

## **PROPOSED ORDINANCE**

### **ESTABLISHING EARNED SICK LEAVE FOR EMPLOYEES IN COOK COUNTY**

**WHEREAS**, the County of Cook is a home rule unit of government pursuant to the 1970 Illinois Constitution, Article VII, Section 6 (a); and,

**WHEREAS**, pursuant to their home rule powers, the Cook County Commissioners may exercise any power and perform any function relating to their governments and affairs, including the power to regulate for the protection of the public health, safety, morals, and welfare; and,

**WHEREAS**, employees in every industry occasionally require time away from the workplace to tend to their own health or the health of family members; and,

**WHEREAS**, in Cook County approximately 40 percent, or 840,000, private sector workers receive no paid sick leave; and,

**WHEREAS**, earned sick leave has a positive effect on the health of not only employees and their family members, but also the health of fellow workers and public at large and the most comprehensive national survey of U.S. restaurant workers found that two-thirds of restaurant wait staff and cooks have come to work sick; and,

**WHEREAS**, earned sick leave reduces healthcare expenditures by promoting access to primary and preventative care and reduces reliance on emergency care; and,

**WHEREAS**, nationally providing all workers with earned sick leave would result in 1.1 billion in annual savings in hospital emergency department costs; and,

**WHEREAS**, nearly one in four American women report domestic violence by an intimate partner, nearly one in five women have been raped, and nearly one in six women have been stalked. Many workers, men and women, need time off to care for themselves after these incidents, or to find solutions, such as protective orders or new housing, to avoid or prevent further domestic or sexual violence. Without paid time off, employees are in grave danger of losing their jobs, which can be devastating when victims need economic security to ensure their own safety and that of their children; and,

**WHEREAS**, at least 28 local jurisdictions have enacted Earned Sick Leave including Chicago, New York City, Los Angeles, San Francisco, Oakland, Minneapolis, Philadelphia, Jersey City and Seattle; and,

**WHEREAS**, a cost model developed by the Civic Consulting Alliance found that a paid sick leave framework similar to the one reflected in this ordinance would result in only a small, 0.7 to 1.5 increase in labor costs for most employers.

**NOW, THEREFORE, BE IT ORDAINED**, by the Cook County Board of Commissioners, that Chapter 42, Human Relations, Article 1, In General, Section 42-1 through 42-6 of the Cook County Code is hereby enacted as follows:

**Sec. 42-1. Short title.**

This article shall be known and may be cited as the Cook County Earned Sick Leave Ordinance (“Ordinance”).

**Sec. 42-2. Definitions.**

The following words, terms and phrases, when used in this article shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Agency* shall mean the Cook County Commission on Human Rights.

*Construction Industry* means any constructing, altering, reconstructing, repairing, rehabilitating, refinishing, refurbishing, remodeling, remediating, renovating, custom fabricating, maintenance, landscaping, improving, wrecking, painting, decorating, demolishing, and adding to or subtracting from any building, structure, highway, roadway, street, bridge, alley, sewer, ditch, sewage disposal plant, water works, parking facility, railroad, excavation or other structure, project, development, real property or improvement, or to do any part thereof, whether or not the performance of the work herein described involves the addition to, or fabrication into, any structure, project, development, real property or improvement herein described of any material or article of merchandise. Construction shall also include moving construction related materials on the job site to or from the job site, snow plowing, snow removal, and refuse collection.

*“Covered Employee”* means any Employee who, in any particular two-week period, performs at least two hours of work for an Employer while physically present within the geographic boundaries of Cook County. For purposes of this definition, time spent traveling in Cook County that is compensated time, including, but not limited to, deliveries, sales calls, and travel related to other business activity taking place within Cook County, shall constitute work while physically present within the geographic boundaries of Cook County; however, time spent traveling in Cook County that is uncompensated commuting time shall not constitute work while physically present within the geographic boundaries of Cook County. The definition of “Covered Employee” for purposes of this ordinance does not include any “employee” as defined by Section 1(d) of the Railroad Unemployment Insurance Act, 45 U.S.C. § 351(d).

