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THE COUNCIL

COMMITTEE REPORT OF THE HUMAN SERVICES DIVISION

Robert Newman, Legislative Director

COMMITTEE ON CIVIL SERVICE AND LABOR

Hon. Michael Nelson, Chairperson

May 6, 2013

PROPOSED INT. NO. 97-A:

By Council Members Brewer, Lappin, Mendez, Palma, Gonzalez, Ferreras, Koppell, Recchia, Gentile, Mark-Viverito, Rodriguez, James, Williams, Levin, Rose, Jackson, Chin, Barron, Ulrich, Mealy, Nelson, Vann, Crowley, Foster, Lander, Van Bramer, Dromm, Garodnick, Rivera, Cabrera, Eugene, Koslowitz, Vacca, Weprin, Reyna, Arroyo, King, Richards, Wills, Gennaro, Dickens, Comrie and the Public Advocate (Mr. de Blasio)

TITLE:

A Local Law to amend the charter and the administrative code of the city of New York, in relation to the provision of sick time earned by employees.

CHARTER:

Amends section 2203 by adding a new subdivision e, relettering current subdivisions e through g as f through h, and amending relettered subdivisions f and h.

ADMINISTRATIVE CODE:

Adds a new chapter 8 to title 20.

I. Introduction

On May 6, 2013, the Committee on Civil Service and Labor, chaired by Council Member Michael Nelson, will hold a hearing on Proposed Int. No. 97-A, a Local Law to amend the Administrative Code of the City of New York in relation to the provision of sick time earned by employees. During the previous legislative session, the precursor to this legislation, former Int. No. 1059-2009, was heard by the Committee on November 17, 2009. Former Int. No. 1059-2009 was subsequently reintroduced in the current session as Int. No. 97, with various amendments (*see* section III. C.). The Committee held a hearing on Int. No. 97 on May 11, 2010. Consequently, significant revisions were made to the bill, which became an earlier version of Proposed Int. No. 97-A (*see* section III. D.).

The Committee held a hearing on Proposed Int. No. 97-A on March 22, 2013 and various interested parties testified providing diverse perspectives on this legislation, including workers, businesses, advocates and public policy institutions. Subsequent to the March 22, 2013 hearing, additional amendments were made to the bill (*see* section III. E.).

II. Background

A. Paid Sick Time in the United States

1. Overview

In March of 2013, the Healthy Families Act was reintroduced in the United States Congress. This law would require sick time for employers with 15 or more employees. This and similar legislation was introduced in recent congressional sessions without being voted out of committee. Currently, four cities and one state have paid sick leave laws: San Francisco, California; Washington, D.C.; Seattle, Washington; Portland, Oregon; and Connecticut. Recently, a paid sick leave bill was considered and passed by the Philadelphia City Council, but the bill was

vetoed by Mayor Michael Nutter, and the Council fell short on trying to override the veto.¹ A sick time law was also passed by public referendum in Milwaukee, but it was blocked by a lawsuit and in May of 2012 the state passed legislation preempting local paid sick time laws in Wisconsin.² Other jurisdictions have pending sick time legislation at various stages.

2. Federal

The Healthy Families Act (S. 1152/ H.R. 2460),³ was introduced in May 2009 by Senator Edward Kennedy and Representative Rosa DeLauro. It was reintroduced in the following Congress by Rep. DeLauro and Senator Tom Harkin (S. 984/H.R. 1876)⁴ and again by those lawmakers this year on March 20th (S. 631/H.R. 1286).⁵ The federal bill would require employers with 15 or more employees to accrue one hour of paid sick time for every 30 hours worked up to 56 hours or seven days. Employees would have been able to use such time to meet their own medical needs, care for the medical needs of certain family members or seek medical attention, or assist a related person. The previous version of the bill was referred to the Senate Committee on Health, Education, Labor and Pensions, and the House Committee on Education and the Workforce, but died in committee at the end of the session.⁶

Another bill, the Emergency Influenza Containment Act (Miller H.R. 3991 (no Senate counterpart)) was introduced in Congress in November 2009 in response to the H1N1 influenza virus scare of that year.⁷ The bill provided for five paid sick days for workers sent home by their employers with a contagious illness for businesses with 15 or more employees. If passed, workers who follow their employers' directions to stay home because of contagious illness could not have

¹ NBC10 Philadelphia, "Paid Sick Leave Veto Override Falls 1 Vote Short," April 11, 2013, available at: <http://www.nbcphiladelphia.com/news/politics/Paid-Sick-Leave-Bill-Veto-Stands-202535031.html>.

² *Milwaukee Journal Sentinel*, "Walker signs law pre-empting sick day ordinance," May 5, 2011, available at: <http://www.jsonline.com/news/milwaukee/121332629.html>.

³ See <http://www.govtrack.us/congress/bills/111/hr2460>.

⁴ See <http://www.govtrack.us/congress/bills/112/s984>.

⁵ See <http://www.govtrack.us/congress/bills/113/hr1286>.

⁶ *Id.*

⁷ See <http://www.govtrack.us/congress/bills/111/hr3991>.

been fired, disciplined or retaliated against for staying home; however, workers who stayed home on their own volition would not have been guaranteed paid sick days. The bill would have taken effect 15 days after being signed into law and expired after two years. The bill was referred to the House Committee on Education and Labor in November 2009 and to the Subcommittee on Workforce Protections in December, but it died at the end of the session⁸ and no current version of this bill was introduced in the previous or current congress pending.

A third relevant bill introduced in November 2009 was the Pandemic Protection for Workers, Families, and Businesses Act (Dodd S.2790/DeLauro H.R.4092),⁹ which was very similar to the Emergency Influenza Containment Act. This bill would have allowed employees to use up to seven sick days to tend to their own flu-like symptoms, obtain a medical diagnosis or preventive treatment, care for a sick child, or care for a child whose school or child care facility has been closed due to the spread of a contagious illness. Part-time employees would also have been entitled to paid leave on a pro-rated basis. In addition, the bill would have made it unlawful for an employer to take an adverse action or otherwise discriminate against employees that avail themselves of these leave benefits. If enacted, the terms of this bill would have taken effect within 15 days, and sunsetted after two years. Employers that already provide up to seven days of annual paid sick leave would not have been required to provide additional benefits. This bill was referred to the Senate Committee on Health, Education, Labor, and Pensions, and the House Subcommittee on Workforce Protections, but died at the end of the session¹⁰ and no version of this bill is currently pending.

⁸ See <http://www.opencongress.org/bill/111-h3991/show>.

⁹ See <http://www.govtrack.us/congress/bills/111/s2790>.

¹⁰ See <http://www.opencongress.org/bill/111-s2790/show>.

The Obama Administration has also expressed support for paid sick leave.¹¹ The United States Department of Labor testified at a congressional hearing regarding H1N1 and paid sick days that more must be done to help protect the economic security of working families who often must choose between a paycheck and their health and the health of their families.¹² The Administration expressed support of efforts such as the Healthy Families Act and other proposals that advance workplace flexibility and protect the income and security of workers.¹³

3. San Francisco

San Francisco, California was the first municipality in the United States to pass a paid sick time law. Enacted it by public referendum in February 2007,¹⁴ the San Francisco law provides the same number of sick days per year as the original Int. No. 97 (five paid sick days for small businesses and nine for larger businesses); however, the definition for small business is under ten employees, rather than twenty in the original Int. No. 97.¹⁵ Under San Francisco's law, unused days carry over to the next year and there is no maximum number of days that can be used per year. Employees may use sick time for purposes similar to Proposed Intro. No. 97-A and also may use it to care for one "designated person," who is not related to the employee. In addition, the accrual of sick time starts after 90 days.

3. Washington D.C.

The District of Columbia passed a paid sick time law in March 2008.¹⁶ Employees who worked at least 1,000 hours in the previous year receive benefits after a year of uninterrupted

¹¹ Testimony of Deputy Secretary of Labor Seth Harris, U.S. Senate Subcommittee on Children and Families Committee on Health, Education, Labor and Pensions Hearing: "The Cost of Being Sick: H1N1 and Paid Sick Days" November 10, 2009, available at http://www.dol.gov/sec/media/congress/20091110_H1N1.htm.

¹² *Id.*

¹³ *Id.*

¹⁴ City and County of San Francisco Office of Labor Standards and Enforcement website <http://sfgsa.org/index.aspx?page=419>.

