Amending Chapter 9-4100 of The Philadelphia Code, entitled "Promoting Healthy Families and Workplaces," to establish leave time for public health emergencies, 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:

SECTION 1. Chapter 9-4100 of The Philadelphia Code is hereby amended to read as follows:

CHAPTER 9-4100. PROMOTING HEALTHY FAMILIES AND WORKPLACES

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§ 9-4104. Accrual of Paid Sick Time.

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(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.] *agreement, except to the extent specifically provided*.

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§ 9-4116. Public Health Emergency 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) "Covered individual" includes all employees and the following individuals, without regard to whether the individual is regarded as an employee, provided such individuals perform work within the geographic boundaries of the City of Philadelphia for at least 40 hours in a year for one or more hiring entities:

(i) Any individual who works in residence for the purposes of caring for a child, serving as a companion or caretaker for a sick convalescing, elderly or a person with a disability; housekeeping or house cleaning; cooking; providing food or butler service; parking cars; cleaning laundry; gardening; personal organizing, or for any other domestic service purpose and as further defined in Section 9-4501, regardless of whether such individual works for one or more hiring entities.

(ii) Any individual providing services under the participant directed and agency homecare model.

(iii) Any individual that works for a food delivery network company, including as a driver. A

food delivery network company means an organization whether a corporation, partnership, sole proprietor, or other form, operating in the City of Philadelphia, that offers prearranged delivery services for compensation using an online-enabled application or platform, such as an application dispatch system, to connect customers with workers for delivery from one or more of the following: (1) eating and drinking establishments, (2) food processing establishments, (3) grocery stores, or (4) any facility supplying groceries or prepared food and beverages for an online order.

(iv) Any individual that works for a transportation network company, including those individuals who work as a driver. A transportation network company means an organization whether a corporation, partnership, sole proprietor, or other form, licensed or required to be licensed operating in the City of Philadelphia, that offers prearranged transportation services for compensation using an online-enabled application or platform, such as an application dispatch system, to connect passengers with drivers.

(v) Any individual that works as a health care professional only when such individual indicates that the individual is available for work and who has no obligation to work when the individual does not indicate availability.

(b) "Employee" includes any individual employed by a hiring entity who performs work within the geographic boundaries of the City of Philadelphia for at least 40 hours in a year. There shall be a rebuttable presumption that any individual performing work for a hiring entity is an employee unless the hiring entity can demonstrate the following conditions are satisfied:

(i) The individual is free from the control and direction of the hiring entity in connection with the performance of the labor or services, both under the contract for the performance of the work and in fact;

(ii) The individual performs labor or services that are outside the usual course of the hiring entity's business;

(iii) The individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the labor or services performed.

(c) "Employer" is as defined in the Act of January 17, 1968, P.L. 11, No. 5, § 3 (43 P.S. § 333.103 (g) regardless of business size, including employers who employ fewer than ten (10) employees.

(d) "Hiring entity" means any employer who employs a covered individual, as well as any individual, partnership, association, corporation, business trust or combination thereof, that pays a wage or wages for the services of a covered individual. It includes any such entity, person or group of persons that provides compensation directly or indirectly to a covered individual for the performance of work or services and any such entity, person or persons acting directly or indirectly in the interest of the hiring entity in relation to the covered individual. It does not include any such entity, person or group of persons that the City is legally prohibited from regulating under federal or state law.

(e) "Public health emergency 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

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P.S. § 333.104.

(f) "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) Public Health Emergency Leave. On the date the public health emergency is declared or proclaimed, or on the date of hire for covered individuals hired while the public health emergency is in effect, a hiring entity shall provide public health emergency leave to covered individuals in an amount pursuant to subsection (4) of this Section 9-4116, provided that if a public health emergency is in effect on the effective date of the ordinance adding this Section 9-4116 to the Code, the public health emergency will be considered to be declared on such effective date for the purpose of determining the public health emergency leave applicable under this Section 9-4116. A covered individual may use public health emergency leave when unable to work for one or more of the following purposes:

(a) being subject to a Federal, State, or local quarantine or isolation order related to the public health emergency;

(b) being advised by a health care provider to self-quarantine due to concerns related to the public health emergency;

(c) experiencing symptoms related to the public health emergency and seeking a medical diagnosis;

(d) caring for an individual who is subject to an order as described in subsection (a) or has been advised as described in subsection (b);

(e) caring for a child of such covered individual 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;

(f) experiencing any other substantially similar condition specified by the United States Secretary of Health and Human Services in consultation with the United States Secretary of the Treasury and the United States Secretary of Labor.

