Legislation Details (With Text)

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Int. No. 832

By the Public Advocate (Mr. Williams) and Council Members Louis, Restler and Farías

A Local Law to amend the administrative code of the city of New York, in relation to requiring city employers to provide earned personal time to employees

Be it enacted by the Council as follows:

Section 1. Chapter 8 of title 20 of the administrative code of the city of New York, as amended by local law number 97 for the year 2020, is amended to read as follows:

CHAPTER 8

EARNED SAFE [AND], SICK AND PERSONAL TIME LAW [ACT]

§ 20-911 Short title. This chapter shall be known and may be cited as the "Earned Safe, [and] Sick and Personal Time [Act] Law."

§ 20-912 Definitions. When used in this chapter, the following terms shall be defined as follows:

"Calendar year" shall mean a regular and consecutive twelve month period, as determined by an

employer.

"Chain business" shall 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 five.

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

"Commissioner" shall mean the commissioner of consumer and worker protection.

“COVID-19 child vaccination time” shall mean paid time that an employer provides to an employee that can be used as set forth in section 20-914.1 of this chapter.

"Department" shall mean the department of consumer and worker protection.

"Domestic partner" shall 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.

“Domestic worker” shall mean any person who provides care for a child, companionship for a sick, convalescing or elderly person, housekeeping, or any other domestic service in a home or residence[.] who is directly employed as an employee to provide such service by an individual or private household. The term "domestic worker" does not include any person who is employed by an agency whenever such person provides services as an employee of such agency, regardless of whether such person is jointly employed by an individual or private household in the provision of such services.

“Employee” shall mean any "employee" as defined in subdivision 2 of section 190 of the labor law who is employed for hire within the city of New York 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 section 92 of the general municipal law or section 207 of the county law.

"Employer" shall mean any "employer" as defined in subdivision (3) of section 190 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; 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. 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 shall be counted, provided that where the number of employees who work for an employer for 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 shall be counted.

"Exempt licensed provider of education related services" shall 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.

"Family member" shall mean an employee's child, spouse, domestic partner, parent, sibling, grandchild or grandparent; the child or parent of an employee's spouse or domestic partner; and any other individual related by blood to the employee; and any other individual whose close association with the employee is the equivalent of a family relationship.

"Family offense matter" shall mean an act or threat of an act that may constitute disorderly conduct, harassment in the first degree, harassment in the second degree, aggravated harassment in the second degree, sexual misconduct, forcible touching, sexual abuse in the third degree, sexual abuse in the second degree as set forth in subdivision 1 of section 130.60 of the penal law <https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000115&cite=NYPES130.60&originatingDoc=I55B5F9658F14483F9B74911E8E361885&refType=SP&originationContext=document&transitionType=DocumentItem&ppcid=a9f0357101e9461b875e4d6596620ea8&contextData=(sc.Category)>, stalking in the first degree, stalking in the second degree, stalking in the third degree, stalking in the fourth degree, criminal mischief, menacing in the second degree, menacing in the third degree, reckless endangerment, strangulation in the first degree, strangulation in the second degree, criminal obstruction of breathing or blood circulation, assault in the second degree, assault in the third degree, an attempted assault, identity theft in the first degree, identity theft in the second degree, identity theft in the third degree, grand larceny in the fourth degree, grand larceny in the third degree or coercion in the second degree as set forth in subdivisions 1 <https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000115&cite=NYPES135.60&originatingDoc=I55B5F9658F14483F9B74911E8E361885&refType=SP&originationContext=document&transitionType=DocumentItem&ppcid=a9f0357101e9461b875e4d6596620ea8&contextData=(sc.Category)>, <https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000115&cite=NYPES135.60&originatingDoc=I55B5F9658F14483F9B74911E8E361885&refType=SP&originationContext=document&transitionType=DocumentItem&ppcid=a9f0357101e9461b875e4d6596620ea8&contextData=(sc.Category)> and 3 of section 135.60 of the penal law between spouses or former spouses, or between parent and child or between members of the same family or household.

"Grandchild" shall mean a child of an employee's child.

