

LEGAL TEXT OF PROPOSITION F

Ordinance adding Chapter 12W to the Administrative Code to require San Francisco employers to provide paid sick leave to employees.

Note: All sections are new.

Be it ordained by the People of the City and County of San Francisco:

Section 1. LEGISLATIVE FINDINGS AND PURPOSE.

A large number of workers in the City and County of San Francisco do not have paid sick leave available to them. This problem is most prevalent among part-time employees but also is widespread among full-time employees working in many sectors of the local economy. The problem is greatest among workers toward the lower end of the economic spectrum, although it is by no means limited to such workers and affects many middle-income workers as well as higher-income workers. Further, a large number of workers who have paid sick leave available to them do not have an adequate number of hours of such leave to reasonably meet their needs or the needs of their children or other family members.

The absence or inadequacy of paid sick leave among workers in San Francisco poses serious problems not only for affected workers but also for their families, their employers, the health care system, and the community as a whole. Among these problems are the following:

1. When workers have no paid sick leave or an inadequate amount available to them, they are more likely to come to work when they are sick. Working when sick is often counterproductive from a health standpoint, because it may cause the employee's condition to worsen or may delay the employee's recovery, thus compounding the hardship to the employee and his or her family caused by the illness. In addition, the employee's job productivity is likely to suffer if he or she is working while sick or injured.

2. Employees who comes to work when they are sick may expose other employees to infectious diseases, such as the flu. When that occurs, some of the employees who have been exposed will also become ill, which not only creates hardships for those workers and their families but also increases costs to the health care system and undermines job productivity.

3. In those industries where workers have substantial contact with customers, or with certain goods that come into contact with customers, such as food, there is a risk that a sick worker will jeopardize the health of members of the public by exposing them, directly or indirectly, to germs and disease.

4. When workers do not have paid sick leave or an adequate amount of paid sick leave available to them, they are more likely to come to work notwithstanding the medical problems facing their children or other family members. When that occurs, ill or injured family members may not receive the care, attention, and

medical assistance necessary to aid their recovery. Their health problems consequently may intensify or be prolonged, because it often will take longer for them to recover when responsible adult family members are not able to care for them at home or take them to medical appointments.

5. A worker who has no paid sick leave or an inadequate amount to take time off to care for a sick child may send the child, even though sick, to school or a child care center, thereby exposing other children to germs and disease. Inevitably, some children thus exposed will become ill due to their close proximity to and interactions with the sick child.

6. Without adequate paid sick leave, working parents who must stay home when they, their children, or other family members are ill or injured lose earnings and may risk a loss of employment, thereby placing the family's economic security in jeopardy and increasing the likelihood that taxpayer-funded sources will have to be used to provide for the family's needs.

7. Without adequate paid sick leave, it is much more difficult for workers to schedule medical appointments for themselves and their children and other family members. As a result, routine medical appointments that can prevent the onset of illness or injury are often not scheduled; and medical appointments to treat an existing illness or injury are not scheduled, or are scheduled only after the illness or injury has become acute. When medical care is sacrificed in the short run, medical costs increase in the long run. Hospitalization of patients, with its attendant costs, sometimes becomes necessary because preventive health measures were not taken earlier.

8. Without adequate paid sick leave, it is much more difficult for workers to care for family members on a short-term basis. As a result, it sometimes becomes necessary for family members to be placed in nursing homes, thereby increasing nursing care costs.

The foregoing problems are particularly serious for single-parent and two-parent households in which the single parent or both parents work, which is often a necessity in San Francisco. The unavailability or inadequacy of paid sick leave hits women and people of color in the San Francisco workforce particularly hard, but no demographic or ethnic group is spared from hardship when sick leave is unavailable or inadequate.

