



Legislation Details (With Text)

File #: Ord 23-2 **Version:** 1

Type: Ordinance **Status:** Passed

In control: City Council

Final action: 1/18/2023

Title: Amending Chapter 233 of the Legislative Code pertaining to Earned Sick and Safe Time.

Sponsors: Amy Brendmoen, Mitra Jalali

Indexes:

Code sections:

Attachments: 1. HREEO ESST Staff Report to City Council (BC 12.30.22)

Date	Ver.	Action By	Action	Result
1/19/2023	1	Mayor's Office	Signed	
1/18/2023	1	City Council	Adopted	Pass
1/11/2023	1	City Council	Laid Over to Final Adoption	Pass
1/4/2023	1	City Council	Laid Over to Second Reading	

Amending Chapter 233 of the Legislative Code pertaining to Earned Sick and Safe Time.

SECTION 1

WHEREAS, Minneapolis' Sick and Safe Time Ordinance is similar to St. Paul's Earned Sick and Safe Time ordinance; and

WHEREAS, Minneapolis applied its ordinance to all work done in Minneapolis, even if the employer is located outside of Minneapolis; and

WHEREAS, St. Paul interpreted its ordinance to apply to work done in St. Paul on behalf of employers located in St. Paul; and

WHEREAS, in 2017, Minneapolis was challenged on its application of its ordinance to employers located outside of Minneapolis on the grounds that the ordinance was "extraterritorial" and exceeded Minneapolis' jurisdiction, and the case reached the Minnesota Supreme Court; and

WHEREAS, in 2020 the Minnesota Supreme Court held that the Minneapolis Sick and Safe Time Ordinance did not operate extraterritorially because it limited the accrual and use of sick and safe time to those hours worked and scheduled within the city, respectively; and

WHEREAS, the Court also noted that the purpose and effect of the Minneapolis ordinance ensured that the ordinance did not operate extraterritorially; and

WHEREAS, the Council wishes to apply St. Paul's ordinance to all work performed within the City of Saint Paul on behalf of an employer, as was upheld by the Minnesota Supreme Court; and

WHEREAS, the primary purpose and intended effect of the Earned Sick and Safe Time Ordinance is to safeguard the public welfare, health, safety, and prosperity of the City of Saint Paul by regulating the activity within the geographic limits of the City; and

WHEREAS, in 2019 the Saint Paul City Council passed Saint Paul Administrative Code Section 11.03 thereby establishing the Labor Standards and Enforcement Education Division; and

WHEREAS, the purpose of creating the Labor Standards and Enforcement Division was to streamline the administrative, educational and enforcement efforts related to the Saint Paul Labor Standards Ordinances, including Chapter 223 of the Saint Paul Legislative Code; and

WHEREAS, to reduce employer burden, promote compliance, and provide consistent and effective outreach to employers and employees, the ordinances administered by the Labor Standards Enforcement and Education Division should be aligned where possible; and

WHEREAS, the Mayor and Saint Paul City Council continue to support earned sick and safe time for all employees who work in Saint Paul; now, therefore, be it

RESOLVED that THE COUNCIL OF THE CITY OF SAINT PAUL DOES ORDAIN:

SECTION 2

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.

SECTION 3

Section 233.02 of the Saint Paul Legislative Code is hereby amended to read as follows:

Sec. 233.02. - Definitions.

For purposes of this chapter, the following definitions apply:

City means 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 Minnesota Statutes § 518B.01.

Earned sick and safe time means leave, including paid time off and other paid-leave systems, paid at the same hourly rate as an employee earns from employment that may be used for the same purposes as section 233.04, paragraph (2) of this chapter.

Employee means any person who is employed by the employer, including temporary and part-time employees, who perform 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 an independent contractor.

Employer means a person who has one (1) or more employees. The term includes an individual, corporation, partnership, association, nonprofit organization, or a group of persons. An employer includes a person, firm, or corporation that hires temporary employees through an employment service. In the event that a temporary employee is supplied by a staffing agency or similar entity, absent a contractual agreement stating otherwise, that individual shall be an employee of the staffing agency for all purposes of this chapter. 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 the employee's child, step-child, adopted child, foster child, adult child, spouse, sibling, parent, step-parent, mother-in-law, father-in-law, grandchild, grandparent, or registered domestic partners as defined by Saint Paul Code of Ordinances section 186.02 and any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

Frontload means to provide all required hours at the beginning of a reporting year.