*Domestic partner* means any person who has a registered domestic partnership, or qualifies as a domestic partner under Sections 2-173 and 174 of this Code or as a party to a civil union under the Illinois Religious Freedom Protection and Civil Union Act, 750 ILCS 75/1 et seq., as currently in force and hereafter amended.

*Earned Sick Leave* means time that is provided by an Employer to a Covered Employee that is eligible to be used for the purposes described in Section 42-3 of this Chapter, and is compensated at the

same rate and with the same benefits, including health care benefits, that the Covered Employee regularly earns during hours worked.

*Employee* means an individual permitted to work by an employer regardless of the number of persons the Employer employs.

*Employer means:*

(1) "Employer" means any individual, partnership, association, corporation, limited liability company, business trust, or any person or group of persons that gainfully employs at least one Covered Employee with its principal place of business within Cook County.

(2) The term "employer" does not mean:

- a. The government of the United States or a corporation wholly owned by the government of the United States;
- b. An Indian tribe or a corporation wholly owned by an Indian tribe;
- c. The government of the State or any agency or department thereof; or
- d. Units of local government.

*Family and Medical Leave Act* means the United States Family and Medical Leave Act of 1993. 29 USC S 2601 et seq. as currently in force and hereafter amended.

*Family member* means a Covered Employee's child, legal guardian or ward, spouse under the laws of any state, domestic partner, parent, spouse or domestic partner's parent, sibling, grandparent, grandchild, or any other individual related by blood or whose close association with the Covered Employee is the equivalent of a family relationship. A child includes not only a biological relationship, but also a relationship resulting from an adoption, step-relationship, and/or foster care relationship, or a child to whom the Covered Employee stands in loco parentis. A parent includes a biological, foster, stepparent or adoptive parent or legal guardian of a Covered Employee, or a person who stood in loco parentis when the Employee was a minor child.

*Health Care Provider* means any person licensed to provide medical or emergency services, including, but not limited to doctors, nurses, and emergency room personnel.

### **Sec. 42-3. Earned Sick Leave**

(a) General Provisions

(1) Any Covered Employee who works at least 80 hours for an Employer within any 120-day period shall be eligible for Earned Sick Leave as provided under this Section.

(2) Where a Covered Employee is engaged in an Occupation in which Gratuities have customarily and usually constituted part of the remuneration, his or her Employer shall pay at least the full minimum wage, as provided in their jurisdiction for Earned Sick Leave.

(3) Unless an applicable collective bargaining agreement provides otherwise, upon a Covered Employee's termination, resignation, retirement or other separating from employment, his or her Employer is not required to provide financial or other reimbursement for unused Earned Sick Leave.

(b) Accrual of Earned Sick Leave

(1) Earned Sick Leave shall begin to accrue either on the 1<sup>st</sup> calendar day after the commencement of a Covered Employee's employment or on the effective date of this Ordinance, whichever is later.

(2) For every 40 hours worked after a Covered Employee's Earned Sick Leave begins to accrue, he or she shall accrue one hour of Earned Sick Leave. Earned Sick Leave shall accrue only in hourly increments; there shall be no fractional accruals.

(3) A Covered Employee who is exempt from overtime requirements shall be assumed to work 40 hours in each workweek for purposes of Earned Sick Leave accrual, unless his or her normal work week is less than 40 hours, in which case Earned Sick Leave shall accrue based upon that normal work week.

(4) For each Covered Employee, there shall be a cap of 40 hours Earned Sick Leave accrued per 12-month period, unless his or her Employer sets a higher limit. The 12-month period for a Covered Employee shall be calculated from the date he or she began to accrue Earned Sick Leave.

(5) At the end of a Covered Employee's 12-month accrual period, he or she shall be allowed to carry over to the following 12-month period half of his or her unused accrued Earned Sick Leave, up to a maximum of 20 hours.

(6) If an Employer is subject to the Family and Medical Leave Act, each of the Employer's Covered Employees shall be allowed, at the end of his or her 12-month Earned Sick Leave accrual period, to carry over up to 40 hours of his or her unused accrued Earned Sick Leave, in addition to the carryover allowed under subsection 42-3(b)(5), to use exclusively for Family and Medical Leave Act eligible purposes.

