

DRAFT MODEL LEGISLATION

Establishing a Permanent Right to Paid Sick and Safe Time that Includes Additional Leave for a Public Health Emergency

The following model bill would establish a general right to paid sick time, including additional leave for a public health emergency. Inclusion of public health emergency leave is especially necessary given the current pandemic. This legislation was adapted from model paid sick and safe time legislation developed by A Better Balance and the National Partnership for Women & Families.

Please note that the President signed into law the [Families First Coronavirus Response Act \(FFCRA\)](#) on March 18, 2020.

- Among other provisions, the FFCRA will provide—until it is set to sunset on December 31, 2020—up to 10 emergency paid sick days for certain sick time needs related to COVID-19 (including a worker’s or family member’s quarantine/self-isolation, seeking a medical diagnosis due to COVID-19 symptoms, or when a child’s school or place of care is closed or childcare is unavailable). In addition to these 10 paid sick days, workers are eligible for partial wage replacement for up to 12 weeks *but only when a worker needs to care for a child whose school/place of care has been closed, or childcare is unavailable, due to COVID-19. The FFCRA applies to public agencies regardless of size, but it only covers private entities that employ fewer than 500 employees. Moreover, an employer of a health care provider or emergency responder may elect to exclude such worker from all or part of the FFCRA’s emergency leave provisions.*
- Furthermore, the Secretary of Labor exercised his authority under the FFCRA to issue regulations for good cause that exempt businesses with fewer than 50 employees from the emergency paid sick and family leave requirements related to school and child care closures, or the unavailability of child care due to coronavirus, when the imposition of such requirements would jeopardize the business’ viability. While employers of “health care providers” and “emergency responders” can exempt those employees from all or part of the law, the small business exemption is more limited. The exemption for businesses with fewer than 50 employees from the leave requirements on school/child care closures, or unavailability of child care, allows those businesses to meet the exemption by documenting certain information for their records (rather than submitting information to the government for any review).

Passage of a more robust paid sick and safe leave bill, which includes public health emergency leave, would provide *additional* paid sick leave to employees who are covered beyond the federal law (currently in effect until December 31, 2020), and it could provide an opportunity for states and localities to: 1) provide broader, permanent paid sick and safe time rights to all workers, including general sick and safe leave beyond just public health emergencies; 2) guarantee emergency paid sick leave during a public health emergency to employees in private-sector businesses of all sizes—including those with 500 or more employees—as well as employees of health care providers and emergency responders; and/or 3) provide a right to additional paid sick time for future public health emergencies as well, beyond December 31, 2020.

Please note that drafting a paid sick time policy requires state-specific research, analysis of underlying state and/or local law and consideration of complex policy issues. Please contact us at sleiwant@abetterbalance.org or jmake@abetterbalance.org regarding more information on how to adapt or customize this model.

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

Whereas the [legislative body] finds that: [Detailed legislative findings are available if such findings are typical in your jurisdiction and you would like to include them.]

The purposes of this Act are:

- (1) To ensure that all workers in [X- State or Local Government Name] can address their own health and safety needs and the health and safety needs of their families by requiring employers to provide a minimum level of paid sick time, including time to care for their family members;
- (2) To diminish public and private health care costs and promote preventive health services in [X] by enabling workers to seek early and routine medical care for themselves and their family members;
- (3) To protect the public’s health in [X] by reducing the risk of contagion, including during a public health emergency, and to ensure that workers in [X] and their families can follow the orders and recommendations of public health officials or health care providers during an emergency that threatens their health and the health of others in the community;
- (4) To promote the economic security and stability of workers and their families;
- (5) To protect employees in [X] from losing their jobs or facing workplace discipline when they use the paid sick time they earn to care for themselves or their families;
- (6) To assist victims of domestic violence and their family members by providing them job-protected time away from work to receive treatment and to take the necessary steps to ensure their safety;
- (7) To safeguard the public welfare, health, safety and prosperity of the people of [X]; and
- (8) To accomplish the purposes described in paragraphs (1)-(7) in a manner that is feasible for employers.

