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Sponsors: Elissa Hansen, Noah Hobbs
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3/26/2018	1	City Council	read for the first time	
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3/12/2018	1	City Council	read for the first time	

ORDINANCE ADDING A NEW CHAPTER 29E TO THE DULUTH CITY CODE ESTABLISHING MINIMUM STANDARDS FOR EARNED SICK AND SAFE TIME IN THE CITY OF DULUTH.

BY PRESIDENT HANSEN AND COUNCILOR HOBBS:

The city of Duluth does ordain:

Section 1. That the Duluth City Code is hereby amended by adding following Chapter 29E to read as follows:

CHAPTER 29E

EARNED SICK AND SAFE TIME

Sec. 29E-1 Purpose.

This Chapter is adopted for the following reasons:

(a) To promote the health and safety of the citizens of the city of Duluth by limiting exposure and spread of infectious diseases; and

- (b) To promote the health and welfare of workers in the city of Duluth by making it possible for workers to address their own health needs and the health needs of their families; and
- (c) To reduce healthcare costs by allowing workers to seek medical care for themselves and their family members, preventing minor medical issues from developing into major medical problems; and
- (d) To assist victims of domestic violence and their families by providing paid leave for treatment and protective action; and
- (e) To promote economic security and stability of workers and businesses in the city of Duluth by balancing the needs of both workers and employers.

Sec. 29E-2 Definitions.

For the purposes of this Chapter, the following terms shall be defined as follows:

- (a) Calendar year. Calendar year means a consecutive twelve-month period as determined by an employer and may be based on an employee's employment anniversary date.
- (b) City. City means the city of Duluth.
- (c) Child. Child means Employee's biological, adopted, step or foster child., legal ward or child whom the employee is legal guardian regardless of age.
- (d) Domestic abuse. Domestic abuse has the meaning given in Minnesota Statutes Sec. 518B.01.
- (e) Earned sick and safe time. Earned sick and safe time means leave, including paid time off and other paid-leave systems, paid at the same hourly rate as an employee earns from employment that may be used for the same purpose as prescribed in Sec. 29E-3.
- (f) Employee. Employee means any person employed by an employer who performs work within the geographic boundaries of the city for more than 50 percent of the employee's working time in a 12-month period or is based in the city of Duluth and spends a substantial part of his or her time working in the city and does not spend more than 50 percent of their work-time in a 12-month period in any other particular place.

For the purposes of this chapter, employee does not include the following:

- (1) Independent contractors;
- (2) Student interns;
- (3) Seasonal employees; and
- (4) Any person entitled to benefits under or otherwise covered by the federal Railroad

Unemployment Insurance Act, 45 U.S.C. Sections 351 et.seq.

(g) Employer. Employer means an individual, corporation, partnership, association, nonprofit organization or a group of persons who has 5 or more employees whether or not the employees work in the city. The number of employees is determined based on the average number of employees per week during the previous calendar year. Absent a contractual agreement stating otherwise, a temporary employee supplied by a staffing agency or similar entity shall be considered an employee of the staffing agency for all purposes of this chapter. For purposes of this chapter, employer does not include:

- (1) The United States government;
- (2) The state, including any officer, department, agency, authority institution, association, society, or other body of the state including the legislature and the judiciary; or
- (3) Any county or local government except the city of Duluth.

(h) Family member. Family member means employee's:

- (1) Child, adopted child, adult child, foster child; legal ward, or child for whom the employee is a legal guardian;
- (2) Spouse or domestic partner;
- (3) Sibling, stepsibling or foster sibling;
- (4) Parent, stepparent, mother-in-law, father-in-law;
- (5) Grandchild, foster grandchild, grandparent, step-grandparent; and
- (6) Any other individual related by blood or whose close association with the employee is the equivalent of a family relationship.

(i) Safe time. Safe time means the need for time off under the circumstances described in Minnesota Statutes Section 181.9413(b).

(j) Student Intern. Student intern means an unpaid or paid student who is acquiring hands on training, work experience, or clinical training in connection to a course of study or higher education program for a limited period of time.