(7) If an Employer has a policy that grants Covered Employees paid time off in an amount and a manner that meets the requirements for Earned Sick Leave under this Section, the Employer is not required to provide additional paid leave. If such Employer's policy awards the full complement of paid time off immediately upon date of eligibility, rather than using an accrual

model, the Employer must award each Covered Employee 40 hours paid time off within one calendar year of his or her date of eligibility.

(c) Use of Earned Sick Leave

(1) An Employer shall allow a Covered Employee to begin using Earned Sick Leave no later than on the 180<sup>th</sup> calendar day following the commencement of his or her employment. A Covered Employee is entitled to use no more than 40 hours of Earned Sick Leave per 12-month period, unless his or her Employer sets a higher limit. The 12-month period for a Covered Employee shall be calculated from the date he or she began to accrue Earned Sick Leave. If a Covered Employee carries over 40 hours of Family and Medical Leave Act leave pursuant to subsection 42-3(b)(6) and uses that leave, he or she is entitled to use no more than an additional 20 hours of accrued Paid Sick Leave in the same 12 month period, unless the Employer sets a higher limit. A Covered Employee shall be allowed to determine how much accrued Earned Sick Leave he or she needs to use, provided that his or her Employer may set a reasonable minimum increment requirement not to exceed four hours per day.

(2) A Covered Employee may use Earned Sick Leave when:

- a. He or she is ill or injured, or for the purpose of receiving medical care, treatment, diagnosis or preventative medical care;
- b. A member of his or her family is ill or injured, or to care for a family member receiving medical care, treatment, diagnosis or preventative medical care;
- c. He or she, or a member of his or her family, is the victim of domestic violence, as defined in Section 103 of the Illinois Domestic Violence Act of 1986, or is the victim of sexual violence or stalking as defined in Article 11, and Sections 12-7.3, 12-7.4, and 12-7.5 of the Illinois Criminal Code of 2012; or
- d. His or her place of business is closed by order of a public official due to a public health emergency, or he or she needs to care for a child whose school or place of care has been closed by order of a public official due to a public health emergency.

(3) An Employer shall not require, as a condition of a Covered Employee taking Earned Sick Leave that he or she search for or find a replacement worker to cover the hours during which he or she is on Earned Sick Leave.

(4) If a Covered Employee's need for Earned Sick Leave is reasonably foreseeable, an Employer may require up to seven days' notice before leave is taken. If the need for Earned Sick Leave is not reasonably foreseeable, an Employer may require a Covered Employee to give notice as soon as is practicable on the day the Covered Employee intends to take Earned Sick Leave by notifying the Employer via phone, e-mail, or text message. For purposes of this subsection, needs that are "reasonably foreseeable" include, but are not limited to prescheduled appointments with health

care providers for the Covered Employee or for a family member, and court dates in domestic violence cases. Any notice requirement imposed by an Employer pursuant to this subsection shall be waived in the event a Covered Employee is unable to give notice because he or she is unconscious, or otherwise medically incapacitated. If the leave is one that is covered under the Family and Medical Leave Act, notice shall be in accordance with the Family and Medical Leave Act.

(5) Where a Covered Employee is absent for more than three consecutive work days, his or her Employer may require certification that the use of Earned Sick Leave was authorized under subsection 42-3(c)(2). For time used pursuant to subsections (c)(2)(a) or (b), documentation signed by a licensed health care provider shall satisfy this requirement. An Employer shall not require that such documentation specify the nature of the Covered Employee's or the Covered Employee's family member's injury, illness, or condition, except as required by law. For Earned Sick Leave used pursuant to subsection (c)(2)(c) a police report, court document, a signed statement from an attorney, a member of the clergy, or a victim services advocate, or any other evidence that supports the Covered Employee's claim, including a written statement from him or her, or any other person who has knowledge of the circumstances, shall satisfy this requirement. The Covered Employee may choose which document to submit, and no more than one document shall be required if the Earned Sick Leave is related to the same incident of violence or the same perpetrator. The Employer shall not delay the commencement of Earned Sick Leave taken for one of the purposes in subsection 42-3(c)(2) nor delay payment of wages, on the basis that the Employer has not yet received the required certification.