¹⁵ Former Int. No. 1059-2009, the version of Int. No. 97 from the last session, had this same definition, but it was increased to fewer than 20 employees for the new bill.

¹⁶ See Seattle Office of Human Rights website, <http://www.seattle.gov/civilrights/sickleave.htm>.

service. Sick time can be taken for similar purposes as Proposed Int. No. 97-A.¹⁷ Under DC’s law, large businesses (defined as 100 or more) must provide seven days, smaller businesses (25-99 employees) must provide five days and even smaller businesses must provide three days.¹⁸ Among those exempted from the law are employees who derive most of their compensation from tips and full-time students who work for their school.¹⁹ There is also a “hardship exemption” that was left undefined in the law and to be determined by regulation, but thus far, although they have been proposed, no rules have been promulgated on the topic.²⁰

4. Seattle

Seattle, Washington passed a paid sick time law that went into effect on September 1, 2012.²¹ Sick time can be taken for similar purposes as Proposed Int. No. 97-A, but, like the Washington, D.C. law. Under this law, employers with 250 or more workers must provide nine days of paid sick time. Businesses with 50 to 249 employees are required to provide seven paid sick days.²² Businesses with five to 49 employees must provide five days. Businesses under 5 employees are exempt. New businesses up to 249 employees also receive a two-year exemption from the law.

5. Portland

Earlier this year, Portland, Oregon became the latest municipality to enact a paid sick leave law, which will go into effect at the beginning of next year.²³ This law applies to people

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ D.C. Municipal Regulations and D.C. Register website <http://www.dcregs.dc.gov/Gateway/RuleHome.aspx?RuleID=3520632>.

²¹ *Washington Post*, “Many workers unaware of D.C. sick-leave law passed in 2008”, Jan. 5, 2010 at 1.

²² *Id.*

²³ Paul Shukovsky, “Portland Joins Small Group of Jurisdictions In Adopting Paid Sick Leave Ordinance,” Bloomberg BNA, March 18, 2013, available at: <http://www.bna.com/portland-joins-small-n17179872839/>.

who work within the city for 240 hours in a year.²⁴ Employees accrue up to five paid sick days per year. Businesses under 6 employees are exempt.²⁵ As with Washington, D.C. and Seattle, in addition to the standard uses for sick time, *i.e.*, care for self or family when sick or injured.²⁶

6. Connecticut

Connecticut is, thus far, the only state to pass mandatory paid sick time law, which covers private sector service workers and went into effect on January 1, 2012.²⁷ The law covers businesses with 50 or more employees²⁸ and exempts manufacturing²⁹ and “any nationally chartered organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code...that provides...[r]ecreation, child care and education”³⁰ (which currently only applies to the YM/WCA³¹). It provides for five paid sick days per year, which can be used after an employee works for 680 hours. Sick time can be used for the similar purposes as Proposed Int. No. 97-A.³²

B. Paid Sick Time Statistics

1. National Numbers

According to the U.S. Department of Labor Bureau of Labor Statistics (BLS) March 2010 report on paid sick leave, 61 percent of private industry workers and 89 of state and local workers receive paid sick time as of March 2009.³³ The report found that after a year of service,

²⁴ Ryan Kost, “Portland City Council votes unanimously to approve sick leave policy,” Oregon Live Powered by the Oregonian, Mar. 13, 2013, available at:

http://www.oregonlive.com/portland/index.ssf/2013/03/portland_city_council_votes_un.html.

²⁵ Shukovsky, “Portland Joins Small Group of Jurisdictions In Adopting Paid Sick Leave Ordinance.”

²⁶ *Id.*

²⁷ Connecticut Dept. of Labor website, “An Overview of the Paid Sick Time Law,” (“An Overview”) at 16, available at <http://www.ctdol.state.ct.us/wgwkstnd/12-15%20PSLfinal2011.pdf>.

²⁸ *Id.* at 2.

²⁹ *Id.* at 4.

³⁰ *Id.*

³¹ Connecticut Employment Law Blog, “Paid Sick Leave: The Basics Of What Employers Need to Know,” June 7, 2011, available at <http://www.ctemploymentlawblog.com/2011/06/articles/paidsickleaveemployers/>.

³² An Overview at 31 and 33.

³³ U.S. Bureau of Labor Statistics, Program Perspectives, Vol. 2, Issue 2, Paid Sick Leave in the United States, March 2010 (“USBLA Program Perspectives”).

private employers give an average of 8 paid sick days and public employees receive an average of 11 days per year.³⁴ The BLS's most recent report on paid sick time, issued in March 2012 continues to cite these 2009 numbers as the most up-to-date data.³⁵

According to the Institute for Women's Policy Research ("IWPR"), on average, most employees with sick time benefits take 3.95 sick days per year (although this is estimated to be only 2.2 days in New York City³⁶). Those without the benefit take about 3.35.³⁷

The type of employment and size of the business often determines whether an employee receives paid sick days:

- 82 percent of managers and professionals receive sick days, but only 42 percent of service workers do.³⁸
- Full-time employees are much more likely to receive sick days (73 percent) than part-time employees (26 percent).³⁹
- High wage workers are also much more likely to receive sick days; 81 percent of workers in the top 25 percent income earners have sick days compared with 33 percent in the lowest 25 percent of income earners.⁴⁰
- Most full-time state and local government employees receive sick days (98 percent) compared to 42 percent of such part-time workers.⁴¹
- 97 percent of State and local government workers covered by collective bargaining agreements receive sick days, compared with 83 percent of non-unionized employees.⁴²
- Employers with 500 or more workers provide an average of 11 paid sick days.⁴³
- Employers with less than a hundred employees provide an average of 6 days.⁴⁴

³⁴ *Id.* at 2.

³⁵ Ross O. Barthold and Jason L. Ford, "Paid Sick Leave: Prevalence, Provision, and Usage among Full-Time Workers in Private Industry," U.S. Bureau of Labor Statistics, Feb. 29, 2012, available at: <http://www.bls.gov/opub/cwc/cm20120228ar01p1.htm>.

³⁶ *See* Sec. II(B)(2).

³⁷ Vicky Lovell, Ph.D, "Valuing Good Health: An Estimate of Costs and Savings for the Healthy Families Act," Institute for Women's Policy Research, April 2005.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

2. New York City Numbers

According to the IWPR, 1.6 million or 50 percent of New York City workers do not receive any paid sick days.⁴⁵ In addition 850,000 workers have no paid leave or vacation time of any kind.⁴⁶ Based on the version of Proposed Intro. No. 97-A heard at the hearing in March of this year, IWPR estimates that workers with paid sick time in the City will use an average of 2.2 sick days per year.⁴⁷

C. Costs

1. U.S. Bureau of Labor Statistics

The U.S. Bureau of Labor Statistics estimates that as of June 2009, private industry employer compensation costs nationwide averaged \$27.42 per hour worked.⁴⁸ Wages and salaries averaged \$19.39 per hour (70.7 percent), while benefits averaged \$8.02 (29.3 percent).⁴⁹ Employer costs for paid leave averaged \$1.85 per hour worked (6.8 percent), of which paid sick leave comprised 23¢ (0.8%) of total paid leave costs.⁵⁰ When that figure is broken down by type of business, the cost for management, professional and related occupations is 53¢ per hour, and the cost for service employees is only 8¢ per hour.⁵¹

⁴⁵ Kevin Miller, Ph.D. and Claudia Williams, “Paid Sick Days in New York City Would Lower Health Care Costs by Reducing Unnecessary Emergency Department Visits,” Institute for Women’s Policy Research, Feb. 2012 at 1, available at: <http://www.iwpr.org/publications/pubs/paid-sick-days-in-new-york-city-would-lower-health-care-costs-by-reducing-unnecessary-emergency-department-visits>.

⁴⁶ Kevin Miller, Ph.D. and Claudia Williams, “Valuing Good Health Health in New York City: The Costs and Benefits of Paid Sick Days,” (Valuing Good Health), Institute for Women’s Policy Research, Sept. 2009 at 1, available at: <http://www.iwpr.org/publications/pubs/valuing-good-health-in-new-york-city-the-costs-and-benefits-of-paid-sick-days-1>.

