

Health & Human Services and Public Safety Committee Agenda

Tuesday, October 23, 2018, 5:30pm

Room 209, City Hall

Councilor Belinda Ray, District 1, Chair

Councilor Brian Batson, District 3

Councilor Pious Ali, At-Large

1. Announcements
2. Review And Approval Of Draft Minutes From The October 9, 2018 Meeting.

Documents:

[HHS PS MINUTES OCTOBER 9 2018 DRAFT.PDF](#)

3. Committee Revisits Items On Paid Sick Leave.

Documents:

[MAYOR STRIMLING- PST MEMO \(1\).PDF](#)
[2018-10-09 MEMO ON HEALTHCARE AND NEW EMPLOYERS.PDF](#)
[EPSL NOTES FOR 102518 BRAY.PDF](#)
[2018-10-18 SICK LEAVE ORDINANCE \(COMMITTEE REDLINE\).PDF](#)
[2018-10-19 ENFORCEMENT PROVISIONS.PDF](#)
[MEMO TO HHS COMMITTEE OCTOBER 2018.PDF](#)

4. Next Meeting: November 13, 2018

NOTE: Since there are no action items on the agenda, there will be no opportunity for public comment at this meeting. Please feel free to send comments to members of the committee on any issue at any time via email. Councilors email addresses are available on the city website: www.portlandmaine.gov

The meeting can be watched online via livestream: www.portlandmaine.gov/livestream

Keep up to date with the new shelter design and planning process at the City's and Bayside Neighborhood Association's websites:

www.portlandmaine.gov/shelterplanning

<https://baysideportland.org/category/shelter/>



Health & Human Services and Public Safety Committee Minutes

Tuesday, October 9, 2018, 5:30pm, Room 209, City Hall

Committee Attendance:

Belinda Ray, Chair (District 1), Brian Batson (District 3), Pious Ali (At-Large)

Councilors in Attendance: Mayor, Ethan Strimling

City Staff: Director of Health and Human Services, Dawn Stiles; Assistant City Manager, Michael Sauschuck; Fire Chief, Keith Gautreau; Assistant Corporation Counsel, Anne Torregrossa; Executive Assistant, Adam Harr

AGENDA ITEM 1 – Announcements and Approval of Minutes:

Councilor Batson moved to approve the minutes as amended; Councilor Ali seconded and the motion passed:

- Current ordinance one hour for every 40 hours worked should be for every 30.

AGENDA ITEM 2 – Committee Review Of Staff's NFPA 2018 Standards Including Public Testimony

Fire Chief Gautreau introduced the coding history and changes outlined in Assistant Corporation Counsel, Anne Torregrossa's memo; it has been 10 years since codes have been updated and the State is also looking to adopt the National Fire Protection Association (NFPA) codes *Life Safety Code* (NFPA 101) and the *Fire Code* (NFPA 1).

The memo containing full list of additions, updates, deletions and clarifications is available here:

<https://www.portlandmaine.gov/AgendaCenter/ViewFile/Item/6733?fileID=38194>

Major Changes include:

- Chapter 38 of NFPA 1: this new chapter was added to as a placeholder and starting point to ensure growing and processing is safe.
- Reorganization of Chapter 10 for clarity.

Life Safety Code

- 10-3(a)(ii)
 - No partially sprinkled buildings.
- 10-3(a)(iv)



- Balconies or rooftop decks that serve multiple uses with access from common areas are protected.
- Does not apply to single unit balconies or decks.
- 10-3(a)(v) Smoke Alarms
 - Battery operated smoke alarms must be hard wired with battery back-up.
 - Photoelectric sensors will cut false alarms.
- Deleted Sections
 - 10-3(f) One or two family home renovations will require to be sprinkled
 - Historic buildings definitions and directions for rehab.
 -

Fire Code

- 10-18(b) mirrors NFPA 101 and State statute.
- 10-18(e), (f)
 - Carnivals and Fairs.
 - Marijuana growing and processing placeholder in statute.
 - Blasting operations
 - Permits filed with Fire Department instead of in Planning.
 - Certificate of fitness for special hazards (currently no requirements for technicians working on these systems.)
 - Commercial Kitchens have hood ventilation systems
 - Marijuana growing facility placeholder
- Deleted Sections
 - 10-18(e) unvented fuel fired heaters is already addressed in the fire code.
- Article III. Enforcement and Appeals
 - Mirrors Chapter 6
- Deleted Sections in Article VIII (VI on the memo):
 - 10-103: Box alarms are no longer assigned so the language is obsolete.
 - 10-104: False alarm penalties have deleted the time requirement for the Chief to give written notice as 15 days may be too long in severe situations.

