Chapter 233. Public Health, Safety and Welfare

Sec. 233.01. Statement of legislative purpose and intent.

The purposes of this chapter are:

(1) To ensure that all workers in the City of Saint Paul can address their own health needs and the health needs of their family members by requiring employers to provide a minimum level of earned sick leave, including leave for care for family members;

(2) To diminish public and private health-care costs and promote preventative health services in the City of Saint Paul by enabling workers to seek routine medical care for themselves and their family members;

(3) To protect the public's health in Saint Paul by reducing the risk and spread of contagion;

(4) To assist victims of domestic abuse and their family members by providing them with job-protected paid leave away from work to allow them to receive treatment and take the necessary steps to ensure their protection;

(5) To promote the economic security and stability of workers and their families, as well as businesses serving the City of Saint Paul and its residents;

(6) To protect residents and all workers in the City of Saint Paul from losing their jobs or facing discipline as a result of illness and use of sick leave to care for themselves or their family members; and

(7) To safeguard the public welfare, health, safety, and prosperity of the people in the City of Saint Paul.

The council recognizes that its objective of promoting the overall health and safety of the residents and workers in the City of Saint Paul by reducing the risk of and spread of communicable disease and contagion, in a manner that is fair and reasonable to both employees and employers, is accomplished by enacting the following regulations which are intended to achieve the purposes of this chapter.

(Ord 16-29, § 1, 9-7-16)

Sec. 233.02. Definitions.

For purposes of this chapter, the following definitions apply:

City means the City of Saint Paul.

Code means the legislative code of the City of Saint Paul, title II of the Saint Paul code of ordinances.

Council means the city council of the City of Saint Paul.

Department means the department of human rights and equal economic opportunity or any department or office that by ordinance or resolution is designated the successor to the department.

Director means the director of the department of human rights and equal economic opportunity or his or her designee.

Domestic Abuse has the meaning given in Minn. Stats. § 518B.01 or a successor statute.

Earned Sick and Safe Time means leave, including paid time off and other paid leave systems, that is paid at the same hourly rate as an Employee earns from employment that may be used for the same purposes and under

the same conditions as provided under section 233.04, paragraph (2) of this chapter, but in no case shall this hourly rate be less than that provided under chapter 224 of the Code or other applicable minimum wage law.

Employee means any person who is employed by an Employer, including temporary and part-time employees, who performs work within the geographic boundaries of the city for at least eighty (80) hours in a year for that Employer. For purposes of this chapter, Employee does not include:

(1) An independent contractor; or

(2) An individual employed by an air carrier as a flight deck or cabin crew member who:

(a) Is subject to United States code, title 45, section 181 to 188;

(b) Works less than a majority of their hours within the geographic boundaries of Saint Paul in a calendar year; and

(c) Is provided with paid leave equal to or exceeding the amounts in section 233.03.

Employer means a person who has one (1) or more Employees. Employer includes an individual, corporation, partnership, business trust, association, nonprofit organization, or a group of persons. In the case of an Employee leasing company or professional employer organization, the taxpaying employer, as described in Minn. Stat., § 268.046, subdivision 1, remains the employer. In the case of an individual provider within the meaning of section 256B.0711, subdivision 1, paragraph (d), the employer includes any participant within the meaning of section 256B.0711, subdivision 1, paragraph (e), or participant's representative within the meaning of section 256B.0711, subdivision 1, paragraph (f). In the event that a temporary Employee is supplied by a staffing agency, absent a contractual agreement stating otherwise, that individual shall be an Employee of the staffing agency for all purposes of chapter 233 of the Code. For purposes of this chapter, Employer does not include:

(1) The United States government;

(2) The state, including any officer, department, agency, authority institution, association, society, or other body of the state including the legislature and the judiciary;

(3) Any county or local government except the City of Saint Paul.

Family Member means

(1) An Employee's:

(a) Child, foster child, adult child, legal ward, child for whom the Employee is legal guardian, or child to whom the Employee stands or stood in loco parentis;

(b) Spouse or registered domestic partner;

(c) Sibling, stepsibling, or foster sibling;

(d) Biological, adoptive, or foster parent, stepparent, or a person who stood in loco parentis when the Employee was a minor child;

(e) Grandchild, foster grandchild, or stepgrandchild;

(f) Grandparent or stepgrandparent;

(g) A child of a sibling of the Employee;

(h) A sibling of the parents of the Employee; or

(i) A child-in-law or sibling-in-law.

(2) Any of the Family Members listed in clause (1) of a spouse or registered domestic partner;

(3) Any other individual related by blood or whose close association with the Employee is the equivalent of a family relationship; and

(4) Up to one (1) individual annually designated by the Employee.

Health care professional means any person licensed, certified, or otherwise authorized under federal or state law to provide medical or emergency services, including doctors, physician assistants, nurses, advanced practice registered nurses, mental health professionals, and emergency room personnel.

