvania related to the COVID-19 pandemic] *The provisions of this Section 9-4116, "Covid-19 Leave," shall expire on December 31, 2023.*

Explanation:

[Brackets] indicate matter deleted.

Italics indicate new matter added.