

EXHIBIT A – Protected Sick Time

TITLE 9

9.01.010 Policy.

It is the policy of the City of Portland to ensure that employers responsibly and compassionately maintain their workforce in support of a productive and healthy work environment. It is the policy of the City to promote a sustainable, healthy workforce built on the foundations of goodwill, reciprocity and holistic employee/employer relations. The City encourages and requires employers to provide sick leave in order to allow employees and their families care in times of sickness, health maintenance, and support of a productive and healthy workplace.

9.01.020 Intent.

It is incumbent upon the City Council, in the exercise of its powers for the protection of the public health, economic and general welfare of its citizens, to encourage where not provided and enforce where required, employees to earn and take sick time to maintain a healthy workforce, which promotes a vibrant, productive and resilient City. It is the City's aspiration that all persons working in the City will be provided the right to earn and use paid sick time.

9.01.030 Definitions.

For purposes of this Chapter, the following definitions apply:

- A. "City" means the City of Portland as defined in Title 1 of the Code of the City of Portland.
- B. "BOLI Commissioner" means the Commissioner of the Bureau of Labor and Industries (BOLI) of the State of Oregon as established by ORS 651.020.
- C. "Designated Contact Protocol" means the telephone number or another reasonable and accessible means of communication provided by an Employer to an Employee for the purpose of allowing the Employee a convenient means of contacting the employer.
- D. "Employee" means anyone employed to work within the geographic boundaries of the City, by an Employer, but does not include employees who work in Portland for less than 240 hours in a calendar year. Any work in excess of 240 hours constitutes an Employee for the purposes of this Chapter and all 240 hours are counted towards sick time accrual stipulated in Section 9.01.040. Employees whose Employer's business or offices are located in the State of Oregon, who travel to the City and make a stop as a purpose of their work are covered by this Chapter for the hours they are paid for work within the City. "Employee" includes recipients of public benefits who are engaged in work activity as a condition of receiving public assistance and home care workers as defined in ORS 410.600(8), but does not include independent contractors or those who are participating in a work study program under 42 U.S.C. Chapter 2753.

- E. “Employer” means the same as that term is defined in ORS 653.010(3), but does not include: (a) the United States Government; or (b) the State of Oregon including any office, department, agency, authority, institution, association, society or other body of the state, including the legislature and the judiciary; or (c) any political subdivision of the State of Oregon or any county, city, district, authority, public corporation or public entity other than the City.
- F. “Family Member” means the same as that term is defined in ORS 659A.150 (4) and includes domestic partners as defined under ORS 106.310.
- G. “Health care provider” means the same as that term is defined in ORS 659A.150 (5).
- H. “Hiring Hall” means a location used when a union sends workers to employers as needed without the cost of maintaining a steady workforce making possible the orderly allocation of the workforce within and between sites. A hiring hall may be managed by a union alone or by an employer and union jointly.
- I. “Paid Time Off” is a feature in employee agreements that provides a "resource" of hours that an employee can draw from to take time off from work, without having to specify a reason. Generally PTO hours cover everything from planned vacations to sick days.
- I. “Sick Time” means time off from work that has been accrued and may be used by an Employee and which is calculated at the same hourly rate and with the same benefits, including health care benefits, as the Employee normally earns during hours worked and is provided by an Employer to an Employee at the rate described in Section 9.01.040 and for the purposes described in Section 9.01.050.
- J. “Retaliatory Personnel Action” means the Employer’s denial of any right guaranteed under this Chapter or any threat, discharge, suspension, demotion or any other adverse employment action against an Employee for the exercise of any right guaranteed herein, including, but not limited to, any sanctions issued by an Employer against an Employee who is protected under this Chapter. Retaliatory Personnel Action also includes interference with, or punishment for, participating in any manner in an investigation, proceeding or hearing under this Chapter.

9.01.040 Accrual of Sick Time

- A. Employers with a minimum of 6 employees shall provide Employees with a minimum of one hour of accrued paid Sick Time for every 30 hours of work performed by the Employee, except as otherwise provided in this Chapter.
- B. Employers with a maximum of 5 employees shall provide Employees with a minimum of one hour of accrued unpaid Sick Time for every 30 hours of work performed by the Employee, except as otherwise provided in this Chapter.
- C. Employees may accrue and use up to 40 hours of Sick Time in a calendar year, unless the Employer provides, or is contractually obligated to provide, more than what this Chapter requires.