Independent Contractor has the meaning defined in the Labor and Industry Chapters of the Minn. Stat. §§ 181.723 and 176.042, as defined in Minnesota Rules Chapter 5224, or as defined in any subsequent related statutes or rules.

Prevailing wage rate has the meaning given in Minn. Stats. § 177.42 and as calculated by the state department of labor and industry.

Sexual Assault means an act that constitutes a violation under Minn. Stats. §§ 609.342 to 609.3453 or § 609.352 or a successor statute.

Stalking has the meaning given in Minn. Stats. § 609.749 or a successor statute.

Year means a regular and consecutive 12-month period, either calendar or fiscal, as determined by an Employer and clearly communicated to each Employee of that Employer.

(Ord 16-29, § 1, 9-7-16; Ord 23-2, § 3, 1-18-23; Ord 23-48, § 2, 10-18-23)

Sec. 233.03. Accrual of Earned Sick and Safe Time.

(a) *When Employees accrue.* Employees shall accrue Earned Sick and Safe Time at the commencement of employment. For individuals who are employed on the date this ordinance takes effect, accrual shall begin on the date this ordinance takes effect.

(b) *Accrual.* Employees accrue a minimum of one (1) hour of Earned Sick and Safe Time for every thirty (30) hours worked within the geographic boundaries of the City. Earned Sick and Safe Time shall accrue only in hour-unit increments; there shall be no accrual of a fraction of an hour of Earned Sick and Safe Time. Employers are not required to allow accrual of more than forty-eight (48) hours in a single calendar or fiscal Year, but may agree to provide more hours upon agreement with their Employee(s).

(c) *Carry over.*

(1) Except as provided in paragraph (2) of this subsection, Employers must permit an Employee who has worked within the geographic boundaries of the City during more than one (1) Year to carry over accrued but unused Earned Sick and Safe Time into the following Year. Time carried over is limited to, and Employers must allow Employees to accrue up to up to eighty (80) hours of Earned Sick and Safe Time unless the Employer agrees with their Employee(s) to a higher amount.

(2) In lieu of permitting the carryover of accrued but unused sick and safe time into the following Year as provided under paragraph (1) of this subsection, an Employer may provide an Employee with Earned Sick and Safe Time for the Year that meets or exceeds the requirements of this section that is available for the Employee's immediate use at the beginning of the subsequent Year as follows:

a. Forty-eight (48) hours, if an Employer pays an Employee for accrued but unused Earned Sick and Safe Time at the end of a Year at the same hourly rate as an Employee earns from employment; or

b. Eighty (80) hours, if an Employer does not pay an Employee for accrued but unused Earned Sick and Safe Time at the end of a Year at the same or greater hourly rate as an Employee earns from

employment. In no case shall this hourly rate be less than that provided under Chapter 224 of the Code, or any applicable minimum wage law.

An Employer opting to comply with accrual requirements under this paragraph must apply the same method of compliance to all employees.

(d) An Employer may comply with this chapter and is not required to provide additional Earned Sick and Safe Time by providing a paid-leave policy, including those made up of a combination of sick, personal, and vacation leave, provided that the policy:

(1) Provides Employees an amount of total paid leave that is consistent with this chapter;

(2) The leave may be used for the same purposes as provided in this chapter;

(3) The leave may be used under the same conditions as provided in this chapter;

(4) The leave is sufficient to meet the requirements for Earned Sick and Safe Time as stated in subsections (a)—(c) of this section; and

(5) The leave provided is at least sufficient to satisfy requirements under Minnesota state law.

(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 Earned Sick and Safe Time that the employee has not used.

(Ord 16-29, § 1, 9-7-16; Ord 23-2, § 4, 1-18-23; Ord 23-48, § 3, 10-18-23)

Sec. 233.04. Use of Earned Sick and Safe Time.

(a) Earned Sick and Safe Time shall be provided to an Employee by an Employer for:

(1) An Employee's:

a. Mental or physical illness, injury, or other health condition;

b. Need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or

c. Need for preventive medical or health care;

(2) The Employee to provide care to a Family Member:

a. With a mental or physical illness, injury, or other health condition;

b. Who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or other health condition; or

c. Who needs preventive medical or health care;

(3) An absence due to Domestic Abuse, Sexual Assault, or stalking of the Employee or Employee's Family Member, provided the absence is to:

a. Seek medical attention related to physical or psychological injury or disability caused by Domestic Abuse, Sexual Assault, or Stalking;

b. Obtain services from a victim-services organization;

c. Obtain psychological or other counseling;

d. Seek relocation or take steps to secure an existing home due to Domestic Abuse, Sexual Assault, or Stalking; or

e. Seek legal advice or take legal action, including preparing for or participating in any civil or criminal legal proceeding related to or resulting from Domestic Abuse, Sexual Assault, or Stalking.