HREEO commission means the commission established pursuant to section 183.19 of the Legislative Code for the City of Saint Paul.

Independent contractor has the meaning defined in the Labor and Industry Chapters of the Minnesota Statutes Sections 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 Minnesota Statutes section 177.42 and as calculated by the state department of labor and industry.

Safe time means the need for time off under the circumstances described in Minnesota Statutes § 181.9413 (b).

Sexual assault means an act that constitutes a violation under Minnesota Statutes §§ 609.342 to 609.3453 or § 609.352.

Stalking has the meaning given in Minnesota Statutes § 609.749

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.

SECTION 4

Section 233.03 of the Saint Paul Legislative Code is hereby amended to read as follows:

Sec. 233.03. - Accrual of sick and safe time.

(a) When Employees Accrue. Employees shall earn and 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. Accrual rates shall not apply to hours worked before this ordinance takes effect.

(b) Accrual. Employees accrue a minimum of (1) hour of earned sick and safe time Ffor every thirty (30) hours worked within the geographic boundaries of the City. after earned sick and safe time begins to accrue for an employee, the employee shall accrue one (1) hour of earned sick and safe time. 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. The maximum number of earned sick and safe time hours an employee can earn in each calendar or fiscal year shall not exceed forty-eight (48) hours. Employers are not required to allow accrual of more than forty-eight (48) hours in a single calendar or fiscal year.

(c) Carry Over.

(1) Employers must permit an employee who has worked within the geographic boundaries of the city for more than one year to accrue up to eighty (80) hours of earned sick and safe time. Employers shall permit an employee to carry over earned accrued but unused sick and safe time into the following year (whether calendar or fiscal year), but Ttime carried over is limited to, and employers must allow employees to accrue up to up to the aforementioned caps. Employers may satisfy this requirement by providing at least forty-eight (48) hours of earned sick and safe time following the initial ninety (90) days of employment for use by the employee during the first year, and providing at least eighty (80) hours of earned sick and safe time unless an employer agrees to a higher amount. beginning each subsequent year.

(2) Employers are not required to permit carry over of unused earned sick and safe time if they frontload employees at least:

- a. Forty-eight (48) hours of earned sick and safe time for use by the employee during the first year for use following the initial ninety (90) days of employment; and
- b. (b) Eighty (80) hours of earned sick and safe time at the beginning of each subsequent year.

(3) Method of Compliance. Employers must establish the method of compliance with this subsection either through carry over or frontloading at the beginning of the calendar or fiscal year, and employers may not change the method until the next reporting year.

(4) Modifying Method of Compliance. Employers who switch between Accrual compliance and

Frontloading compliance must ensure that employees have at least as many Earned Sick and Safe Time hours available on the first day of the new reporting year as the employee had on the last day of the immediately preceding reporting year.

- a. For employers who switch from Accrual to Frontloading, the total Earned Sick and Safe Time hours Frontloaded on the first day of the reporting year must be at least 48 hours for employees in their first year of employment, but need not be greater than 80 hours for all other employees.
- b. For employers who switch from Frontloading to Accrual, the total balance available to the employee at the start of the first reporting year after the employer has modified the method of compliance shall be at least equal to the Frontloading balance remaining at the end of the immediately preceding reporting year.

(d) ~~If a~~An employer may comply with this chapter and is not required to provide additional earned sick and safe time by providing has a paid-leave policy, including those ~~such as a paid-time-off policy, or~~ made up of a combination of sick, personal, and vacation leave time, provided that the policy:

(1) ~~Provides~~ makes available to 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 ~~and~~ under the same conditions as provided in this chapter;
and

(4) ~~earned sick and safe time under this section and that The leave is sufficient to meet the requirements for earned sick and safe time as stated in subsections (a)-(c) of this section, the employer is not required to provide additional earned sick and safe time. Satisfaction of subsections (a)-(c) may be made through any combination of sick, vacation, or paid time off.~~

(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.