Sec. 29E-3 Earned sick and safe time.

(a) Employees shall earn and accrue earned sick and safe time at the commencement of employment. For individuals who are employed on the date this ordinance takes effect, accrual shall begin on the date this ordinance takes effect.

(b) From the date earned sick and safe time begins to accrue for an employee, the employee shall accrue one hour of earned sick and safe time for every 50 hours worked. Earned sick and safe time shall accrue only in hour-unit increments; there shall be no accrual of a fraction of an hour of earned sick and safe time.

(c) Employers will permit an employee to accrue up to 64 hours of earned sick and safe time per year. Employers shall permit an employee to carry over up to 40 hours of earned but unused sick and safe time into the following year.

(d) An employer may satisfy the requirements of this Chapter by providing at least 40 hours of earned sick and safe time following the initial 90 days of employment for use by the employee during the first year, and providing at least 40 hours of earned sick and safe time beginning each subsequent year. If an employer has a substantially equivalent paid-leave policy, such as a paid-time-off policy, or a combination of sick and vacation time, that makes available to employees an amount of paid leave that may be used for the same purposes and under the same conditions as earned sick and safe time under this Chapter and that is sufficient to meet the requirements for earned sick and safe time as stated in subsections (a)-(c) of this section, the employer is not required to provide additional earned sick and safe time. Satisfaction of subsections (a)-(c) may be made through any combination of sick, vacation, or paid time off.

(e) An employer may opt to satisfy the requirements of this chapter for construction industry employees working on private or public projects by either:

(1) Paying at least the prevailing wage rate as defined by Minnesota Statutes, Section 177.42 and as calculated by the state department of labor and industry; or

(2) Paying at least the required rate established in a registered apprenticeship agreement for apprentices registered with the state department of labor and industry.

(f) 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 earned sick and safe time that the employee has accrued but not used.

Sec. 29E-4 Use of earned sick and safe time.

(a) After 90 calendar days of employment, employees may use up to 40 hours of earned sick and safe time each year if they are unable to work all or part of a scheduled shift.

(b) An employer shall allow an employee to use earned sick and safe time for the following reasons:

(1) An absence resulting from an employee's own mental or physical illness, injury, or health condition; to accommodate the employee's need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or an employee's need for preventive medical care;

(2) To allow the employee to provide care for a family member with a mental or physical illness, injury, or health condition; care for a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or care for a family member who needs preventive medical care; and

(3) An absence due to domestic abuse, sexual assault, or stalking of the employee or employee's family member.

(c) Employees may use earned sick and safe time in increments consistent with the current business/payroll practice as defined by industry standards or existing employer policies, provided such increment is not more than four hours.

(d) An employer must compensate an employee for used sick and safe time at the employee's standard hourly rate, for hourly employees, or an equivalent rate, for salaried employees. Employees are not entitled to compensation for lost tips or commissions and compensation is required only for hours that an employee is scheduled to have worked.

(e) Earned sick and safe time shall be provided upon the request of an employee. When possible, the request shall include the expected duration of the absence. An employer may require an employee to comply with the employer's usual and customary notice and procedural requirements for absences or for

requesting leave, provided that such requirements do not interfere with the purposes for which the leave is needed.

(f) It is not a violation of this ordinance for an employer to require reasonable documentation that the sick and safe time is covered by paragraph (b) of this section for absences of more than three consecutive days.

(g) An employer may not require, as a condition of an employee's using sick and safe time, that the employee find a replacement worker to cover the hours during which the employee uses sick and safe time.

Sec. 29E-5 Confidentiality and nondisclosure.

(a) Except as provided in subsection (b) of this section, an employer shall maintain the confidentiality of information provided by the employee or others in support of an employee's request for sick and safe time, including health information and the fact that the employee or employee's family member is a victim of domestic abuse, sexual assault, or stalking; that the employee has requested or obtained leave under this ordinance; and any written or oral statement, documentation, record, or corroborating evidence provided by the employee.