To safeguard the public welfare, health, safety, and prosperity of San Francisco, it is essential that all persons working in our community be able to receive paid sick leave that is adequate to ensure a decent and healthy life for them and their families. Ensuring the adequacy of paid sick leave for employees in San Francisco will ensure a more stable workforce in our community and thereby benefit not only workers and their families but employers and the community as a whole. It is in the interest of all San Franciscans to require that employers benefiting

from the opportunity to do business here make available to their employees a reasonable amount of paid sick leave. Implementation of this policy serves the public interest and constitutes a significant public benefit.

Section 2. The San Francisco Administrative Code is hereby amended by adding Chapter 12W, consisting of Sections 12W.1 through 12W.16, to read as follows:

CHAPTER 12W

SICK LEAVE

- Sec. 12W.1. Title
- Sec. 12W.2. Definitions
- Sec. 12W.3. Accrual of Paid Sick Leave
- Sec. 12W.4. Use of Paid Sick Leave
- Sec. 12W.5. Notice and Posting
- Sec. 12W.6. Employer Records
- Sec. 12W.7. Exercise of Rights Protected; Retaliation Prohibited
- Sec. 12W.8. Implementation and Enforcement
- Sec. 12W.9. Waiver Through Collective Bargaining
- Sec. 12W.10. Other Legal Requirements
- Sec. 12W.11. More Generous Employer Leave Policies
- Sec. 12W.12. Operative Date
- Sec. 12W.13. Preemption
- Sec. 12W.14. City Undertaking Limited to Promotion of the General Welfare
- Sec. 12W.15. Severability
- Sec. 12W.16. Amendment by the Board of Supervisors

SEC. 12W.1. TITLE.

This Chapter shall be known as the "Sick Leave Ordinance."

SEC. 12W.2. DEFINITIONS.

For purposes of this Chapter, the following definitions apply.

(a) "Agency" shall mean the Office of Labor Standards Enforcement or any department or office that by ordinance or resolution is designated the successor to the Office of Labor Standards Enforcement.

(b) "City" shall mean the City and County of San Francisco.

(c) "Employee" shall mean any person who is employed within the geographic boundaries of the City by an employer, including part-time and temporary employees. "Employee" includes a participant in a Welfare-to-Work Program when the participant is engaged in work activity that would be considered "employment" under the federal Fair Labor Standards Act, 29 U.S.C. §201 *et seq.*, and any applicable U.S. Department of Labor Guidelines. "Welfare-to-Work Program" shall

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include any public assistance program administered by the Human Services Agency, including but not limited to CalWORKS and the County Adult Assistance Program (CAAP), and any successor programs that are substantially similar to them, that require a public assistance applicant or recipient to work in exchange for their grant.

(d) "Employer" shall mean any person, as defined in Section 18 of the California Labor Code, including corporate officers or executives, who directly or indirectly or through an agent or any other person, including through the services of a temporary services or staffing agency or similar entity, employs or exercises control over the wages, hours, or working conditions of an employee.

(e) "Paid sick leave" shall mean paid "sick leave" as defined in California Labor Code §233(b)(4), except that the definition extends beyond the employee's own illness, injury, medical condition, need for medical diagnosis or treatment, or medical reason, to also encompass time taken off work by an employee for the purpose of providing care or assistance to other persons, as specified further in Section 12W.4(a), with an illness, injury, medical condition, need for medical diagnosis or treatment, or other medical reason.

(f) "Small business" shall mean an employer for which fewer than ten persons work for compensation during a given week. In determining the number of persons performing work for an employer during a given week, all persons performing work for compensation on a full-time, part-time, or temporary basis shall be counted, including persons made available to work through the services of a temporary services or staffing agency or similar entity.

SEC. 12W.3. ACCRUAL OF PAID SICK LEAVE.

(a) For employees working for an employer on or before the operative date of this Chapter, paid sick leave shall begin to accrue as of the operative date of this Chapter. For employees hired by an employer after the operative date of this Chapter, paid sick leave shall begin to accrue 90 days after the commencement of employment with the employer.

