

## MODEL EARNED PAID SICK AND SAFE TIME ACT OF 2015

Note: Drafting a new earned paid sick time policy requires state-specific research, analysis of underlying state and/or local law and consideration of complex policy issues. We are available to do any necessary legal research and drafting, and to work with you to customize the below model.

For assistance, please contact:

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### A Bill to Be Entitled “Healthy Families and Workplaces Act”

<b>Issue for Advocates #1: Tailoring the Findings and Purposes to the Local Authority and Reasons for the Law</b>
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#### Whereas the [legislative body] finds that:

(1) Most workers in the [State/County/City] of X will at some time during each year need limited time off from work to take care of their own health needs or the health needs of their family members.

(2) Nationally, nearly 40 percent of private sector workers do not have any paid sick time.<sup>1</sup> In addition, many workers who do have paid sick time are disciplined for using it<sup>2</sup> or cannot use the time to care for sick children. In [State/County/City], an estimated ##% of private sector workers lack paid sick time.<sup>3</sup>

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<sup>1</sup> U.S. Bureau of Labor Statistics. (2015, September). *National Compensation Survey: Employee Benefits in the United States, March 2015* (Table 6). Retrieved 21 September 2015, from <http://www.bls.gov/news.release/pdf/ebs2.pdf>

<sup>2</sup> Institute for Women’s Policy Research. (2011, July). *Paid Sick Days and Employer Penalties for Absence*. Retrieved 21 September 2015, from <http://www.iwpr.org/publications/pubs/paid-sick-days-and-employer-penalties-for-absence>

<sup>3</sup> **Find information for your state here:** Institute for Women’s Policy Research & National Partnership for Women & Families. (2015, May). *Workers’ Access to Paid Sick Days in the States*. Retrieved 21

(3) Workers' access to paid sick time varies significantly by wage level and race. Nationally, only one in five of the lowest-income workers (22 percent) has access to paid sick time, compared to 86 percent of the highest-income workers.<sup>4</sup> And Hispanic and African American workers are less likely to have access than white workers: Less than half of Hispanic workers (49 percent) and only 60 percent of African American workers have access to paid sick days, compared to 64 percent of white workers.<sup>5</sup>

(4) Providing workers time off to attend to their own health care needs and the health care needs of their family members will ensure a healthier and more productive workforce in X.

(5) ##% of children in X are in families where all adults work, which means that parents without paid sick time must lose income and risk losing their jobs when a child is ill or needs medical care.<sup>6</sup>

(6) In the state of X, ## people serve as family caregivers for family members, work which has an aggregate value of \$X per year.<sup>7</sup> Nationally, 69 percent of workers who juggle work with caregiving responsibilities have reported the need to decrease hours or take unpaid leave to provide care for a family member or close friend.<sup>8</sup> Working family caregivers cannot adequately care for their relatives without access to paid sick time.

(7) Earned paid sick time will have a positive effect on the individuals and public health of X by allowing workers to earn a limited number of hours per year to care for themselves or a close family member when illness strikes or medical needs arise. Earned paid sick time will reduce recovery time, promote the use of regular medical

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September 2015, from <http://www.iwpr.org/publications/pubs/workers-access-to-paid-sick-days-in-the-states>

<sup>4</sup> U.S. Bureau of Labor Statistics. (2015, September). *National Compensation Survey: Employee Benefits in the United States, March 2015* (Table 32). Retrieved 21 September 2015, from <http://www.bls.gov/news.release/pdf/ebs2.pdf>.

<sup>5</sup> O'Connor, R, Hayes, J. & Gault, B. (2014, July). *Paid Sick Days Access Varies by Race/Ethnicity, Sexual Orientation, and Job Characteristics* (Table 1). Institute for Women's Policy Research Publication. Retrieved 18 November 2015, from <http://www.iwpr.org/publications/pubs/paid-sick-days-access-varies-by-race-ethnicity-sexual-orientation-and-jobcharacteristics>

<sup>6</sup> Calculate data for your state or metro area using the American Community Survey (<http://factfinder2.census.gov>), or contact the National Partnership or A Better Balance for assistance.

<sup>7</sup> Find numbers for your state here: Reinhard, S. C. et al. (2015, July). *Valuing the Invaluable: 2015 Update*. AARP Public Policy Institute Publication. Retrieved 21 September 2015, from <http://www.aarp.org/content/dam/aarp/ppi/2015/valuing-the-invaluable-2015-update-new.pdf>

<sup>8</sup> Feinberg, L. et al. (2011, June). *Valuing the Invaluable: 2011 Update*. AARP Public Policy Institute Publication. Retrieved 10 November 2015, from <http://assets.aarp.org/rgcenter/ppi/ltc/i51-caregiving.pdf>

providers rather than hospital emergency departments, and reduce the likelihood of people spreading illness to other members of the workforce and to the public.<sup>9</sup>

(8) Earned paid sick time will also reduce health care expenditures by promoting access to primary and preventive care. Nationally, providing all workers with earned paid sick time would result in \$1.1 billion in annual savings in hospital emergency department costs, including more than \$500 million in savings to publicly funded health insurance programs such as Medicare, Medicaid and SCHIP.<sup>10</sup> Access to paid sick time can also help decrease the likelihood that a worker will put off needed care, and can increase the rates of preventive care among workers and their children.<sup>11</sup>