⁴⁷ Institute for Women’s Policy Research, “Fact Sheet: Valuing Good Health in New York City: The Costs and Benefits of Earned Sick Days,” at 1, March 2013, available http://www.iwpr.org/publications/pubs/valuing-good-health-in-new-york-city-the-costs-and-benefits-of-earned-sick-days-1/at_download/file.

⁴⁸ U.S. Dep’t of Labor, Bureau of Labor Statistics: “Employer Costs for Employee Compensation” June 2009 available at <http://www.bls.gov/news.release/pdf/ecec.pdf>.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

2. Institute for Women’s Policy Research Study

According to the Institute for Women’s Policy Research, based on the first version of Proposed Intro. No. 97-A, the cost of implementing this bill would be the equivalent of raising wages 18¢ per hour or \$6.31 per week.^{52 53} IWPR estimates that workers will take an average of 2.2 days under this law.⁵⁴ Further, IWPR estimates that it will save approximately \$70 million annually in health care expenditures, of which \$56 million would be savings from public health insurance programs.⁵⁵

3. New York City Council Finance Division Analysis

Appendix A to the March 22, 2013 Committee Report as well as this Committee Report on the original Proposed Intro. No. 97-A, is an analysis of the economics of paid sick leave prepared by the New York City Council Finance Division, entitled “Some Simple Economics of Paid Sick Leave: Economic Analysis of Proposed Intro. No. 97-A.” It should be noted that the economic research on paid sick leave is slim. However, there exists a good body of work on the economics of mandated benefits in general that can be applied to a mandated sick leave benefit. Presented here is a short summary of the discussion.

It is clear from the public discourse that there is an economic value to workers for paid sick leave. A number of companies provide it to their workers as part of their compensation. Proposed Intro. No. 97-A seeks to provide this value to workers who do not yet have it through a legislative mandate. However, as Lawrence Summers warns, “[t]here is no sense in which a benefit becomes ‘free’ just because government mandates employers to offer them to workers.” Mandating paid sick leave does not just provide a benefit to workers, but it also imposes a cost.

⁵² Fact Sheet: Valuing Good Health in New York City: The Costs and Benefits of Earned Sick Days, at 1.

⁵³ Changes have been made to the bill since this determination was made, including changing coverage from employers with five or more employees to employers with fifteen employees.

⁵⁴ Fact Sheet: Valuing Good Health in New York City: The Costs and Benefits of Earned Sick Days, at 1.

⁵⁵ *Id.*

Moreover, a good portion of this cost will eventually be borne by the workers themselves, in the form of wages that are lower than they would be without the mandate.

New York City Council Finance estimates the costs of such a mandate as proposed in this legislation to be between 1.1 to 1.8 percent of the payroll of the impacted workforce. Initially, firms will be forced to absorb some of these costs, but an economic adjustment process will reduce this burden as firms try to restore their profits.

Basic economic theory posits that this adjustment will be done by lowering wages paid to impacted workers and possibly by reducing the workforce. However, in the real world, wages tend to be sticky in the downward direction; it is hard to reduce an employee's wage. If firms are unable to reduce wages but remain under pressure from increased labor costs, reduced employment will result. The reduction in employment is a temporary phenomenon during the adjustment process to the new mandate.

One way to avoid this temporary unemployment is by introducing the mandate during a period of wage growth. When wages are growing, firms can pass some of the costs to workers through slower wage increases without having to reduce employment or reduce employees' wages. The timing of when paid sick leave is introduced does matter.

Currently about 74 percent of New York City's workers have access to paid sick leave. Workers who do not have paid sick leave tend to have lower wages and work for smaller firms. This is not accidental, and in fact this pattern is found with most fringe benefits including pensions, vacation days and health insurance. In part this is an unintended consequence of other policies, such as progressive taxation. However, most of it reflects the basic economic realities of small business and low income workers.

There are economies of scale to providing fringe benefits. Put simply, the bigger you are the cheaper it gets. The addendum explores one aspect of this that applies to paid sick leave;

small firms may find adapting to the mandate more difficult since their smaller workforce size makes it harder for them to manage the volatility that comes from workforce absences.

The type of firm impacted matters as well. Firms, such as those in warehousing, distribution, and wholesaling, will find it difficult to raise prices to compensate for the added costs because many of their competitors are not located in New York City and are not subject to the mandate.

It should not be blindly assumed that all firms will be similarly impacted by a paid sick leave mandate. If a firm's costs to offer the required benefit differ from the overall market, the firm will not be able to pass all of those cost on to workers or customers. While overall employment effects from the mandate could be small there could be "substantial employment reallocation across firms." Basically there is a risk that a mandated benefit like paid sick leave could have an impact on the structure of an industry, favoring larger firms that are better capable of handling it, over smaller ones.

One final consideration is that the value of the mandate is not just a sum of the value to all the workers who would receive paid sick leave. To a degree, firms and even society at large, would benefit from this mandate because it would help control the spread of infectious disease. A sick worker is not as productive as a healthy worker, which in turn means illness has a cost to a firm. By encouraging sick workers to remain home, paid sick leave may help reduce the potential for healthy workers to get sick. Expanding the argument, some epidemiological research has shown that measures that allow sick workers to avoid social contact, such as paid sick leave, can help reduce the spread of contagion and thus illness in society. This public health benefit should be part of the equation when discussing the relative costs and benefits of paid sick leave.

Policy makers should not solely ask whether paid sick leave should be extended to those who do not have it. It is important that they consider the questions of how, when, and to what

extent the benefit should be expanded. Not doing so could have negative and completely avoidable consequences.

III. Proposed Int. No. 97-A

A. Bill Text

Proposed Int. No. 97-A would allow employees to earn a minimum amount of paid sick time from their employees. Section one of this legislation would contain a statement of legislative intent which reads:

The City Council finds that nearly every worker at some time during each year will need time off from work to take care of his or her health needs or the health needs of family members. Providing the right to earned sick time will therefore have a positive effect on the public health of the City and lessen the spread of and exposure to diseases. The Council further finds that supporting a healthy workforce will foster greater employee retention and productivity, and recognizes that responsible businesses that already have policies that allow time off that amounts to at least the minimum requirements under this law, and that can be taken for the same reasons and under the same conditions as enumerated in this legislation, will not be required to provide additional sick time. Providing sick time to workers at a time when the economy is improving, and ensuring that workers' jobs are protected when they need to take a sick day, strikes the right balance and will result in a more prosperous, safe and healthy City.

Bill section 2 would amend 2203 of the New York City Charter pertaining to the powers of the Commissioner of Consumer Affairs and the powers of the Department of Consumer Affairs concerning the Earned Sick Time Act created by this legislation, by adding a new subdivision e, relettering current subdivisions e through g as subdivisions f through h, and amending relettered subdivisions f and h(1) to read as follows:

(e) The commissioner shall have all powers as set forth in chapter 8 of title 20 of the administrative code relating to the receipt, investigation, and resolution of complaints thereunder regarding earned sick time.

(f) The commissioner, in the performance of said functions, including those functions pursuant to subdivision e of this section, shall be authorized to hold public and private hearings, administer oaths, take testimony, serve subpoenas, receive evidence, and to receive, administer, pay over and distribute monies collected in and as a result of actions brought for violations of laws relating to deceptive or unconscionable trade practices, or of related laws, and to promulgate, amend and modify rules and regulations necessary to carry out the powers and duties of the department.

(h) (1) Notwithstanding any inconsistent provision of law, the department shall be authorized, upon due notice and hearing, to impose civil penalties for the violation of any laws or rules the enforcement of which is within the jurisdiction of the department pursuant to this charter, the administrative code or any other general, special or local law. The department shall have the power to render decisions and orders and to impose civil penalties for all such violations, and to order equitable relief for and payment of monetary damages in connection with enforcement of chapter 8 of title 20 of the administrative code. Except to the extent that dollar limits are otherwise specifically provided, such civil penalties shall not exceed five hundred dollars for each violation. All proceedings authorized pursuant to this subdivision shall be conducted in accordance with rules promulgated by the commissioner. The remedies and penalties provided for in this subdivision shall be in addition to any other remedies or penalties provided for the enforcement of such provisions under any other law including, but not limited to, civil or criminal actions or proceedings.

Bill section 3 would add a new Chapter 8 to Title 20 of the Administrative Code of the City of New York (the Code).

New section 20-911 of the Code would provide that this chapter would be known and cited as the “Earned Sick Time Act.”