SECTION 5

Section 233.04 of the Saint Paul Legislative Code is hereby amended to read as follows:

Sec. 233.04. - Use of earned sick and safe time.

- (a) Employees shall be entitled to use earned sick and safe time ninety (90) calendar days following the commencement of their employment. After ninety (90) calendar days of employment, employees may use earned sick and safe time as it is accrued.

- (b) Earned sick and safe time shall be provided to an employee by an employer for the following reasons:
- (1) An absence resulting from an employee's own mental or physical illness, injury, or health condition; to accommodate the employee's need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or an employee's need for preventive medical care;
 - (2) To allow the employee to provide care for a family member with a mental or physical illness, injury, or health condition; care for a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or care for a family member who needs preventive medical 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 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 by order of a public official to limit exposure to an infectious agent, biological toxin or hazardous material or other public health emergency.
 - (5) To accommodate the employee's need to care for a family member whose school or place of care has been closed by order of a public official to limit exposure to an infectious agent, biological toxin or hazardous material or other public health emergency.
 - (6) To accommodate the employee's need to care for a family member whose school or place of care has been closed due to inclement weather, loss of power, loss of heating, loss of water, or other unexpected closure.
- (c) Employees may use earned sick and safe time in increments consistent with the current business/payroll practice as defined by industry standards or existing employer policies, provided such increment is not more than four (4) hours.
- (d) An employer must compensate an employee for used sick and safe time at the employee's standard hourly rate, for hourly employees, or an equivalent rate, for salaried employees. 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.
- (e) Earned sick and safe time shall be provided upon the request of an employee. When possible, the request shall include the expected duration of the absence. An employer may require an employee to comply with the employer's usual and customary notice and procedural requirements for absences or for requesting leave, provided that such requirements do not interfere with the purposes for which the leave is needed.

- (f) It is not a violation of this ordinance for an employer to require reasonable documentation that the sick and safe time is covered by paragraph (b) of this section for absences of more than three (3) consecutive days.
- (g) An employer may not require, as a condition of an employee's using sick and safe time, that the employee find a replacement worker to cover the hours during which the employee uses sick and safe time.
- (h) 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 Minnesota Statutes, Section 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.
- (i) An employer is only required to allow an employee to use sick and safe time that is accrued pursuant to this ordinance when the employee is scheduled to perform work within the geographic boundaries of the City of Saint Paul. An employer may allow use of accrued sick and safe time when an employee is scheduled to perform work for the employer outside of the City of Saint Paul.

SECTION 6

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 employee or others in support of an employee's request for sick and safe time, including health information 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 ordinance; 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.

SECTION 7

Section 233.06 of the Saint Paul Legislative Code is hereby amended to read as follows:

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 interfere with, restrain, 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 earn sick 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.
- (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 reasonable attorney's fees, 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.
- (a) ~~It shall be unlawful for an employer or any other person to interfere with, restrain, or deny the exercise of, or the attempted exercise of, any right protected 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. Such rights include but are not limited to the right to use earned sick and safe time pursuant to this chapter, the right to file a complaint, or filing an action to enforce a right to use earned sick and safe time under this chapter.~~
- (c) ~~A person injured by a violation of this section may, in addition to any other remedies provided in section 233.13 and 233.14, bring a civil action in the district court wherein the interference or retaliation is alleged to have been committed or where the respondent resides or has a principal place of business, to recover any and all damages recoverable at law, together with costs and disbursements, including reasonable attorney's fees, and may receive injunctive and other equitable relief as determined by the court.~~

SECTION 8

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 and the terms of its use guaranteed under this chapter; 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) 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.
- (c) Employers may comply with this section by displaying the poster in a conspicuous and accessible place in each establishment where such employees are employed.

- (d) An employer that provides an employee handbook to its employees must include in the handbook notice of employee rights and remedies under this chapter.

SECTION 9

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:

- (a) Earned sick and safe time available to the employee; and
- (b) 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.

SECTION 10

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.

SECTION 11

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 outside of the city, 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 ninety (90) days of separation by the same employer, previously 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 earn additional sick and safe time upon commencement of reemployment.

SECTION 12

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.