(b) For every 30 hours worked after paid sick leave begins to accrue for an employee, the employee shall accrue one hour of paid sick leave. Paid sick leave shall accrue only in hour-unit increments; there shall be no accrual of a fraction of an hour of paid sick leave.

(c) For employees of small businesses, there shall be a cap of 40 hours of accrued paid sick leave. For employees of other employers, there shall be a cap of 72 hours of accrued paid sick leave. Accrued paid sick leave for employees carries over from year to year (whether calendar year or fiscal year), but is limited to the aforementioned caps.

(d) If an employer has a paid leave policy, such as a paid time off policy, that makes available to employees an amount of paid leave

that may be used for the same purposes as paid sick leave under this Chapter and that is sufficient to meet the requirements for accrued paid sick leave as stated in subsections (a)-(c), the employer is not required to provide additional paid sick leave.

(e) 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 accrued paid sick leave that the employee has not used.

SEC. 12W.4 USE OF PAID SICK LEAVE.

(a) An employee may use paid sick leave not only when he or she is ill or injured or for the purpose of the employee's receiving medical care, treatment, or diagnosis, as specified more fully in California Labor Code §233(b)(4), but also to aid or care for the following persons when they are ill or injured or receiving medical care, treatment, or diagnosis: Child; parent; legal guardian or ward; sibling; grandparent; grandchild; and spouse, registered domestic partner under any state or local law, or designated person. The employee may use all or any percentage of his or her paid sick leave to aid or care for the aforementioned persons. The aforementioned child, parent, sibling, grandparent, and grandchild relationships include not only biological relationships but also relationships resulting from adoption; step-relationships; and foster care relationships. "Child" includes a child of a domestic partner and a child of a person standing in loco parentis.

If the employee has no spouse or registered domestic partner, the employee may designate one person as to whom the employee may use paid sick leave to aid or care for the person. The opportunity to make such a designation shall be extended to the employee no later than the date on which the employee has worked 30 hours after paid sick leave begins to accrue pursuant to Section 12W.3(a). There shall be a window of 10 work days for the employee to make this designation. Thereafter, the opportunity to make such a designation, including the opportunity to change such a designation previously made, shall be extended to the employee on an annual basis, with a window of 10 work days for the employee to make the designation.

(b) An employer may not require, as a condition of an employee's taking paid sick leave, that the employee search for or find a replacement worker to cover the hours during which the employee is on paid sick leave.

(c) An employer may require employees to give reasonable notification of an absence from work for which paid sick leave is or will be used.

(d) An employer may only take reasonable measures to verify or document that an employee's use of paid sick leave is lawful.

SEC. 12W.5. NOTICE AND POSTING.

(a) The Agency shall, by the operative date of this Chapter, publish and make available to employers, in all languages spoken by more than 5% of the San Francisco workforce, a notice suitable for posting by employers in the workplace informing employees of their rights under this Chapter. The Agency shall update this notice on December 1 of any year in which there is a change in the languages spoken by more than 5% of the San Francisco workforce. In its discretion, the Agency may combine the notice required herein with the notice required by Section 12R.5(a) of the Administrative Code.

(b) Every employer shall post in a conspicuous place at any workplace or job site where any employee works the notice required by subsection (a). Every employer shall post this notice in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the workplace or job site.

SEC. 12W.6. EMPLOYER RECORDS.

Employers shall retain records documenting hours worked by employees and paid sick leave taken by employees, for a period of four years, and shall allow the Agency access to such records, with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of this Chapter. When an issue arises as to an employee's entitlement to paid sick leave under this Chapter, if the employer does not maintain or retain adequate records documenting hours worked by the employee and paid sick leave taken by the employee, or does not allow the Agency reasonable access to such records, it shall be presumed that the employer has violated this Chapter, absent clear and convincing evidence otherwise.

SEC. 12W.7. EXERCISE OF RIGHTS PROTECTED; RETALIATION PROHIBITED.

It shall be unlawful for an employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this Chapter.

