

**Memorandum**

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**City of Dallas**

DATE February 27, 2019  
TO The Honorable Michael S. Rawlings  
FROM Philip T. Kingston, Councilmember, District 14

CITY SECRETARY  
DALLAS, TEXAS

SUBJECT **Request for Placement of Agenda Item – Council Member(s)**

**ITEM/ISSUE PROPOSED FOR COUNCIL CONSIDERATION:**

Pursuant to Section 6.2 of the City Council Rules of Procedure, please post the following item on the first **[VOTING]** agenda scheduled at least 30 calendar days after receipt of this request:

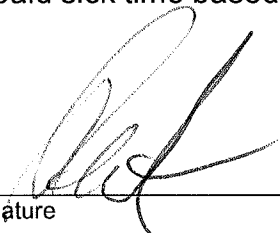
An ordinance requiring businesses to permit employees to earn paid sick leave by amending Sec. 20.

**BRIEF BACKGROUND:**

Employees in Texas do not have the guarantee of earned paid sick time. This ordinance would require employers to permit employees to earn paid sick time based on the time that they work.

Submitted for consideration by:

Philip T. Kingston, District 14  
Printed Name, District #


  
Signature

Supporting Council Member Signatures (4 Signatures Only):

Scott Grigg, D1  
Printed Name, District #

  
Signature

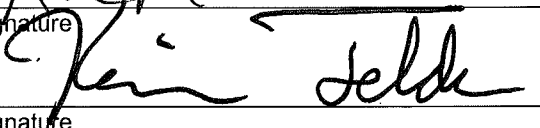
Omar Narvaez District 6  
Printed Name, District #

  
Signature

Adam Medrano D2  
Printed Name, District #

  
Signature

Kevin Felder D7  
Printed Name, District #

  
Signature

Attachment: Draft Resolution

c: Honorable Council Members  
T.C. Broadnax, City Manager  
Chris Caso, Interim City Attorney  
Carol A. Smith, Interim City Auditor  
Biliera Johnson, City Secretary  
Scott Goldstein, Chief of Policy and Communications, Office of the Mayor

\_\_\_\_\_  
DATE

ORDINANCE NO. \_\_\_\_\_

An ordinance amending the Dallas City Code by adding a new Chapter 20, “Earned Paid Sick Time,” requiring private employers to establish and administer earned paid sick time policies that employees who work in the City of Dallas may use if an employee or an employee’s family member experiences physical or mental illness, injury, stalking, domestic abuse, sexual assault or needs preventative care; providing definitions; providing that employers must provide one hour of earned paid sick time for every 30 hours of time worked; providing a yearly cap of 64 hours of paid sick time per employee for medium or large employers; providing a yearly cap of 48 hours of paid sick time per employee for small employers; providing that employees must generally be able to carry over unused paid sick time to the following year; providing procedures for an employee to request earned paid sick time off; providing that an employer may not retaliate against an employee for using earned paid sick time or for making a complaint to the director; providing a process for employees to complain to the director; providing an investigation process for the director; providing a civil penalty not to exceed \$500; providing the right to appeal the assessment of a civil penalty; providing for a multilingual education campaign to educate the public about this ordinance; providing a savings clause; providing a severability clause; and providing an effective date.

WHEREAS, most workers in the City of Dallas will at some time during each year need limited time off from work to care for their own health and safety needs or the health and safety needs of a close family member; and

WHEREAS, denying earned paid sick time to employees is detrimental to the health, safety, and welfare of the residents of the City of Dallas; and

WHEREAS, the lack of earned paid sick time for employees contributes to employee turnover and unemployment, and harms the local economy; and

WHEREAS, the City of Dallas, as a home-rule municipality, has the ability to address matters of public health and safety, and now finds that establishing earned paid sick time requirements is a matter of public health and safety; and

WHEREAS, this ordinance was submitted by petition to the City Council, and was passed by the City Council or was submitted to the voters of the City of Dallas at an election held pursuant to Chapter XVIII, Sections 11 through 15, of the Charter of the City of Dallas, and was duly adopted by the voters at said election; Now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OR CITIZENS OF THE CITY OF DALLAS:

SECTION 1. That the Dallas City Code is amended by adding a new Chapter 20, “Earned Paid Sick Time,” to read as follows:

**“CHAPTER 20**

**EARNED PAID SICK TIME [RESERVED]**

**ARTICLE I.**  
**GENERAL PROVISIONS.**

**SEC. 20-1. PURPOSE.**

(a) The purpose of this chapter is to protect the health, safety, and welfare of the people of the City of Dallas by providing employees with the ability to accrue and use earned paid sick time when they need to be absent from work because the employee or the employee’s family member suffers illness, injury, stalking, domestic abuse, sexual assault, or otherwise requires medical or health care, including preventative care and mental health care.