(9) Earned paid sick time will allow parents to provide personal care for their sick children. Parental care makes children's recovery faster and can prevent future health problems.<sup>12</sup> Parents who don't have paid sick time are more than twice as likely as parents with paid sick time to send a sick child to school or daycare, and five times as likely to report taking their child or a family member to a hospital emergency room because they were unable to take time off work during their regular work hours.<sup>13</sup>

(10) Earned paid sick time will reduce contagion. Workers in jobs with high levels of public contact, such as restaurant workers and child care workers, are very unlikely to have paid sick time.<sup>14</sup> As a result, these workers may have no choice but to go to

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<sup>9</sup> Lovell, V. (2006, January). *Paid Sick Days Improve Public Health by Reducing the Spread of Disease*. Institute for Women's Policy Research Publication. Retrieved 10 November 2015, from <http://www.iwpr.org/publications/pubs/paid-sick-days-improve-public-health-by-reducing-the-spread-of-disease>

<sup>10</sup> Miller, K., Williams, C., & Yi, Y. (2011, November). *Paid Sick Days and Health: Cost Savings from Reduced Emergency Department Visits* (pp. iii, 14-15). Institute for Women's Policy Research. Retrieved 10 November 2015, from <http://www.iwpr.org/publications/pubs/paid-sick-days-and-health-cost-savings-from-reduced-emergency-department-visits>

<sup>11</sup> Miller, K., Williams, C., & Yi, Y. (2011, November). *Paid Sick Days and Health: Cost Savings from Reduced Emergency Department Visits, 14-15 (Tables 5, 6)*. Institute for Women's Policy Research. Retrieved 21 September 2015, from <http://www.iwpr.org/publications/pubs/paid-sick-days-and-health-cost-savings-from-reduced-emergency-department-visits>

<sup>12</sup> Heymann, J. (2001). *The Widening Gap: Why America's Working Families Are in Jeopardy—and What Can Be Done About It*. New York, NY: Basic Books.

<sup>13</sup> Smith, T., & Kim, J. (2010, June). *Paid Sick Days: Attitudes and Experiences* (p. 6). National Opinion Research Center at the University of Chicago Publication. Retrieved 10 November 2015, from <http://www.nationalpartnership.org/research-library/work-family/psd/paid-sick-days-attitudes-and-experiences.pdf>

<sup>14</sup> O'Connor, R., Hayes, J., & Gault, B. (2014, July). *Paid Sick Days Access Varies by Race/Ethnicity, Sexual Orientation, and Job Characteristics*. Institute for Women's Policy Research Publication.

work when they are ill, thereby increasing the risk of passing illnesses on to co-workers and customers while also jeopardizing their own health.<sup>15</sup> Overall, people without paid sick time are 1.5 times more likely than people with paid sick time to go to work with a contagious illness like the flu.<sup>16</sup>

(11) A peer-reviewed epidemiological study found that nearly one in five food service workers had come to work vomiting or with diarrhea in the past year, creating dangerous health conditions.<sup>17</sup> The largest national survey of U.S. restaurant workers found that two-thirds of restaurant waitstaff and cooks have come to work sick.<sup>18</sup>

(12) In the event of a disease outbreak that presents a threat to public health—for example, the H1N1 outbreak of 2009—government officials request that sick workers stay home and keep sick children home from school or child care to prevent the spread of illness, and to safeguard workplace productivity.<sup>19</sup> However, because many workers lack paid sick time, they may be unable to comply.

(13) During the height of the H1N1 pandemic, workers with lower rates of access to paid sick time were more likely than those with higher rates of access to paid sick time to go to work sick, and as a result, the pandemic lasted longer in their workplaces as the virus spread from co-worker to co-worker.<sup>20</sup> One study estimates

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Retrieved 18 September 2015, from <http://www.iwpr.org/publications/pubs/paid-sick-days-access-varies-by-race-ethnicity-sexual-orientation-and-job-characteristics/>

<sup>15</sup> Human Impact Partners. (2009, September). *A Health Impact Assessment of the Healthy Families Act of 2009*. Retrieved 16 September 2015, from <http://www.humanimpact.org/component/jdownloads/finish/5/68>

<sup>16</sup> Smith, T., & Kim, J. (2010, June). *Paid Sick Days: Attitudes and Experiences*. National Opinion Research Center at the University of Chicago Publication. Retrieved 16 September 2015, from <http://www.publicwelfare.org/resources/DocFiles/psd2010final.pdf>.