New section 20-912 of the Code is the definitional provision. This subdivision would provide definitions of the following terms used in this section:

a. “Calendar year” would mean a regular and consecutive twelve month period, as determined by an employer.

b. “Chain business” would mean any employer that is part of a group of establishments that share a common owner or principal who owns at least thirty percent of each establishment where such establishments (i) engage in the same business or (ii) operate pursuant to franchise agreements with the same franchisor as defined in general business law section 681; provided that the total number of employees of all such establishments in such group is at least fifteen.

Explanation:

This definition is intended to capture businesses in the same field that are owned by the same person or entity (at least 30 percent ownership of each establishment), but which might have distinct corporate structures, or are separately franchised establishments. Individually, some of these establishments may have less than 15 employees, but all related establishments should be used in counting the number of employees. The law is not intended to apply to a franchisor that owns only one franchise that employs less than 15 employees.

For example, if an individual owned at least 30 percent of three pizzerias in New York City that each employs seven employees, all three establishments would be counted

together and be required to provide paid sick time. On the other hand, another individual who owned one Dunkin' Donuts franchise that employs 14 people would *not* be required to provide paid sick time. In addition, if someone owned at least 30 percent of a bodega, a liquor store and a Laundromat that each had less than fifteen employees, none of these establishments would be required to provide sick days, because the businesses are not engaged in a similar trade.

Additionally, the word "ownership" is intended to be interpreted broadly. For example, if pursuant to a franchise agreement or other contract, an employer owns at least thirty percent of a business but does not own the business' building or equipment, etc., that employer can be considered a chain business under this law.

c. "Child" would mean a biological, adopted or foster child, a legal ward, or a child of an employee standing in loco parentis.

d. "Domestic partner" would mean any person who has a registered domestic partnership pursuant to section 3-240 of the code, a domestic partnership registered in accordance with Executive Order Number 123, dated August 7, 1989, or a domestic partnership registered in accordance with Executive Order Number 48, dated January 7, 1993.

e. "Domestic worker" would mean any "domestic worker" as defined in section 2(16) of the labor law who is employed for hire within the city of New York for more than eighty hours in a calendar year who performs work on a full-time or part-time basis.

f. "Employee" would mean any "employee" as defined in section 190(2) of the labor law who is employed for hire within the city of New York for more than eighty hours in a calendar year who performs work on a full-time or part-time basis, including work performed in a transitional jobs program pursuant to section 336-f of the social services law, but not including work performed as a participant in a work experience program pursuant to section 336-c of the

social services law, and not including those who are employed by (i) the United States government; (ii) the state of New York, including any office, department, independent agency, authority, institution, association, society or other body of the state including the legislature and the judiciary; or (iii) the city of New York or any local government, municipality or county or any entity governed by general municipal law section 92 or county law section 207.

Explanation:

The definition for “employee” used in this bill is from the State Labor Law section 190(2), which reads: “‘Employee’ means any person employed for hire by an employer in any employment.” The choice of this broad definition was intentional. This bill is intended to cover all employees in the State of New York (except those specifically exempted in sections 20-912(f) of the bill). For instance, musicians and other performers who qualify for unemployment insurance coverage pursuant to the Unemployment Compensation Law⁵⁶ or covered by the New York Workers Compensation Law⁵⁷ are intended to be employees for purposes of this local law.g.

“Employer” would mean any “employer” as defined in section 190(3) of the labor law, but not including (i) the United States government; (ii) the state of New York, including any office, department, independent agency, authority, institution, association, society or other body of the state including the legislature and the judiciary; (iii) the city of New York or any local government, municipality or county or any entity governed by general municipal law section 92 or county law section 207; or (iv) any employer that is a business establishment classified in section 31, 32 or 33 of the North American Industry Classification System. In determining the number of employees performing work for an employer for compensation during a given week, all employees performing work for compensation on a full-time, part-time or temporary basis would be counted, provided that where the number of employees who work for an employer for

⁵⁶ New York Labor Law § 500 *et seq.*

⁵⁷ New York Workers Compensation Law § 200 *et seq.*

compensation per week fluctuates, business size may be determined for the current calendar year based upon the average number of employees who worked for compensation per week during the preceding calendar year, and provided further that in determining the number of employees performing work for an employer that is a chain business, the total number of employees in that group of establishments would be counted.

Explanation:

For a detailed description of what sections 31, 32 or 33 of the North American Industry Classification System cover, please see the U.S. Bureau of Labor Statistics website.⁵⁸

h. “Family member” would mean an employee’s child, spouse, domestic partner or parent, or the child or parent of an employee’s spouse or domestic partner.

i. “Health care provider” would mean any person licensed under federal or New York State law to provide medical or emergency services, including, but not limited to, doctors, nurses and emergency room personnel.

j. “Hourly professional employee” would mean any individual (i) who is professionally licensed by the New York state education department, office of professions, under the direction of the New York state board of regents under education law sections 6732, 7902 or 8202, (ii) who calls in for work assignments at will determining his or her own work schedule with the ability to reject or accept any assignment referred to them and (iii) who is paid an average hourly wage which is at least four times the federal minimum wage for hours worked during the calendar year.

⁵⁸ http://www.bls.gov/oes/current/naics2_31-33.htm.

Explanation:

New York Education Law section 6732 covers physical therapists; Section 7902 covers occupational therapists; and section covers speech language pathologists.

k. “Paid sick time” would mean time that is provided by an employer to an employee that can be used for the purposes described in section 20-914 of this chapter and is compensated at the same rate as the employee earns from his or her employment at the time the employee uses such time, except that an employee who volunteers or agrees to work hours in addition to his or her normal schedule will not receive more in paid sick time compensation than his or her regular hourly wage if such employee is not able to work the hours for which he or she has volunteered or agreed even if the reason for such inability to work is one of the reasons in section 20-914 of this chapter. In no case shall an employer be required to pay more to an employee for paid sick time than the employee’s regular rate of pay at the time the employee uses such paid sick time, except that in no case shall the paid sick time hourly rate be less than the hourly rate provided in section 652(1) of the labor law.

l. “Parent” would mean a biological, foster, step- or adoptive parent, or a legal guardian of an employee, or a person who stood in loco parentis when the employee was a minor child.

m. “Public disaster” would mean an event such as fire, explosion, terrorist attack, severe weather conditions or other catastrophe that is declared a public emergency or disaster by the president of the United States, the Governor of the State of New York or the Mayor of the City of New York.

n. “Public health emergency” would mean a declaration made by the commissioner of health and mental hygiene pursuant to section 3.01(d) of the New York city health code or by the mayor pursuant to section 24 of the executive law.

o. “Public service commission” would mean the public service commission established by section 4 of the public service law.

p. “Retaliation” would mean any threat, discipline, discharge, demotion, suspension, or reduction in employee hours, or any other adverse employment action against any employee for exercising or attempting to exercise any right guaranteed under this chapter.

q. “Sick time” would mean time that is provided by an employer to an employee that can be used for the purposes described in section 20-914 of this chapter, whether or not compensation for that time is required pursuant to this chapter.

r. “Spouse” shall mean a person to whom an employee is legally married under the laws of the state of New York.

New section 20-913 would provide for the right to and accrual of paid sick time. Subdivision a of such section would declare that all employers that employ fifteen or more employees and all employers of one or more domestic workers would provide paid sick time to their employees in accordance with the provisions of this chapter and the schedule set forth in section 7 of this local law and all employees not entitled to paid sick time pursuant to this chapter would be entitled to unpaid sick time in accordance with the schedule set forth in section 7 of the local law which enacted this section. Additionally, all employers that employ fifteen to nineteen employees, and all employers of one or more domestic workers, would provide unpaid sick time in accordance with the provisions of this chapter and the schedule set forth in section 7 of the local law which enacted this section during any period in which, pursuant to the schedule set forth in section 7 of the local law which enacted this section, such employers would not be required to provide paid sick time but employers that employ twenty or more employees are required to provide paid sick time.

Explanation:

For example, assuming economic conditions do not worsen⁵⁹ and the bill goes into effect on April 1, 2014, the employees of any business with 20 or more employees would start accruing paid sick time and businesses under 20 employees would start accruing unpaid sick time. Eighteen months later, on October 1, 2015, employees of businesses with 15–19 employees, and domestic workers would begin accruing paid sick time.

