

**ORDINANCE NO.**

**AN ORDINANCE ESTABLISHING EARNED SICK TIME STANDARDS IN THE CITY; CREATING A CIVIL PENALTY; AND CREATING AN OFFENSE.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

**PART 1. Findings:**

(A) The council finds that most workers in the City of Austin will at some time during each year need limited time off from work to care for their own health and safety needs or the health and safety needs of a close family member.

(B) The council further finds that denying earned sick time to employees:

- (1) is unjust;
- (2) is detrimental to the health, safety, and welfare of the residents of the City; and
- (3) contributes to employee turnover and unemployment, and harms the local economy.

The council further finds that it is within the police power and the responsibility of the City to remedy the problems enumerated in parts (A) and (B) of this Section.

**PART 2. Title 4 of the City Code is amended by adding a new Chapter 4-19 to read:**

**CHAPTER 4-19. EARNED SICK TIME.**

**§4-19-1. DEFINITIONS.**

In this Chapter:

(A) **EARNED SICK TIME** means a period of paid leave from work accrued by an employee in accord with this Chapter.

(B) EEO/FHO means the City of Austin Equal Employment Opportunity/ Fair Housing Office.

(C) EMPLOYEE means an individual who performs at least 80 hours of work for pay within the City of Austin in a calendar year for an employer, including work performed through the services of a temporary or employment agency.

(D) EMPLOYER means any person, company, corporation, firm, partnership, labor organization, non-profit organization or association that pays an employee to perform work for an employer and exercises control over the employee's wages, hours and working conditions. The term does not include:

(1) the United States;

(2) a corporation wholly owned by the government of the United States;

(3) the state or a state agency; or

(4) a political subdivision of the state.

(E) FAMILY MEMBER means an employee's spouse, child, parent, or any other individual related by blood or whose close association with the employee is the equivalent of a family relationship.

#### **§4-19-2. EARNED SICK TIME STANDARDS.**

(A) An employer shall grant an employee one hour of earned sick time for every 30 hours worked for the employer in the City of Austin.

(B) Earned sick time shall accrue starting at the commencement of employment or the date this Chapter is effective, whichever is later.

(C) Earned sick time shall be available for an employee to use in accord with this Chapter as soon as it is accrued. Provided, that an employer may restrict an employee from using earned sick time during the employee's first 60 days of

71 employment if the employer establishes that the employee's term of  
72 employment is at least one year.  
73

74 (D) An employee may request earned sick time from an employer for an absence  
75 from the employee's scheduled work time caused by:  
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77 (1) the employee's physical or mental illness or injury, preventative  
78 medical or health care, or health condition; or  
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80 (2) the employee's need to care for a family member's physical or mental  
81 illness, preventative medical or health care, injury, or health condition;  
82 or  
83

84 (3) the employee's need to seek medical attention, or to participate in  
85 legal or court ordered action related to an incident of domestic abuse,  
86 sexual assault, or stalking involving the employee or employee's  
87 family member.  
88

89 (E) An employer may adopt reasonable verification procedures to establish that  
90 an employee's request for earned sick time meets the requirements of  
91 Subsection (D) for a request to use earned sick time for more than three  
92 consecutive work days.  
93

94 (F) An employer shall provide earned sick time for an employee's absence from  
95 the employee's scheduled work time if the employee has available earned  
96 sick time and makes a timely request for use of earned sick time before their  
97 scheduled work time. An employer may not prevent an employee from using  
98 earned sick time for an unforeseeable qualified absence as established in  
99 Subsection (D).

100 (G) An employer is not required to provide more than 64 hours of earned sick  
101 time to an employee in a calendar year. ~~All available earned sick time up to~~  
102 ~~64 hours shall be carried over to the following year.~~ An employer may  
103 inform an employee that leave requested in excess of the employee's  
104 available earned sick time will not be paid.

105 (H) All available earned sick time up to 64 hours shall be carried over to the  
106 following year. Provided, that an employer that by policy makes at least 64

107 hours of earned sick time available to an employee at the beginning of the  
108 year under the purpose and usage requirements of this Chapter shall not be  
109 required to carry over earned sick time under this Chapter for that year.

- 110 (I) An employer shall provide an employee with earned sick time that meets the  
111 requirements under this Section in an amount up to the employee's available  
112 earned sick time. The employer shall pay earned sick time in an amount equal  
113 to what the employee would have earned if the employee had worked the  
114 scheduled work time, exclusive of any overtime premium, tips, or  
115 commissions, but no less than the state minimum wage.
- 116 (J) On no less than a monthly basis, an employer shall provide electronically or  
117 in writing to each employee a statement showing the amount of the  
118 employee's available earned sick time. For the period required for  
119 maintenance of records under Title 29, Section 516(a), Code of Federal  
120 Regulations, an employer shall maintain records establishing the amount of  
121 earned sick time accrued and used by each covered employee. This section  
122 is not creating a new requirement for certified payroll.
- 123 (K) An employer may not require an employee to find a replacement to cover the  
124 hours of earned sick time as a condition of using earned sick time.
- 125 (L) Neither the amount of earned sick time nor the right to use earned sick time  
126 shall be affected by an employee's transfer to a different facility, location,  
127 division, or job position with the same employer.
- 128 (M) An employee who is rehired by an employer within 12 months following  
129 separation of employment from that employer may use any earned sick leave  
130 available to the employee at the time of separation.
- 131 (N) An employer may provide paid leave benefits that exceed the  
132 requirements of this Chapter. This Chapter does not require an employer  
133 who makes paid time off available to an employee under conditions that meet  
134 the accrual, purpose, and usage requirements of this Chapter to provide  
135 additional earned sick time to the employee. If an employee uses paid time  
136 off that is available under the conditions that meet the accrual, purpose, and  
137 usage requirements of this Chapter for a use other than earned sick time, this  
138 ordinance shall not be construed as requiring an employer to provide  
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141 additional earned sick time to the employee beyond the accrual requirements  
142 of this Chapter.