It shall be unlawful for an employer or any other person to discharge, threaten to discharge, demote, suspend, or in any manner discriminate or take adverse action against any person in retaliation for exercising rights protected under this Chapter. Such rights include but are not limited to the right to use paid sick leave pursuant to this Chapter; the right to file a complaint or inform any person about any employer's alleged violation of this Chapter; the right to cooperate with the Agency in its investigations of alleged violations of this Chapter; and the right to inform any person of his or her potential rights under this Chapter.

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It shall be unlawful for an employer absence control policy to count paid sick leave taken under this Chapter as an absence that may lead to or result in discipline, discharge, demotion, suspension, or any other adverse action.

Protections of this Chapter shall apply to any person who mistakenly but in good faith alleges violations of this Chapter.

Taking adverse action against a person within 90 days of the person's filing a complaint with the Agency or a court alleging a violation of any provision of this Chapter; informing any person about an employer's alleged violation of this Chapter; cooperating with the Agency or other persons in the investigation or prosecution of any alleged violation of this Chapter; opposing any policy, practice, or act that is unlawful under this Chapter; or informing any person of his or her rights under this Chapter shall raise a rebuttable presumption that such adverse action was taken in retaliation for the exercise of one or more of the aforementioned rights.

SEC. 12W.8. IMPLEMENTATION AND ENFORCEMENT.

(a) *Implementation.* The Agency shall be authorized to coordinate implementation and enforcement of this Chapter and may promulgate appropriate guidelines or rules for such purposes. Any guidelines or rules promulgated by the Agency shall have the force and effect of law and may be relied on by employers, employees, and other persons to determine their rights and responsibilities under this Chapter. Any guidelines or rules may establish procedures for ensuring fair, efficient, and cost-effective implementation of this Chapter, including supplementary procedures for helping to inform employees of their rights under this Chapter, for monitoring employer compliance with this Chapter, and for providing administrative hearings to determine whether an employer or other person has violated the requirements of this Chapter.

(b) *Administrative Enforcement.* The Agency is authorized to take appropriate steps to enforce this Chapter. The Agency may investigate any possible violations of this Chapter by an employer or other person. Where the Agency has reason to believe that a violation has occurred, it may order any appropriate temporary or interim relief to mitigate the violation or maintain the status quo pending completion of a full investigation or hearing.

Where the Agency, after a hearing that affords a suspected violator due process, determines that a violation has occurred, it may order any appropriate relief including, but not limited to, reinstatement, back pay, the payment of any sick leave unlawfully withheld, and the payment of an additional sum as an administrative penalty to each employee or person whose rights under this Chapter were violated. If any paid sick leave was unlawfully withheld, the dollar amount of paid sick leave withheld from the employee multiplied by three, or \$250, whichever amount is greater,

shall be included in the administrative penalty paid to the employee. In addition, if a violation of this Chapter resulted in other harm to the employee or any other person, such as discharge from employment, or otherwise violated the rights of employees or other persons, such as a failure to post the notice required by Section 12W.5(b), or an act of retaliation prohibited by Section 12W.7, this administrative penalty shall also include \$50 to each employee or person whose rights under this Chapter were violated for each day or portion thereof that the violation occurred or continued.

Where prompt compliance is not forthcoming, the Agency may take any appropriate enforcement action to secure compliance, including initiating a civil action pursuant to Section 12W.8(c) and/or, except where prohibited by state or federal law, requesting that City agencies or departments revoke or suspend any registration certificates, permits or licenses held or requested by the employer or person until such time as the violation is remedied. In order to compensate the City for the costs of investigating and remedying the violation, the Agency may also order the violating employer or person to pay to the City a sum of not more than \$50 for each day or portion thereof and for each employee or person as to whom the violation occurred or continued. Such funds shall be allocated to the agency and used to offset the costs of implementing and enforcing this Chapter.