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

Section 1. Definitions

For Purposes of this Act:

- (1) “Agency” means [state, county or city agency responsible for enforcement of labor laws or the agency (with sufficient authority) best suited to enforcing this law, if there is no local labor enforcement agency].
- (2) “Domestic violence” is as defined in [state statute or local law].
- (3) “Employee” is as defined in [state wage and hour law, local law or federal Fair Labor Standards Act (29 U.S.C. § 203(e)); you should choose the most inclusive option, or we can help to draft a new definition] but does not include those who work in [X] for fewer than # [typically 80] hours in a calendar year. “Employee” includes recipients of public benefits who are engaged in work activity as a condition of

receiving public assistance. [May also specifically add: “Employee” does not include an “employee” as defined by 45 U.S.C. 351(d) who is subject to the federal Railroad Unemployment Insurance Act, 45 U.S.C. 351 et seq.]

(A) There shall be a rebuttable presumption that any individual performing work for a hiring entity is an employee under this Act unless the hiring entity can demonstrate that all of the following conditions are satisfied: (i) The individual is free from the control and direction of the hiring entity in connection with the performance of the labor or services, both under the contract for the performance of the work and in fact; (ii) The individual performs labor or services that are outside the usual course of the hiring entity’s business; and (iii) The individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the labor or services performed. [Note: We recommend including this language, although it is advisable to confirm that there are no legal barriers in your jurisdiction. If included, the definition of employer and employee may need to be adjusted as well to ensure there's no conflict with the test, which we can help to do. This language is recommended since far too many individuals are misclassified as independent contractors, rather than employees, which denies them certain labor protections—like paid sick time—that are only available to employees. This language creates a presumption that an individual performing work for a business or hiring entity is an employee unless the business or hiring entity can show that the working individual is an independent contractor who meets the three-part test described here. This test is commonly known as the “ABC” test.]

(4) “Employer” is as defined in [state wage and hour law, local law or federal Fair Labor Standards Act (29 U.S.C. § 203(d)); you should choose the most inclusive, or we can help to draft a new definition]. For the purposes of this Act, “employer” does not include any of the following:

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

(5) “Family member” means:

- (A) A biological, adopted or foster child, stepchild or legal ward, a child of a domestic partner, or a child to whom the employee stands *in loco parentis*, regardless of age;
- (B) A biological, foster, stepparent or adoptive parent or legal guardian of an employee or an employee’s spouse or domestic partner or a person who stood *in loco parentis* when the employee or employee’s spouse or domestic partner was a minor child;
- (C) A person to whom the employee is legally married under the laws of any state, or a domestic partner of an employee [as defined under X state/county/city law or] as registered under the laws of any state or political subdivision;

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

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

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

(6) “Health care professional” means any person licensed under Federal or any State law to provide medical or emergency services, including but not limited to doctors, nurses and emergency room personnel. [Note: you may want to add “as well as certified midwives” if your state does not require licensing of midwives].

(7) “Paid sick time” means time that is compensated at the same hourly rate and with the same benefits, including health care benefits, as the employee normally earns during hours worked and is provided by an employer to an employee for the purposes described in Section 3 and Section 4 of this Act, but in no case shall this hourly amount be less than that provided under 29 U.S.C. §206(a)(1) [or your state or local minimum wage law].

(8) “Public health emergency” means a declaration or proclamation related to a public health threat, risk, disaster, or emergency that is made or issued by a federal, state or local official with the authority to make or issue such a declaration or proclamation.

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

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

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

(12) “Whistleblower” means a current or former employee, contractor, subcontractor or employee of such a contractor or subcontractor of an alleged violator of this Act, regardless of whether that person has received full or partial relief under Section 9. [Note: whistleblower protections are included as an enforcement option under Section 9(4) of this model bill; this definition should only be included if those protections are added]

(13) “Year” means a regular and consecutive 12 month period as determined by the employer; except that for the purposes of Sections 7 and 9 of this Act, “year” shall mean a calendar year.