(3) Timing for Use of Public Health Emergency Leave.

(a) A covered individual may use all or a portion of the public health emergency leave provided under Section 9-4116 at any time during the public health emergency and for one month following the conclusion of such emergency.

(b) Nothing in this act shall be construed to require a hiring entity to allow a covered individual to use public health emergency leave if the covered individual is reasonably able to perform work remotely taking into consideration all relevant circumstances that affect the covered individual's ability to perform such remote work.

(c) A covered individual who is laid off or whose employment is otherwise terminated as the result

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of a public health emergency who chooses not to use all or a portion of such covered individual's public health emergency leave and paid sick time under Section 9-4104 at the time of being laid off or terminated shall be entitled, if rehired by the same hiring entity within six months of separation, to the same amount public health emergency leave when such covered individual returns to work as such covered individual was entitled to on the day such covered individual was laid off or terminated.

(4) Amount of leave. Public Health Emergency Leave shall be provided by a hiring entity to a covered individual as follows:

(a) For covered individuals who work 40 hours or more per week for a single hiring entity and are not entitled to leave under the Families First Coronavirus Response Act, H.R. 6201, Public Law No. 116-127 ("FFCRA") from that specific hiring entity as provided in paragraph (e), public health emergency leave in the amount of the greater of eighty (80) hours or the average hours worked over a 14-day period as calculated pursuant to clauses (1) and (2) of paragraph (b) replacing the phrase "wages and compensation" with the term "hours," up to a maximum of one hundred and twelve (112) hours.

(b) For covered individuals who work less than 40 hours per week for a hiring entity, and are not entitled to leave under the FFCRA from that specific hiring entity as provided in paragraph (e), each such hiring entity shall provide public health emergency leave in an amount equal to the amount of wages or other compensation the covered individual receives on average in a 14-day period, unless the hiring entity chooses to provide more. In the case of a covered individual whose wages or other compensation varies from week to week, the hiring entity shall use the following calculation to determine the average wages or compensation in a 14-day period: (1) Subject to clause (2), a number equal to the average wages or other compensation that the covered individual received per day over the 6-month period ending on the date the public health emergency was declared, multiplied times fourteen (14), including wages or compensation for any hours for which the covered individual took leave of any type; (2) If the covered individual did not work over such period, the reasonable expectation of the covered individual at the time of hiring of the average wages or other compensation that the covered individual would normally receive within a typical 14-day period.

(c) For covered individuals who have performed work for multiple hiring entities, the Agency shall establish a centralized portable benefits system for calculating public health emergency leave attributed to each hiring entity and collecting and distributing funds from the hiring entities to pay for such public health emergency leave. For the time period before such a centralized portable benefits system is created, a covered individual working for multiple hiring entities shall be entitled to public health emergency leave from each hiring entity for whom the covered individual performed work during the public health work period upon the Agency's promulgation of regulations setting forth the manner in which the leave required under paragraph (b), above, of this subsection (4) applies to such covered individuals and hiring entities.

(d) For tipped covered individuals, the rate of pay shall be determined in accordance with Regulation 5.1 of the regulations enacted pursuant to Section 9-4601 (10) of the Philadelphia Code.

(e) Covered individuals who are entitled to leave under the FFCRA from a specific hiring entity, are not entitled to public health emergency leave from such specific hiring entity. A covered individual shall be considered to be entitled to leave under the FFCRA from a specific hiring entity for the purposes of this paragraph and paragraphs (a) and (b) of this subsection (4) if the following requirements are met:

(a) the covered individual is or was entitled to FFCRA from that specific hiring entity at any

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time; and

(b) the hiring entity did not, at any point, exercise an option not to provide leave under the FFCRA to such covered individual.

(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 public health emergency leave under this Section 9-4116 unless their normal work week is less than 40 hours, in which case public health emergency leave under this Act is based upon that normal work week.

(6) Replenishment of the Public Health Emergency Leave. The one-hundred and twelve (112) hours of public health emergency leave available to a covered individual under this chapter shall be available each time: (a) a public official declares a new public health emergency based on a different emergency health concern; or (b) a public official declares a second public health emergency for the same emergency health concern more than one month after the first public health emergency has officially ended.

