

Legislation Text

File #: 141026, **Version:** 1

Enacting a new Chapter 9-4100 of The Philadelphia Code, entitled “Promoting Healthy Families and Workplaces,” to provide that certain employees are entitled to paid and unpaid leave, all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. A new Chapter 9-4100 of The Philadelphia Code, entitled “Promoting Healthy Families and Workplaces,” is hereby enacted, to read as follows:

CHAPTER 9-4100. PROMOTING HEALTHY FAMILIES AND WORKPLACES.

§ 9-4101. 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) According to the Employee Benefit Survey of the national Bureau of Labor Statistics, 35% to 40% of workers in Philadelphia, or approximately 200,000 workers, lack access to paid sick leave. Among workers who have paid sick leave, many have an inadequate amount of time they can use, are limited in their ability to use their sick time without retaliation or cannot use their sick time to care for their families. Nationally, nearly 4 in 10 of all workers do not have earned paid sick days and millions more workers cannot use sick days to care for sick children.

(3) In this economy, earned paid sick days are needed now more than ever. For too many Philadelphians, taking time off from work due to illness or family emergency means sacrificing much-needed income and risking loss of a job. As the economy returns to prosperity, families need every penny of the income they earn to stay financially secure. According to the Mayor’s Task Force on Paid Sick Leave, for a family without paid time off, on average, 3.1 days of pay lost due to illness is equivalent to an entire month’s health care budget and 3.5 days is equivalent to its entire monthly grocery budget.

(4) According to the national Bureau of Labor Statistics, low-income workers, especially women and minorities, are significantly less likely to have earned paid sick days than other members of the workforce. Nationally, four in five low income workers (80%) do not have access to paid sick days.

(5) Providing workers the opportunity to earn 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. Many studies document the impact of paid sick days on access to and use of preventative care and reduced recovery times. According to the Mayor's Task Force on Paid Sick Leave, women without paid sick days are significantly less likely to obtain preventive breast exams than women who have access to paid sick leave.

(6) Earned 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 reducing their recovery time and reducing the likelihood of spreading illness to other members of the workforce and to the public. The Center for Disease Control and Prevention guidelines recommend that children be kept home for 24 hours after a fever and that people experiencing the flu avoid public contact for 5 days to reduce the risk of contagion for co-workers and the public. Workers without paid sick days are least likely to follow these guidelines.

(7) Paid sick days will also save taxpayers money. Workers without paid sick leave are five times more likely to report using the emergency room adding to avoidable health care costs.

(8) Earned 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.

(9) Families whose children have any learning disability, including autism, face a number of challenges. Parents without access to earned paid sick days must choose between providing essential care and treatment for their children or keeping a job that provides an essential income for their families.

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

(11) Employers who provide the opportunity for workers to earn paid sick days have greater employee retention and avoid the problem of workers coming to work sick and lowering productivity. Workers who come to work sick are less productive and more likely to experience workplace injury. According to the Mayor's Task Force on Paid Sick Leave, "presenteeism" or coming to work sick is estimated to cost employers twice as much as absenteeism due to illness.

(12) 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.

(13) 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.

(14) Workers in jobs with significant public contact, such as service workers and restaurant workers, are very unlikely to have earned paid sick days. Because of the lack of earned 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, approximately 78% of food service and accommodation workers in the Philadelphia area do not have earned paid sick days.

(15) In 2010, more than 115,000 individuals called the Philadelphia Police Department (PPD) for help with domestic violence emergencies - representing more than 300 calls per day.

(16) Because incidents of domestic violence, sexual assault, and stalking are tragically common and affect a large number of workers, the ability to use earned paid sick days to protect survivors' jobs when they seek help is an important protection for workers who cannot afford to take unpaid time off.

§ 9-4102. Purposes.

The purposes of this Chapter are:

(1) To ensure that 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 reduce 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 assist victims of domestic violence and their family members by providing them with job-protected paid time away from work to allow them to receive treatment and to take the necessary steps to ensure their protection;

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

(6) To accomplish the purposes described in subsections (1) - (5) in a manner that is feasible for employers and that does not require employers to provide any additional paid time to their employees if they already provide the same amount of paid time off that can be used for the same purposes and under the same conditions as required in this Ordinance.