Section 2. Accrual of General Paid Sick Time

- (1) All employees shall accrue a minimum of one hour of paid sick time for every 30 hours worked. Employees shall not use more than 72 hours of paid sick time in a year, unless the employer selects a higher limit. [Note: Laws vary on the amount of time, but we recommend starting at 72, before considering less time; you could also consider 72 hours for larger business and fewer hours, such as 56 or 40, for small business. It is also possible to limit accrual: Employees shall not use or accrue more than # hours of paid sick time in a year, unless the employer selects a higher limit.]
- (2) Employees who are exempt from overtime requirements under 29 U.S.C. § 213(a)(1) of the Federal Fair Labor Standards Act will be assumed to work 40 hours in each work week for purposes of paid sick time accrual unless their normal work week is less than 40 hours, in which case paid sick time accrues based upon that normal work week.
- (3) Paid sick time as provided in this section shall begin to accrue at the commencement of employment or on the date this law goes into effect, whichever is later. An employee shall be entitled to use paid sick time as it is accrued. An employer may provide all paid sick time that an employee is expected to accrue in a year at the beginning of the year. [Note: Recent paid sick time laws—including statewide measures in Colorado and New York—have eliminated any waiting period on use of accrued paid sick time, which is highly recommended. Also, the federal FFCRA did not include a waiting period on use of emergency sick leave. Such limits on use can harm workers, who cannot plan when an illness or medical emergency happens, and also harms low-wage workers and temp workers who are more likely to have job instability and/or change jobs more frequently; moreover, the effect is limited through this model law’s accrual approach, since a full-time worker generally won’t earn 8 hours of paid sick time—one day—until they’ve worked for 6 weeks.]
- (4) Paid sick time shall be carried over to the following year, but this Act does not require an employer to permit an employee to use more than [72, or the number of hours decided upon in subsection (1) above] hours of paid sick time per year, in addition to any paid sick time pursuant to Section 4 during a public health emergency. Alternatively, in lieu of carryover of unused paid sick time provided pursuant to this section from one year to the next, an employer may pay an employee for unused paid sick time provided pursuant to this section at the end of a year and provide the employee with an amount of paid sick time that meets or exceeds the requirements of this section that is available for the employee’s immediate use at the beginning of the subsequent year.
- (5) Any employer with a paid leave policy, such as a paid time off policy, who makes available an amount of paid leave sufficient to meet the requirements of this Act that may be used for the same purposes and under the same conditions as paid sick time under this Act is not required to provide additional paid sick time under this Act.
- (6) If an employee is transferred to a separate division, entity or location, but remains employed by the same employer, the employee is entitled to all paid sick time accrued at the prior division, entity or location and is entitled to use all paid sick time as provided in this Act. When there is a separation from employment and the employee is rehired within # months of separation [Note: we recommend 12 months] by the same employer, previously accrued paid sick time that had not been used shall be reinstated. Further, the employee shall be entitled to use accrued paid sick time and accrue additional paid sick time at the commencement of employment.

(7) When a different employer succeeds or takes the place of an existing employer, all employees of the original employer who remain employed by the successor employer are entitled to all paid sick time they accrued or received under this Act when employed by the original employer, and are entitled to use paid sick time previously accrued or received under this Act.

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

Section 3. Use of General Paid Sick Time

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

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

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

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

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

(ii) Services from a victim services organization;

(iii) Psychological or other counseling;

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

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

(2) Paid sick time under this Section shall be provided upon the oral request of an employee. When possible, the request shall include the expected duration of the absence.

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

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

(5) An employer may not require, as a condition of an employee's taking paid sick time under this Section and Section 4, that the employee search for or find a replacement worker to cover the hours during which the employee is using paid sick time.

(6) Paid sick time under this Section and Section 4 may be used in the smaller of hourly increments or the smallest increment that the employer's payroll system uses to account for absences or use of other time.

(7) Except as provided in Section 4, for paid sick time of 4 or more consecutive work days, an employer may require reasonable documentation that the paid sick time has been used for a purpose covered by subsection (1).

(A) Documentation signed by a health care professional indicating that paid sick time is or was necessary shall be considered reasonable documentation. However, if the employee or employee's family member did not receive services from a health care professional, or if documentation cannot be obtained from a health care professional in reasonable time or without added expense, the employee can provide a written statement indicating that the employee is taking or took paid sick time for a qualifying purpose covered by subsection (1). Such employee writing may be written in the employee's first language and need not be notarized or in any particular format.

(B) In cases of domestic violence, sexual assault, or stalking, one of the following types of documentation selected by the employee shall be considered reasonable documentation: (i) a police report indicating that the employee or the employee's family member was a victim of domestic violence, sexual assault, or stalking; (ii) a written statement from a witness advocate affirming that the employee or employee's family member is or was receiving services from a victim services organization; (iii) a court document indicating that the employee or employee's family member is or was involved in legal action related to domestic violence, sexual assault, or stalking; or (iv) a written statement from the employee affirming that the employee or employee's family member is taking or took paid sick time for a qualifying purpose of subsection (1). A written statement pursuant to this subsection may be written in the employee's first language and need not be notarized or in any particular format.