An employee or other person may report to the agency any suspected violation of this Chapter. The Agency shall encourage reporting pursuant to this subsection by keeping confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the employee or person reporting the violation. Provided, however, that with the authorization of such person, the Agency may disclose his or her name and identifying information as necessary to enforce this Chapter or for other appropriate purposes.

(c) *Civil Enforcement.* The Agency, the City Attorney, any person aggrieved by a violation of this Chapter, any entity a member of which is aggrieved by a violation of this Chapter, or any other person or entity acting on behalf of the public as provided for under applicable state law, may bring a civil action in a court of competent jurisdiction against the employer or other person violating this Chapter and, upon prevailing, shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, but not limited to, reinstatement, back pay, the payment of any sick leave unlawfully withheld, the payment of an additional sum as liquidated damages in the amount of \$50 to each employee or person whose rights under this Chapter were violated for each hour or portion thereof that the violation occurred or continued, plus, where the employer has unlawfully withheld paid sick leave to an employee, the dollar amount of paid sick leave withheld from the employee multiplied by three; or \$250, whichever amount is greater; and reinstatement

in employment and/or injunctive relief; and, further, shall be awarded reasonable attorneys' fees and costs. Provided, however, that any person or entity enforcing this Chapter on behalf of the public as provided for under applicable state law shall, upon prevailing, be entitled only to equitable, injunctive or restitutionary relief, and reasonable attorneys' fees and costs.

(d) *Interest.* In any administrative or civil action brought under this Chapter, the Agency or court, as the case may be, shall award interest on all amounts due and unpaid at the rate of interest specified in subdivision (b) of Section 3289 of the California Civil Code.

(e) *Remedies Cumulative.* The remedies, penalties, and procedures provided under this Chapter are cumulative.

SEC. 12W.9. WAIVER THROUGH COLLECTIVE BARGAINING.

All or any portion of the applicable requirements of this Chapter shall not apply to employees covered by a bona fide collective bargaining agreement to the extent that such requirements are expressly waived in the collective bargaining agreement in clear and unambiguous terms.

SEC. 12W.10. OTHER LEGAL REQUIREMENTS.

This Chapter provides minimum requirements pertaining to paid sick 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 greater accrual or use by employees of sick leave, whether paid or unpaid, or that extends other protections to employees.

SEC. 12W.11. MORE GENEROUS EMPLOYER LEAVE POLICIES.

This Chapter provides minimum requirements pertaining to paid sick leave and shall not be construed to prevent employers from adopting or retaining leave policies that are more generous than policies that comply with this Chapter. Employers are encouraged to provide more generous leave policies than required by this Chapter.

SEC. 12W.12. OPERATIVE DATE.

This Chapter shall become operative 90 days after its adoption by the voters at the November 7, 2006 election. This Chapter shall have prospective effect only.

SEC. 12W.13. PREEMPTION.

Nothing in this Chapter shall be interpreted or applied so as to create any power or duty in conflict with federal or state law.

SEC. 12W.14. CITY UNDERTAKING LIMITED TO PROMOTION OF GENERAL WELFARE.

In undertaking the adoption and enforcement of this Chapter, the City is undertaking only to promote the general welfare. The

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City is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury. This Chapter does not create a legally enforceable right by any member of the public against the City.

SEC 12W.15. SEVERABILITY.

If any part or provision of this Chapter, or the application of this Chapter to any person or circumstance, is held invalid, the remainder of this Chapter, including the application of such part or provision to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the provisions of this Chapter are severable.

SEC. 12W.16. AMENDMENT BY THE BOARD OF SUPERVISORS.

The Board of Supervisors may amend this Chapter with respect to matters relating to its implementation and enforcement (including but not limited to those matters addressed in Section 12W.8) and matters relating to employer requirements for verification or documentation of an employee's use of sick leave, but not with respect to this Chapter's substantive requirements or scope of coverage; provided, however, that, in the event any provision in this Chapter is held legally invalid, the Board retains the power to adopt legislation concerning the subject matter that was covered in the invalid provision.