<sup>17</sup> Sumner, S. et al. (2011). Factors Associated with Food Workers Working while Experiencing Vomiting or Diarrhea. *Journal of Food Protection*, 74(2). Retrieved 21 September 2015, from [http://www.cdc.gov/nceh/ehs/ehsnet/Docs/JFP\\_ill\\_food\\_workers.pdf](http://www.cdc.gov/nceh/ehs/ehsnet/Docs/JFP_ill_food_workers.pdf)

<sup>18</sup> Restaurant Opportunities Centers United. (2010, September). *Serving While Sick: High Risks & Low Benefits for the Nation's Restaurant Workforce, and Their Impact on the Consumer*. Retrieved 21 September 2015, from [http://rocunited.org/wp-content/uploads/2013/04/reports\\_serving-while-sick\\_full.pdf](http://rocunited.org/wp-content/uploads/2013/04/reports_serving-while-sick_full.pdf)

<sup>19</sup> U.S. Occupational Safety and Health Administration. (2009, May). *OSHA Fact Sheet: What Employers Can Do to Protect Workers from Pandemic Influenza*. Retrieved 16 September 2015, from <http://www.osha.gov/Publications/employers-protect-workers-flu-factsheet.html>

<sup>20</sup> Drago, R., & Miller, K. (2010, January). *Sick at Work: Infected Employees in the Workplace During the H1N1 Pandemic*. Institute for Women's Policy Research Publication. Retrieved 16 September 2015, from <http://www.iwpr.org/publications/pubs/sick-at-work-infected-employees-in-the-workplace-during-the-h1n1-pandemic>

that lack of paid sick time was responsible for five million cases of influenza-like illness during the pandemic.<sup>21</sup>

(14) A study by Centers for Disease Control and Prevention researchers found that workers who have access to paid sick time are significantly more likely to undergo routine cancer screenings and to visit a doctor or obtain other medical care. Women workers with paid sick time are more likely to receive mammograms and Pap tests at suggested intervals, and adult workers with paid sick time are more likely to undergo a colonoscopy or sigmoidoscopy. The study concludes that the lack of paid sick time appears to be a potential barrier to obtaining cancer screenings and preventive medical care.<sup>22</sup>

(15) A study by researchers from the National Institute for Occupational Safety and Health at the Centers for Disease Control and Prevention found that workers with access to paid sick time were 28 percent less likely than workers without access to paid sick time to be injured on the job. The strongest connection between access to paid sick time and a lower incidence of occupational injuries occurs in high-risk sectors and occupations.<sup>23</sup>

(16) Providing earned paid sick time is good for businesses. Paid sick time results in reduced worker turnover, which leads to reduced costs incurred from advertising, interviewing and training new hires.<sup>24</sup> Replacing workers can cost approximately 21 percent of an employee's annual compensation.<sup>25</sup>

(17) Earned paid sick time will reduce the risk of “presenteeism”—workers coming to work with illnesses and health conditions that reduce their productivity—a

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<sup>21</sup> Kumar, S. et al. (2012). The Impact of Workplace Policies and Other Social Factors on Self-Reported Influenza-Like Illness Incidence During the 2009 H1N1 Pandemic. *American Journal of Public Health, 102*(1).

<sup>22</sup> Peipins, L. et al. (2012). The lack of paid sick leave as a barrier to cancer screening and medical care-seeking: results from the National Health Interview Survey. *BMC Public Health, (12)*520. Retrieved 21 September 2015, from <http://www.biomedcentral.com/content/pdf/1471-2458-12-520.pdf>

<sup>23</sup> Asfaw, A., Pana-Cryan, R., & Rosa, R. (2012, September). Paid Sick Leave and Nonfatal Occupational Injuries. *American Journal of Public Health, 102*(9). Retrieved 21 September 2015, from <http://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2011.300482>

<sup>24</sup> Siegwarth Meyer, C. et al. (2001, Spring). Work-Family Benefits: Which Ones Maximize Profits? *Journal of Managerial Issues, 13*(1).

<sup>25</sup> Boushey, H., & Glynn, S. J. (2012, November). *There Are Significant Business Costs to Replacing Employees*. Center for American Progress Publication. Retrieved 16 September 2015, from <http://cdn.americanprogress.org/wp-content/uploads/2012/11/CostofTurnover.pdf>

problem that costs the national economy \$160 billion annually (\$207.6 billion after adjusting for inflation).<sup>26</sup>

(18) Earned paid sick time will level the playing field by enabling smaller companies who want to provide earned paid sick time an opportunity to compete with larger companies.

**Issue for Advocates #2: Whether to Include Domestic Violence/Sexual Assault “Safe Time”**

(19) More than one in four American women report having experienced a negative impact from sexual violence, physical violence and/or stalking by an intimate partner at some point in their lives.<sup>27</sup> 5.7 million women reported having experienced intimate partner-related physical assaults and rapes in the last 12 months.<sup>28</sup> In a national survey, nearly 2.4 million men reported having experienced severe physical violence by an intimate partner in the previous 12 months.<sup>29</sup> Many workers need time away from their jobs to care for their health after these incidents or to find solutions, such as a restraining order or new housing, to avoid or prevent physical or sexual abuse.

(20) Survivors of domestic and sexual violence are forced to lose days of paid employment because of the violence they face. According to surveys from the Bureau of Justice Statistics, 36 percent of rape or sexual assault victims lost more than 10 days of work following victimization, and more than half of stalking victims

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<sup>26</sup> Stewart, W. et al. (2003, December). Lost Productive Work Time Costs from Health Conditions in the United States: Results from the American Productivity Audit. *Journal of Occupational and Environmental Medicine*, 45(12). Retrieved 16 September 2015, from <http://www.nationalpartnership.org/research-library/work-family/psd/lost-productive-work-time-american-productivity-audit.pdf> (Unpublished calculation based on \$226 billion annually in lost productivity, 71 percent due to presenteeism.)