(C) An employer may not require that the documentation explain the nature of the illness, details of the underlying health needs, or the details of the domestic violence, sexual assault, or stalking.

Section 4. Additional Emergency Paid Sick Time During a Public Health Emergency

(1) On the date a public health emergency affecting [state/local government name] is declared or proclaimed, an employer shall provide each employee of an employer with additional paid sick time, in addition to paid sick time under Section 2 and Section 3, in the following amount: (A) employees who normally work 40 or more hours in a week shall be provided at least 80 hours of additional paid sick time; (B) employees who work fewer than 40 hours in a week shall be provided an amount of additional paid sick time equal to the amount of time the employee is otherwise scheduled to work or works on average in a two-week period, whichever is greater.

(2) In the case of an employee described in subsection (1)(B) whose schedule varies from week to week, the employer shall use the following in place of such number to determine the amount of time worked on average in a two-week period: (A) Subject to subsection (2)(B), a number equal to the average number of hours that the employee was scheduled per week over the 6-month period ending on the date on which the

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employee takes paid sick time under this Section, including hours for which the employee took leave of any type; (B) If the employee did not work over such period, the reasonable expectation of the employee at the time of hiring of the average number of hours per week that the employee would normally be scheduled to work.

(3) If a public health emergency was declared or proclaimed before and remains in effect on the effective date of this Act, paid sick time under this section shall be: (A) provided to employees pursuant to subsection (1) on the effective date of this Act; and (B) made available retroactively to employees employed on the effective date of this Act to the date the public health emergency was declared or proclaimed.

(4) The paid sick time required in subsection (1) shall be provided to employees immediately for use for any of the purposes described in subsection (5) beginning on the date of any public health emergency, regardless of how long they have been employed. An employee shall be entitled to use paid sick time under this Section until [X] weeks following the official termination or suspension of the public health emergency.

(5) The paid sick time required in subsection (1) shall be provided to an employee by an employer when the employee is unable to perform the functions of the position of such employee, including through telework, due to a need for leave for any of the following purposes related to a public health emergency:

(A) An employee's need to: (i) self-isolate and care for oneself because the individual is diagnosed with a communicable illness related to a public health emergency; (ii) self-isolate and care for oneself because the individual is experiencing symptoms of a communicable illness related to a public health emergency; (iii) seek preventive care concerning a communicable illness related to a public health emergency; or (iv) seek or obtain medical diagnosis, care, or treatment if experiencing symptoms of a communicable illness related to a public health emergency;

(B) An employee's need to comply with an order or determination to self-isolate, on the basis that the employee's physical presence on the job or in the community would jeopardize the employee's health, the health of other employees, or the health of an individual in the employee's household because of: (i) possible exposure to a communicable illness related to a public health emergency; or (ii) exhibiting of symptoms of a communicable illness related to a public health emergency, regardless of whether the employee has been diagnosed with such illness;

(C) An employee's need to take care of a family member who is: (i) self-isolating, seeking preventive care, or seeking or obtaining medical diagnosis, care, or treatment for the purposes described in paragraph (A) of this subsection; or (ii) self-isolating due to an order or determination as described in paragraph (B) of this subsection;

(D) An employee's inability to work or telework because the employee is: (i) prohibited from working by the employer due to health concerns related to the potential transmission of a communicable illness related to the public health emergency; or (ii) subject to an individual or general local, state, or federal quarantine or isolation order, including a shelter-in-place or stay-at-home order, related to a public health emergency [note: it is advisable to check on terminology in your jurisdiction for isolation/quarantine/shelter-in-place/stay-at-home orders to ensure use of relevant language];

(E) An employee's need to take care of a child or other family member when the care provider of such individual is unavailable due to a public health emergency, or if the child's or family member's school or place of care has been closed by a local, state or federal public official or at the discretion of the school or place of care due to a public health emergency, including if a school or place of care: (i) is physically closed but providing virtual learning instruction; (ii) requires or makes optional virtual learning instruction; or (iii) requires or makes available a hybrid of in-person and virtual learning instruction models; or

(F) An employee's inability to work because the employee has a health condition that may increase susceptibility to or risk of a communicable illness related to the public health emergency including, but not limited to: age, heart disease, asthma, lung disease, diabetes, kidney disease, or a weakened immune system.