(4) The closure of the Employee's place of business due to weather or other public emergency or an Employee's need to care for a Family Member whose school or place of care has been closed due to weather or other public emergency;

(5) The Employee's inability to work or telework because the Employee is: (i) prohibited from working by the Employer due to health concerns related to the potential transmission of a communicable illness related to a public emergency; or (ii) seeking or awaiting the results of a diagnostic test for, or a medical diagnosis of, a communicable disease related to a public emergency and such Employee has been exposed to a communicable disease or the Employee's Employer has requested a test or diagnosis;

(6) When it has been determined by the health authorities having jurisdiction or by a Health Care Professional that the presence of the Employee or Family Member of the Employee in the community would jeopardize the health of others because of the exposure of the Employee or Family Member of the Employee to a communicable disease, whether or not the Employee or Family Member has actually contracted the communicable disease.

For the purposes of this subdivision, a public emergency shall include a declared emergency as defined in Minn. Stat. § 12.03 or a declared local emergency under § 12.29.

(b) Employees may use Earned Sick and Safe Time in the smallest increment of time tracked by the Employer's payroll system, provided such increment is not more than four (4) hours.

(c) An Employer must compensate an employee for used Earned Sick and Safe Time at the Employee's standard hourly rate, for hourly Employees, or an equivalent rate, for salaried Employees.

(1) Employees are not entitled to compensation for lost tips or commissions and compensation is required only for hours that an Employee is scheduled to have worked.

(2) During any use of Earned Sick and Safe Time, the Employer must maintain coverage under any group insurance policy, group subscriber contract, or health care plan for the Employee and any dependents, as if the Employee was being paid for work rather than using Earned Sick and Safe Time, provided, however, that the Employee must continue to pay any Employee share of the cost of such benefits.

(3) An Employee returning from a leave under this section is entitled to return to employment at the same rate of pay the Employee had been receiving when the leave commenced, plus any automatic adjustments in the Employee's pay scale that occurred during the leave period. The Employee returning from a leave is entitled to retain all accrued pre-leave benefits of employment and seniority as if there had been no interruption in service, provided that nothing under this section prevents the accrual of benefits or seniority during the leave pursuant to a collective bargaining or other agreement between the Employer and Employees.

(4) An Employee, by agreement with the Employer, may return to work part time during the leave period without forfeiting the right to return to employment at the end of the leave, as provided under this section.

(d) An Employer may require notice of the need for use of Earned Sick and Safe Time as provided in this paragraph. If the need for use is foreseeable, an Employer may require advance notice of the intention to use Earned Sick and Safe Time but must not require more than seven (7) days' advance notice. If the need is unforeseeable, an Employer may require an Employee to give notice of the need for Earned Sick and Safe Time as soon as practicable. An Employer that requires notice of the need to use Earned Sick and Safe Time in accordance with this subdivision shall have a written policy containing reasonable procedures for Employees to provide notice of the need to use Earned Sick and Safe Time, and shall provide a written copy

of such policy to Employees. If a copy of the written policy has not been provided to an Employee, an Employer shall not deny the use of Earned Sick and Safe Time to the Employee on that basis.

(e) It is not a violation of this chapter for an Employer to require reasonable documentation that the Earned Sick and Safe Time is covered by paragraph (a) of this section for absences of more than three (3) consecutive days.

(1) For Earned Sick and Safe Time under section 233.04(a)(1), (2), (5), and (6) reasonable documentation may include a signed statement by a Health Care Professional indicating the need for use of Earned Sick and Safe Time. However, if the Employee or Employee's Family Member did not receive services from a Health Care Professional, or if documentation cannot be obtained from a Health Care Professional in a reasonable time or without added expense, then reasonable documentation for the purposes of this paragraph may include a written statement from the Employee indicating that the Employee is using or used Earned Sick and Safe Time for a qualifying purpose covered by section 233.04(a)(1), (2), (5), or (6).

(2) For Earned Sick and Safe Time under section 233.04(a)(3), an Employer must accept a court record or documentation signed by a volunteer or employee of a victim services organization, an attorney, a police officer, or an antiviolence counselor as reasonable documentation.

(3) For Earned Sick and Safe Time to care for a Family Member under section 233.04(a)(4), an Employer must accept as reasonable documentation a written statement from the Employee indicating that the Employee is using or used Earned Sick and Safe Time for a qualifying purpose as reasonable documentation.

(4) An Employer must not require disclosure of details relating to Domestic Abuse, Sexual Assault, or Stalking or the details of an Employee's or an Employee's Family Member's medical condition as related to an Employee's request to use Earned Sick and Safe Time under this section.

(5) Written statements by an Employee may be written in the Employee's first language and need not be notarized or in any particular format.

(f) An Employer may not require, as a condition of an Employee's using Earned Sick and Safe Time, that the Employee find a replacement worker to cover the hours during which the Employee uses Earned Sick and Safe Time.

(g) An employer may opt to satisfy the requirements of this chapter for construction industry employees by:

(1) Paying at least the Prevailing Wage rate as defined by Minn. Stats., § 177.42 and as calculated by the state department of labor and industry; or

(2) Paying at least the required rate established in a registered apprenticeship agreement for apprentices registered with the state department of labor and industry.