"Grandparent" shall mean a parent of an employee's parent.

"Health care provider" shall 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.

["Hourly professional employee" shall 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.]

"Human trafficking" shall mean an act or threat of an act that may constitute sex trafficking, as defined in section 230.34 of the penal law, or labor trafficking, as defined in section 135.35 and 135.36 of the penal law.

"Member of the same family or household" shall mean (i) persons related by consanguinity or affinity; (ii) persons legally married to or in a domestic partnership with one another; (iii) persons formerly married to or in a domestic partnership with one another regardless of whether they still reside in the same household; (iv)

persons who have a child in common, regardless of whether such persons have been married or domestic partners or have lived together at any time; and (v) persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time.

“Parent” shall mean a biological, foster, step- or adoptive parent, or a legal guardian of [an employee, or] a person, or a person who currently stands in loco parentis to another person or a person who stood in loco parentis when [the] an employee was a minor child.

“Personal time” shall mean time that is provided by an employer to an employee that can be used for the purposes described in subdivision b-1 of section 20-914 of this chapter, whether or not compensation for that time is required pursuant to this chapter.

"Public disaster" shall 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.

"Public health emergency" shall mean a declaration made by the commissioner of health and mental hygiene pursuant to subdivision d of section 3.01 of the New York city health code or by the mayor pursuant to section 24 of the executive law.

"Public service commission" shall mean the public service commission established by section 4 of the public service law.

“Safe/sick time” shall mean time that is provided by an employer to an employee that can be used for the purposes described in subdivisions a and b of section 20-914 of this chapter, whether or not compensation for that time is required pursuant to this chapter.

"Sexual offense" shall mean an act or threat of an act that may constitute a violation of article 130 of the penal law.

"Sibling" shall mean an employee's brother or sister, including half-siblings, step-siblings and siblings

related through adoption.

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

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

"Stalking" shall mean an act or threat of an act that may constitute a violation of section 120.45, 120.50, 120.55, or 120.60 of the penal law.

§ 20-913. Right to [safe/sick] time off from work; accrual. a. All employees have the right to [safe/sick] time off from work pursuant to this chapter.

1. All employers that employ five or more employees, all employers of one or more domestic workers, and any employer of four or fewer employees that had a net income of one million dollars or more during the previous tax year, shall provide paid safe/sick time to their employees in accordance with the provisions of this chapter. An employer shall pay an employee for paid safe/sick time at the employee's regular rate of pay at the time the paid safe/sick time is taken, provided that the rate of pay shall not be less than the highest applicable rate of pay to which the employee would be entitled pursuant to subdivision 1 of section 652 of the labor law, or any other applicable federal, state, or local law, rule, contract, or agreement. Such rate of pay shall be calculated without allowing for any tip credit or tip allowance set forth in any federal, state, or local law, rule, contract, or agreement.

2. All employees not entitled to paid safe/sick time pursuant to this chapter shall be entitled to unpaid safe/sick time in accordance with the provisions of this chapter.

3. All employees not entitled to paid personal time pursuant to this chapter shall be entitled to unpaid personal time in accordance with the provisions of this chapter.

4. An employer shall not be required to pay more to an employee for paid personal time than the

employee's regular rate of pay at the time the employee uses such paid time, except that in no case shall the paid hourly rate be less than the hourly rate applicable to the employee under federal, state, or local law.

b. All employers shall provide a minimum of one hour of safe/sick time and one hour of personal time for every thirty hours worked by an employee[, other than a domestic worker who shall accrue safe/sick time pursuant to paragraph 2 of subdivision d of this section], provided that[. Employers] employers shall not be required under this chapter to provide more than a total of forty hours of safe/sick time and a total of eighty hours of personal time for an employee in a calendar year. For purposes of this subdivision, any paid days of rest to which a domestic worker as defined by this chapter is entitled pursuant to subdivision 1 of section 161 of the labor law shall count toward [such forty hours] the paid time to which the domestic worker is entitled under this chapter to the extent that such paid days of rest may be used by the domestic worker for the same purposes and under the same conditions as safe/sick time or personal time under this chapter. Nothing in this chapter shall be construed to discourage or prohibit an employer from allowing the accrual of safe/sick time or personal time at a faster rate or use of safe/sick time or personal time at an earlier date than this chapter requires.