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144 **§4-19-3. SIGNAGE REQUIRED.**

145 (A) An employer shall display a sign describing the requirements of this Chapter  
146 in at least English and Spanish in a conspicuous place or places where notices  
147 to employees are customarily posted. An employer is not required to post  
148 such signage until the City of Austin makes such signage available publicly  
149 on its website.

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151 (B) EEO/FHO shall prescribe by rule the size, content, and location of signs  
152 required under Subsection (A) of this Section.  
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154 **§4-19-4. RETALIATION PROHIBITED.** An employer may not transfer,  
155 demote, discharge, suspend, reduce hours, or directly threaten these actions against  
156 an employee for requesting or using earned sick time, or for reporting a violation  
157 or participating in an administrative proceeding under this Chapter.

158 **§4-19-5. ADMINISTRATION.**

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160 (A) The EEO/FHO shall:

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162 (1) educate employers and employees about this Chapter;  
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164 (2) receive and investigate complaints, including anonymous complaints,  
165 alleging a violation of this Chapter;  
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167 (3) enforce this Chapter;  
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169 (4) seek voluntary compliance with this Chapter before collecting a civil  
170 penalty; and  
171  
172 (5) adopt rules necessary to implement this Chapter.  
173

174 (B) A complaint alleging a violation of this Chapter must be filed with the  
175 EEO/FHO by or on behalf of an aggrieved employee within two years from  
176 the date of the violation.  
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178 (C) If the EEO/FHO finds after investigation of a timely complaint that a  
179 violation of this Chapter has occurred:  
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181 (1) the EEO/FHO shall assess a civil penalty up to \$500 against the  
182 employer for each violation of this Chapter, and shall provide written  
183 notice of the assessment to the employer; and  
184

185 (2) the EEO/FHO shall seek voluntary compliance from the employer to  
186 remedy any violation of this Chapter. If voluntary compliance is not  
187 achieved within 10 business days following the employer's receipt of  
188 the written civil penalty assessment, the employer shall be liable to the  
189 City for the amount of the assessed civil penalty.  
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191 (D) This Section does not create a criminal offense.  
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#### 193 §4-19-6. INVESTIGATION OF COMPLAINTS.

194 (A) The director of the EEO/FHO may subpoena records or testimony relevant  
195 to the investigation of a complaint under this Chapter. Relevant information  
196 includes, and is limited to, only the information necessary to determine  
197 whether a violation of the Earned Sick Time ordinance has occurred and  
198 nothing further. A subpoena shall:  
199

200 (1) be directed to a person with knowledge or information relevant to a  
201 complaint under this Chapter, or to a custodian of records relevant to  
202 a complaint under this Chapter;  
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204 (2) be in writing and signed by the director of the EEO/FHO;  
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206 (3) identify the records or testimony to be produced under the subpoena;  
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208 (4) direct the person to whom it is issued to produce the records or provide  
209 the testimony identified in the subpoena at a specific place and time,  
210 which shall be not earlier than 10 business days from the

211 date of service of the subpoena;

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- 213 (5) identify the individual complaint made under this Chapter to which the
- 214 subpoena relates;
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- 216 (6) state that the subpoena is issued under the authority of this Chapter for
- 217 purposes of investigating a complaint under this Chapter;
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- 219 (7) state that failure to comply with the subpoena is an offense and
- 220 punishable as a Class C misdemeanor under this Code; and
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- 222 (8) be served on the person to whom it is directed by certified mail or
- 223 personal delivery.
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225 (B) A person commits an offense if the person fails to comply with a subpoena

226 issued and served on the person as provided in Part (A). The offense is

227 punishable as a Class C misdemeanor as provided in Section 1-1-99 of this

228 Code. A culpable mental state is not a necessary element of the offense.

229

230 (C) The EEO/FHO may inform employees at a work site of any investigation of

231 a complaint at that worksite alleging a violation of this Chapter.

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233 **PART 3.** For a violation of Chapter 4-19 that occurs within the first three months

234 after the effective date of this ordinance, the EEO/FHO shall issue a notice to the

235 employer that a civil penalty may be assessed for a violation that occurs at any

236 time after October 1, 2018.

237

238 **PART 4.** The council directs the city manager to design and provide a multilingual

239 public education campaign to inform employers and residents of the requirements

240 of Chapter 4-19, such as a website with best practices for employers, and an

241 educational outreach strategy for informing employees and residents of the earned

242 sick time ordinance.

243

244 **PART 5.** Except as provided in Part 3 and Part 4, this ordinance takes effect

245 on May \_\_\_\_, 2018.

246

247 **PASSED AND APPROVED**

\_\_\_\_\_, 2018      §  
§  
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Steve Adler  
Mayor

**APPROVED:** \_\_\_\_\_  
Anne L. Morgan  
City Attorney

**ATTEST:** \_\_\_\_\_  
Jannette S. Goodall  
City Clerk