Subdivision b of such section would require that all employers provide a minimum of one hour of sick time for every thirty hours worked by an employee, other than a domestic worker who would accrue sick time pursuant to paragraph 2 of subdivision d of this section. Employers would not be required under this chapter to provide more than forty hours of sick time for an employee in a calendar year. For purposes of this subdivision, any paid days of rest to which a domestic worker is entitled pursuant to section 161(1) of the labor law shall count toward such forty hours. Nothing in this chapter would be construed to discourage or prohibit an employer from allowing the accrual of sick time at a faster rate or use of sick time at an earlier date than this chapter requires.

Subdivision c of such section would provide that an employer required to provide paid sick time pursuant to this chapter who provides an employee with an amount of paid leave, including paid time off, paid vacation, paid personal days or paid days of rest required to be compensated pursuant to section 161(1) of the labor law, sufficient to meet the requirements of this section and who allows such paid leave to be used for the same purposes and under the same conditions as sick time required pursuant to this chapter, would not be required to provide additional paid sick time for such employee whether or not such employee chooses to use such

⁵⁹ See Explanation of Section 7 of the bill on p. 37.

leave for the purposes included in subdivision a of section 20-914 of this chapter. It would also state that an employer required to provide unpaid sick time pursuant to this chapter who provides an employee with an amount of unpaid or paid leave, including unpaid or paid time off, unpaid or paid vacation, or unpaid or paid personal days, sufficient to meet the requirements of this section and who allows such leave to be used for the same purposes and under the same conditions as sick time required pursuant to this chapter, would not be required to provide additional unpaid sick time for such employee whether or not such employee chooses to use such leave for the purposes included in subdivision a of section 20-914 of this chapter.

Explanation:

Employers who provide at least five days of any kind of paid time off, (*i.e.*, personal days, vacation, sick leave, etc.), that may be used for the same purposes as elaborated in the bill, would not be required to provide additional paid sick days. Further, an employer that is required to provide unpaid sick time pursuant to this bill, who provides an employee with unpaid or paid leave, that is sufficient to meet the requirements of this bill and who allows such leave to be used for the same purposes as sick time required under this bill, is not required to provide additional unpaid sick time for such employee whether or not such employee chooses to use such leave for sick time purposes.

If an employer provides employees with five vacation days that can be used as sick days under the provisions of this law, the employer does not need to provide additional days. The employee has a choice to use these days as vacation days or sick days. If they choose to use them for vacation, the employer is not required to provide additional sick days.

For domestic workers, the three paid days of rest provided for under the State Labor Law can be used towards the employers' requirement to provide paid or unpaid sick time.

Subdivision d of such section would provide that for an employee other than a domestic worker, sick time as provided pursuant to this chapter would begin to accrue at the commencement of employment or on the effective date of this local law, whichever is later, and an employee would be entitled to begin using sick time on the one hundred twentieth calendar day following commencement of his or her employment or on the one hundred and twentieth day following the effective date of this local law, whichever is later. After the one hundred twentieth calendar day of employment or after the one hundred twentieth calendar day following the effective date of this local law, whichever is later, such employee would be able to use sick time as it is accrued. It would also provide that in addition to the paid day or days of rest to which a domestic worker is entitled pursuant to section 161(1) of the labor law, such domestic worker would also be entitled to two days of paid sick time as of the date that such domestic worker is entitled to such paid day or days of rest and annually thereafter, provided that notwithstanding any provision of this chapter to the contrary, such two days of paid sick time would be calculated in the same manner as the paid day or days of rest are calculated pursuant to the provisions of section 161(1) of the labor law.

Explanation:

For example, if under the State Labor Law a domestic worker is entitled to three five-hour days of rest, the proposed law would in no way interfere with these 3 days but would provide that they could accrue two additional days of sick time, which would accrue and be calculated in the same manner as the three days of rest are accrued and calculated under the State Labor Law. So, under the above scenario, a domestic worker would be entitled to two additional five-hour days of rest under this law.

Subdivision e of such section would provide that employees who are not covered by the overtime requirements of New York state law or regulations, including the wage orders

promulgated by the New York commissioner of labor pursuant to article 19 or 19-A of the labor law, would be assumed to work forty hours in each work week for purposes of sick time accrual unless their regular work week is less than forty hours, in which case sick time accrues based upon that regular work week.

Subdivision f of such section would provide that the provisions of this chapter would not apply to work study programs under 42 U.S.C. section 2753, employees for the hours worked and compensated by or through qualified scholarships as defined in 26 U.S.C. section 117, independent contractors who do not meet the definition of employee under section 190(2) of the labor law, and hourly professional employees.

Subdivision g of such section would provide that employees would determine how much earned sick time they need to use, provided that employers may set a reasonable minimum increment for the use of sick time not to exceed four hours per day.

Subdivision h of such section would provide that except for domestic workers, unused sick time as provided pursuant to this chapter would be carried over to the following calendar year; provided that no employer would be required to allow the use of more than forty hours of sick time in a calendar year or carry over unused paid sick time if the employee is paid for any unused sick time at the end of the calendar year in which such time is accrued and the employer provides the employee with an amount of paid sick time that meets or exceeds the requirements of this chapter for such employee for the immediately subsequent calendar year on the first day of the immediately subsequent calendar year.

Explanation:

For example if an employer pays its workers for their unused sick time at the end of the business' fiscal year, the employer would have to give the employee the

amount of sick time the employee would have accrued during the year on the first day of the new year.

Subdivision i of such section would provide that that nothing in this section should be construed as requiring financial or other reimbursement to an employee from an employer upon the employee's termination, resignation, retirement, or other separation from employment for accrued sick time that has not been used.

Subdivision j of such section would provide that if an employee was transferred to a separate division, entity or location in the city of New York, but remains employed by the same employer, such employee would be entitled to all sick time accrued at the prior division, entity or location and would be entitled to retain or use all sick time as provided pursuant to the provisions of this chapter. When there is a separation from employment and the employee was rehired within six months of separation by the same employer, previously accrued sick time that was not used would be reinstated and such employee would be entitled to use such accrued sick time at any time after such employee is rehired; provided that no employer would be required to reinstate such sick time to the extent the employee was paid for unused accrued sick time prior to separation and the employee agrees to accept such pay for such unused sick time.

New section 20-914 of the Code would be entitled "Use of sick time." This section would provide under paragraph one that an employee would be entitled to use paid sick time for absence from work due to the following situations:

1. An employee's mental or physical illness, injury or health condition or need for medical diagnosis, care, or treatment of a mental or physical illness, injury or health condition or need for preventive medical care;
2. Care of a family member who needs medical diagnosis, care or treatment of a mental or physical illness, injury or health condition or who needs preventive medical care; or

3. Closure of an employee's place of business by order of a public official due to a public health emergency or an employee's need to care for a child whose school or childcare provider has been closed by order of a public official due to a public health emergency.

Under subdivision b of such section, this bill would provide that an employer could require reasonable notice of the need to use sick time. Where such need was foreseeable, an employer could require reasonable advance notice of the intention to use such sick time, not to exceed seven days prior to the date such sick time is to begin. Where such need is not foreseeable, an employer could require an employee to provide notice of the need for the use of sick time as soon as practicable.

Subdivision c of such section would provide that for an absence of more than three consecutive work days, an employer could require reasonable documentation that the use of sick time was authorized by subdivision a of this section. For sick time used pursuant to paragraphs 1 and 2 of subdivision a of this section, documentation signed by a licensed health care provider indicating the need for the amount of sick time taken would be considered reasonable documentation. An employer could not require that such documentation specify the nature of the employee's or the employee's family member's injury, illness or condition, except as required by law.

Explanation:

Absence from work means an absence from a day or period of hours an employee was scheduled to work.

Subdivision d of such section would provide that nothing in the local law would prevent an employer from requiring an employee to provide written confirmation that an employee used sick time pursuant to this section.

Subdivision e of such section would provide that an employer could not require an employee, as a condition of taking sick time, to search for or find a replacement worker to cover the hours during which such employee is utilizing sick time.

Subdivision f of such section would provide that nothing in this chapter would be construed to prohibit an employer from taking disciplinary action, up to and including termination, against a worker who uses sick time provided pursuant to this chapter for purposes other than those described in this section.