(6) Nothing in this Section shall be construed to prohibit an Employer from taking disciplinary action, up to and including termination, against a Covered Employee who uses Earned Sick Leave for purposes other than those described in this Section.

(7) This Section provides minimum Earned Sick Leave requirements; it shall not be construed to affect the applicability of any other law, regulation, requirement, policy, or standard that provides for greater Earned Sick Leave benefits.

#### **Sec. 42-5. Application to collective bargaining agreements**

Nothing in this Ordinance shall be deemed to interfere with, impede, or in any way diminish the right of Covered Employees to bargain collectively with their Employers through representatives of their own choosing in order to establish wages or other conditions of work in excess of the applicable minimum standards of the provisions of this Ordinance. The requirements of this Ordinance may be waived in a bona fide collective bargaining agreement, but only if the waiver is set forth explicitly in such agreement in clear and unambiguous terms. Nothing in this Ordinance shall be deemed to affect the validity or change the terms of bona fide collective bargaining agreements in force on the effective date of this Ordinance. After that date, requirements of this Ordinance may be waived in a bona fide collective bargaining agreement, but only if the waiver is set forth explicitly in such agreement in clear and unambiguous terms. In no event shall this Ordinance apply to any Covered Employee working in the Construction Industry who is covered by a bona fide collective bargaining agreement.

#### **Sec. 42-6. Notice and posting.**

(a) Every Employer shall post in a conspicuous place at each facility where any Covered Employee works that is located within the geographic boundaries of Cook County a notice advising the Covered Employee of his or her rights to Earned Sick Time under this Ordinance. The Agency shall prepare and make available a form notice that satisfies the requirements of this Ordinance. Employers that do not maintain a business facility within the geographic boundaries of the County are exempt from this subsection.

(b) Every Employer shall provide to an Employee at the commencement of employment written notice advising the Employee of his or her rights to Earned Sick Time under this Ordinance. The Agency shall prepare and make available a form notice that satisfies the requirements of this Ordinance.

#### **Sec. 42-7. Retaliation prohibited**

It shall be unlawful for any Employer to discriminate in any manner or take any adverse action against any Employee in retaliation for exercising, or attempting in good faith to exercise, any right under this Ordinance, including, but not limited to, disclosing, reporting, or testifying about any violation of this Ordinance or regulations promulgated thereunder. For purposes of this Section, prohibited adverse actions include, but are not limited to, unjustified termination, unjustified denial of promotion, unjustified negative evaluations, punitive schedule changes, punitive decreases in the desirability of work assignments, and other acts of harassment shown to be linked to such exercise of rights. An Employer shall not use its absence-control policy to count Earned Sick Leave as an absence that triggers discipline, discharge, demotion, suspension, or any other adverse activity.

#### **Sec. 42-8. Enforcement and Penalties**

The Agency shall administer and enforce this Ordinance in accordance with Chapter 42, Article II, Section 42-34 of the Cook County Human Rights Ordinance, except as allowed for in subsection (b) of this Section.

If any Employer violates any of the Earned Sick Leave provisions in this Ordinance, the affected Covered Employee may recover in a civil action damages equal to three times the full amount of any unpaid Sick Leave denied or lost by reason of the violation, and the interest on that amount calculated at the prevailing rate, together with costs and such reasonable attorney's fees as the court allows. Such action may be brought without first filing an administrative complaint. The statute of limitations for a civil action brought pursuant to this Ordinance shall be for a period of three years from the date of the last event constituting the alleged violation for which the action is brought.

#### **Sec. 42-9. Effect of invalidity; severability**

If any section, subdivision, paragraph, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not

affect the validity of the remaining portions of this local law, which remaining portions shall continue in full force and effect.

**Sec. 42-10.** After passage and publication, this Ordinance shall take effect on July 1, 2017.

**Effective Date:** This Ordinance shall take effect on July 1, 2017