c. 1. An employer required to provide paid safe/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 subdivision 1 of section 161 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 safe/sick time required pursuant to this chapter, is not required to provide additional [paid] safe/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. An employer required to provide unpaid safe/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 safe/sick time required pursuant to this chapter, is not required to provide additional unpaid

safe/sick time for such employee [whether or not such employee chooses to use such leave for the purposes set forth in subdivision a of section 20-914 of this chapter].

2. An employer required to provide paid personal 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 subdivision 1 of section 161 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 personal time required pursuant to this chapter, is not required to provide additional personal time for such employee. An employer required to provide unpaid personal 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 personal time required pursuant to this chapter, is not required to provide additional unpaid personal time for such employee.

d. 1. Safe/sick time as provided pursuant to this chapter shall begin to accrue at the commencement of employment or on the effective date of the local law that created the right to such time, whichever is later. An employee shall be entitled to use safe/sick time as it is accrued, except that employees of any employer of four or fewer employees that had a net income of one million dollars or more during the previous tax year may use paid safe/sick time as it is accrued on or after January 1, 2021, and that employees of any employer of one hundred or more employees may use any accrued amount of paid safe/sick time that exceeds forty hours per calendar year on or after January 1, 2021.

2. Personal time as provided pursuant to this chapter shall begin to accrue at the commencement of employment or on the effective date of the local law that created the right to such time, whichever is later, and an employee shall be entitled to begin using personal time on the ninetieth calendar day following commencement of his or her employment or on the ninetieth calendar day following the effective date of the

local law that created the right to such time, whichever is later. After the ninetieth calendar day of employment or after the ninetieth calendar day following the effective date of the relevant local law, whichever is later, such employee may use personal time as it is accrued.

e. Employees who are exempt from 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, shall be assumed to work forty hours in each work week for purposes of safe/sick time and personal time accrual unless their regular work week is less than forty hours, in which case [safe/sick] time accrues based upon that regular work week.

f. The provisions of this chapter do not apply to (i) work study programs under 42 U.S.C. section 2753, (ii) employees for the hours worked and compensated by or through qualified scholarships as defined in 26 U.S.C. section 117, (iii) independent contractors who do not meet the definition of employee under section 190 (2) of the labor law, and (iv) [hourly professional employees] exempt licensed providers of education related services.

g. Employees shall determine how much accrued safe/sick time or personal time they need to use, provided that employers may set a reasonable minimum increment for the use of [safe/sick] such time which shall not exceed four hours per day.

h. For employees of employers with ninety-nine or fewer employees, up to forty hours of unused safe/sick time as provided pursuant to this chapter and up to eighty hours of unused personal time as provided pursuant to this chapter shall be carried over to the following calendar year, and for employees of employers with one hundred or more employees, up to fifty-six hours of unused safe/sick time as provided pursuant to this chapter shall be carried over to the following calendar year; provided that no employer with ninety-nine or fewer employees shall be required to (i) allow the use of more than forty hours of safe/sick time or more than eighty hours of personal time in a calendar year or (ii) carry over unused paid safe/sick time or personal time if the employee is paid for any unused safe/sick time or personal 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 safe/sick time or personal time that meets or exceeds the requirements of this chapter for such employee for the immediately subsequent calendar year on the first day of such year; and further provided that no employer with one hundred or more employees shall be required to (i) allow the use of more than fifty-six hours of safe/sick time or more than eighty hours of personal time in a calendar year or (ii) carry over unused paid safe/sick time or personal time if the employee is paid for any unused safe/sick time or personal 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 safe/sick time or personal time that meets or exceeds the requirements of this chapter for such employee for the immediately subsequent calendar year on the first day of such year.

i. Nothing in this chapter shall be construed as requiring financial or other reimbursement to an employee from an employer upon the employee's termination, resignation, retirement, or other separation from employment for accrued safe/sick time or personal time that has not been used.