<sup>27</sup> Breiding, M. J. et al. (2014, September 5). Prevalence and Characteristics of Sexual Violence, Stalking, and Intimate Partner Violence Victimization – National Intimate Partner and Sexual Violence Survey, United States, 2011. *Morbidity and Mortality Weekly Report*, 63(SS08). Centers for Disease Control and Prevention Publication. Retrieved 31 August 2015, from <http://www.cdc.gov/mmwr/preview/mmwrhtml/ss6308a1.htm>

<sup>28</sup> Breiding, M. J., et al. (2014, September 5). Prevalence and Characteristics of Sexual Violence, Stalking, and Intimate Partner Violence Victimization – National Intimate Partner and Sexual Violence Survey, United States, 2011. *Morbidity and Mortality Weekly Report*, 63(SS08). Centers for Disease Control and Prevention Publication. Retrieved 31 August 2015, from <http://www.cdc.gov/mmwr/preview/mmwrhtml/ss6308a1.htm>

<sup>29</sup> Breiding, M. J., et al. (2014, September 5). Prevalence and Characteristics of Sexual Violence, Stalking, and Intimate Partner Violence Victimization – National Intimate Partner and Sexual Violence Survey, United States, 2011. *Morbidity and Mortality Weekly Report*, 63(SS08). Centers for Disease Control and Prevention Publication. Retrieved 31 August 2015, from <http://www.cdc.gov/mmwr/preview/mmwrhtml/ss6308a1.htm>

lost five or more days of work.<sup>30</sup> Each year, victims of domestic violence are forced to miss nearly eight million days of paid work, costing more than \$700 million annually due to victims' lost productivity in employment.<sup>31</sup>

(21) Without job protection, survivors are in grave danger of losing their jobs. Between 25 and 50 percent of domestic violence survivors report job loss, due at least in part to the domestic violence.<sup>32</sup> Loss of employment can be particularly devastating for survivors of domestic violence, who often need economic security to ensure their and their children's safety.

**The purposes of this Act are:**

(1) To ensure that all workers in **X** can address their own health and safety needs and the health and safety needs of their families by requiring employers to provide a minimum level of earned paid sick time, including time to care for their family members;

(2) To diminish public and private health care costs and promote preventive health services in **X** by enabling workers to seek early and routine medical care for themselves and their family members;

(3) To protect the public's health in **X** by reducing the risk of contagion;

(4) To promote the economic security and stability of workers and their families;

(5) To protect employees in **X** from losing their jobs or facing workplace discipline when they use the paid sick time they earn to care for themselves or their families;

(6) To assist victims of domestic violence and their family members by providing them job-protected time away from work to receive treatment and to take the necessary steps to ensure their safety;

(7) To safeguard the public welfare, health, safety and prosperity of the people of **X**; and

(8) To accomplish the purposes described in paragraphs (1)-(7) in a manner that is feasible for employers.

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<sup>30</sup> Bureau of Justice Statistics, U.S. Department of Justice. (2013, December). *Stalking*. Retrieved 24 September 2015, from <http://www.bjs.gov/index.cfm?ty=tp&tid=973>; Bureau of Justice Statistics, U.S. Department of Justice. (2000). *National Crime Victimization Survey: Personal and Property Crimes*.

<sup>31</sup> Centers for Disease Control and Prevention. (2013, December 24). *Intimate Partner Violence: Consequences*. Retrieved 21 September 2015, from <http://www.cdc.gov/ViolencePrevention/intimatepartnerviolence/consequences.html>; Hanson, R. et al. (2010, April). The Impact of Crime Victimization on Quality of Life. *Journal of Traumatic Stress*, 23(2), 189-197.

<sup>32</sup> Lloyd, S., & Taluc, N. (1999). The Effects of Male Violence on Female Employment. *Violence Against Women*, 5(4), 370-92. Retrieved 21 September 2015, from <http://vaw.sagepub.com/content/5/4/370.short?rss=1&ssource=mfc>

Be It Enacted by the [Legislature/Council of X]:

**Section 1. Definitions**

For Purposes of this Act:

**Issue for Advocates #3: Selecting an Enforcement Agency**

(1) “Agency” means [state, county or city agency responsible for enforcement of labor laws or the county/city agency best suited to enforcing this law, if there is no local labor enforcement agency].

(2) “Domestic violence” is as defined in [state statute or local law].

**Issue for Advocates #4: Use of the Minimum Wage and Tipped Employees**

(3) “Earned paid sick time” means time that is compensated 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 for the purposes described in Section 3 of this Act, but in no case shall this hourly amount be less than that provided under 29 U.S.C. §206(a)(1) [or your state or local minimum wage law].

**Issues for Advocates #5, #6, #7 & #8: Definitions of Employee and Employer; Specific Inclusion of Public Assistance Recipients Engaged in Work Programs; Reducing Requirements for Small Businesses; Counting Employees**

(4) “Employee” is as defined in [state wage and hour law, local law or federal Fair Labor Standards Act (29 U.S.C. § 203(e))] but does not include those who work in X for fewer than # hours in a calendar year. “Employee” includes recipients of public benefits who are engaged in work activity as a condition of receiving public assistance. [May also specifically add: “Employee” does not include any railroad worker exempted under the Railroad Unemployment Insurance Act, 45 U.S.C. 363(b).]