SECTION 13

Section 233.12 of the Saint Paul Legislative Code is hereby amended to read as follows:

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.
- (d) Annual report. Beginning in 2018, and each year thereafter, the director shall provide in the Human Rights and Equal Economic Opportunity annual report a written report to the city council regarding this chapter. The report shall include, but not be limited to, a discussion of the implementation and enforcement of this chapter, including the number and nature of violations, industries and occupations with high rates of violations, and the penalties assessed in the prior year. The report may also include recommendations for possible improvements to this chapter.

SECTION 14

Section 233.13 of the Saint Paul Legislative Code is hereby amended to read as follows:

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 two (2) years three hundred sixty-five (365) days 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 claiming rights under this chapter is a basis for additional monetary damages. 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 in any appeal made pursuant to Section 233.14 of 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 notice of violation/determination of no violation. Except when there is an agreed upon settlement, the director must issue a written determination of violation with findings of fact resulting from the investigation and a statement of whether a violation of this chapter has occurred based upon a preponderance of the evidence before the department. The determination of violation/no violation must be issued to the employer and the complainant who filed the suspected violation report. The employer or complainant may, within twenty-one (21) days, file a request for reconsideration of the determination with the director. The director must provide a written response on the reconsideration within ten (10) days. 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 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 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.

SECTION 15

Section 233.14 of the Saint Paul Legislative Code is hereby amended to read as follows:

Sec. 233.14. - ~~Appeal.~~ Civil Enforcement.

- (a) An employer or complainant may appeal from a determination by filing an appeal in writing with the department within twenty-one (21) days of the date of service of the determination. ~~Failure to file a timely appeal shall constitute admission to the violation and the determination shall be deemed final.~~
- (b) ~~The department shall notify the employer and complainant of this right of review after issuance of the director's decision.~~

- (c) Upon an appeal of the director's determination, the department shall refer the matter to the HREEO commission, which for purposes of this chapter and pursuant to the department's rules is authorized to hear such appeals.
- (d) In such appeals, in addition to hearing oral arguments, the HREEO commission shall consider the record and the written statements of positions by the parties involved. The HREEO commission shall reverse the department's determination of a violation only upon a finding that it is clearly erroneous. The HREEO commission's decision shall constitute the city's final decision without any further right of administrative appeal.
- (e) An employer or complainant may appeal the HREEO commission's decision to the extent provided by state law.

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.

SECTION 16

Section 233.15 of the Saint Paul Legislative Code is hereby amended to read as follows:

Sec. 233.15. - Civil enforcement Remedies Cumulative.

~~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.~~

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

SECTION 17

Section 233.16 of the Saint Paul Legislative Code is hereby amended to read as follows:

Sec. 233.16. - ~~Remedies cumulative~~ Employee exchange of hours.

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

- (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 sick and safe time to an employee prior to accrual by the employee.

SECTION 18

Section 233.17 of the Saint Paul Legislative Code is hereby amended to read as follows:

Sec. 233.17. - ~~Employee exchange of hours~~ Encouragement of more generous sick time policies; no effect on more generous policies.

- (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 sick and safe time to an employee prior to accrual by the employee.~~
- (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.

SECTION 19

Section 233.18 of the Saint Paul Legislative Code is hereby amended to read as follows:

Sec. 233.18. - ~~Encouragement of more generous sick time policies; no effect on more generous policies~~ Other legal requirements.

- (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.~~

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.

SECTION 20

Section 233.19 of the Saint Paul Legislative Code is hereby amended to read as follows:

Sec. 233.19. - ~~Other legal requirements~~ No assumption of liability.

~~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.~~

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.

SECTION 21

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.

SECTION 22

Sec. 233.21. - Effective date

- (a) For employers with twenty-four (24) or more employees, this chapter is effective July 1, 2017. For employers with twenty-three (23) or fewer employees, this chapter is effective January 1, 2018.
- (b) For employers operating in their first six (6) months after the hire date of the employer's first employee, the employer is required to provide unpaid sick and safe time but is not required to provide paid sick and safe time. After six (6) months, the employer will be subject to this chapter. This subsection will sunset on

January 1, 2023, at which point all employers will be subject to full enforcement.

SECTION 23

This ordinance shall take effect and be in force thirty (30) days following its passage, approval and publication.