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

§ 20-914. Use of safe/sick time and personal time and COVID-19 child vaccination time. a. Sick time. 1. An employee shall be entitled to use sick time for absence from work due to:

(a) such 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; or

(b) 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

(c) closure of such employee's place of business by order of a public official due to a public health emergency or such 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.

2. For an absence of more than three consecutive work days for sick time, an employer may require reasonable documentation that the use of sick time was authorized by this subdivision. For sick time used pursuant to this subdivision, documentation signed by a licensed health care provider indicating the need for the amount of sick time taken shall be considered reasonable documentation and an employer shall 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.

b. Safe time. 1. An employee shall be entitled to use safe time for absence from work due to any of the following reasons when the employee or a family member has been the victim of a family offense matter, sexual offense, stalking, or human trafficking:

(a) to obtain services from a domestic violence shelter, rape crisis center, or other shelter or services program for relief from a family offense matter, sexual offense, stalking, or human trafficking;

(b) to participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members from future family offense matters, sexual offenses, stalking, or human trafficking;

(c) to meet with a civil attorney or other social service provider to obtain information and advice on, and prepare for or participate in any criminal or civil proceeding, including but not limited to, matters related to a family offense matter, sexual offense, stalking, human trafficking, custody, visitation, matrimonial issues,

orders of protection, immigration, housing, discrimination in employment, housing or consumer credit;

(d) to file a complaint or domestic incident report with law enforcement;

(e) to meet with a district attorney's office;

(f) to enroll children in a new school; or

(g) to take other actions necessary to maintain, improve, or restore the physical, psychological, or economic health or safety of the employee or the employee's family member or to protect those who associate or work with the employee.

2. For an absence of more than three consecutive work days for safe time, an employer may require reasonable documentation that the use of safe time was authorized by this subdivision. For safe time used pursuant to this subdivision, documentation signed by an employee, agent, or volunteer of a victim services organization, an attorney, a member of the clergy, or a medical or other professional service provider from whom the employee or that employee's family member has sought assistance in addressing family offense matters, sex offenses, stalking, or human trafficking and their effects; a police or court record; or a notarized letter from the employee explaining the need for such time shall be considered reasonable documentation and an employer shall not require that such documentation specify the details of the family offense matter, sexual offense, stalking, or human trafficking.

c. An employer may require reasonable notice of the need to use safe/sick time or COVID-19 child vaccination time. Where such need is foreseeable, an employer may require reasonable advance notice of the intention to use such time, not to exceed seven days prior to the date such usage of time is to begin. Where such need is not foreseeable, an employer may require an employee to provide notice of the need for the use of such time as soon as practicable.

c-1. Personal time. 1. An employee shall be entitled to use personal time for absence from work for any reason, including but not limited to the reasons described in paragraphs a, b and c of this subdivision.

2. An employee shall not be required to provide documentation for the use of personal time authorized

by this subdivision.

c-2. An employer may require reasonable notice [of the need] to use safe/sick time or personal time.

1. Where the use of safe/sick time or personal time is not foreseeable, an employer may require an employee to provide notice of the use of such time as soon as practicable.

2. Where the use of safe/sick time is foreseeable, an employer may require reasonable advance notice of the intention to use such safe/sick time, not to exceed seven days prior to the date such safe/sick time is to begin.

3. Where the use of personal time is foreseeable, an employer may require reasonable advance notice of the intention to use such time, not to exceed fourteen days prior to the date such time is to begin, unless otherwise provided by rules promulgated by the commissioner. Such rules shall be designed to enable employers to ensure the continuity and effectiveness of their operations without unduly restricting the ability of employees to enjoy the rights provided under this chapter. An employer may establish and enforce policies concerning reasonable advance notice for use of personal time and the right to deny such requests consistent with such rules, provided that the notice requirements and circumstances in which an employer may deny a request are clearly described in an employer's written policies, that such policies are disseminated to all affected employees, and that such policies are applied consistently and in a nondiscriminatory manner.

d. Nothing herein shall prevent an employer from requiring an employee to provide written confirmation that an employee used safe/sick time or personal time pursuant to this section.

e. An employer shall not require an employee, as a condition of taking safe/sick time, personal time or COVID-19 child vaccination time, to search for or find a replacement worker to cover the hours during which such employee is utilizing time.

f. Nothing in this chapter shall be construed to prohibit an employer from taking disciplinary action, up to and including termination, against a worker who uses safe/sick time provided pursuant to this chapter for purposes other than those described in this section or uses COVID-19 child vaccination time provided pursuant

to this chapter for purposes other than those described in section 20-914.1.