New section 20-915 of the code would be entitled “Changing schedule.” Under this section, upon mutual consent of the employee and the employer, an employee who is absent for a reason listed in subdivision a of section 20-914 of this chapter could work additional hours during the immediately preceding seven days if the absence was foreseeable or within the immediately subsequent seven days from that absence without using sick time to make up for the original hours for which such employee was absent, provided that an adjunct professor who is an employee at an institute of higher education could work such additional hours at any time during the academic term. An employer could not require such employee to work additional hours to make up for the original hours for which such employee was absent or to search for or find a replacement employee to cover the hours during which the employee is absent pursuant to this section. If such employee worked additional hours, and such hours were fewer than the number of hours such employee was originally scheduled to work, then such employee would be able to use sick time provided pursuant to this chapter for the difference. Should the employee work additional hours, the employer would comply with any applicable federal, state or local labor laws.

New section 20-916 of the Code would be entitled “Collective bargaining agreements” and subdivision a of such section would provide that the provisions of this chapter would not

apply to any employee covered by a valid collective bargaining agreement if (i) such provisions were expressly waived in such collective bargaining agreement and (ii) such agreement provides for a comparable benefit for the employees covered by such agreement in the form of paid days off; such paid days off shall be in the form of leave, compensation, other employee benefits, or some combination thereof. Comparable benefits shall include, but are not limited to, vacation time, personal time, sick time, and holiday and Sunday time pay at premium rates.

Subdivision b of such section would provide that notwithstanding subdivision a of this section, the provisions of this chapter would not apply to any employee in the construction or grocery industry covered by a valid collective bargaining agreement if such provisions were expressly waived in such collective bargaining agreement.

New section 20-917 of the Code would be entitled “Public disasters” and would provide that in the event of a public disaster, the mayor could, for the length of such disaster, suspend the provisions of this chapter for businesses, corporations or other entities regulated by the public service commission.

New section 20-918 of the Code would be entitled “Retaliation and interference prohibited” and would provide that no employer should engage in retaliation or threaten retaliation against an employee for exercising or attempting to exercise any right provided pursuant to this chapter, or interfere with any investigation, proceeding or hearing pursuant to this chapter. The protections of this chapter would apply to any person who mistakenly but in good faith alleges a violation of this chapter. Rights under this chapter would include, but not be limited to, the right to request and use sick time, file a complaint for alleged violations of this chapter with the department, communicate with any person about any violation of this chapter, participate in any administrative or judicial action regarding an alleged violation of this chapter, or inform any person of his or her potential rights under this chapter.

New section 20-919 of the Code would be entitled “Notice of rights.” Pursuant to the provisions of subdivision a of this section, an employer must provide an employee at the commencement of employment with written notice of such employee’s right to sick time pursuant to this chapter, including the accrual and use of sick time, the calendar year of the employer, and the right to be free from retaliation and to bring a complaint to the department. Such notice would be in English and the primary language spoken by that employee, provided that the department has made available a translation of such notice in such language pursuant to subdivision b of this section. Such notice could also be conspicuously posted at an employer’s place of business in an area accessible to employees.

Subdivision b of such section would provide that the department would create and make available notices that contain the information required pursuant to subdivision a of this section and such notices would allow for the employer to fill in applicable dates for such employer’s calendar year. Such notices would be posted in a downloadable format on the department’s website in Chinese, English, French-Creole, Italian, Korean, Russian, Spanish and any other language deemed appropriate by the department.

Subdivision c of such section would provide that any person or entity that willfully violated the notice requirements of this section would be subject to a civil fine in an amount not to exceed fifty dollars for each employee who was not given appropriate notice pursuant to this section.

New section 20-920 of the Code would be entitled “Employer records.” This section would provide that employers should retain records documenting such employer’s compliance with the requirements of this chapter for a period of two years unless otherwise required pursuant to any other law, rule or regulation, and shall allow the department to access such records, with appropriate notice and at a mutually agreeable time, in furtherance of an investigation conducted pursuant to this chapter.

New section 20-921 would be entitled “Confidentiality and nondisclosure.” This section would provide that no person or entity could require the disclosure of details relating to an employee’s or his or her family member’s medical condition as a condition of providing sick time under this chapter. Health information about an employee or an employee’s family member obtained solely for the purposes of utilizing sick time pursuant to this chapter would be treated as confidential and would not be disclosed except by the affected employee, with the permission of the affected employee or as required by law.

Explanation:

The prohibition of employers disclosing confidential information about an employee’s medical condition is intended only to apply to confidential information obtained pursuant to this local law and is not intended to effect whether an employer whose employee is also requesting time off or other accommodations based on the American’s with Disabilities Act, the Family and Medical Leave Act, or any other law, is required to disclose an employee’s confidential medical information.

New section 20-922 of the Code would be entitled “Encouragement of more generous policies; with no effect on more generous policies.” Subdivision a of this section would provide that nothing in this chapter should be construed to discourage or prohibit the adoption or retention of a sick time policy more generous than that which is required herein.

Subdivision b of such section would provide that nothing in this chapter would 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 time to an employee than required herein.

Subdivision c of such section would provide that nothing in this chapter should be construed as diminishing the rights of public employees regarding sick time as provided pursuant to federal, state or city law.

New section 20-923 of the Code would be entitled “other legal requirements.” Under subdivision a of this section would provide that this chapter provides minimum requirements pertaining to sick time and shall not be construed to preempt, limit or otherwise affect the applicability of any other law, regulation, rule, requirement, policy or standard that provides for greater accrual or use by employees of sick leave or time, whether paid or unpaid, or that extends other protections to employees.

Under subdivision b of such section, nothing in this chapter should be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation, nor should anything in this chapter be construed to diminish or impair the rights of an employee or employer under any valid collective bargaining agreement.

New section 20-924 of the Code would be entitled “Enforcement and Penalties” and subdivision a of this section would provide that the department would enforce the provisions of this chapter. In effectuating such enforcement, the department would establish a system utilizing multiple means of communication to receive complaints regarding non-compliance with this chapter and investigate complaints received by the department in a timely manner.

Explanation:

The Department of Consumer Affairs administration of the bill is complaint driven.

Subdivision b of such section would provide that any person alleging a violation of this chapter would have the right to file a complaint with the department within 270 days of the date the person knew or should have known of the alleged violation. The department would

maintain confidential the identity of any complainant unless disclosure of such complainant's identity is necessary for resolution of the investigation or otherwise required by law. The department would, to the extent practicable, notify such complainant that the department would be disclosing his or her identity prior to such disclosure.

Subdivision c of such section would provide that upon receiving a complaint alleging a violation of this chapter, the department would investigate such complaint and attempt to resolve it through mediation. The department would keep complainants reasonably notified regarding the status of their complaint and any resultant investigation. If the department believed that a violation had occurred, it would issue to the offending person or entity a notice of violation. The commissioner would have prescribed the form and wording of such notices of violation. The notice of violation would be returnable to the administrative tribunal authorized to adjudicate violations of this chapter.

Subdivision d of such section would provide that the department would have the power to impose penalties provided for in this chapter and to grant an employee or former employee all appropriate relief. Such relief include: (i) for each instance of sick time taken by an employee but unlawfully not compensated by the employer: three times the wages that should have been paid under this chapter or two hundred fifty dollars, whichever is greater; (ii) for each instance of sick time requested by an employee but unlawfully denied by the employer and not taken by the employee or unlawfully conditioned upon searching for or finding a replacement worker, or for each instance an employer requires an employee to work additional hours without the mutual consent of such employer and employee in violation of section 20-915 of this chapter to make up for the original hours during which such employee is absent pursuant to this chapter: five hundred dollars; (iii) for each instance of unlawful retaliation not including discharge from employment: full compensation including wages and benefits lost,

five hundred dollars and equitable relief as appropriate; and (iv) for each instance of unlawful discharge from employment: full compensation including wages and benefits lost, two thousand five hundred dollars and equitable relief, including reinstatement, as appropriate.

Subdivision e of such section would provide that any entity or person found to be in violation of the provisions of sections 20-913, 20-914, 20-915 or 20-918 of this chapter would be liable for a civil penalty payable to the city not to exceed five hundred dollars for the first violation and, for subsequent violations that occur within two years of any previous violation, not to exceed seven hundred and fifty dollars for the second violation and not to exceed one thousand dollars for each succeeding violation

Subdivision f of such section would provide that the department would annually report on its website the number and nature of the complaints received pursuant to this chapter, the results of investigations undertaken pursuant to this chapter, including the number of complaints not substantiated and the number of notices of violations issued, the number and nature of adjudications pursuant to this chapter, and the average time for a complaint to be resolved pursuant to this chapter.