§ 9-4103. Definitions.

(1) "Agency" means such office as the Mayor shall designate.

(2) "Domestic abuse" is abuse as defined in 23 Pa C.S. § 6102(a).

(3) "Employee" means any individual employed by an employer who performs work within the

geographic boundaries of the City of Philadelphia for at least 40 hours in a year; but excluding independent contractors, seasonal workers, adjunct professors, employees hired for a term of less than six months, interns, pool employees, State and Federal employees, and employees covered by a bona fide collective bargaining agreement.

(4) “Employer” is as defined in the Act of January 17, 1968, P.L. 11, No. 5, §3 (43 P.S. § 333.103(g)); except that an employer that employs fewer than ten (10) employees for at least forty (40) weeks in a calendar year shall not be required to provide its employees with paid sick time under the provisions of this Chapter. In determining the number of persons employed during a given week, all persons performing work for compensation on a full-time, part-time, or temporary basis shall be counted. A chain establishment shall be required to provide paid sick time under this Chapter regardless of the number of employees in that establishment.

(5) “Employ” is as defined in 43 P.S. § 333.103(f).

(6) “Philadelphia” means the geographic boundaries of the City of Philadelphia.

(7) “Chain establishment” means an establishment doing business under the same trade name used by fifteen (15) or more establishments whether such other establishments are located in the City or elsewhere and regardless of the type of ownership of each individual establishment.

(8) “Family member” means:

(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 Life Partner as defined in Section 9-1102 of this Code.

(9) “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.

(10) *“Intern” means a student who is enrolled in an educational institution and who is performing work for that institution, provided that such student shall not be considered an intern for the purposes of this Chapter when working for any employer other than the educational institution in which the student is enrolled.*

(11) *“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 employee normally earns from the employee’s employment at the time the employee uses the paid sick time and is provided by an employer to an employee for the purposes described in § 9-4105 of this Chapter.*

(12) *“Pool employee” means any health care professional, other than an employee of a temporary placement agency, who works only when he or she indicates that he or she is available for work and who has no obligation to work when he or she does not indicate availability.*

(13) *“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.*

(14) *“Seasonal worker” means a person who has been hired for a temporary period of not more than sixteen weeks during a calendar year.*

(15) *“Sexual assault” means any physical sexual contact without the consent of the victim.*

(16) *“Sick time” means time off from work that is provided by an employer to an employee, whether paid or unpaid, that can be used for the purposes described in § 9-3305 of this Chapter.*

(17) *“Stalking” is as defined in §9-3201(7) of this Code.*

§ 9-4104. Accrual of Paid Sick Time.

(1) *All employees as defined in this Chapter have the right to sick time as provided herein.*

(a) *All employers that employ ten or more employees shall provide paid sick time to their employees in accordance with the provisions of this Chapter.*

(b) *All employees not entitled to paid sick time pursuant to this Chapter shall be entitled to unpaid sick time in accordance with the provisions of this Chapter.*

(2) *All employees shall accrue a minimum of one hour of sick time for every 40 hours worked in Philadelphia. Employees will not accrue more than 40 hours of 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 sick time accrual unless their normal work week is less than 40 hours, in which case sick time accrues based upon that normal work week.*

(4) *Sick time as provided in this Section shall begin to accrue on the effective date of this Ordinance, as to an employee who is employed as of such effective date. An employee who becomes employed after such effective date shall begin to accrue paid sick time at the commencement of his or her employment.*

(5) *Employees shall be entitled to use accrued sick time beginning on the 90th calendar day following commencement of their employment. After the 90th calendar day of employment, employees may use sick time as it is accrued.*

(6) *Sick time shall be carried over to the following calendar year unless the employer provides at least 40 hours of sick time at the beginning of each calendar year. An employee's use of sick time provided under this Chapter in each calendar year shall not exceed 40 hours, unless the employer chooses to provide a higher limit.*

(7) *Any employer with a paid leave policy, who makes available an amount of paid leave (including but not limited to vacation days, sick days, short-term disability benefits, floating holidays, parental leave, personal days, or PTO), sufficient to meet or exceed the accrual requirements of this Section, and that may be used for the same purposes and under the same conditions as sick time under this Chapter, is not required to provide additional sick time.*