§ 20-914.1 COVID-19 child vaccination time. a. An employee who is a parent of a child under the age of 18, or the parent of an older child who is incapable of self-care because of a mental or physical disability, shall be entitled to four hours of COVID-19 child vaccination time per vaccine injection, for each such child, for an absence from work due to any of the following reasons associated with such child's COVID-19 vaccination:

1. Accompanying such child to receive a COVID-19 vaccine injection; or

2. Caring for such child who is experiencing temporary side effects from a COVID-19 vaccine injection.

b. COVID-19 child vaccination time shall be paid at an employee's regular rate of pay at the time the time is taken, provided that the rate of pay shall not be less than the highest applicable rate of pay to which the employee would be entitled pursuant to subdivision 1 of section 652 of the labor law, or any other applicable federal, state, or local law, rule, contract, or agreement. Such rate of pay shall be calculated without allowing for any tip credit or tip allowance set forth in any federal, state, or local law, rule, contract, or agreement and shall not be charged against an employee's accrual or use of safe/sick time under this chapter. COVID-19 child vaccination time must be paid no later than the payday for the next regular payroll period beginning after the COVID-19 child vaccination time was used by the employee.

c. An employer may require that within seven days of an employee's use of COVID-19 child vaccination time, the employee provide reasonable documentation that the child for whose care the COVID-19 vaccine time is claimed has received a COVID-19 vaccine injection.

d. An employer shall not require an 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.

§ 20-915. Changing schedule. 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 may 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 safe/sick time or personal 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 may work such additional hours at any time during the academic term. An employer shall 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 works additional hours, and such hours are fewer than the number of hours such employee was originally scheduled to work, then such employee shall be able to use safe/sick time or personal time provided pursuant to this chapter for the difference. Should the employee work additional hours, the employer shall comply with any applicable federal, state or local labor laws.

§ 20-916. Collective bargaining agreements. a. The provisions of this chapter shall not apply to any employee covered by a valid collective bargaining agreement if (i) such provisions are 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, [safe/sick] safe time, sick time, and holiday and Sunday time pay at premium rates.

b. Notwithstanding subdivision a of this section, the provisions of this chapter shall not apply to any employee in the construction or grocery industry covered by a valid collective bargaining agreement if such provisions are expressly waived in such collective bargaining agreement.

c. Notwithstanding subdivisions a and b of this section, the requirement to provide COVID-19 child vaccination time as set forth in section 20-914.1 cannot be waived.

§ 20-917. Public disasters. In the event of a public disaster, the mayor may, for the length of such

disaster, suspend the provisions of this chapter for businesses, corporations or other entities regulated by the public service commission.

§ 20-918. Retaliation and interference prohibited. a. No person shall interfere with any investigation, proceeding or hearing pursuant to this chapter.

b. No person shall take any adverse action against an employee that penalizes an employee for, or is reasonably likely to deter an employee from, exercising or attempting to exercise rights under this chapter or interfere with an employee's exercise of rights under this chapter and implementing rules.

c. Adverse actions include, but are not limited to, threats, intimidation, discipline, discharge, demotion, suspension, harassment, discrimination, reduction in hours or pay, informing another employer of an employee's exercise of rights under this chapter, blacklisting, and maintenance or application of an absence control policy that counts protected leave for safe/sick time or COVID-19 child vaccination time as an absence that may lead to or result in an adverse action. Adverse actions include actions related to perceived immigration status or work authorization.

d. An employee need not explicitly refer to a provision of this chapter or implementing rules to be protected from an adverse action.

e. The protections of this section shall apply to any person who mistakenly but in good faith asserts their rights or alleges a violation of this chapter.

f. A causal connection between the exercise, attempted exercise, or anticipated exercise of rights protected by this chapter and implementing rules and an employer's adverse action against an employee or a group of employees may be established by indirect or direct evidence.

g. For purposes of subdivision b of this section, a violation is established when it is shown that a protected activity was a motivating factor for an adverse action, whether or not other factors motivated the adverse action.