An employer electing this option shall be deemed in compliance with this chapter for construction industry employees who receive either at least the Prevailing Wage rate or the rate required in the applicable apprenticeship agreement regardless of whether the employees are working on private or public projects.

(h) The provisions of this chapter may be waived by a collective bargaining agreement with a bona fide building and construction trades labor organization that has established itself as the collective bargaining representative for the affected building and construction industry Employees, provided that for such waiver to be valid, it shall explicitly reference sections 233.02 to 233.11 of the Code and clearly and unambiguously waive application of those sections to such Employees.

(i) An Employer is only required to allow an Employee to use Earned Sick and Safe Time that is accrued pursuant to this chapter when the Employee is scheduled to perform work within the geographic boundaries of the City of Saint Paul. An employer may allow use of Earned Sick and Safe Time when an Employee is scheduled to perform work for the Employer outside of the City of Saint Paul.

(Ord 16-29, § 1, 9-7-16; Ord 23-2, § 5, 1-18-23; Ord 23-48, § 4, 10-18-23)

Sec. 233.05. Confidentiality and nondisclosure.

(a) Except as provided in subsection (b) of this section, an Employer shall maintain the confidentiality of information provided by the Employe or others in support of an Employee's request for Earned Sick and Safe Time, including health or medical information regarding an Employee or Employee's Family Member and the fact that the Employee or Employee's Family Member is a victim of Domestic Abuse, Sexual Assault, or Stalking; that the Employee has requested or obtained leave under this chapter; and any written or oral statement, documentation, record, or corroborating evidence provided by the Employee.

(b) Information given by an employee may be disclosed by an Employer only if it is:

(1) Requested or consented to by the Employee;

(2) Ordered by a court or administrative agency; or

(3) Otherwise required by applicable federal or state law.

(c) Records and documents relating to medical certifications, recertifications, or medical histories of Employees or Family Members of Employees created for purposes of section 233.13 or sections 233.02 to 233.11 must be maintained as confidential medical records separate from the usual personnel files. At the request of the Employee, the Employer must destroy or return the records required by sections 233.02 to 233.11 that are older than three (3) years prior to the current calendar year.

(d) Employers may not discriminate against any employee based on records created for the purposes of this chapter.

(Ord 16-29, § 1, 9-7-16; Ord 23-48, § 5, 10-18-23)

Sec. 233.06. Exercise of rights protected; retaliation prohibited.

(a) It shall be unlawful, and a violation of this chapter for an Employer or any other person to discipline, discharge, penalize, interfere with, threaten, restrain, coerce, or deny the exercise of, or the attempted exercise of, any right protected under this chapter.

(1) Such rights include, but are not limited to, the right to accrue Earned Sick and Safe Time pursuant to this chapter; the right to make inquiries about the rights protected under this chapter; the right to inform others about their rights; the right to inform the person's Employer, union, or similar organization, and/or the person's legal counsel or any other person about an alleged violation; the right to file an oral or written complaint with the Department or bring a civil action for an alleged violation; the right to cooperate with the Department in its investigations; the right to testify in a proceeding under or related to this; the right to refuse to participate in an activity that would result in a violation of City, state, or federal law; and the right to oppose any policy, practice, or act that is unlawful under this chapter.

(2) No Employer or any other person shall communicate to a person exercising rights protected under this section, directly or indirectly, the willingness to inform a government employee that the person is not lawfully in the United States, or to report, or to make an implied or express assertion of a willingness to report, suspected citizenship or immigration status of an employee or a Family Member of the Employee to a federal, state, or local agency because the Employee has exercised a right under this chapter.

(b) An Employer shall not take any adverse employment action or in any other manner discriminate against an Employee because the Employee has exercised in good faith the rights protected under this chapter. It shall be unlawful for an Employer's absence control policy or attendance point system to count Earned Sick and Safe Time taken under this chapter as an absence that may lead to or result in retaliation or any other adverse action.

(c) A person injured by a violation of this section may bring a civil action in the district court to recover any and all damages recoverable at law, together with costs and disbursements, including, but not limited to, reasonable attorney's fees, backpay and reinstatement to the person's previous position, wages, benefits, hours, and other conditions of employment; and may receive injunctive and other equitable relief as determined by the court.

(d) It shall be a rebuttable presumption of retaliation if an Employer or any other person takes an adverse action against a person within ninety (90) days of the person's exercise of rights protected in this section. However, in the case of seasonal work that ends before the close of the 90-day period, the presumption also applies if the Employer fails to rehire a former Employee at the next opportunity for work in the same position. The Employer may rebut the presumption with clear and convincing evidence that the adverse action was taken for a permissible purpose.

(e) *Standard of proof.* Proof of retaliation shall be sufficient upon a showing that an Employer or any other person has taken an adverse action against a person and the person's exercise of rights protected was a motivating factor in the adverse action, unless the Employer can prove that the action would have been taken in the absence of such protected activity.