Committee Discussion

- Councilor Batson asked what has changed in 10-3 A B; CO requirements are the same but written to be easier to understand.
- Chair Ray asked if the CO alarms are hard wired? If a building is having major renovation or new construction, hard wiring is required.
- CO alarms are required in single family homes.
- This committee will vote before going to the Council.

Public Hearing: Public comment period opened and closed without comment.



Committee Vote:

Chair Ray made a motion to recommend approval to the full City Council with amendments to page 10-35. Councilor Ali seconded and the motion passed unanimously

- 10-35:
 - To make it clear, the alarm system language changed to “all such buildings shall be connected to a City-Approved wireless master box alarm system.”
 - Councilor Ali asked if someone did not switch over due to hardship, what will happen? This is for commercial buildings

AGENDA ITEM 3– City Staff Answers To Committee Questions On Paid Sick Leave

Chair Ray introduced the topic and explained that the committee will continue through the ordinance, starting with use of earned paid sick time.

- Use of Earned Paid Sick Time
 - OR is the only state that allows sick time to be used to bond with a new child and for a family member’s death.
 - Chair inclined not to include either.
 - Should be included in policies other than Paid Sick Leave.
 - The ordinance is being created mainly for public health purposes.
 - Councilors Batson and Ali are interested in including use for the death of a family member.
 - Mayor Strimling would like to see these covered but agrees they are not necessarily appropriate for a Sick Leave ordinance.
 - Councilor Batson requested further information on bereavement leave but is not bringing an amendment at this time.
 - The death of a service member grants job protected (unpaid) leave to certain family members.
 - Bereavement leave is offered by the City; the benefit is influenced by which bargaining unit and employee is a part of and the level of family association to the deceased.
 - #2 could apply to bereavement.
 - Broad definition of family without a tiered family association would require an update to bereavement leave.
 - #4 and #5
 - Does this make a distinction or are they redundant?
 - Does the city distinguish between mental health days and sick days?
 - Currently the City would have mental health days covered under personal time or vacation time.



- Defining or distinguishing mental health day is a policy decision,
 - The committee agreed these are redundant; and confirmed that #2 covers them.
- Employer's Payroll System
 - If an employer has no system and just writes checks, how are hours calculated.
 - Most employers log up to a quarter hour (if an employee clocks in within the first fifteen minutes of an hour, they will be paid from the start of the hour.)
 - NJ does allow time accrued by the employee time needed for an employee to attend a school related event of their children.
 - Mayor Strimling suggested looking at the New Jersey language; Anne will add a copy for the next meeting.
 - A-1 Allows time for Domestic Violence related appointments.
 - C was added by the committee.
- Noticing Requirements
 - 7 days is typical
 - Chair Ray is interested into changing to 7 calendar days.
 - Foreseeable is not defined.
 - The committee agreed on 7 days' notice to employers when use of earned sick time is foreseeable.
- Section C-2
 - When the employer requires documentation the employer is responsible for the cost of obtaining documentation.
 - This is not found in other states.
 - Chair Ray would like to strike the payment but is interested in the MA language requiring post use written verification system where employees fill out a signed form attesting the legitimate use of their sick time.
 - Employees that do not have medical care could use the form instead of obtaining a doctor's note.
 - Councilor Ali asked if there is a cost for obtaining documentation from a medical appointment the employee went to? No, but if an employee wouldn't otherwise need a healthcare provider there would be a cost.
 - Payment was added when people who do not have health insurance who are then required to see a doctor.
 - Mayor Strimling and the Chair would like the MA language looked at.
 - Anne suggested that there be mechanism for employers to address abuse.
 - The City tracks use of sick time and begins requiring a doctor's note when a pattern of use results in going over the average amount of sic time used by City employees.
 - The MA verification form addresses patterns of abuse.
 - The MA FAQ has a lot of useable language.