(b) The denial or deprivation of earned paid sick time to employees is detrimental to the health, safety, and welfare of the residents of Dallas and is within the power and responsibility of the city to prevent.

**SEC. 20-2. DEFINITIONS.**

In this chapter:

(1) CITY means the City of Dallas, Texas.

(2) DEPARTMENT means the department designated by the city manager to implement, administer, and enforce this chapter.

(3) DIRECTOR means the director of the department designated by the city manager to implement, administer, and enforce this chapter and includes representatives, agents, or department employees designated by the director.

(4) EARNED PAID SICK TIME means a period of paid leave from work accrued by an employee in accord with this chapter.

(5) EMPLOYEE means an individual who performs at least 80 hours of work for pay within the City of Dallas, Texas in a year for an employer, including work performed through the services of a temporary or employment agency. Employee does not mean an individual who is an independent contractor according to Title 40, Section 821.5 of the Texas Administrative Code. Employee does not mean an unpaid intern.

(6) EMPLOYER means any person, company, corporation, firm, partnership, labor organization, non-profit organization or association that pays an employee to perform work for an employer and exercise control over the employee's wages, hours, and working conditions. The term does not include:

(A) the United States government, any of its departments or agencies, or any corporation wholly owned by it;

(B) the government of the State of Texas or any of its departments, agencies, or political subdivisions;

(C) the City of Dallas, Texas; or

(D) any other agency that cannot be regulated by city ordinance.

(7) FAMILY MEMBER means a spouse, child, parent, any other individual related by blood, or any other individual whose close association to an employee is the equivalent of a family relationship.

(8) MEDIUM OR LARGE EMPLOYER means an employer with more than 15 employees at any time in the preceding 12 months, excluding the employer's family members.

(9) PREDECESSOR means an employer that employs at least one individual covered in this chapter, and for which a controlling interest in such employer or a recognized division of such employer is acquired by a successor.

(10) RELEVANT INFORMATION AND TESTIMONY means only materials, documents, testimony or information necessary to determine whether a violation of this chapter has occurred.

(11) SMALL EMPLOYER means any employer that is not a medium or large employer.

(12) SUBPOENA means a subpoena or a subpoena duces tecum.

(13) SUCCESSOR means an employer that acquires a controlling interest in a predecessor or a controlling interest in a recognized division of a predecessor.

### **SEC. 20-3. GENERAL AUTHORITY AND DUTY OF THE DIRECTOR.**

The director shall implement, administer, and enforce the provisions of this chapter. The director has the power to render interpretations of this chapter and to adopt and enforce rules and regulations supplemental to this chapter as the director deems necessary to clarify the application of this chapter. Such interpretations, rules, and regulations must be in conformity with the purpose of this chapter.

## **ARTICLE II.**

### **EARNED PAID SICK TIME REQUIREMENTS.**

#### **SEC. 20-4. ACCRUAL REQUIREMENTS AND YEARLY CAP.**

(a) An employer shall grant an employee one hour of earned paid sick time for every 30 hours worked for the employer in the City of Dallas. Earned paid sick time shall accrue in one hour unit increments, unless an employer's written policies establish the accrual of earned paid sick time to be in fraction of an hour increments.

(b) Earned paid sick time shall accrue starting at the commencement of employment or the effective date provided in Section 20-13, whichever is later.

(c) This chapter does not require an employer to provide an employee with more earned paid sick time in a year than the yearly cap provided in this section. This chapter does not require an employer to allow an employee to accrue more than the yearly cap of earned paid sick time in a year. An employer may inform an employee that leave requested in excess of the

employee's available earned paid sick time will not be paid. The yearly cap for earned paid sick time under this chapter is:

(1) Sixty-four hours per employee per year for medium or large employers, unless the employer chooses a higher limit; and

(2) Forty-eight hours per employee per year for small employers, unless the employer chooses a higher limit;

(d) All available earned paid sick time up to the yearly cap provided in this section shall be carried over to the following year. Provided, that an employer that makes at least the yearly cap of earned paid sick time available to employees at the beginning of the year under the purpose and usage requirements of this chapter is not required to carry over earned paid sick time for that year.

(e) A written contract made pursuant to Title 29, Section 158(d) of the United States Code between an employer and a labor organization representing employees may modify the yearly cap requirement established in this section for employees covered by the contract if the modification is expressly stated in the contract.

(f) A successor must provide to an employee who was employed by a predecessor at the time of the acquisition and hired by the successor at the time of acquisition all earned paid sick time available to the employee immediately before the acquisition.

#### **SEC. 20-5. USAGE REQUIREMENTS.**

(a) An employer shall provide an employee with earned paid sick time that meets the requirements of this chapter in an amount up to the employee's available earned paid sick time. The employer shall pay earned paid sick time in an amount equal to what the employee would have earned if the employee had worked the scheduled work time, exclusive of any overtime premium, tips, or commissions, but no less than the state minimum wage.