(b) Information given by an employee may be disclosed by an employer only if it is:

- (1) Requested or consented to by the employee;
- (2) Ordered by a court or administrative agency; or
- (3) Otherwise required by applicable federal or state law.

Sec. 29E-6 Notice requirement.

Employers shall give notice of the following:

- (a) Employees are entitled to earned sick and safe time;
- (b) The amount of earned sick and safe time;
- (c) The terms of its use guaranteed under this chapter;
- (d) That retaliation against employees who request or use earned sick and safe time is prohibited;

and

(e) That each employee has the right to file a written complaint to the city clerk if earned sick and safe time as required by this section is denied by the employer or the employee is retaliated against for requesting or taking earned sick and safe time.

Sec. 29E-7 Employer Records.

(a) Employer shall retain accurate records documenting hours worked by employees, number of earned sick and safe hours accrued and time taken by employees for a period of three years.

(b) Upon written request, employers must provide the city clerk's office with access to earned sick and safe time records to allow for the investigation of potential violations and to monitor compliance with the requirement of this chapter.

(c) When an issue arises as to an employee's entitlement to earned sick and safe time under this Chapter, if the employer does not maintain or retain adequate records documenting hours worked by the employee and earned sick and safe time taken by the employee, or does not allow the city clerk's office reasonable access to such records, it shall be presumed that the employer has violated this Chapter, absent clear and convincing evidence otherwise.

Sec. 29E-8 Transfers, separation from employment, and employer succession.

(a) If an employee is transferred to a different division, entity, or location within the city, but remains employed by the same employer, the employee is entitled to all accrued sick and safe time accrued but not used at the prior division, entity, or location and is entitled to use all accrued sick and safe time as provided in this chapter.

(b) When there is a separation from employment and the employee is rehired within ninety days of separation by the same employer, previously accrued sick and safe time that had not been used must be reinstated. An employee is entitled to use accrued sick and safe time and accrue additional sick and safe time previously not used.

(c) When a different employer succeeds or takes the place of an existing employer, all employees of the original employer who remain employed by the successor employer are entitled to all accrued sick and safe time accrued but not used when employed by the original employer, and are entitled to use all accrued sick and safe time previously accrued but not used.

Sec. 29E-9 Implementation.

(a) The city clerk's office has the authority to implement, administer, and enforce this Chapter. The city clerk will have the authority to investigate possible violations of this Chapter.

(b) The city will develop and implement a culturally specific outreach and community engagement program to educate employees and employers about their rights and obligations under this Chapter.

Sec. 29E-10 Enforcement.

(a) Report of violation. An employee or other person may report to the city clerk's office any suspected violation of this chapter. A report of a suspected violation may be filed only if the matter complained of occurred after the effective date of this Chapter and within one year of filing of the report.

(b) Investigation Process.

(1) The city clerk's office has sole discretion to decide whether to investigate or to pursue a violation of this Chapter. If the city clerk's office decides not to investigate or otherwise pursue a report of a suspected violation, the city clerk's office will provide a written notification to any employee or other person who filed the report that the city clerk's office is declining to further investigate the report. The employee or other person may within twenty-one days, file a request for reconsideration with the city clerk. The city clerk will provide a written response on the reconsideration within 20 days.

(2) The city clerk's office may initiate an investigation pursuant to a complaint. To pursue a violation of this chapter, the city clerk will serve a notice of investigation setting forth the allegations and pertinent facts upon an employer by U.S. mail. The notice of investigation shall be accompanied by a request for a written position statement and may include a request for records or other information.

(3) An employer's position and response to any request for records will be provided to the city clerk's office within 30 days. An employer's failure to provide a position statement or to timely and fully respond to a request for records or any other reasonable request issued by the city clerk's office pursuant to an investigation creates a rebuttable presumption of a violation of this Chapter for the purposes of the investigation and determination of violation. An employer that fails to respond to a request for records may not use such records in any appeal to challenge the correctness of any determination of violation by the city clerk of damages owed or penalties assessed.