§ 20-919. Notice of rights. a. 1. An employer shall provide an employee with written notice of such

employee's right to safe/sick time and personal time pursuant to this chapter, including the accrual and use of [safe/sick] safe time, sick time and personal time, the calendar year of the employer, and the right to be free from retaliation and to file a complaint with the department. Such notice shall 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 shall also be conspicuously posted at an employer's place of business in an area accessible to employees.

2. Such notice shall be provided to each employee at the commencement of employment. For employees who were already employed prior to the effective dates of provisions of this chapter establishing their right to safe/sick time, such notice shall be provided within thirty days of the effective date of the local law that established each such right.

b. The department shall create and make available notices that contain the information required pursuant to subdivision a of this section concerning safe/sick time and personal time and such notices shall allow for the employer to fill in applicable dates for such employer's calendar year. Such notices shall 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.

c. The amount of safe/sick time accrued and used during a pay period and an employee's total balance of accrued safe/sick time shall be noted on a pay statement or other form of written documentation provided to the employee each pay period.

d. Any person or entity that willfully violates the notice requirements of this section shall be subject to a civil penalty in an amount not to exceed fifty dollars for each employee who was not given appropriate notice pursuant to this section.

§ 20-920. Employer records. Employers shall make and retain records documenting such employer's compliance with the requirements of this chapter for a period of three 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 of day, in furtherance of an investigation conducted pursuant to this chapter.

§ 20-921. Confidentiality and nondisclosure. a. An employer may not require the disclosure of details relating to an employee's or his or her family member's medical condition or require the disclosure of details relating to an employee's or his or her family member's status as a victim of domestic violence, family offenses, sexual offenses, stalking, or human trafficking as a condition of providing safe/sick time under this chapter. Health information about an employee or an employee's family member, and information concerning an employee's or his or her family member's status or perceived status as a victim of domestic violence, family offenses, sexual offenses, stalking or human trafficking obtained solely for the purposes of utilizing safe/sick time pursuant to this chapter, shall be treated as confidential and shall not be disclosed except by the affected employee, with the written permission of the affected employee or as required by law. Provided, however, that nothing in this section shall preclude an employer from considering information provided in connection with a request for safe time in connection with a request for reasonable accommodation pursuant to subdivision 27 of section 8-107.

§ 20-922. Encouragement of more generous policies; no effect on more generous policies.

a. Nothing in this chapter shall be construed to discourage or prohibit the adoption or retention of a safe/sick time policy, personal time policy, or COVID-19 child vaccination time policy more generous than that which is 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 safe/sick sick time, personal time or COVID-19 child vaccination time to an employee than required herein.

c. Nothing in this chapter shall be construed as diminishing the rights of public employees regarding safe/sick time, personal time or COVID-19 child vaccination time as provided pursuant to federal, state or city

law.

§ 20-923. Other legal requirements. a. This chapter provides minimum requirements pertaining to safe/sick time, personal time and COVID-19 child vaccination 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 safe/sick time, personal time or COVID-19 child vaccination time, whether paid or unpaid, or that extends other protections to employees.

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

c. Where section 196-b of the labor law, or any regulation issued thereunder, sets forth a standard or requirement for minimum hour or use of safe/sick time that exceeds any provision in this chapter, such standard or requirement shall be incorporated by reference and shall be enforceable by the department in the manner set forth in this chapter and subject to the penalties and remedies set forth in the labor law.