Bill section 4 would contain a severability clause. This provision would provide that if any section, subdivision, paragraph, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this local law, which remaining portions shall continue in full force and effect.

Bill section 5 would provide that pursuant to section 260 of the New York City Charter, no later than thirty months after employers with twenty or more employees are required to provide sick time to employees pursuant to section 3 of this local law, the Independent Budget

office (“IBO”) would report to the Mayor and the Council and post on its website a report presenting data and analysis related to the costs and benefits of the Earned Sick Time Act. Such report would include to the extent practicable given available data and analysis, and methodologies, but not be limited to, data regarding wage and employment rates; businesses, including small business start-up and failure rates, expenses and revenues; and infectious disease rates; and shall include to the extent possible a comparison of New York City with surrounding counties and large cities comparable to New York City that do not provide sick time. When reporting this data, the IBO director would ensure that IBO uses appropriate and professionally accepted methodologies for comparing similar data and identify such methodologies in the report, and shall clearly specify the extent to which the earned sick time act can properly be determined to have had an impact on any of the data analyzed. The report would be contingent on the availability to IBO of data the IBO director determines to be necessary to complete such report. The IBO director would be authorized to secure such information, data, estimates and statistics from the agencies of the City as the director determines to be necessary in the preparation of such report, and such agencies shall provide such information to the extent that it is available in a timely fashion.

Bill section 6 would provide that on December 16, 2013, the Independent Budget Office would submit to the Council a determination stating whether the most recent New York City Coincident Economic Index or similar successor index as published by the Federal Reserve Bank of New York (the “Index”) was at or above its January 2012 level. If such determination stated that the Index was below its January 2012 level, the IBO would make and submit a determination every June 16 and December 16 of each year thereafter, until it determines that the Index is at or above its January 2012 level.

Bill section 7 would provide that this local law would take effect pursuant to the following schedule:

(1) If the December 16, 2013 Independent Budget Office (“IBO”) determination shows that the most recent New York City Coincident Economic Index or similar successor index as published by the Federal Reserve Bank of New York (the “Index”) is at or above its January 2012 level, then:

(a) All employers that employ twenty or more employees must comply with the provisions of this local law on April 1, 2014;

(b) all employers that employ fifteen to nineteen employees or a domestic worker must comply with the provisions of this local law regarding paid sick time on October 1, 2015; and

(c) all employers with employees not entitled to paid sick time pursuant to chapter 8 of title 20 of the administrative code as added by section 3 of this local law, including those employers covered by paragraph 3 of subdivision a of section 20-913 of such code as added by section 3 of this local law during the period specified therein, must comply with the provisions of this local law on April 1, 2014.

(2) If on December 16, 2013, the Index is not at or above its January 2012 level, but on June 16, 2014, the Index is at or above its January 2012 level as determined by the IBO, then:

(a) All employers that employ twenty or more employees must comply with the provisions of this local law on October 1, 2014;

(b) all employers that employ fifteen to nineteen employees or a domestic worker must comply with the provisions of this local law regarding paid sick time on April 1, 2015; and

(c) all employers with employees not entitled to paid sick time pursuant to chapter 8 of title 20 of the administrative code as added by section 3 of this local law, including

those employers covered by paragraph 3 of subdivision a of section 20-913 of such code as added by section 3 of this local law during the period specified therein, must comply with the provisions of this local law on October 1, 2014.

(3) If on June 16, 2014, the Index is not at or above its January 2012 level, but on December 16, 2014, the Index is at or above its January 2012 level as determined by the IBO, then:

(a) All employers that employ twenty or more employees must comply with the provisions of this local law on April 1, 2015; all employers that employ fifteen to nineteen employees or a domestic worker must comply with the provisions of this local law on October 1, 2016; and

(b) all employers with employees not entitled to paid sick time pursuant to this chapter must comply with the provisions of this local law regarding paid sick time on April 1, 2015.

(c) all employers with employees not entitled to paid sick time pursuant to chapter 8 of title 20 of the administrative code as added by section 3 of this local law, including those employers covered by paragraph 3 of subdivision a of section 20-913 of such code as added by section 3 of this local law during the period specified therein, must comply with the provisions of this local law on April 1, 2015.

(4) If on December 16, 2014 the Index is not at or above its January 2012 level, then the IBO shall make a determination every June 16th and December 16th of each year thereafter until such Index is at or above its January 2012 level, and the effective date of this local law for all employers shall be on the succeeding October 1 or April 1, respectively, after the first such determination that the Index is at or above its January 2012 level.

(5) Notwithstanding the preceding paragraphs (1) through (4), in the case of employees covered by a valid collective bargaining agreement in effect on the effective date prescribed by

such preceding paragraphs, this local law shall take effect on the date of the termination of such agreement.

(6) This local law shall take effect pursuant to the preceding paragraphs and the commissioner shall take such measures as are necessary for its implementation, including the promulgation of rules, prior to such effective date.

Explanation:

This bill would go into effect only if the economy stays the same or improves, according to a certain economic indicator.⁶⁰ The City's Independent Budget Office will check the economic indicator on December 16th and if it is at the same level or better than it was in January 2012, it will go into effect. On April 1, 2014 employers with 20 or more employees will have to provide paid sick time and most other employers will have to provide unpaid sick time. Eighteen months later, on October 1, 2015, businesses with 15–19 employees and employers of domestic workers would have to provide paid sick time instead of unpaid sick time.

If the economy is worse on December 16th, the law will be put on hold. The IBO will then check the economic indicator every six months and if the economy has returned to or surpassed the January 2012 level, the law will go into effect on the following April 1st or October 1st, whichever is sooner, following the same scheme, *i.e.*, it would first apply to businesses 20 or more employees for paid sick days and eighteen months later it would require sick days be given to employees of businesses of 15–19 employees.

⁶⁰ New York City Coincident Economic Index or similar successor index as published by the Federal Reserve Bank of New York.

C. Amendments made to former Int. No. 1059-2009

The following brief descriptions highlight the changes from former Int. No. 1059-2009 which was introduced in the previous legislative session to the originally introduced version of Int. No. 97 (*i.e.* changes made after the first hearing on the bill on November 17, 2009):

<u>Issue Area</u>	<u>Int. No. 1059-2009 Language</u>	<u>Amended Language for Int. No. 97</u>
Definition Issues		
Coverage based on size of business	Small business defined as less than 10 employees, who get 5 paid sick days Employees of businesses with more than get 9 days	Small business definition increased to less than 20 employees; number of days remain 5 for small business and 9 for larger businesses
Seasonal employees	Sick time can be used after 90 days; time rolls over if an employee is rehired within twelve months	Rehired employees keep accrued time if less than 6 months have passed; otherwise accrual starts over
Relatives covered	Includes blood and affinity and third degree relation	Family member means an employee's child, spouse, domestic partner, parent, grandchild, grandparent, mother-in-law, father-in-law or mother of domestic partner or father of domestic partner. Child means a biological, adopted or foster child, a stepchild, a legal ward, or a child of an employee standing in loco parentis
Public health emergency	No definition	Definition added to the bill
Accrual Issues		
Difficult to determine rate of pay for special shifts, <i>i.e.</i> , catering	All employees receive their pay at the rate they would earn during the time called out sick.	Special shift paid is no more than normal hourly wage
Commissioned workers	Commissioned workers paid at regular rate of pay.	Commission worker pay no more than normal base compensation and no less than minimum wage
Current PTO equivalent policies must continue	If current practices allow time off for the same purposes and amounts of time under this bill, no change is required	Language clarified that current equivalent policies satisfy the law