- The committee will
 - strike 2, requiring the employer pay for obtaining documentation
 - Adding the verification form.
 - Allow for controlling for abuse
- How does someone take DV related leave while maintaining confidentiality?
 - Should a confidentiality section be added?
 - What are the State requirements?
 - Documentation not defined but is required under the act.
 - Is there a broader category that would allow DV use without disclosing?
 - Section 9 Health and DV related information will remain confidential.
 - Still, should a box indicating DV need to be checked?
 - In order to use the State's protected leave, one must provide documentation that discloses.
 - The committee will come back to this question.
 - The reasons identified are the reasons sick leave can be used for.
- 5-C of the proposed ordinance prohibits retaliation for legitimate use of earned sick leave.
- Example of an employer with an unexcused absence policy.
 - Employers would have to adjust their policies to conform
- Amount of earned sick time used, earned, and available on each pay stubs.
 - Chair Ray would like to strike this for small businesses who do not have robust tracking sick systems.
 - Instead require to give this information at least once a month.
 - The committee agreed and add that employers should provide the information within one week upon request.
 - "...Shall be provided to the employee at least once per month and at the request of the employee."
- Accessibility: translated into languages spoken by at least 5% of the population?
 - Where did the list of languages come from? Pine Tree Legal Assistance Inc.
 - Should translations only be done when a native speaker of a language that is not yet translated is hired?
 - Be translated broadly by the City (as it is written, the City must translate the posters and make them available online.)
 - Top 5 languages.
 - Better way? One that does not necessitate an ordinance change.
- Section F Employer who willfully violates...



- Section b 4 in enforcement may make section F duplicative save for the cap outlined in F.
- Record Keeping Requirements
 - 6 years is the standard statute of limitations for civil type disputes.
 - MA only retains sick leave records for 3 years.
 - PTO: Sick leave records must only be retained if it the employer tracks sick time separately from PTO.
 - 6 years versus 3 years?
 - PTO policies are not exempted from the ordinance.
 - 6 years seems long.
 - Councilor Ali explained that the records are helpful in wage theft cases.
 - Wage and hour statute of limitations is 2 years.
 - The 6 year schedule is for current and former employees.
 - The Committee agreed to change the Records Retention requirement to three years.
 - This in relation to C creates a legal presumption that the employer has violated without clear evidence.
 - Spoliation of evidence (destroying or not keeping required records)
 - Already can be fined without C
 - This impacts the burden of proof
 - The committee agreed to strike C pending resolution of enforcement.
 - Usually it is the plaintiff who has the burden of proof, but C presumes that employers have violated; this may not be honored by a court.
 - What is the penalty without C for not keeping documentation? \$100-2,000 a day until produced.
- Enforcement
 - Concerns:
 - Cost
 - Legality: limits on what a city can do to help an individual person.
 - Triple back wages to the employee?
 - Fines go to the City.
 - Benefit to employee is the earned sick time, not a penalty that goes above and beyond what they were entitled to.
 - Municipalities cannot represent individuals.
 - Mayor Strimling requested a proposal from Corporation Counsel on what a good enforcement policy would look like.
 - Anne will share the MEMO and model the section on the Minimum Wage ordinance's enforcement.
 - Could the City be a first line that explains the ordinance to employers when an employee files a complaint? Then, if an employee wants to move forward, the City could provide documentation for the private right of action.



- At this point, the City independently could fine the employer for noncompliance with the ordinance.
- Effective Date

AGENDA ITEM 4 – Next Steps

On October 23th:

The committee will come back to the items to be revisited from this and last meeting.

Mayor Strimling requested one more meeting to have a public hearing before the last two meetings.

- At the end of the next meeting, the committee will determine if another meeting is needed.

The meeting adjourned at approximately 7:45 PM



Office of the Mayor, Ethan K Strimling

DISTRIBUTE TO: Members of the HHS and Public Safety Committee: Councilor Belinda Ray, Chair; Councilor Pious Ali; and Councilor Brian Batson.
FROM: Ethan Strimling, Mayor
DATE: Oct 9, 2018
SUBJECT: **Municipal Hourly Paid Sick Time requirements**

This memo is in response to the question Councilor Batson asked at the September 25th Committee meeting regarding why we proposed that the city ensure 48 hours of paid sick time for all employees who work in Portland.

In a nutshell, besides wanting to get as close as possible to the seven days needed for flu recovery, we took our guidance based on what most other municipalities have successfully implemented. While it is true that most **states** max out their minimum requirements at 40 hours, as was mentioned at the meeting, most **cities** that have passed ordinances require well above 40 hours of paid sick time for their largest businesses and very few go below 40 hours for their smallest ("large" and "small" differ everywhere, with a one city having three tiers).