(c) Determination of violation. Except when there is an agreed upon settlement, the city clerk will issue a written determination of violation with findings of fact resulting from the investigation and a statement of whether a violation of this Chapter has or has not occurred based upon a preponderance of the evidence. The determination of violation will be issued to the employer and any employee or other person who filed the suspected violation report.

(d) Relief and administrative fines. The city clerk may order any appropriate relief for a determination including, but not limited to:

(1) Reinstatement and back pay.

(2) The crediting to an employee of any accrued sick and safe time accrued but not credited.

(3) The payment of any accrued sick and safe time unlawfully withheld.

(4) An administrative penalty that is set in accordance with Section 31-8 of this Code payable to the employee for each violation of section 29E-5 or section 29E-6.

(e) Failure to exhaust administrative remedies. If there is no appeal of the city clerk's determination of a violation, that determination of violation shall constitute the city's final decision. An employer's failure to appeal the city clerk's determination of a violation shall constitute a failure to exhaust administrative remedies, which shall serve as a complete defense to any petition or claim brought by the employer against the city regarding the city clerk's determination of a violation.

Sec. 29E-11 Appeal.

(a) An employee, former employee, or employer may appeal the determination of violation by the city clerk to the city's chief administrative officer in writing within fifteen days of the date of service of the determination of violation. Failure to file a timely, written appeal shall be an admission to the violation, and the violation shall be deemed final upon expiration of the fifteen-day period.

(b) Upon an appeal of the city clerk's determination of a violation, the chief administrative officer will hear the appeal.

(c) In such appeal, the chief administrative officer shall consider the record submitted to it by the

city clerk's office, the written statements of positions by the parties involved, and may, in the discretion of the chief administrative officer, take testimony to resolve issues of credibility or factual disputes and hear oral arguments. The chief administrative officer will reverse the city clerk's office determination of violation only upon a finding that it is clearly erroneous. The chief administrative officer's decision of the appeal shall constitute the city's final decision.

Sec. 29E-12 Civil enforcement.

(a) Where prompt compliance is not forthcoming with a final determination of violation, the city clerk's office may refer the action to the city attorney to consider initiating a civil action against an employer, for violating any requirement of this Chapter and, upon prevailing, shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation, including, without limitation, the payment of lost wages, the payment of an additional sum as a civil penalty not to exceed twice the amount awarded for lost wages, and reinstatement in employment and/or injunctive relief and shall be awarded reasonable attorneys' fees and costs.

(b) A person injured by a violation of this Chapter may, once the other remedies provided in this Chapter are exhausted, bring a civil action in district court to recover any and all damages recoverable at law and may receive injunctive and other equitable relief as determined by the court.

Sec. 29E-13 Effect on existing leave and discipline policies.

(a) Nothing in this Chapter shall be construed to discourage employers from adopting or retaining other leave policies, including accrued sick and safe time policies, that provide for greater accrual or use by employees of sick and safe time or that extends other protections to employees.

(b) Nothing in this chapter shall be construed to prohibit an employer from establishing a policy whereby employees may donate unused accrued sick and safe time to another employee.

(c) Nothing in this chapter shall be construed to prohibit an employer from advancing sick and safe time to an employee prior to accrual by such employee.

(d) Nothing in this chapter shall prevent an employer from taking reasonable action (e.g., discipline) when an employee's use of earned sick and safe time is not in good faith, such as a clear instance of abuse. Disciplinary actions may not include deductions from an employee's legitimate earned sick and safe time.

Sec. 29E-14 Annual Report.

Beginning in 2021, and each year thereafter, the city shall provide by March 31, a written report to the city council regarding this Chapter. The report shall include, but not be limited to, a discussion of the implementation and enforcement of this chapter, including the number and nature of violations and the penalties assessed in the prior year. The report may also include recommendations for possible improvements to this Chapter.

Section 2. That this ordinance shall take effect on January 1, 2020.

STATEMENT OF PURPOSE: The purpose of this ordinance is to mandate that a minimum amount of earned sick and safe time be made available to employees working in the city of Duluth.