(8) *The requirements of this Chapter shall not apply to an employer with respect to those employees who are covered by a bona fide collective bargaining agreement.*

(9) *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 sick time that has not been used.*

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

§ 9-4105. *Use of Paid Sick Time.*

(1) *Accrued 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; or

(c) Absence necessary due to domestic abuse, sexual assault or stalking, provided the leave is to allow the employee to obtain for the employee or the employee's family member:

(.1) Medical attention needed to recover from physical or psychological injury or disability caused by domestic or sexual violence or stalking;

(.2) Services from a victim services organization;

(.3) Psychological or other counseling;

(.4) Relocation due to the domestic or sexual violence or stalking; or

(.5) Legal services or remedies, including preparing for or participating in any civil or criminal legal proceeding related to or resulting from the domestic or sexual violence.

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

(3) When the need for sick time is known to the employee in advance, such as for a scheduled appointment with a health care provider, the employee shall 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. For all other absences, the employee shall notify the employer before the start of the employee's scheduled work hours, or as soon as practicable if the need arises immediately before or after the employee has reported for work.

(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 two (2) consecutive days, an employer may require reasonable documentation that the sick time is covered by subsection (1). For absences due to the purposes described in §§ 9-4105(1)(a) and (b), documentation signed by a health care professional indicating that sick time is necessary shall be considered reasonable documentation. For absences due to the purposes described in § 9-4105(1)(c), documentation signed by a health care professional; a police report indicating that the employee was a victim of domestic abuse, stalking or sexual assault; a court order; or a signed statement from a representative of a victim services organization as defined in § 9-3201 of this Code, affirming that the employee

was a victim of domestic abuse, stalking or sexual assault shall be considered reasonable documentation. An employer may not require that the documentation explain the nature of the illness or the details of the violence.

(6) An employer may not require, as a condition of providing 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 sick time.

(7) An employee who uses sick time for a purpose described in § 9-4105(1)(c) may, after accrued paid sick leave has been exhausted, take unpaid leave as provided in §§ 9-3202 and 9-3208 of this Code.

§ 9-4106. 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.

(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 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 Chapter.

(3) It shall be unlawful for an employer's absence control policy to count 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; provided, however, that nothing in this subsection shall prevent an employer from taking an action against an employee who uses sick time under this Chapter for purposes other than those enumerated in § 9-4105(1).

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

(5) There shall be a rebuttable presumption of unlawful retaliation under this Section whenever an employer discharges, suspends, demotes, or takes other 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 Chapter;

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

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

(d) opposes any policy, practice, or act that is unlawful under this Chapter.

§ 9-4107. Notice and Posting.

(1) Employers shall give notice that employees are entitled to sick time, the amount of sick time, and the terms of its use guaranteed under this Chapter; that retaliation against employees who request or use 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 Chapter is denied by the employer or the employee is retaliated against for requesting or taking sick time. This information shall also be included in any employee handbooks that are distributed to employees.

(2) Employers shall comply with this Section by either (a) 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); or (b) 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).

(3) 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.

(4) 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.

§ 9-4108. Employer Records.

Employers shall commence keeping records documenting hours worked by employees, sick time taken by employees and payment made to employees for the sick time if payment was made upon the effective date of this Chapter, shall retain such records for a period of two 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 sick time under this Chapter, if the employer does not maintain or retain adequate records documenting hours worked by the employee and 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.

§ 9-4109. Regulations.

The Agency is authorized to coordinate implementation, administration, and enforcement of this Chapter and shall promulgate appropriate guidelines or regulations for such purposes, and for the purposes of establishing procedures for the filing, investigation, and resolution of complaints regarding alleged violations of this

Chapter.