(5) “Employer” is as defined in [state wage and hour law, local law or federal Fair Labor Standards Act (29 U.S.C. § 203(d))].

**Issue for Advocates #9: Exempting Public Employers or Entities Already Subject to Earned Paid Sick Time Requirements by State or Local Law**

For the purposes of this Act, “employer” does not include any of the following:

- (A) The United States Government.



- (B) **For local bills only:** The State of **X** including any office, department, agency, authority, institution, association, society or other body of the state, including the legislature and the judiciary.
- (C) **For local bills only:** Any county or local government other than **X**. **OR**  
**For local bills if necessary due to limitations on authority of legislative body to determine benefits for locality's own workers:**  
Any county or local government.

**Issue for Advocates #10: Broader Definition of Family Members and Using Existing Legal Definitions**

(6) "Family member" means:

(A) Regardless of age, a biological, adopted or foster child, stepchild or legal ward, a child of a domestic partner, a child to whom the employee stands in loco parentis, or an individual to whom the employee stood in loco parentis when the individual was a minor;

(B) A biological, foster, stepparent or adoptive parent or legal guardian of an employee or an employee's spouse or domestic partner or a person who stood *in loco parentis* when the employee or employee's spouse or domestic partner was a minor child;

(C) A person to whom the employee is legally married under the laws of any state, or a domestic partner of an employee **[as defined under X state/county/city law or]** as registered under the laws of any state or political subdivision;

(D) A grandparent, grandchild or sibling (whether of a biological, foster, adoptive or step relationship) of the employee or the employee's spouse or domestic partner;

(E) A person for whom the employee is responsible for providing or arranging care, including but not limited to helping that individual obtain diagnostic, preventive, routine or therapeutic health treatment; or

(F) Any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

(7) "Harassment" is as defined in **[state statute or local law]**.

**Issue for Advocates #11: Including Midwives under the Definition of "Health Care Professional"**

(8) "Health care professional" means any person licensed under Federal **[or State]** law to provide medical or emergency services, including but not limited to doctors, nurses and emergency room personnel.

(9) “Retaliatory personnel action” means denial of any right guaranteed under this Act and any threat, discharge, suspension, demotion, reduction of hours, reporting or threatening to report an employee’s suspected citizenship or immigration status, or the suspected citizenship or immigration status of a family member of the employee to a federal, state or local agency, or any other adverse action against an employee for the exercise of any right guaranteed herein including any sanctions against an employee who is the recipient of public benefits for rights guaranteed under this Act. Retaliation shall also include interference with or punishment for in any manner participating in or assisting an investigation, proceeding or hearing under this Act.

(10) “Sexual assault” is as defined in [state statute or local law].

(11) “Stalking” is as defined in [state statute or local law].

(12) “Year” means a regular and consecutive 12 month period as determined by the employer; except that for the purposes of sections 6 and 8 of this Act, “year” shall mean a calendar year.

## Section 2. Accrual of Earned Paid Sick Time

### Issue for Advocates #12: Calculating the Accrual Rate and Deciding on a Limit

(1) All employees shall accrue a minimum of one hour of earned paid sick time for every # hours worked. Employees shall not [use] more than # hours of earned paid sick time in a year, unless the employer selects a higher limit. [Note: It is also possible to limit accrual: Employees will not accrue more than # hours of earned paid sick time in a year, unless the employer selects a higher limit.]

### Issue for Advocates #13: Assuming 40 Hours Worked Per Week

(2) Employees who are exempt from overtime requirements under 29 U.S.C. § 213(a)(1) of the Federal Fair Labor Standards Act will be assumed to work 40 hours in each work week for purposes of earned paid sick time accrual unless their normal work week is less than 40 hours, in which case earned paid sick time accrues based upon that normal work week.

### Issue for Advocates #14: Front-Loading

(3) Earned paid sick time as provided in this section shall begin to accrue at the commencement of employment or on the date this law goes into effect, whichever is later. An employer may provide all paid sick time that an employee is expected to accrue in a year at the beginning of the year.

### Issue for Advocates #15: Waiting Period for Use

(4) Employees shall not be entitled to use accrued earned paid sick time until the # calendar day following commencement of their employment, [or the # calendar day following the date this law goes into effect, whichever is later,] unless otherwise permitted by the employer. On and after the # calendar day of employment, employees may use earned paid sick time as it is accrued.

**Issue for Advocates #16: Carry Forward**

(5) Earned paid sick time shall be carried over to the following year. Alternatively, in lieu of carryover of unused earned paid sick time from one year to the next, an employer may pay an employee for unused earned paid sick time at the end of a year and provide the employee with an amount of paid sick time that meets or exceeds the requirements of this Act that is available for the employee's immediate use at the beginning of the subsequent year.

**Issue for Advocates #17: Protecting Paid Time Off Accounts and Vacation Leave**

(6) Any employer with a paid leave policy, such as a paid time off policy, who makes available an amount of paid leave sufficient to meet the accrual requirements of this section that may be used for the same purposes and under the same conditions as earned paid sick time under this Act is not required to provide additional paid sick time.