- D. Employees who are exempt from overtime requirements under OAR 839-020-0125 will be presumed to work 40 hours in each work week for purposes of earning and accruing Sick Time unless their normal work week is less than 40 hours, in which case Sick Time is earned and accrued based upon that normal work week.
- E. For individuals who are employed on the date this ordinance takes effect accruals shall begin on that date. Sick time may be used after eight hours of sick time has been accrued or a lesser time may be used if allowed by the Employer.
- F. Sick Time accrued by an Employee that is not used in a calendar year may be used by the Employee in the following calendar years. Notwithstanding such carryover, an Employee's accrual and use of Sick Time provided under this Chapter shall not exceed 40 hours in a calendar year unless otherwise allowed by the Employer or as provided by law.
- G. An Employer who provides a minimum of 40 hours per calendar year of paid or unpaid time off through a Paid Time Off policy that can be used under the same provisions of this Chapter, is not required to provide additional Sick Time.
- H. If an Employee is transferred by an Employer to a separate division, entity or location of the Employer, the Employee is entitled to all Sick Time accrued at the prior division, entity or location and is entitled to transfer and use all Sick Time as provided in this Chapter. Accrued Sick Time shall be retained by the Employee if the Employer sells, transfers or otherwise assigns its business to another Employer.
- I. An Employer shall provide previously accrued and unused Sick time to an Employee who is rehired by that Employer within six months of separation from that Employer. The Employee shall be entitled to use previously accrued Sick Time immediately upon re-employment.
- J. An Employer may not require the Employee to search for or find a replacement worker as a condition of the Employee's use of Sick Time.
- K. Upon mutual consent between the Employer and the Employee, the employee shall not be forced but may choose to work an alternate shift in the same or next pay period in lieu of using Sick Time, if the Employer offers or allows such a trade.

9.01.050 Use of Sick Time.

- A. An Employee may use paid or unpaid Sick Time for:
 - 1. Diagnosis, care, or treatment of the employee's mental or physical illness, injury or health condition including, but not limited to, pregnancy, childbirth, post-partum care and preventive medical care;
 - 2. Care for a Family Member who needs diagnosis, care, treatment of a mental or physical illness, , pregnancy, childbirth, post-partum care, injury or health condition and preventive medical care;
 - 3. Purposes described in ORS 659A.272 Domestic Violence, Harassment, Sexual Assault or Stalking.

4. A qualifying absence from work due to:
 - (a) Closure of the Employee's place of business by order of a public official due to a public health emergency;
 - (b) An Employee's need 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;
 - (c) Care for a Family Member when it has been determined by a lawful public health authority or by a health care provider that the Family Member's presence in the community would jeopardize the health of others; and
 - (d) The time when the Employer is required by state law or regulation to exclude the Employee from the workplace for health reasons.
- B. Unless otherwise agreed under Section 9.01.040 (K), Sick Time must be taken for the first day of a qualifying absence, and each day thereafter, until all accrued eligible hours have been taken.
- C. Employers suspecting sick leave abuse may require a licensed Health Care Providers note before any paid or unpaid sick leave is approved. Employers may investigate a documented pattern of an Employee's unscheduled use of Sick Time based on self-attested illness or injury, and notify the Employee of concerns. Indication of patterns of abuse may include but are not limited to, use of unscheduled Sick Time on or adjacent to weekends, holidays, or vacation, or when mandatory shifts are scheduled.
- D. The Employee shall notify the Employer through a Designated Contact Protocol of the need to use Sick Time two hours before the start of the Employee's scheduled work hours, or as soon as practicable, unless the need arises immediately before or after the Employee has reported for work. When possible, the request should include the expected duration of the absence. The Employee shall inform the Employer to any change to the expected duration of the sick leave as soon as practicable.
- E. When the need to use Sick Time is foreseeable, the Employee shall provide notice to the Employer in writing as soon as possible in advance of the use of the Sick Time, and shall make a reasonable effort to schedule the use of Sick Time in a manner that does not unduly disrupt the operations of the Employer. The Employee shall inform the Employer of any change to the expected duration of the sick leave as soon as practicable.
- F. An Employee's right to use Sick Time under the provisions of this Chapter, shall be granted by the Employer upon the oral or Designated Contact Protocol request of an Employee. The Employee shall submit paperwork if required by the Employer as specified in Subsection G of this Section.
- G. For absences of more than 3 consecutive days, an Employer may require reasonable documentation that Sick Time has been used for one of the purposes listed in Section 9.01.050 (1). Documentation signed by a licensed Health Care Provider indicating that sick time for a purpose designated in Section 9.01.050 (1) shall be considered reasonable documentation. If an Employer chooses to require

documentation for use of earned Sick Time, the Employer must pay the cost of any verification by the health care provider not covered by insurance or another benefit plan as provided in ORS 659A.168 (2). As an alternative, the Employer may require the Employee to submit a signed personal statement that the leave was for a purpose covered by Section 9.01.050.

- H. Nothing in this Chapter requires an Employer to compensate an Employee for unused Sick Time upon the Employee's termination, resignation, retirement, or other separation from employment unless the Employer has contractually obligated itself to do so.