Here is the list of all municipalities and how much they offer (excluding NJ, as their ordinances got superseded by state law):

- **Austin: 48 hours for smallest businesses, 64 hours for largest.**
- **Berkeley: 48 hours for smallest businesses, 72 hours for largest.**
- **Chicago: 40 hours for all businesses.**
- **Duluth: 64 hours for all businesses.**
- **Emeryville: 48 hours for smallest businesses, 72 hours for largest.**
- **Los Angeles: 48 hours for all businesses.**
- **Minneapolis: 48 hours for all businesses over 5 employees (unpaid below).**
- **Montgomery County: 32 hours for smallest businesses, 56 hours for largest.**
- **New York City: 40 hours for all businesses above 4 (unpaid below).**
- **Oakland: 40 hours for smallest businesses, 72 hours for largest.**
- **Philadelphia: 40 hours for all businesses over 9 employees (unpaid below)**
- **Pittsburgh: 24 hours for small businesses, 40 for the largest.**
- **San Diego: 40 hours for all businesses.**
- **San Francisco: 40 hours for small businesses, 72 hours for largest.**
- **Santa Monica 40 hours for smallest businesses, 72 hours for largest.**
- **Seattle: 40 hours for small businesses, 56 hours for medium, 72 hours for largest.**
- **St. Paul: 48 hours for all businesses.**
- **Tacoma: 24 hours for all businesses.**

As you can see, the average amount of time required for small businesses (excluding those that have no paid requirement) is 42 hours. Of the 18 municipalities that require paid sick time, only three have a requirement below 40 hours for their smallest businesses and six are at 48 hours or more. The average for larger businesses is 50 hours, with a majority being at 48 or higher.

At the rate of 24/40 considered at the last meeting, Portland would have one of the lowest municipal minimums for small businesses in the country and we'd be in the bottom third for large businesses. For those with a two-tiered system, 40 hours for our largest businesses would put us in the bottom 15%.

In light of this, I hope the committee will consider staying with the proposed amount of 48 hours across the board. We brought this forward as a compromise that didn't push Portland to the highest marks we have seen, but that seems fair to both employees and employers. And, by not having a tiered system, it will be easier to enforce and won't create perverse incentives.

However, if the committee believes a multi-tier system is better, I would recommend a compromise of 40 and 72 (with 40 going to small businesses below five), as this is the most common split tier system across all municipalities.

MEMORANDUM

TO: Health and Human Services and Public Safety Committee
CC: Mayor Strimling
FROM: Anne M. Torregrossa, Associate Corporation Counsel
DATE: October 9, 2018
RE: Paid Sick Time Ordinance – per diem health care workers, and new businesses

In the context of considering an exemption for per diem employees working for a healthcare facility, the Committee requested 1) a proposed definition for a covered healthcare facility; and 2) options for including some or all per diem employees working for a healthcare facility.

The Committee also requested language around exempting new employers in their first year of business, looking to the language adopted by Minneapolis.

Proposed definition for healthcare facility.

The Committee requested a definition for healthcare facilities who would be included in the exemption. I would recommend using the definition included in 22 M.R.S. § 328(8). This definition includes hospitals, nursing homes, and similar facilities. It is the definition used by state statute in the context of determining and regulating the healthcare needs of communities, including limiting the number of new facilities, transfers of ownership, etc. The definition in § 328 is:

Health care facility. "Health care facility" means a hospital, psychiatric hospital, nursing facility, kidney disease treatment center including a freestanding hemodialysis facility, rehabilitation facility, ambulatory surgical facility, independent radiological service center, independent cardiac catheterization center or cancer treatment center. "Health care facility" does not include the office of a private health care practitioner, as defined in Title 24, section 2502, subsection 1-A, whether in individual or group practice. In an ambulatory surgical facility that functions also as the office of a health care practitioner, the following portions of the ambulatory surgical facility are considered to be a health care facility:

- A. Operating rooms;
- B. Recovery rooms;
- C. Waiting areas for ambulatory surgical facility patients;
- C-1. Any space with major medical equipment; and
- D. Any other space used primarily to support the activities of the ambulatory surgical facility.

Options for covered employees of a healthcare facility

The Committee requested options for limiting the exemption for per diem employees to some category of licensed employees. Below are some provisions of state law that would govern various categories of licensees typically found in a healthcare facility.