(b) Earned paid sick time shall be available for an employee to use in accord with this chapter as soon as it is accrued, provided, that an employer may restrict an employee from using earned paid sick time during the employee's first 60 days of employment if the employer establishes that the employee's term of employment is at least one year.

(c) An employee may request earned paid sick time from an employer for an absence from the employee's scheduled work time caused by:

(1) The employee's physical or mental illness, physical injury, preventative medical or health care or health condition; or

(2) The employee's need to care for their family member's physical or mental illness, physical injury, preventative medical or health care or health condition; or

(3) The employee's or their family member's need to seek medical attention, seek relocation, obtain services of a victim services organization, or participate in legal or court ordered action related to an incident of victimization from domestic abuse, sexual assault, or stalking involving the employee or the employee's family member.

(d) An employer may adopt reasonable verification procedures to establish that an employee's request for earned paid sick time meets the requirements of this section if an employee requests to use earned paid sick time for more than three consecutive work days. An employer may not adopt verification procedures that would require an employee to explain the nature of the domestic abuse, sexual assault, stalking, illness, injury, health condition, or other health need when making a request for earned paid sick time under this section.

(e) An employer shall provide earned paid sick time for an employee's absence from the employee's scheduled work time if the employee has available earned paid sick time and makes a timely request for the use of earned paid sick time before their scheduled work time. An employer may not prevent an employee from using earned paid sick time for an unforeseen qualified absence that meets the requirements of this section.

(f) This section does not require any employer to allow an employee to use earned paid sick time on more than eight days in a year.

(g) An employee who is rehired by an employer within six months following separation from employment from that employer may use any earned paid sick time available to the employee at the time of the separation.

(h) An employer shall not require an employee to find a replacement to cover the hours of earned paid sick time as a condition of using earned paid sick time. This chapter does not prohibit an employer from allowing an employee to voluntarily exchange hours or voluntarily trade shifts with another employee, or prohibit an employer from establishing incentives for employees to voluntarily exchange hours or voluntarily trade shifts. This chapter does not prohibit an employer from permitting an employee to donate available earned paid sick time to another employee.

(i) Neither the amount of available earned paid sick time nor the right to use earned paid sick time shall be affected by an employee's transfer to a different facility, location, division or job position with the same employer.

**SEC. 20-6. NO CHANGE TO MORE GENEROUS LEAVE POLICIES.**

(a) An employer may provide paid leave benefits to its employees that exceed the requirements of this chapter. This chapter does not require an employer who makes paid time off available to an employee under conditions that meet the purpose, accrual, yearly cap, and usage requirements of this chapter to provide additional earned paid sick time to that employee. This chapter does not require an employer to provide additional earned paid sick time to an employee if the employee has used paid time off that meets the requirements of this chapter for a purpose not specified in Section 20-5.



(b) This chapter does not prohibit an employer from granting earned paid sick time to an employee prior to accrual by the employee.

**SEC. 20-7. NOTICE AND OTHER REQUIREMENTS.**

(a) On no less than a monthly basis, an employer shall provide electronically or in writing to each employee a statement showing the amount of the employee's available earned paid sick time. This section does not create a new requirement for certified payroll.

(b) An employer who provides an employee handbook to its employees must include a notice of an employee's rights and remedies under this chapter in that handbook.

(c) An employer who, as a matter of company policy, uses a 12-consecutive-month period other than a calendar year for the purpose of determining an employee's eligibility for and accrual of earned paid sick time shall provide its employees with written notice of such policy at the commencement of employment or by the effective date provided in Section 20-13, whichever is later.

(d) For the period required for maintenance of records under Title 29, Section 516(a) of the Code of Federal Regulations, an employer shall maintain records establishing the amount of earned paid sick time accrued by, used by, and available to each employee.

(e) An employer shall display a sign describing the requirements of this chapter in a conspicuous place or places where notices to employees are customarily posted. The director shall prescribe the size, content, and posting location of signs required under this section. The signs displayed under this section shall be in English and other languages, as determined by the director. An employer is not required to post such signage until the director makes such signage publicly available on the city's website.

**SEC. 20-8. RETALIATION PROHIBITED.**

An employer may not transfer, demote, discharge, suspend, reduce hours, or directly threaten such actions against an employee because that employee requests or uses earned paid sick time, reports or attempts to report a violation of this chapter, participates or attempts to participate in an investigation or proceeding under this chapter, or otherwise exercises any rights afforded by this chapter.

**ARTICLE III.**

**ENFORCEMENT.**

**SEC. 20-9. PROCEDURES FOR FILING COMPLAINTS.**

Any employee alleging a violation of this chapter or their representative may file a complaint with the director. The director shall receive and investigate complaints, including anonymous complaints, alleging a violation of this chapter. A complaint alleging a violation of

this chapter must be filed with the director by or on behalf of an aggrieved employee within two years from the date of the violation.