9.01.060 Exercise of Rights Protected; Retaliation Prohibited.

- A. 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.
- B. An Employer shall not take Retaliatory Personnel Action or discriminate against an Employee because the Employee has exercised rights protected under this Chapter. Such rights include the right to use Sick Time 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 BOLI 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.
- C. Retaliatory Personnel Action shall not be taken against any person who mistakenly, but in good faith, alleges violations of this Chapter.

9.01.070 Notice and Posting.

- A. All Employers shall post notice of Employee rights under this Chapter. The notice shall be in English and other languages used to communicate with the employer's workforce. The City may contract with the Bureau of Labor and Industries to create and disseminate the required poster.
- B. Employers may comply with this section by displaying a poster in a conspicuous and accessible place in each establishment where such Employees are employed.
- C. An Employer who knowingly violates the notice and posting requirements of this section may be subject to a civil fine in an amount not to exceed \$100 for each separate offense.

9.01.80. Employer Records

Employers shall retain records documenting hours worked by Employees and paid or unpaid Sick Time taken by Employees, for a period of at least two years as required by ORS 653.045(1), and shall allow access to such records by BOLI or another other agency authorized to enforce this Chapter.

9.01.90 Administrative Rules implementing this Chapter.

- A. The City Attorney is authorized to adopt rules, procedures and forms to assist in the implementation of the provisions of this Chapter.
- B. All rules adopted to implement this Chapter shall be subject to a public review process. Not less than ten or more than thirty days before such public review process, a notice shall be published in a newspaper of general circulation. The notice shall include the place and time, when the Rules will be considered and the location at which copies of the full text of the proposed rules may be obtained.
- C. During the public review, a designee of the City shall hear testimony or receive written comment concerning the proposed rules. The City shall review the recommendation, taking into consideration the comments received during the public review process, and shall either adopt t modify it or reject the proposed Rules.
- D. Unless otherwise stated, all rules shall be effective upon adoption by the City Attorney and shall be filed in the office of the City Auditor.

9.01.100 Enforcement.

- A. The City may contract with BOLI to enforce this Chapter.
- B. Pursuant to agreement between BOLI and the City, enforcement may be governed by the procedures established pursuant to ORS 659A.800 *et.seq*, ORS. Chapter 652 or ORS Chapter 653, or such other procedures as may be agreed upon by BOLI and the City. Rules adopted by the City pursuant to Section 7 of this Chapter may also be used to implement enforcement and administration of this Chapter.
- C. Pursuant to agreement between BOLI and the City, any person claiming to be aggrieved by an unlawful employment practice under this Chapter may file a complaint with BOLI under procedures established under ORS 659A.820, ORS Chapter 652 or ORS Chapter 653, or such other procedures as BOLI or the City may establish for taking complaints.
- D. Pursuant to agreement, BOLI shall have the same enforcement powers with respect to the rights established under this Chapter as are established under ORS 659A.820 *et .seq.*, ORS. Chapter 652 and ORS. Chapter 653, and if the complaint is found to be justified, the complainant may be entitled to any remedies provided under ORS 659A.850 *et. seq.*, ORS Chapter 652 and ORS Chapter 653 and their implementing regulations and any additional remedies, provided that those remedies are specified in the agreement between the City and the BOLI Commissioner.

- E. Any person claiming to be aggrieved by a violation of this Chapter shall have a cause of action in any court of competent jurisdiction for damages and such other remedies as may be appropriate. Election of remedies and other procedural issues relating to the interplay between administrative proceedings and private rights of action shall be handled as provided for in ORS 659A.870 *et. seq.* The court may grant such relief as it deems appropriate.

9.01.110 Confidentiality and Nondisclosure.

If the Employer obtains health information about an Employee or Employee's family member, such information shall be treated as confidential to the extent provided by law.

9.01.120 Waiver through Collective Bargaining for Certain Employees Hired Through a Hiring Hall.

All or any portion of the requirements of this Act shall not apply to Employees:

- A. Whose terms of employment are defined in a bona fide collective bargaining agreement that contains a clear paid time-off policy equal to or better than the requirements of this Chapter, including protections against retaliation for time used for the purposes outlined in Section 4 of this Act; and
- B. Whose employment resulted from referral from a Hiring Hall operating pursuant to the collective bargaining agreement referred to in subsection (1).

9.01.130 Other Legal Requirements.

This Chapter provides minimum requirements pertaining to Sick Time 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 time, whether paid or unpaid, or that extends other protections to Employees.

9.01.140 Public Education and Outreach.

The City shall develop and implement an outreach program to inform Employers and Employees, about the requirements for Paid and Unpaid Sick Time under this Chapter.

9.01.150 Severability.

If any provision of this Chapter or application thereof to any person or circumstance is judged invalid, the invalidity shall not affect other provisions or application of the

Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are declared severable.

9.01.160 Application.

This Chapter is effective January 1, 2014. Administrative Rules shall be adopted a minimum of 4 months prior to implementation.