§ 9-4110. 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 such steps as deemed appropriate to resolve complaints and enforce this Chapter, including, but not limited to, establishing a system to receive complaints regarding non-compliance with this Chapter, investigating alleged violations in a timely manner, and resolving complaints through mediation.*

(3) *Any person alleging a violation of this Chapter shall file a complaint with the Agency within a year of the date the person knew or should have known of the alleged violation. The Agency shall maintain confidential the identity of any complainant unless disclosure of such complainant's identity is necessary for resolution of any investigation by the Agency, or otherwise required by law. The Agency shall, to the extent practicable, notify such complainant that the Agency will be disclosing his or her identity prior to such disclosure.*

(4) *Upon receiving a complaint alleging a violation of this Chapter, the Agency shall investigate such complaint and, if appropriate, attempt to resolve it through mediation. The Agency shall keep complainants reasonably notified regarding the status of their complaint and any resulting investigation and shall notify complainants of any final decision of the Agency, including any mediation result, with respect to the complaint. Whenever the Agency finds that a violation of this Chapter has occurred, it shall issue to the offending employer a notice of violation, and offer the employer a chance to remedy the violation within sixty (60) days of the issuance of the notice of violation.*

(5) *The Agency shall have the power to impose penalties and fines for violation of this Chapter and to provide or obtain appropriate relief, including reinstatement. It shall be a Class II offense under Section 1-109 (2) of this Code whenever (i) sick time is taken by an employee and is not compensated by the employer as required by this Chapter; (ii) sick time is requested by an employee but unlawfully denied by the employer and not taken by the employee; or (iii) an employee is retaliated against in any way other than discharge from employment. It shall be a Class III offense under Section 1-109(3) for an employer to discharge an employee in retaliation for activity protected under this Chapter. Remedies shall include full restitution to the employee for lost wages and benefits.*

(6) *The Agency, the City Solicitor, 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, except that a person aggrieved by a violation of this Chapter shall first file a complaint with the Agency as provided in this Section 9-4110, and shall have the right to bring a civil action after receiving notification of a final decision from the Agency, or 180 days after filing the complaint if no final decision has been rendered by the Agency within that time. Notwithstanding the*

preceding sentence, for the first 120 days after the effective date of the ordinance enacting this Chapter, any such action may be brought without first filing an administrative complaint, unless the Agency shortens such period by regulation.

(a) Upon prevailing in an action brought pursuant to this Section, an aggrieved person shall recover the full amount of any unpaid sick time to which he or she would have been entitled under this Chapter, any wages and benefits lost or other damages suffered as the result of the employer's violation of this Chapter, and an equal amount, up to a maximum of \$2,000, as liquidated damages. An aggrieved person shall also be entitled to reasonable attorney's fees.

(b) Upon prevailing in an action brought pursuant to this Section, an aggrieved person 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.

(c) The City Solicitor may bring a civil action to enforce this Chapter. The City Solicitor 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 Solicitor may seek to impose a fine payable to the City.

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

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

§ 9-4111. Confidentiality and Nondisclosure.

An employer may not require disclosure of details relating to domestic abuse, sexual assault or stalking or the details of an employee's medical condition or the medical condition of an employee's family member as a condition of providing sick time under this Chapter. If an employer possesses health information or information pertaining to domestic abuse, sexual assault or stalking 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. This provision shall not apply if compliance would cause an employer to violate any other law, regulation or licensing standard.

§ 9-4112. 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 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.

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

(4) Nothing in this Chapter shall be construed to require an employer to change existing policies or provide additional paid leave if the employer's existing policy satisfies or exceeds the bill's accrual requirements and meets all other conditions set forth in this Chapter.

§ 9-4113. Other Legal Requirements.

This Chapter provides minimum requirements pertaining to 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.

§ 9-4114. Public Outreach and Education.

(1) The Agency shall develop and implement a multilingual outreach program to inform employees and employers of the availability of paid sick time and the rights and responsibilities established under this Chapter and the importance to public health of workers staying at home when sick and children being kept at home when sick.

(2) The program shall include the distribution of notices and other written materials in English and in other languages throughout the City including to childcare and elder care providers, domestic violence shelters, schools, hospitals, community health centers, and other health care providers.

§ 9-4115. Report.

One year from the effective date of this Chapter, the Agency shall issue a report on implementation of this Chapter which will include information on outreach efforts, number of complaints filed and disposition of those complaints.

§ 9-4116. 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 shall take effect 90 days after it becomes law.

Explanation:

Italics indicate new matter added.