(f) The protections afforded shall apply to any person who mistakenly but in good faith alleges violations.

(g) A complaint or other communication by any person triggers the protections of this section regardless of whether the complaint or communication is in writing or makes explicit reference to this chapter.

(Ord 16-29, § 1, 9-7-16; Ord 23-2, § 7, 1-18-23; Ord 23-48, § 6, 10-18-23)

Sec. 233.07. Notice and posting.

(a) Employers shall give notice that: Employees are entitled to Earned Sick and Safe Time; the amount of Earned Sick and Safe Time, the accrual Year for the Employee, and the terms of its use guaranteed under this chapter, including the written policy requiring advance notice from Employee's requesting Earned Sick and Safe Time under section 233.04(d); that retaliation against Employees who request or use Earned Sick and Safe Time is prohibited; and that each Employee has the right to file a complaint or bring a civil action if Earned Sick and Safe Time as required by this section is denied by the Employer or the Employee is retaliated against for requesting or taking Earned Sick and Safe Time.

(b) Employers must supply Employees with a notice in English and the primary language of the Employee, as identified by the Employee, that contains the information required in paragraph (a) at commencement of employment or the effective date of this section, whichever is later.

(c) The Department shall create and make available to Employers a poster and a model notice, hereinafter referred to as the "notice," which contains the information required under subsection (a) of this section for their use in complying with this subsection. The poster shall be printed in English and any other languages that the Department determines are needed to notify Employees of their rights under this chapter.

(d) The means used by the Employer must be at least as effective as the following options for providing notice:

(1) Posting a copy of the notice at each location where Employees perform work and where the notice must be readily observed and easily reviewed by all Employees performing work;

(2) Providing a paper or electronic copy of the notice to Employees; or

(3) A conspicuous posting in a web-based or app-based platform through which an employee performs work.

The notice must contain all information required under paragraph (a) of this section.

(e) An Employer that provides an employee handbook to its Employees must include in the handbook notice of employee rights and remedies under this chapter.

(Ord 16-29, § 1, 9-7-16; Ord 23-48, § 7, 10-18-23)

Sec. 233.08. Required statement to Employee.

Upon request of the Employee, the Employer must provide, in writing or electronically, information stating the Employee's then current amount of:

(1) Earned Sick and Safe Time available to the Employee; and

(2) Used Earned Sick and Safe Time.

Employers may choose a reasonable system for providing this notification, including, but not limited to, listing information on each pay stub or developing an online system where Employees can access their own information.

(Ord 16-29, § 1, 9-7-16; Ord 23-48, § 8, 10-18-23)

Sec. 233.09. Employer records.

(a) Employers shall retain accurate records documenting hours worked by Employees and Earned Sick and Safe Time taken by Employees for a period of three (3) years.

(b) Employers shall allow the Department access to such records, with appropriate notice and at a mutually agreeable time, to investigate potential violations and to monitor compliance with the requirements of this chapter. The Employer shall allow the Department to copy, as needed, only those records which document the 1) hours worked by Employees, 2) the accrual of Earned Sick and Safe Time, and 3) the use of Earned Sick and Safe Time. Social security numbers and Employees' personal addresses shall not become a matter of public record. At the Employee's request the Employer shall provide a copy of these records to the Employee.

(c) When an issue arises as to an Employee's entitlement to Earned Sick and Safe Time under this chapter, if the Employer does not maintain or retain adequate records documenting hours worked by the Employee and Earned Sick and Safe Time taken by the Employee, or does not allow the Department reasonable access to such records, it shall be presumed that the Employer has violated this chapter, absent clear and convincing evidence otherwise.

(d) Records and documents relating to medical certifications, re-certifications, or medical histories of Employees or Employees' Family Members created for purposes of this chapter must be maintained as confidential medical records separate from the usual personnel files. If the Americans with Disabilities Act (ADA) applies, then these records must comply with the ADA's confidentiality requirements.

(Ord 16-29, § 1, 9-7-16; Ord 23-48, § 9, 10-18-23)

Sec. 233.10. Transfer; separation.

(a) If an Employee is transferred to a separate division, entity, or location outside of the City, but remains employed by the same Employer, and the Employer does not allow the use of Earned Sick and Safe Time at the separate division, entity or location, the Employer must maintain the Employee's Earned Sick and Safe Time on the books for a period of three (3) years from the time of the transfer. If, within three (3) years of the time of the Employee's transfer to a separate division, entity, or location outside of the City, the Employee is transferred back to a division, entity, or location within the City but remains employed by the same Employer, the Employee is entitled to all previously Earned Sick and Safe Time accrued but not used at the prior division, entity, or location within the City and is entitled to use all Earned Sick and Safe Time as provided in this chapter.

(b) If an Employee is transferred to a separate division, entity, or location within the City but remains employed by the same Employer, the Employee is entitled to all Earned Sick and Safe Time accrued but not used at the prior division, entity, or location and is entitled to use all Earned Sick and Safe Time as provided in this chapter.