§ 20-924. Enforcement and penalties. a. The department shall enforce the provisions of this chapter. In effectuating such enforcement, the department shall 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. The department may open an investigation upon receipt of a complaint or on its own initiative.

b. Any person alleging a violation of this chapter shall have the right to file a complaint with the department within two years of the date the person knew or should have known of the alleged violation. The department shall maintain confidential the identity of any natural person providing information relevant to enforcement of this chapter unless disclosure of such person's identity is necessary to the department for resolution of its investigation or otherwise required by federal or state law. The department shall, to the extent practicable, notify such person that the department will be disclosing his or her identity prior to such disclosure.

c. Upon receiving a complaint alleging a violation of this chapter, the department shall investigate such complaint. Within fourteen days of written notification of an investigation by the department, the person or entity under investigation shall provide the department with a written response and such other information as the department may request. The department shall keep complainants reasonably notified regarding the status of their complaint and any resultant investigation. If, as a result of an investigation of a complaint or an investigation conducted upon its own initiative, the department believes that a violation has occurred, it shall issue to the offending person or entity a notice of violation. The commissioner shall prescribe the form and wording of such notices of violation. The notice of violation shall be returnable to the administrative tribunal authorized to adjudicate violations of this chapter.

d. The department shall have the power to impose penalties provided for in this chapter and to grant each and every employee or former employee all appropriate relief. Such relief shall include: (i) for each instance of safe/sick time or personal 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 safe/sick time or personal 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; (v) for each employee covered by an employer's official or unofficial policy or practice of not providing or refusing to allow the use of accrued safe/sick time in violation of section 20-913, five hundred dollars; (vi) for each instance of

COVID-19 child vaccination 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; and (vii) for each instance of COVID-19 child vaccination time unlawfully denied or charged against an employee's paid safe/sick time accruals, five hundred dollars.

e. Any entity or person found to be in violation of the provisions of sections 20-913, 20-914, 20-914.1, 20-915 or 20-918 of this chapter shall 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 fifty dollars for the second violation and not to exceed one thousand dollars for each succeeding violation. Penalties shall be imposed on a per employee basis.

f. The department shall 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.

§ 20-924.1 Enforcement by the corporation counsel. The corporation counsel or such other persons designated by the corporation counsel on behalf of the department may initiate in any court of competent jurisdiction any action or proceeding that may be appropriate or necessary for the enforcement of any order issued by the department pursuant to this chapter or for the correction of any violation issued pursuant to section 20-924, including actions to mandate compliance with the provisions of such order, secure permanent injunctions, enjoining any acts or practices that constitute such violation, mandating compliance with the provisions of this chapter or such other relief as may be appropriate.

§ 20-924.2 Civil action by corporation counsel for pattern or practice of violations. a. Cause of action. 1. Where reasonable cause exists to believe that an employer is engaged in a pattern or practice of violations of this chapter, the corporation counsel or such other persons designated by the corporation counsel may

commence a civil action on behalf of the city in a court of competent jurisdiction.

2. The corporation counsel or such other persons designated by the corporation counsel shall commence such action by filing a complaint setting forth facts relating to such pattern or practice and requesting relief, which may include injunctive relief, civil penalties and any other appropriate relief.

3. Nothing in this section prohibits the department from exercising its authority under section 20-924 or the city charter, provided that a civil action pursuant to this section shall not have previously been commenced.

b. Investigation. The corporation counsel may initiate any investigation to ascertain such facts as may be necessary for the commencement of a civil action pursuant to subdivision a of this section, and in connection therewith shall have the power to issue subpoenas to compel the attendance of witnesses and the production of documents, to administer oaths and to examine such persons as are deemed necessary.

c. Civil penalties and relief for employees. In any civil action commenced pursuant to subdivision a of this section, the trier of fact may impose a civil penalty of not more than $15,000 for a finding that an employer has engaged in a pattern or practice of violations of this chapter. Any civil penalty so recovered shall be paid into the general fund of the city. The trier of fact may, in addition, award relief of up to $500 to each employee covered by an employer's official or unofficial policy or practice of not providing or refusing to allow the use of earned time in violation of section 20-913.

§ 2. This local law takes effect 120 days after it becomes law.

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