- Title 32, Ch. 2 – Nursing Home Administrators
- Title 32, Ch. 2-B – EMS professionals
- Title 32, Ch. 9 – Chiropractors
- Title 32, Ch. 16 – Dentists and dental hygienists
- Title 32, Ch. 22 – ASL interpreters
- Title 32, Ch. 31 – Nurses (APRN, RN, LPN) and CNAs
- Title 32, Ch. 32 – Occupational Therapists
- Title 32, Ch. 36 – Osteopathic Physicians
- Title 32, Ch. 45-A – Physical Therapists
- Title 32, Ch. 48 – Doctors
- Title 32, Ch. 51 – Podiatrists
- Title 32, Ch. 56 – Psychologists
- Title 32, Ch. 81 – Alcohol and Drug Counselors
- Title 32, Ch. 83 – Social Workers
- Title 32, Ch. 93 – Private Security Guards
- Title 32, Ch. 97 – Respiratory Care Practitioners
- Title 32, Ch. 103 – Radiology Technicians
- Title 32, Ch. 104 – Dieticians
- Title 32, Ch. 113-B – Complementary health care providers (midwives, acupuncturists, etc.)
- Title 32, Ch. 119 – Counseling professionals
- Title 32, Ch. 127 – Massage therapists
- Title 32, Ch. 143 – Dental professions (dental hygienist, dental radiographer)

If the Committee chose to exempt all per diems working in a healthcare facility, that might include kitchen staff, janitorial staff, security staff, groundskeepers, administrative staff, and other support staff.

Minneapolis exemption for new employers

Until July 1, 2022, Minneapolis allows new employers to provide sick time on an unpaid basis. The exemption applies during an employer's first year of operation, except for a new location in an existing chain.

Alternate Accrual Language

The language below has been adapted from a combination of California's law (section 246 (b) of the Labor Code) and Massachusetts' paid sick leave law (940 CMR 33.07(8)).

Couple of caveats:

- I've based this around employers providing up to 40 hours of EPSL annually. If the committee goes with a different number or a tiered approach, updated or additional charts may be needed.
- The provision specifically for new employees below (Alternate Accrual Method #1) is premised upon the ordinance including a waiting period of 90 days for employees to use their EPSL. If that should change, this language would need to be adjusted as well.
- If we set a minimum number of hours that must be worked per year to receive the benefit, the chart for Alternate Accrual Method #3 will need to be adjusted to eliminate any irrelevant rows.

With those caveats, here's what I propose for insertion where appropriate in Section 2(a):

Alternate Accrual Methods

Employers that prefer not to track accrual of sick time over the course of the benefit year may instead use the following methods for providing lump sums of sick leave or paid time off to their employees. Employers using these methods will be in compliance even if an employee's hours vary from week to week. Employers may accelerate the accrual or increase the number of hours provided to employees if they choose.

Alternate Accrual Method #1 (specifically for new employees):

By the completion of the employee's 90th calendar day of employment, the employer will provide not less than 40 hours or five days of paid sick leave which is immediately available to the employee to use.

Alternate Accrual Method #2:

Employees will be provided with a lump sum of 40 hours of earned sick time at the start of each employee or calendar year and will be eligible to use up to 40 hours of earned sick time during that employee or calendar year.

Alternate Accrual Method #3:

Employees will be provided earned sick time in lump sums at the set rates provided in the chart below based on the average number of hours they work per week.

| Employee's average hours/week | Employer will provide EPSL in lump sums as follows: |
|-------------------------------|---|
| 37.5-40 | 8 hrs/month for 5 months |
| 30 | 5 hrs/month for 8 months |
| 24 | 4 hrs/month for 10 months |
| 20 | 4 hrs/month for 9 months |
| 16 | 3 hrs/month for 10 months |
| 10 | 2 hrs/month for 10 months |
| 5 | 1 hr/month for 10 months |
| Under 5 | 1 hr/month for 8 months |

Rollover Language

Instead of Section 2(b) as written, I would like to propose the following:

Employees accruing earned paid sick time in accordance with this ordinance will have the right to rollover their unused earned paid sick leave up to 40 hours to the next benefit year. Accrual may be delayed while an employee maintains an unused bank of 40 hours.

I believe this more clearly addresses the ability to roll over unused time while also simplifying recordkeeping by allowing accrual to be suspended while an employee is carrying a balance of 40 hours.