(6) An order or determination pursuant to subsections (5)(B) or (5)(C)(ii) of this Section shall be made by a local, state, or federal public official, a health authority having jurisdiction, a health care professional, or the employer of the employee or employee's family member. Such order or determination need not be specific to such employee or family member.

(7) An employee may first use the paid sick time under this Section prior to using paid sick time for purposes under Section 3. An employer may not require an employee to use other paid leave provided by the employer to the employee before the employee uses the paid sick time under this Act.

(8) Notwithstanding any other provision in this Act, the employee shall provide notice to the employer of the need for paid sick time as soon as practicable only when the need for paid sick time is foreseeable and the employer's place of business has not been closed.

(9) Notwithstanding any other provision in this Act, documentation shall not be required for paid sick time under this Section.

Section 5. Exercise of Rights Protected; Retaliation Prohibited

(1) It shall be unlawful for an employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this Act.

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

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

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

(5) There shall be a rebuttable presumption of unlawful retaliatory personnel action under this section whenever an employer takes adverse action against a person within 90 days of when that person: (a) files a

complaint with the Agency or a court alleging a violation of any provision of this Act; (b) informs any person about an employer's alleged violation of this Act; (c) cooperates with the Agency or other persons in the investigation or prosecution of any alleged violation of this Act; (d) opposes any policy, practice, or act that is unlawful under this Act; or (e) informs any person of his or her rights under this Act.

Section 6. Notice and Posting

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

(2) Within 7 days of the declaration or proclamation of a public health emergency affecting [state/local government name], employers shall provide employees with written notice of the public health emergency and their right to additional paid sick time pursuant to Section 4. If a public health emergency continues for a period of longer than three months, employers shall be required to provide written notice to their employees pursuant to this section every three months.

(3) The notices required in subsections (1) and (2) shall be in English, [X, X,] and any language that is the first language spoken by at least [X%] of the employer's workforce, provided that such notice has been provided by the Agency.

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

(5) Employers shall display a poster that contains the information required in subsection (1) in a conspicuous and accessible place in each establishment where such employees are employed; provided, however, that in cases where the employer does not maintain a physical workplace, or an employee teleworks or performs work through a web-based or app-based platform, notification shall be sent via electronic communication or a conspicuous posting in the web-based or app-based platform. The poster displayed shall be in English, [X, X,] and any language that is the first language spoken by at least [X%] of the employer's workforce, provided that such poster has been provided by the Agency.

(6) The Agency shall create and make available to employers, in all languages spoken by more than [X%] of the [State's/County's/City's] workforce and any language deemed appropriate by the Agency, model notices and posters that contain the information required under subsections (1) and (2) for employers' use in complying with subsections (1), (2), and (5).

(7) If an employer's business is closed due to a public health emergency, the notice and posting requirements under subsections (1), (2) and (5) shall be waived for the period in which the place of business is closed.

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

Section 7. Employer Records

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

Section 8. Regulations

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

Section 9. Enforcement

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

(1) *Administrative Enforcement*

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

(B) Any person alleging a violation of this Act shall have the right to file a complaint with the Agency within [X months/years] of the date the person knew or should have known of the alleged violation. The Agency shall encourage reporting pursuant to this subsection by keeping confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the employee or person reporting the violation, provided, however, that with the authorization of such person, the Agency may disclose his or her name and identifying information as necessary to enforce this Act or for other appropriate purposes.

(C) Upon receiving a complaint alleging a violation of this Act, the Agency shall investigate such complaint and attempt to resolve it through mediation between the complainant and the subject of the complaint, or other means. The Agency shall keep complainants notified regarding the status of their complaint and any resultant investigation. If the Agency believes that a violation has occurred, it shall issue to the offending person or entity a notice of violation and the relief required of the offending person or entity. The Agency shall prescribe the form and wording of such notices of violation including any method of appealing the decision of the Agency.