(7) Nothing in this section shall be construed as requiring financial or other reimbursement to an employee from an employer upon the employee's termination, resignation, retirement or other separation from employment for accrued earned paid sick time that has not been used.

**Issue for Advocates #18: Transferred, Seasonal and Temporary Workers**

(8) If an employee is transferred to a separate division, entity or location, but remains employed by the same employer, the employee is entitled to all earned paid sick time accrued at the prior division, entity or location and is entitled to use all earned paid sick time as provided in this section. When there is a separation from employment and the employee is rehired within # months of separation by the same employer, previously accrued earned paid sick time that had not been used shall be reinstated. Further, the employee shall be entitled to use accrued earned paid sick time and accrue additional earned paid sick time at the re-commencement of employment.

(9) 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 earned paid sick time they accrued when employed by

the original employer, and are entitled to use earned paid sick time previously accrued.

(10) At its discretion, an employer may loan earned paid sick time to an employee in advance of accrual by such employee.

### **Section 3. Use of Earned Paid Sick Time**

(1) Earned paid sick time shall be provided to an employee by an employer for:

(A) An employee's mental or physical illness, injury or health condition; an employee's need for medical diagnosis, care, or treatment of a mental or physical illness, injury or health condition; an employee's need for preventive medical care;

(B) Care of a family member with a mental or physical illness, injury or health condition; care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury or health condition; care of a family member who needs preventive medical care; or in the case of a child, to attend a school meeting or a meeting at a place where the child is receiving care necessitated by the child's health condition or disability, domestic violence, sexual assault, harassment or stalking;

<b>Issue for Advocates #19: Public Health Emergency</b>
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(C) Closure of the employee's place of business by order of a public official due to a public health emergency or 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, or care for oneself or a family member when it has been determined by the health authorities having jurisdiction or by a health care provider that the employee's or family member's presence in the community may jeopardize the health of others because of his or her exposure to a communicable disease, whether or not the employee or family member has actually contracted the communicable disease; or

(D) Absence necessary due to domestic violence, sexual assault, harassment or stalking, provided the leave is to allow the employee to obtain for the employee or the employee's family member:

(1) Medical attention needed to recover from physical or psychological injury or disability caused by domestic violence, sexual assault, harassment or stalking;

(2) Services from a victim services organization;

(3) Psychological or other counseling;

(4) Relocation or taking steps to secure an existing home due to the domestic violence, sexual assault, harassment or stalking; or

(5) Legal services, including preparing for or participating in any civil or criminal legal proceeding related to or resulting from the domestic violence, sexual assault, harassment or stalking.

**Issue for Advocates #20: Allowing the Employer to Require Notice**

(2) Earned paid sick time shall be provided upon the request of an employee. Such request may be made orally, in writing, by electronic means or by any other means acceptable to the employer. When possible, the request shall include the expected duration of the absence.

(3) When the use of earned paid sick time is foreseeable, the employee shall make a good faith effort to provide notice of the need for such time to the employer in advance of the use of the earned paid sick time and shall make a reasonable effort to schedule the use of earned paid sick time in a manner that does not unduly disrupt the operations of the employer.

(4) An employer that requires notice of the need to use earned paid sick time where the need is not foreseeable shall provide a written policy that contains procedures for the employee to provide notice. An employer that has not provided to the employee a copy of its written policy for providing such notice shall not deny earned paid sick time to the employee based on non-compliance with such a policy.

**Issue for Advocates #21: Additional Hours/Shifts as a Condition of Using Earned Paid Sick Time and Finding a Replacement Worker**

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

**Issue for Advocates #22: Increments of Use**

(6) Earned paid sick time may be used in the smaller of hourly increments or the smallest increment that the employer's payroll system uses to account for absences or use of other time.

**Issue for Advocates #23: Documentation Limits, Content and Costs**

(7) For earned paid sick time of 3 or more consecutive work days, an employer may require reasonable documentation that the earned paid sick time has been used for a purpose covered by subsection (1). Documentation signed by a health care professional indicating that earned paid sick time is necessary shall be considered reasonable documentation for purposes of this section. In cases of domestic violence, sexual assault, harassment or stalking, one of the following types of documentation selected by the employee shall be considered reasonable documentation: (a) a police report indicating that the employee or the employee's family member was a victim of domestic violence, sexual assault, harassment or

stalking; (b) a signed statement from a victim and witness advocate affirming that the employee or employee's family member is receiving services from a victim services organization; or (c) a court document indicating that the employee or employee's family member is involved in legal action related to domestic violence, sexual assault, harassment or stalking. An employer may not require that the documentation explain the nature of the illness or the details of the domestic violence, sexual assault, harassment or stalking. If an employer chooses to require documentation for earned paid sick time and the employer does not offer health insurance to the employee, then the employer is responsible for paying all out of pocket expenses the employee incurs in obtaining the documentation. If the employee does have health insurance, the employer is responsible for paying any costs charged to the employee by the health care provider for providing the specific documentation required by the employer. The employer is responsible for paying any costs charged to the employee for documentation of domestic violence, sexual assault, harassment or stalking required by the employer.