Section 1. Definitions

The following definitions shall apply for purposes of this Article:

Child shall mean a biological, adopted, or foster child of the employee; stepchild or legal ward of the employee; child of a domestic partner of the employee; or a child for whom the employee stands in loco parentis.

Earned paid sick time shall mean paid sick time accrued and awarded pursuant to section X.

Employee shall have the same meaning as in Sec. 33.2 of this Code. However, for purposes of this Article, Employee shall not include the following:

1. Any employee who meets all of the following criteria:
 - a. Is licensed
 - b. Is employed by a health care facility
 - c. Is under no obligation to work a regular schedule;
 - d. Works only when he or she indicates that he or she is available to work and has no obligation to work when he or she does not indicate availability; and
 - e. Receives higher pay than that paid to an employee of the same health care facility performing the same job on a regular schedule.
2. Individuals providing childcare in a person's home for fewer than eight hours per week.
- 1.3. Employees who work less than X number of hours per year/week/month for an employer.

Commented [AT1]: Committee: Consider additional exemptions for per diem workers

Commented [AT2]: Committee: Consider how to deal with babysitters.

Commented [AT3]: Committee: Consider minimum number of hours worked.

Employer shall have the same meaning as in Sec. 33.2 of this Code. However, for purposes of this Article, Employer shall not include the following:

1. Any business that has not employed any employees for less than one year.

Family member shall mean a child, grandchild, sibling, spouse, domestic partner, parent, or grandparent of an employee; a spouse or domestic partner of a parent or grandparent of the employee; a sibling of a spouse or domestic partner of an employee; or any other person related by blood to the employee or whose close association with the employee is the equivalent of a family relationship.- (A) Regardless of age, a biological, adopted or foster child, stepchild or legal ward, a child of a domestic partner, a child to whom the employee stands in loco parentis, or an individual to whom the employee stood in loco parentis when the individual was a minor; (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 registered under the laws of any state or political subdivision; (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 affinity whose close association with the employee is the equivalent of a family relationship.~~

Health care professional shall have the same meaning as in 26 M.R.S. § 843.

~~*Parent* shall mean a biological, adoptive, or foster parent of the employee or employee's spouse or domestic partner; a stepparent or legal guardian of the employee or employee's spouse or domestic partner; or a person who stood *in loco parentis* of the employee or the employee's spouse or domestic partner when that person was a minor child.~~

Year shall mean a regular and consecutive 12-month period as determined by the employer.

Section 2. Accrual of Earned Paid Sick Time

(a) All employees shall accrue a minimum of one hour of earned paid sick time for every 30 hours ~~of work~~, ~~up to a maximum accrual of 48 hours in one year.~~ ~~Hours worked shall not include vacation, sick, or other time for which an employee is paid but no actual work is performed.~~

1. ~~Employees may accrue a maximum number of hours of earned paid sick time in one year, based on the size of their employer, as follows:~~

i. ~~Employers with ten or fewer employees: 24 hours~~

ii. ~~Employers with greater than ten employees: 40 hours~~

2. Employees who are exempt from overtime requirements under the Fair Labor Standards Act will be deemed to work 40 hours in each work week for purposes of earned paid sick time accrual, unless their normal work week is less than 40 hours, in which case earned paid sick time accrues based upon that normal work week.

3. ~~Tipped workers~~

4. Employees shall begin to accrue earned paid sick time at the commencement of employment or on the date this law goes into effect, whichever is later.

5. Accrued paid sick time shall be awarded and available for use no more than eight days after it is accrued. Alternatively, an employer may award paid sick time in advance of accrual in an amount anticipated to be accrued over a year's

Commented [AT4]: Councilor Ray to propose alternative accrual methods.

Commented [AT5]: Committee: For review with additional information from Mayor Strimling

Commented [AT6]: Committee: Consider how to handle tipped workers

time.

~~3.6. Employers are not required to allow employees to take earned paid sick time in the employee's first 90 days of employment. However, employees who return to the same employer within one year of termination shall not have to complete an additional 90-day period to be eligible to take earned paid sick time.~~

Commented [AT7]: Committee: Consider the impact on seasonal employees. Consider reducing waiting period.

(b) Earned paid sick time shall not be automatically forfeited with the passage of time, unless the employer has a policy to pay the employee for any remaining sick time at set intervals of not less than one year.

~~1. However, employers may set a cap on the amount of earned paid sick time that an employee can accrue, which cap may not be less than X hours.~~

Commented [AT8]: Committee: For review

~~1.2. N~~However, nothing in this Article 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 earned paid sick time that has not been used.