**SEC. 20-10. INVESTIGATION.**

(a) Upon filing of a complaint, the director shall commence a prompt and full investigation to determine the facts behind the complaint and whether there is sufficient cause to believe that a violation of this chapter has occurred, except that no investigation may commence if, after reviewing the allegations of the aggrieved employee, the director determines that the complaint does not come within the scope of this chapter. Unless the complaint is filed anonymously, within 15 days after determining that a particular complaint does not come within the scope of this chapter, the director shall give an employee or their representative a clear and concise explanation of the reasons why it does not and take no further action on the complaint..

(b) The director may issue subpoenas to compel the attendance of a witness or the production of materials or documents in order to obtain relevant information and testimony. Refusal to appear or to produce any document or other evidence after receiving a subpoena pursuant to this section is a violation of this chapter and subject to sanctions as described in Section 2-9 of the Dallas City Code. Before issuing a subpoena, the director shall seek the voluntary cooperation of any employer to timely obtain relevant information and testimony in connection with any investigation of a complaint filed under this chapter.

(c) The director may inform employees at a worksite of any investigation of a complaint at that worksite alleging a violation of this chapter.

**SEC. 20-11. VOLUNTARY COMPLIANCE; VIOLATIONS; PENALTIES; APPEALS.**

(a) Unless specifically provided otherwise in this chapter, an offense under this chapter is punishable by a fine not to exceed \$500. Each violation of a particular section or subsection of this chapter constitutes a separate offense. If the director finds after investigation of a timely complaint that a violation of this chapter has occurred, an employer shall receive written notice of the violation and the civil penalty assessed.

(b) The director shall seek voluntary compliance from the employer to remedy any violation of this chapter before any civil penalty is collected. If voluntary compliance is not achieved within 10 business days following the employer's receipt of the written violation notice, the employer shall be liable to the city for the amount of the civil penalty assessed.

(c) No penalties shall be assessed under this chapter until April 1, 2020, except that civil penalties for a violation of Section 20-8, "Retaliation Prohibited," may be assessed at any time after the effective date provided in Section 20-13. For a violation of this chapter that occurs before April 1, 2020, the director may issue a notice to the employer that a civil penalty may be assessed for a violation that occurs after April 1, 2020.

(d) Employers may appeal any civil penalty assessed under this chapter. The director shall establish and enforce additional rules and regulations and adopt necessary procedures regarding the filing and adjudication of appeals submitted under this section.

(e) This section does not create a criminal offense.

**SEC. 20-12. ANNUAL REPORT.**

The director may publish an annual report regarding implementation and enforcement of this chapter.

**SEC. 20-13. EFFECTIVE DATE FOR SECS. 20-1 THRU 20-12.**

Sections 20-1 through 20-12 shall become effective on August 1, 2019, except as provided in this section. Sections 20-1 through 20-12 shall become effective on August 1, 2021 for employers having no more than five employees at any time in the preceding 12 months.”

SECTION 2. That the city manager or a designee of the city manager shall design and oversee a multilingual public education campaign to inform employers, employees, and city residents of the requirements of this ordinance.

SECTION 3. That the Dallas City Code is unaffected by this ordinance except insofar as said Code is explicitly amended by this ordinance.

SECTION 4. That any act done or right vested or accrued, or any proceeding, suit, or prosecution had or commenced in any action before the amendment or repeal of any ordinance, or part thereof, shall not be affected or impaired by amendment or repeal of any ordinance, or part thereof, and shall be treated as still remaining in full force and effect for all intents and purposes as if the amended or repealed ordinance, or part thereof, had remained in force.

SECTION 5. That the terms and provisions of this ordinance are severable and are governed by Section 1-4 of Chapter 1 of the Dallas City Code, as amended.

SECTION 6. That in the event this ordinance is adopted by the City Council, it shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Dallas, and in the event this ordinance is adopted by the citizens of Dallas in an election called for that purpose, it shall take effect immediately after the

canvass of the election in which it is adopted, in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so ordained.

APPROVED AS TO FORM:

*Christopher Casto*  
~~LARRY L. CASTO~~, City Attorney

By \_\_\_\_\_  
Assistant City Attorney

Passed \_\_\_\_\_

<i>2/27/19</i> <i>[Signature]</i> <i>14</i>	<i>2/27/19</i> DATE <i>SS</i> INITIALS <i>1</i> DISTRICT	<i>2/27/19</i> <i>AMC</i> District <i>2</i>	<i>02/27/19</i> Date <i>[Signature]</i> Initials District <i>6</i> District	<i>2/27/19</i> <i>KF</i> District <i>7</i>
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