(7) Reasonable Documentation. The public statement of a public official shall constitute reasonable documentation for the use of any paid sick time used for a purpose covered by Section 9-4116(1). A covered individual need not provide their hiring entity documentation from a public official.

(8) Shift Replacement. A hiring entity may not require, as a condition of providing public health emergency leave for a covered individual that the individual search for or find a replacement to cover the hours during which the covered individual is using public health emergency leave.

(9) Concurrent Use. To the extent that federal or state laws require hiring entities to provide paid leave or paid sick time related to a public health emergency, hiring entities may require the public health emergency leave under this ordinance run concurrently with leave provided by such federal or state law unless such federal or state law prohibits the concurrent use of paid leave. Hiring entities shall be required to provide additional public health emergency leave under this Chapter to the extent that the requirements of this Chapter exceed the requirements of those laws and to the extent permitted under the federal or state law.

(10) Minimum Requirements and Other Obligations.

(a) This Chapter provides minimum requirements pertaining to public health emergency 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 public health emergency leave or that extends other leave protections. Nothing in this Chapter shall be construed as diminishing the obligation of a hiring entity to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous public health emergency leave or paid leave to a covered individual than required herein. Nothing in this Chapter shall be construed as diminishing the rights of public employees regarding paid leave or use of paid leave as provided under Pennsylvania law.

(b) Nothing in this Chapter shall be construed to require a hiring entity to change existing policies or provide additional paid leave if the hiring entity's existing policy provides an amount of paid sick leave that satisfies or exceeds the amount of public health emergency leave under this Chapter and such paid leave can be used for the same purposes and under all of the same conditions as set forth for public health emergency leave

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under this Chapter.

(11) Right to Return. Any covered individual who takes public health emergency leave pursuant to this Section 9-4116 shall be entitled, on return from such leave, to be restored by the hiring entity to the position held when the leave commenced.

(12) Retaliation Prohibited. The provisions of Section 9-4106 of the Philadelphia Code applicable to retaliatory personnel actions shall apply to this Chapter.

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

(a) Notice to Covered Individuals. The provisions of Section 9-4107 of the Philadelphia Code applicable to notice and posting shall apply to this Chapter; provided however, that in cases where the hiring entity does not maintain a physical workplace, or a covered individual teleworks or performs work through a web-based platform, the required notification of rights under this Chapter shall be sent via electronic communication or a conspicuous posting in the web-based platform. All hiring entities shall provide covered individuals with a notice of rights as required under paragraph 1 of subdivision a of this section within (15) days after the ordinance adding this Section 9-4116 to the Code becomes law.

(b) Notice to Hiring Entities. Covered individuals shall provide notice to their hiring entity of the need for public health emergency leave as practicable and as soon as feasible, but only when the need for public health emergency leave is foreseeable. A hiring entity is permitted only to request that a covered individual 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.

(14) Hiring entity Records. The provisions of Section 9-4108 of the Philadelphia Code applicable to employer records shall apply to hiring entity records under this Chapter.

(15) Enforcement. The provisions of Section 9-4110 of the Philadelphia Code applicable to enforcement shall apply to this Chapter. However, after a public health emergency is declared or proclaimed, a covered individual shall have the right to file a civil action in a court of competent jurisdiction against a hiring entity alleging a violation of this Section 9-4116 without first filing an administrative complaint.

(16) All of the provisions of this Section, or any part thereof, may be waived in a bona fide collective bargaining agreement, but only if: (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.

(17) Except as provided in subsection (2) and paragraph (3)(c) of this Section 9-4116, nothing in this Section shall be construed as requiring financial or other reimbursement to a covered individual from a hiring entity upon the covered individual's termination, resignation, retirement or other separation from employment for public health emergency leave that has not been used.

(18) Public health emergency leave may be used in the same increments as provided under Section 9-4105(4).

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(19) Sunset Provision. The provisions of Section 9-4116 shall expire on December 31, 2020. No hiring entity shall be required to provide a covered individual public health emergency leave or allow a covered individual to use public health emergency leave previously provided after December 31, 2020.

[§ 9-4116.] *§ 9-4117.* 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.

Explanation:

[Brackets] indicate matter deleted.
Italics indicate new matter added.

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