#### **Section 4. Exercise of Rights Protected; Retaliation Prohibited**

(1) 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 Act.

(2) An employer shall not take retaliatory personnel action or discriminate against an employee or former employee because the person has exercised rights protected under this Act. Such rights include but are not limited to the right to request or use earned paid sick time pursuant to this Act; the right to file a complaint with the Agency or courts or inform any person about any employer's alleged violation of this Act; the right to participate in an investigation, hearing or proceeding or cooperate with or assist the Agency in its investigations of alleged violations of this Act; and the right to inform any person of his or her potential rights under this Act.

(3) It shall be unlawful for an employer's absence control policy to count earned paid sick time taken under this Act as an absence that may lead to or result in discipline, discharge, demotion, suspension, or any other adverse action.

(4) Protections of this section shall apply to any person who mistakenly but in good faith alleges violations of this Act.

(5) There shall be a rebuttable presumption of unlawful retaliatory personnel action under this section whenever an employer takes adverse action against a person within 90 days of when that person: (a) files a complaint with the Agency or a court alleging a violation of any provision of this Act; (b) informs any person about an employer's alleged violation of this Act; (c) cooperates with the Agency or other persons in the investigation or prosecution of any alleged violation of this Act; (d)

opposes any policy, practice, or act that is unlawful under this Act; or (e) informs any person of his or her rights under this Act.

### Section 5. Notice and Posting

(1) Employers shall give employees written notice of the following at the commencement of employment or by [Date], whichever is later: employees are entitled to earned paid sick time and the amount of earned paid sick time, the terms of its use guaranteed under this Act, that retaliatory personnel action against employees who request or use earned paid sick time is prohibited, that each employee has the right to file a complaint or bring a civil action if earned paid sick time as required by this Act is denied by the employer or the employee is subjected to retaliatory personnel action for requesting or taking earned paid sick time, and the contact information for the Agency where questions about rights and responsibilities under this Act can be answered.

<b>Issue for Advocates #24: Notice/Posting in Languages Other than English</b>
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(2) The notice required in (1) shall be in English, [X, X,] and any language that is the first language spoken by at least X% of the employer's workforce, provided that such notice has been provided by the Agency.

(3) The amount of earned paid sick time available to the employee, the amount of earned paid sick time taken by the employee to date in the year and the amount of pay the employee has received as earned paid sick time shall be recorded in, or on an attachment to, the employee's regular paycheck.

(4) Employers shall display a poster that contains the information required in (1) in a conspicuous and accessible place in each establishment where such employees are employed. The poster displayed shall be in English, [X, X,] and any language that is the first language spoken by at least X% of the employer's workforce, provided that such poster has been provided by the Agency.

(5) The Agency shall create and make available to employers, in all languages spoken by more than X% of the [State's/County's/City's] workforce and any language deemed appropriate by the Agency, model notices and posters that contain the information required under (1) for employers' use in complying with (1) and (4).

(6) An employer who willfully violates the notice and posting requirements of this section shall be subject to a civil fine in an amount not to exceed \$100 for each separate offense.

### Section 6. Employer Records

Employers shall retain records documenting hours worked by employees and earned paid sick time taken by employees, for a period of [three] 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 Act. When an issue arises as to an employee's entitlement to earned paid sick time under this section, if the employer does not maintain or retain adequate records documenting hours worked by the employee and earned paid sick time taken by the employee, or does not allow the Agency reasonable access to such records, it shall be presumed that the employer has violated the Act, absent clear and convincing evidence otherwise.

### Section 7. Regulations

The Agency shall be authorized to coordinate implementation and enforcement of this Act and shall promulgate appropriate guidelines or regulations for such purposes.

### Section 8. Enforcement

NOTE: There are several different ways to enforce an earned paid sick time law, and a bill can contain a combination of them as long as the jurisdiction permits the types of enforcement selected. The model language includes all options.

#### Issue for Advocates #25: Procedures for Agency Enforcement/Availability of Courts

#### (1) *Administrative Enforcement*

(A) The Agency shall enforce the provisions of this Act. In effectuating such enforcement, the Agency shall establish a system utilizing multiple means of communication to receive complaints regarding non-compliance with this Act and investigate complaints received by the Agency in a timely manner.

(B) Any person alleging a violation of this Act shall have the right to file a complaint with the Agency within [X days/weeks/months/years] of the date the person knew or should have known of the alleged violation. 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 Act or for other appropriate purposes.

(C) Upon receiving a complaint alleging a violation of this Act, the Agency shall investigate such complaint and attempt to resolve it through mediation between the complainant and the subject of the complaint, or other means. The Agency shall keep complainants notified regarding the status of their complaint and



any resultant investigation. If the Agency believes that a violation has occurred, it shall issue to the offending person or entity a notice of violation and the relief required of the offending person or entity. The Agency shall prescribe the form and wording of such notices of violation including any method of appealing the decision of the Agency.