(c) When there is a separation from employment and the Employee is rehired within one hundred eighty (180) days of separation by the same Employer, previously accrued Earned Sick and Safe Time that had not been used must be reinstated. An Employee is entitled to use Earned Sick and Safe Time and accrue additional Earned Sick and Safe Time upon commencement of reemployment.

(Ord 16-29, § 1, 9-7-16; Ord 23-48, § 10, 10-18-23)

Sec. 233.11. Employer succession.

(a) 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 Sick and Safe Time accrued but not used when employed by the original Employer, and are entitled to use all Earned Sick and Safe Time previously accrued but not used.

(b) If at the time of transfer of the business, Employees are terminated by the original Employer, and hired within thirty (30) days by the successor Employer following the transfer, those Employees are entitled to all Earned Sick and Safe Time accrued but not used when employed by the original Employer, and are entitled to use all Earned Sick and Safe Time previously accrued but not used.

(Ord 16-29, § 1, 9-7-16; Ord 23-48, § 11, 10-18-23)

Sec. 233.12. Implementation.

(a) The Director has authority to implement, administer, and enforce this chapter. The Department shall have the authority to investigate possible violations of this chapter whenever it has cause to believe that any violation of this chapter has occurred, either on the basis of a report of a suspected violation or on the basis of any other credible information including violations found during the course of an investigation.

(b) The Department shall be authorized to coordinate implementation and enforcement of this chapter and shall promulgate appropriate guidelines and regulations for such purposes. Any guidelines or rules promulgated by the Department 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. Such guidelines or rules shall:

(1) Be consistent with this chapter;

(2) Establish procedures for fair, efficient, and cost-effective implementation and enforcement of this chapter, including rules governing procedures for administrative hearings and appeals; and

(3) Establish procedures for informing Employers of their duties and Employees of their rights under this chapter and monitoring Employer compliance.

The Director shall publish, maintain, and make available to the public any such initial rules at least ninety (90) days prior to their effective date. Any revisions to published rules shall be published, maintained, and made available to the public at least thirty (30) days prior to their effective date.

(c) The Director shall develop and implement a multilingual and culturally specific outreach program to educate Employees and Employers about their rights and obligations under this chapter. This outreach program shall include media, trainings, and materials accessible to the diversity of Employees and Employers in the City.

(Ord 16-29, § 1, 9-7-16; Ord 23-2, § 13, 1-18-23; Ord 23-48, § 12, 10-18-23)

Sec. 233.13. Enforcement.

(a) *Report of violations.* An Employee or other person may report to the Department any suspected violation of this chapter. Such reports may be filed only if the matter complained of occurred after the effective date of this chapter and within three (3) years prior to filing the report. Filing a report of a suspected violation of this chapter does not create any right of appeal to the Department. The Director has sole discretion to decide whether to investigate or to pursue a violation of this chapter.

If the Director decides not to investigate or otherwise pursue a report of suspected violation, the Director must provide a written notification to any complainant who filed the report that the Department is declining and the reasons for declining. The complainant may within twenty-one (21) days file a request for reconsideration with the Director. The Director must provide a written response on the reconsideration within ten (10) days.

(b) *Investigation process.* The Department may initiate an investigation pursuant to a complaint or when the Director has reason to believe that a violation has occurred including, but not limited to: on the basis of multiple reports of suspected violations; a report of a suspected violation with credible information or documentation; or on a report of a suspected violation within a high violation industry.

(1) Notice of investigation. To pursue a violation of this chapter, the Director must serve upon an Employer via U.S. mail a notice of investigation setting forth the allegations and pertinent facts. The notice of investigation shall be accompanied by a request for a written position statement and may include a request for records or other information. The notice shall also inform the Employer that retaliation for exercising rights under this chapter is a violation of this chapter and a basis for additional monetary damages. Within seven (7) days of the notice of investigation, an Employer must post or otherwise notify its Employees that the Department is conducting an investigation, using a form provided by the Department and displaying it on-site, in a conspicuous and accessible location, and in English and the primary language of the Employee(s) at the particular workplace. If display of the form is not feasible, including situations when the Employee works remotely or does not have a regular workplace, Employers may provide the form on an individual basis in the Employee's primary language in physical or electronic format that is reasonably conspicuous and accessible.

(2) An Employer's position and response to any request for records must be provided to the Department as provided in the Department's rules. An Employer's failure to provide a position statement or to timely and fully respond to a request for records or any other reasonable request issued by the Department pursuant to an investigation within thirty (30) days of such request creates a rebuttable presumption of a violation of this chapter. An Employer that fails to respond to a request for records may not use such records at any hearing held under this chapter.

(3) Investigations shall be conducted in an objective and impartial manner.

(4) The Department shall consider any statement of position or evidence with respect to the alleged violation which the complainant or Employer wishes to submit.

