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Title: ORDINANCE AMENDING CHAPTER 29E TO ALLOW EMPLOYEES TO USE EARNED SICK AND SAFE TIME (ESST) WHEN THEIR PLACE OF EMPLOYMENT IS CLOSED FOR PUBLIC HEALTH REASONS, TO REQUIRE NOTICE OF ESST TO NEW EMPLOYEES AND IN EMPLOYEE HANDBOOKS, TO ALLOW NOTICE OF VIOLATIONS AND CORRECTIVE MEASURES AND TO HAVE APPEALS HEARD BY AN ADMINISTRATIVE HEARING OFFICER.

Sponsors: Joel Sipress

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ORDINANCE AMENDING CHAPTER 29E TO ALLOW EMPLOYEES TO USE EARNED SICK AND SAFE TIME (ESST) WHEN THEIR PLACE OF EMPLOYMENT IS CLOSED FOR PUBLIC HEALTH REASONS, TO REQUIRE NOTICE OF ESST TO NEW EMPLOYEES AND IN EMPLOYEE HANDBOOKS, TO ALLOW NOTICE OF VIOLATIONS AND CORRECTIVE MEASURES AND TO HAVE APPEALS HEARD BY AN ADMINISTRATIVE HEARING OFFICER.

BY COUNCILOR SIPRESS:

The city of Duluth does ordain:

Section 1. That Section 29E-4 of the city of Duluth City Code be amended as follows:

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; ~~and~~

(4) Lost work hours due to closure of employee's place of employment for public health reasons.

(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.

Section 2. That Section 29E-6 of the city of Duluth City Code be amended as follows:

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.

(f) The city clerk's office shall create and make available to employers a poster and a model notice, hereinafter referred to as the "notice", for their use complying with this subsection.

(g) Employers may comply with this section by displaying the notice in a conspicuous, accessible, and readily visible place in each establishment where such employees are employed and providing every new employee with an individual copy of the employer's earned sick and safe time policy or the employer's substantially equivalent paid leave policy;

(h) If an employer maintains an employee handbook, a copy of the employer's earned sick and safe time policy or the employer's substantially equivalent paid leave policy must be included in the employee handbook.

Section 3. That Section 29E-10 of the city of Duluth City Code be amended as follows:

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 the suspected violation

(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) Written notice to all employees of a violation and corrective action taken.

(45) 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.

Section 4. That Section 29E-11 of the city of Duluth City Code be amended as follows:

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 through the city's administrative hearing process. Administrative officer~~ An appeal must be submitted to the city clerk's office 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, an administrative hearing officer ~~the chief administrative officer~~ will hear the appeal.

(c) In such appeal, the chief administrative hearing 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 hearing officer, take testimony to resolve issues of credibility or factual disputes and hear oral arguments. The chief administrative hearing officer will reverse the city clerk's office determination of violation only upon a finding that it is clearly erroneous. The chief administrative hearing officer's decision of the appeal shall constitute the city's final decision.

Section 5 That this ordinance shall take effect and be in force 30 days from and after its passage and publication..

STATEMENT OF PURPOSE: ...The purpose of this ordinance is to allow employees to use the earned sick and safe time when their place of employment is closed for public health reasons. The ordinance also requires employers to provide notice of earned sick and safe time to new employees and in employee handbooks, allows the city to require notice to all employees if there is a violation and what corrective action was taken, and modifies the appeals process to utilize the city's administrative hearing process..