Administrative Issues		
Bookkeeping practices	Record keeping is required	Required city agency to put forms online and to the extent possible allow bookkeeping to mesh with current practices
Record retention	5 year retention requirement.	3 year retention requirement, unless otherwise required by law, rule or regulation
Documentation concerns to prevent abuse	Notice if foreseeable; for leave more than 3 days a doctor's note may be required	No change to documentation requirement. Amendment: Inserted a provision stating the law is not meant to interfere with discipline procedures
Collective Bargaining		
"Equivalent" language in collective bargaining clause	Collective bargaining agreements are exempt if there is an express waiver and the benefits are "substantially equivalent."	Future collective bargaining agreements (CBA) exempted if provisions are expressly waived and comparable benefit is in contract; building and construction industry exempted if expressly waived in CBA
Other Issues		
Rebuttable presumption of retaliation	If negative action is taken within 90 days of taking a sick day, there is a rebuttable presumption that such action is in retaliation against an employee for taking a sick day	Removed rebuttable presumption
Posting of rights in native language of employees	Rights must be posted or distributed to employees in English and in native language of 5% of employees	Requires city agency to create the notice, translate into appropriate languages and post on website; and employer to post in English and the native language of 5% of employees. If an employer does not have and maintain written personnel policies for employees, then must display posters with such rights in such languages. Minimum languages agency to translate posters into include English, Chinese, Korean, Russian and Spanish
Effective date, time for rulemaking, outreach and recession	90 days after enactment	180 days after enactment

D. Amendments made to Proposed Int. No. 97

The following brief descriptions highlight the changes from the originally introduced version of Int. No. 97 and Proposed Int. No. 97-A (*i.e.* changes made after the second hearing of the bill on May 11, 2010):

<u>Issue Area</u>	<u>Int. No. 97</u>	<u>Amended Language for Proposed Int. No. 97-A (2010)</u>
Definition Issues		
Coverage based on size of business	All businesses covered employees of employers with less than 20 employees (small business) get 5 days; employees of businesses with 20 employees or more (large business) get 9 days	Businesses with less than 5 employees, get unpaid sick days only; employees or employers with 5 or more employees get 5 days
Seasonal employees	Paid sick days can be used after 90 days	Paid sick days can be used after 120 days
Relative	Family member means an employee's child, spouse, domestic partner, parent, grandchild, grandparent, mother-in-law, father-in-law or mother of domestic partner or father of domestic partner. Child means a biological, adopted or foster child, a stepchild, a legal ward, or a child of an employee standing in loco parentis	Family member means employee's child, spouse, domestic partner, parent, mother-in-law, father-in-law, child of a domestic partner, mother of a domestic partner or father of a domestic partner. Child means a biological, adopted or foster child, a stepchild, a legal ward, a child of a domestic partner, or a child of an employee standing in loco parentis
Retaliation	Definition was "discharge, suspension or demotion by an employer of an employee or any other adverse employment action"	Definition expanded to include "for exercising any right guaranteed under this chapter," and including examples: "any threat, discipline, discharge, demotion, suspension, reduction of hours, or any other adverse action"; also applies to shift swapping and interfering with department's hearings or investigations
Use		
Unpaid Sick Days	No provision	Employees of businesses with less than 5 employees or new small businesses in the first year can take up to 40 hours of unpaid sick time without retribution

Shift swapping	Definition of “Paid Sick Time” states that if employees volunteer for extra shifts that make up missed shifts they cannot also receive paid sick time	New section states that shift employees may swap shifts within the current or following week instead of using sick time, however they cannot be required to do so
Administrative Issues		
Administering Agency	To be determined by the Mayor	Department of Health and Mental Hygiene
Placement in Admin. Code	New section in Chapter 22: Economic Affairs	New Chapter to Title 17: Health
1 Year exemption	None	New small businesses (under 20 employees) exempt for one year
Bookkeeping practices	Record keeping is required	City agency to put forms online and to the extent possible allow bookkeeping to mesh with current practices
Record retention	5 year retention requirement	Three year retention requirement, unless otherwise required by law, rule or regulation
Documentation concerns to prevent abuse	Notice if foreseeable; for leave more than 3 days a doctor’s note may be required	Provision added stating the law is not meant to interfere with discipline procedures
Statute of limitations	3 years	18 months
Other Issues		
Placement in the Admin. Code	New Section to Chapter 15 of Title 22: Economic Affairs	New Chapter to Title 17: Health
Providing of rights in native language of employees	Requires city agency to create the notice, translate into appropriate languages and post on website; and employer to post in English and the native language of 5% of employees. If an employer does not have and maintain written personnel policies for employees, then must display posters with such rights in such languages. Minimum languages agency to translate posters into include English, Chinese, Korean, Russian and Spanish	Requires department to post notice in a downloadable format on the department’s website in Chinese, English, French-Creole, Italian, Korean, Russian, Spanish and any other language deemed appropriate by the department.

E. Additional amendments made to Proposed Int. No. 97-A

The following brief descriptions highlight the changes from the amended bill Proposed Int. No. 97-A to a new A version of the legislation (*i.e.* changes made after the third hearing of the bill on March 22, 2013):

<u>Issue Area</u>	<u>Proposed Int. No. 97-A (2010)</u>	<u>Amended Language for Proposed Int. No. 97-A (2013)</u>
Definition Issues		
Coverage based on size of business	Employees of employers with 5 or more employees get 5 days Businesses with less than 5 employees, get unpaid sick days only;	Businesses with 20 or more employees and eighteen months later business with 15 or more employees, employees get 5 days Other business' workers get unpaid sick days only
Manufacturing	Not mentioned, and therefore included in definition of "employer"	Excluded from definition of "employer"
Chain businesses	Not defined	Definition added to ensure employers with multiple locations with a total of more than 15 employees are covered
Employees covered	Hourly professional employees and WEP workers included	Certain, hourly professional employees who are paid at a premium rate and WEP workers are not covered
Relatives covered	Family member means an employee's child, spouse, domestic partner, parent, grandchild, grandparent, mother-in-law, father-in-law or mother of domestic partner or father of domestic partner. Child means a biological, adopted or foster child, a stepchild, a legal ward, or a child of an employee standing in loco parentis	Family member means an employee's child, spouse, domestic partner, parent, mother-in-law, father-in-law or mother of domestic partner or father of domestic partner. Child means a biological, adopted or foster child, a stepchild, a legal ward, or a child of an employee standing in loco parentis
Use		
Shift Swapping	Shift employees may swap shifts within the <i>same pay period</i> instead of using sick time, however they cannot be required to do so	Shift employees may swap shifts within the <i>current, previous or following week</i> instead of using sick time, however they cannot be required to do so
Administrative Issues		
Administering Agency	Department of Health and Mental Hygiene	Department of Consumer Affairs
Placement in the Admin. Code	New Chapter to Title 17: Health	New Chapter to Title 20: Consumer Affairs

Other Issues		
Right to sue in a private action	Allowed	Not allowed
Damages & Penalties	<p>Damages for sick days taken but not compensated: no less than three times the wages that should have been paid under this chapter or \$500, whichever is greater</p> <p>Damages for each instance of sick time requested by an employee but unlawfully denied and not taken by the employee: no less than \$1,000</p> <p>Damages each instance of retaliation not including discharge from employment: full compensation including wages and benefits lost, but <i>in no event less than \$1,000</i></p> <p>Damages for each instance of discharge from employment in violation of this chapter: full compensation including, but not limited to, wages and benefits lost, <i>but in no event less than \$5,000</i></p> <p>Damages for each instance of unlawful disclosure of confidential information, no less than \$500</p> <p>Fine for violating law: not less than \$1,000 for the first violation, \$2,000 for the second violation and \$3,000 for each succeeding violation</p>	<p>Damages for sick days taken but not compensated: three times the wages that should have been paid under this chapter or \$250, whichever is greater</p> <p>Damages for each instance of sick time requested by an employee but unlawfully denied by the employer and not taken by the employee: \$500</p> <p>Damages for each instance of unlawful retaliation not including discharge from employment: full compensation including wages and benefits lost, \$500</p> <p>Damages for each instance of unlawful discharge from employment: full compensation including wages and benefits lost, \$2,500</p> <p>No damages</p> <p>Fine for violating law: not less than \$500 for the first violation, \$750 for the second violation and \$1,000 for each succeeding violation</p>
Effective date, time for rulemaking, outreach and the recession	180 days after enactment	Bill will go into effect 4/1/14 if certain economic indicators do not worsen and if they do, economic conditions will be reviewed semi-annually until they improve
Independent Budget Office (IBO) Study	Not in old version	A study by the (IBO) regarding the effects of the law will be done 30 months after the law goes into effect

APPENDIX A