(5) In order to define the issues, determine which elements are undisputed, resolve those issues that can be resolved, and afford an opportunity to discuss or negotiate settlement, during investigation the Department may require a fact-finding conference or participation in another process with the Employer and the complainant and any of their agents and witnesses.

(c) *Director determination of violation/no violation.* Except when there is an agreed upon settlement, the Director must issue either a written notice determination of violation or a written notice of determination of no violation. In the case of a notice of a determination of no violation, the Department must state the reason for declining. Every notice must be issued to the Employer and the complainant who filed the suspected violation report. The complainant may, within twenty-one (21) days, file a request for reconsideration of a notice of determination of no violation with the Director. The Director must provide a written response on the reconsideration within ten (10) days.

(d) *Court action.* An Employee or other person who has reported a violation of this chapter may:

(1) Bring a civil action in district court within forty-five (45) days after receipt of a notice of determination of no violation of this chapter.

(2) Bring a civil action in district court within forty-five (45) days upon notice that the Director has reaffirmed a determination of no violation of this chapter if the complainant requested reconsideration.

(3) For purposes of this clauses (1) and (2), notice is presumed to be five (5) days from the date of service by mail of the written notice.

(e) *Contents of notice of violation.* If the Department determines that cause exists to believe that an Employer has violated this chapter, the City attorney's office on behalf of the Department shall issue a notice of violation to the Employer signed by the Director and the City attorney's office. The notice shall advise the Employer of the following:

(1) That the City believes the Employer has violated this chapter;

(2) The basis for the City's belief;

(3) The amount of restitution owed and penalty sought;

(4) That the Employer is entitled to a hearing before any restitution or penalty is imposed; and

(5) That the Employer can choose to admit or deny the allegations.

a. If the Employer wishes to admit the allegations but contest the proposed restitution or sanction, the Employer may request a hearing before the Council regarding the proposed restitution or, if applicable, penalty.

b. If the Employer wishes to deny the allegations, then the Employer must request a hearing before a hearing examiner.

c. Failure to respond in writing within fifteen (15) working days of the notice of violation shall be deemed an admission of the allegations and acceptance of the proposed restitution and, if applicable, penalty.

(f) The hearing examiner shall hear all evidence as may be presented on behalf of the City and the Employer. Both parties shall be provided an opportunity to present evidence and argument as well as meet adverse testimony or evidence by reasonable cross-examination and rebuttal evidence. The hearing examiner may in

his/her discretion permit other interested persons the opportunity to present testimony or evidence or otherwise participate in such hearing. Following the hearing, the hearing examiner shall present to the Council written findings of fact and conclusions of law together with a recommendation regarding the appropriate sanction, including restitution.

(1) *Record; evidence.* The hearing examiner shall receive and keep record of such proceedings, including testimony and exhibits, and shall receive and give weight to evidence, including hearsay evidence, which possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs.

(2) The City must prove that the Employer violated one (1) or more provisions of this chapter by a preponderance of the evidence.

(g) *Council determination.*

(1) The Council shall consider the evidence contained in the record, the hearing examiner's recommended findings of fact and conclusions, and shall not consider any factual testimony not previously submitted to and considered by the hearing examiner. The Council may accept, reject or modify the findings, conclusions and recommendations of the hearing examiner.

(2) *Council action.* The Council shall determine whether the Employer has violated this chapter and shall by resolution determine whether to adopt all or part of the findings, conclusions and recommendations of the hearing examiner.

(3) *Imposition of costs.* The Council may impose upon any respondent some or all of the costs of a contested hearing before an independent hearing examiner. The costs of a contested hearing include, but are not limited to, the costs of the hearing examiner, stenographic and recording costs, copying costs, City staff and attorney time for which adequate records have been kept, rental of rooms and equipment necessary for the hearing, and the cost of expert witnesses. The Council may impose all or part of such costs in any given case if the position, claim or defense of the Employer was frivolous, arbitrary or capricious, made in bad faith, or made for the purpose of delay or harassment.

(h) *Relief and administrative fines.* The Director may order any appropriate relief for a determination of violation, including, but not limited to:

(1) Reinstatement and back pay, and restitution for any out-of-pocket expenses resulting from the violation of this chapter.

(2) For the first violation, the payment of any Earned Sick and Safe Time unlawfully withheld, and the payment of an additional sum as liquidated damages to each Employee whose rights under this chapter were violated. The dollar amount of Earned Sick and Safe Time withheld from the Employee multiplied by two (2), or two hundred fifty dollars ($250.00), whichever amount is greater, may be included as the liquidated damages to be paid to the Employee.

(3) For a second violation by an Employer against the same Employee, in addition to the payment of any Earned Sick and Safe Time unlawfully withheld, the Director shall assess liquidated damages in an additional amount and order the Employer to pay to the Employee the dollar value of the Earned Sick and Safe Time unlawfully withheld multiplied by two (2), or two hundred fifty dollars ($250.00), whichever amount is greater. In addition thereto, for any second violation by an Employer, the Director shall assess an administrative fine, payable to the City, up to one thousand dollars ($1,000.00).