(D) The Agency shall have the power to impose penalties provided for in this Act and to grant an employee or former employee all appropriate relief. Such relief shall include but not be limited to: (i) for each instance of paid sick time taken by an employee but unlawfully not compensated by the employer: three times the wages that should have been paid under this Act or [SX], whichever is greater; (ii) for each instance of paid sick time requested by an employee but unlawfully denied by the employer and not taken by the employee or unlawfully conditioned upon searching for or finding a replacement worker: [SX]; (iii)

for each instance of unlawful retaliation not including discharge from employment: full compensation including wages and benefits lost, an additional amount of at least [SX] and equitable relief as appropriate; and (iv) for each instance of unlawful discharge from employment: full compensation including wages and benefits lost, [SX] and equitable relief, including reinstatement, as appropriate.

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

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

(2) Civil Enforcement

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

(B) Upon prevailing in an action brought pursuant to this section, aggrieved persons shall recover the full amount of any unpaid sick time plus any actual damages suffered as the result of the employer's violation of this Act plus an equal amount of liquidated damages. Aggrieved persons shall also be entitled to reasonable attorney's fees and costs.

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

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

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

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

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

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

[city/county/state] is authorized to either deny approval or to condition approval on the employer's future compliance.

(4) *Whistleblower Protection*

(A) The penalties specified in subsection (1)(E), and injunctive and declaratory relief, may be recovered through a civil action brought on behalf of the Agency in a court of competent jurisdiction by a whistleblower or by a representative nonprofit or labor organization designated by said person, pursuant to the following procedures:

(i) The whistleblower shall give written notice to the Agency of the specific provisions of this Act alleged to have been violated. The whistleblower or representative organization may commence a civil action under this subsection if no enforcement action is taken by the Agency within 120 days.

(ii) Civil penalties recovered pursuant to this subsection shall be distributed as follows: 70 percent to the Agency for enforcement of this act, with 25 percent of that amount reserved for grants to community organizations for outreach and education about employee rights under this Act; and 30 percent to the whistleblower or representative organization to be distributed to the employees affected by the violation. Any person that prevails in an action under this subsection, whether or not the Agency has intervened in that action, shall be entitled to an award of reasonable attorney's fees and costs.

(iii) The right to bring an action under this section shall not be impaired by any private contract. A public enforcement action shall be tried promptly, without regard to concurrent adjudication of private claims.

Section 10. Confidentiality and Nondisclosure

(1) Unless otherwise required by law, an employer may not require disclosure of details relating to domestic violence, sexual assault, or stalking or the details of an employee's or an employee's family member's health information as a condition of providing paid sick time under this Act.

(2) Unless otherwise required by law, any health or safety information possessed by an employer regarding an employee or employee's family member must:

(A) be maintained on a separate form and in a separate file from other personnel information;

(B) be treated as confidential medical records; and

(C) not be disclosed except to the affected employee or with the express permission of the affected employee.

Section 11. Encouragement of More Generous Paid Sick Time Policies; No Effect on More Generous Policies or Laws

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

(2) Nothing in this Act shall be construed as diminishing the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous paid sick time to an employee than required herein. Nothing in this Act shall be construed as

diminishing the rights of public employees regarding paid sick time or use of paid sick time as provided in [laws of the state pertaining to public employees].

(3) [For State laws] Nothing in this Act shall be construed to preempt or supersede any provision of any local law that provides greater rights to paid sick time than the rights established under this Act.

Section 12. Other Legal Requirements

(1) If any Federal law entitles an employee to paid sick leave for any of the purposes provided in Section 3 or Section 4 of this Act, paid sick time provided under this Act shall be in addition to that paid sick leave, to the extent permitted by the Federal law. [This language provides that, if federal law allows, the paid sick leave under this law is additional to any leave under the current FFCRA or future federal paid leave laws; this language should be adjusted if you would like leave to run concurrently, to the extent federal law allows.]

(2) This Act provides minimum requirements pertaining to paid sick time and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for a greater amount, accrual, or use by employees of paid sick time or that extends other protections to employees.

(3) Nothing in this Act 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 paid sick time under this Act that has not been used.

Section 13. Public Education and Outreach

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

Section 14. Severability

If any provision of this Act or application thereof to any person or circumstance is judged invalid, the invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared severable.

Section 15. Effective Date

This Act will take effect [#] days following enactment. [The effective date should be as soon as possible according to the local government's or state's laws, and advocates should consider whether any emergency clauses can have it take effect sooner than a legal default.]

Please note that this document does not constitute legal advice.

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