(D) The Agency shall have the power to impose penalties provided for in this Act and to grant an employee or former employee all appropriate relief. Such relief shall include but not be limited to: (1) for each instance of earned paid sick time taken by an employee but unlawfully not compensated by the employer: three times the wages that should have been paid under this Act or \$X, whichever is greater; (2) for each instance of earned paid sick time requested by an employee but unlawfully denied by the employer and not taken by the employee or unlawfully conditioned upon searching for or finding a replacement worker: \$X; (3) for each instance of unlawful retaliation not including discharge from employment: full compensation including wages and benefits lost, an additional amount of at least \$X and equitable relief as appropriate; and (4) for each instance of unlawful discharge from employment: full compensation including wages and benefits lost, \$X and equitable relief, including reinstatement, as appropriate.

(E) Any entity or person found to be in violation of the provisions of this Act shall be liable for a civil penalty payable to [state/county/city] not to exceed \$X for the first violation and, for subsequent violations that occur within two years of any previous violation, not to exceed \$X for the second violation and not to exceed \$X for each successive violation.

(F) The Agency shall annually report on its website the number and nature of the complaints received pursuant to this Act, the results of investigations undertaken pursuant to this Act, including the number of complaints not substantiated and the number of notices of violations issued, the number and nature of adjudications pursuant to this Act, and the average time for a complaint to be resolved pursuant to this chapter.

## (2) Civil Enforcement

(A) The Agency, the Attorney General [or City/County Attorney], any person aggrieved by a violation of this Act, or any entity a member of which is aggrieved by a violation of this Act may bring a civil action in a court of competent jurisdiction against an employer violating this Act. Such action may be brought by a person aggrieved by a violation of this section without first filing an administrative complaint.

### **Issue for Advocates #26: Liquidated Damages**

(B) Upon prevailing in an action brought pursuant to this section, aggrieved persons shall recover the full amount of any unpaid earned sick time plus any actual

damages suffered as the result of the employer's violation of this Act plus an equal amount of liquidated damages. Aggrieved persons shall also be entitled to reasonable attorney's fees.

(C) Upon prevailing in an action brought pursuant to this section, aggrieved persons shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation, including, without limitation, reinstatement to employment, back pay and injunctive relief.

(D) Any person aggrieved by a violation of this Act may file a complaint with the Attorney General [or City/County Attorney]. The filing of a complaint with the Attorney General [or City/County Attorney] will not preclude the filing of a civil action.

(E) The Attorney General [or City/County Attorney] may bring a civil action to enforce this Act. The Attorney General [or City/County Attorney] may seek injunctive relief. In addition to injunctive relief, or in lieu thereof, for any employer or other person found to have willfully violated this Act, the Attorney General [or City/County Attorney] may seek to impose a fine of X [example: \$1,000] per violation, payable to the [City/County/State].

#### **Issue for Advocates #27: Setting the Statute of Limitations**

(F) The statute of limitations for a civil action brought pursuant to this section shall be for a period of # years from the date the alleged violation occurred or the date the employee knew or should have known of the violation.

(G) Actions brought pursuant to this section may be brought as a class action pursuant to the laws of [state].

(3) [City/County/State] officials are hereby authorized to consider, to the maximum extent permitted by law, an employer's record of noncompliance with this Act in making decisions on [city/county/state] contracts, land use approvals and other entitlements to expand or operate within the [city/county/state]. The [city/county/state] is authorized to either deny approval or to condition approval on the employer's future compliance.

### **Section 9. Confidentiality and Nondisclosure**

An employer may not require disclosure of details relating to domestic violence, sexual assault, harassment or stalking or the details of an employee's or an employee's family member's health information as a condition of providing earned paid sick time under this Act. If an employer possesses health information or information pertaining to domestic violence, sexual assault, harassment or stalking about an employee or employee's family member, such information shall be treated as confidential and not disclosed except to the affected employee or with the permission of the affected employee.

## **Section 10. Encouragement of More Generous Earned Paid Sick Time Policies; No Effect on More Generous Policies or Laws**

- (1) Nothing in this Act shall be construed to discourage or prohibit an employer from the adoption or retention of an earned paid sick time policy more generous than the one required herein.

### **Issue for Advocates #28: Collective Bargaining Agreements (CBAs)**

- (2) Nothing in this Act shall be construed as diminishing the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous paid sick time to an employee than required herein. Nothing in this Act shall be construed as diminishing the rights of public employees regarding paid sick time or use of paid sick time as provided in [laws of the state pertaining to public employees].
- (3) [For State laws] Nothing in this Act shall be construed to supersede any provision of any local law that provides greater rights to paid sick time than the rights established under this Act.

## **Section 11. Other Legal Requirements**

This Act provides minimum requirements pertaining to earned paid 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 earned paid sick time or that extends other protections to employees.

### **Issue for Advocates #29: Public Education and Outreach; Funding**

## **Section 12. Public Education and Outreach**

The Agency [or another relevant official, administrative agency] shall develop and implement a multilingual outreach program to inform employees, parents and persons who are under the care of a health care provider about the availability of earned paid sick time under this Act. This program shall include the distribution of notices and other written materials in English, [X, X,] and any language that is the first language spoken by at least X% of the [state's/county's/city's] population to all child care and elder care providers, domestic violence shelters, schools, hospitals, community health centers and other health care providers.

## **Section 13. Severability**

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

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

**Issue for Advocates #30: Effective Date**

**Section 14. Effective Date**

This Act will take effect # days following enactment.