(4) In addition to the above, for a third or any subsequent violations against the same Employee, the Director shall assess an administrative fine, payable to the Employee, up to one thousand dollars ($1,000.00), or an amount equal to ten (10) percent of the total amount of unpaid wages, whichever is greater.

(5) An administrative fine of up to one thousand dollars ($1,000.00), payable to the Employee, for each violation of sections 233.05 or 233.06 of this chapter.

(6) An administrative fine of up to one thousand dollars ($1,000.00), payable to the City, for each violation of sections 233.07, 233.08, or 233.09 of this chapter.

(i) *Failure to exhaust administrative remedies.* If there is no appeal of the Director's determination of a violation or no violation, that determination shall constitute the City's final decision. The failure to appeal the Director's determination by either the Employer or complainant shall constitute a failure to exhaust administrative remedies, which shall serve as a complete defense to any petition or claim regarding the Director's determination.

(Ord 16-29, § 1, 9-7-16; Ord 23-2, § 14, 1-18-23; Ord 23-48, § 13, 10-18-23)

Sec. 233.14. Civil enforcement.

Where prompt compliance is not forthcoming with a final determination of violation, the Department may refer the action to the City attorney to consider initiating a civil action against an Employer for violating any requirement of this chapter and, upon prevailing, shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation.

(Ord 16-29, § 1, 9-7-16; Ord 23-2, § 15, 1-18-23; Ord 23-48, § 14, 10-18-23)

Editor's note(s)—Ord 23-2, §§ 16—22, adopted January 18, 2023, repealed § 233-14 and renumbered §§ 233-15—233-19 as §§ 233-14—233.18. Former § 233-14 pertained to appeals and derive from Ord 16-29, § 1, adopted September 7, 2016.

Sec. 233.15. Remedies cumulative.

The remedies, penalties, and procedures provided under this chapter are cumulative.

(Ord 16-29, § 1, 9-7-16; Ord 23-2, § 16, 1-18-23)

Editor's note(s)—See editor's note, § 233.14.

Sec. 233.16. Employee exchange of hours.

(a) Nothing in this chapter shall be construed to prohibit an Employer from establishing a policy whereby Employees may voluntarily exchange hours or trade shifts.

(b) Nothing in this chapter shall be construed to prohibit an Employer from establishing a policy whereby Employees may donate unused, Earned Sick and Safe Time to another Employee.

(c) Nothing in this chapter shall be construed to prohibit an Employer from advancing Earned Sick and Safe Time to an Employee prior to accrual by the Employee.

(Ord 16-29, § 1, 9-7-16; Ord 23-2, § 17, 1-18-23; Ord 23-48, § 15, 10-18-23)

Editor's note(s)—See editor's note, § 233.14.

Sec. 233.17. Encouragement of more generous sick time policies; no effect on more generous policies.

(a) Nothing in this chapter shall be construed to discourage or prohibit an Employer from the adoption or retention of an Earned Sick and Safe Time policy more generous than the one (1) required herein.

(b) Nothing in this chapter 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 sick and safe time to an Employee than required herein.

(Ord 16-29, § 1, 9-7-16; Ord 23-2, § 18, 1-18-23; Ord 23-48, § 16, 10-18-23)

Editor's note(s)—See editor's note, § 233.14.

Sec. 233.18. Other legal requirements.

This chapter provides minimum requirements pertaining to Earned Sick and Safe 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 or safe time, whether paid or unpaid, or that extends other protections to Employees. Nothing in this chapter shall be interpreted or applied so as to create any power or duty in conflict with federal or state law. Nor shall this chapter be construed to preclude any person aggrieved from seeking judicial review of any final administrative decision or order made under this chapter affecting such person.

(Ord 16-29, § 1, 9-7-16; Ord 23-2, § 19, 1-18-23; Ord 23-48, § 17, 10-18-23)

Editor's note(s)—See editor's note, § 233.14.

Sec. 233.19. No assumption of liability.

In undertaking the adoption and enforcement of this article, the City is undertaking only to preserve and protect safety, health, and general welfare. The City is not assuming liability, 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 article does not create a legally enforceable right against the City.

(Ord 23-2, § 20, 1-18-23; Ord 23-48, § 18, 10-18-23)

Editor's note(s)—See editor's note, § 233.14.

Sec. 233.20. Severability.

If any of the provisions of this chapter or the application thereof to any person or circumstance is held invalid or unconstitutional by a decision of a court of competent jurisdiction, the remainder of this chapter, including the application of such provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby and shall continue in full force and effect. To that end, the provisions of this chapter are severable.

(Ord 16-29, § 1, 9-7-16)

Sec. 233.21. Reserved.

Editor's note(s)—Ord 23-48, § 18, adopted October 18, 2023, repealed § 233.21. Former § 233.21 pertained to effective date and derived from Ord 16-29, § 1, adopted September 7, 2016.