(c) 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 earned paid sick time accrued at the prior division, entity or location and is entitled to use all earned paid sick time as provided in this section. When there is a separation from employment and the employee is rehired within ~~one year~~ ~~two months~~ of separation by the same employer, previously accrued earned paid sick time that had not been used shall be reinstated. Further, the employee shall be entitled to use accrued earned paid sick time and accrue additional earned paid sick time at the re-commencement of employment.

Commented [AT9]: Committee: Consider this change in the context of the 90-day exemption and renewing rights for seasonal employees.

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

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

(f) Any employer that has a paid leave policy that makes available an amount of paid leave sufficient to meet the accrual requirements of this section, and allows that paid leave to be used for the same purposes and under the same conditions as earned paid sick time under this ordinance, is not required to provide additional paid sick time. This exception applies regardless of how the paid leave is designated, including "sick leave," "paid time off," or otherwise. If an employer has a policy that does not distinguish between sick leave and other types of leave, the employer need not track the actual reasons for leave, so long as leave is available for the same purposes and under the same conditions as earned paid sick time

under this ordinance.

Section 3. Use of Earned Paid Sick Time

(a) Employees may use earned paid sick time for any of the following:

1. Job protected leave provided pursuant to the Maine Employment Leave for Victims of Violence statute;
2. Time needed for diagnosis, care, or treatment of, or recovery from, an employee's mental or physical illness, injury or other adverse health condition, or for preventive medical care for the employee;
3. Time needed for the employee to aid or care for a family member of the employee during diagnosis, care, or treatment of, or recovery from, the family member's mental or physical illness, injury or other adverse health condition, or during preventive medical care for the family member;
4. Time needed by the employee in connection with a child of the employee to attend a school-related conference, meeting, function or other event requested or required by a school administrator, teacher, or other professional staff member responsible for the child's education, or to attend a meeting regarding care provided to the child in connection with the child's health conditions or disability;

Commented [AT10]: Language taken from New Jersey.

- ~~2. Leave for 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; or an employee's need for preventative medical care;~~
- ~~3. Leave for care of a family member'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; or an employee's need for preventative medical care; or~~
- ~~Leave to attend a school meeting necessitated by the family member's health condition or disability; or~~
- ~~4. Leave to attend a meeting at a place where a family member is receiving care necessitated by the family member's health condition or disability.~~

(b) Earned paid sick time 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.

~~(b)~~(c) If an employee uses earned paid sick time for an entire day or shift, earned paid sick time must be paid for the hours the employee was otherwise scheduled to work.

~~(e)~~(d) Employees may not use more than 48 hours of earned paid sick time in a year, unless the employer selects a higher limit.

Section 4. Procedures for Taking Earned Paid Sick Time

(a) Earned paid sick time shall be provided upon the request of an employee.

1. An employer may not require more than ~~seven~~five days' notice for an employee to use earned paid sick time, when the need is foreseeable.
2. When the need for use of earned paid sick time is not foreseeable, an employee must provide notice to the employer as soon as practicable under the facts and circumstances of the particular case
3. An employer that requires notice of the need to use earned paid sick time shall provide a written policy that contains procedures for the employee 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 earned paid sick time to the employee based on non-compliance with such a policy.
4. When the use of earned paid sick time 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 earned paid sick time and shall make a reasonable effort to schedule the use of earned paid sick time in a manner that does not unduly disrupt the operations of the employer.

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

~~(c)~~ An employer may require certification when earned paid sick time is used subject to the following restrictions.

- ~~1.~~ An employer may require an employee to personally verify in writing that the employee has used earned paid sick time only for allowable purposes under this Article.
- ~~1.2.~~ Where the need for earned paid sick time covers more than 24 consecutively scheduled work hours, an employer may require reasonable documentation signed by a health care provider indicating the need for the earned paid sick time taken. Employees who do not have healthcare

coverage may instead provide a signed, written statement evidencing the need for the use of earned sick time.

3. An employer may not require that the documentation explain the nature of the illness or the details of the domestic violence.

4. The employer shall not delay the taking of earned sick time or delay pay for the period in which earned sick time was taken on the basis that the employer has not yet received the certification.

5. Certifications under this subsection shall be kept confidential, except as required by business necessity.

Commented [AT11]: From MA statute and rules.

~~(e) For earned paid sick time of three or more consecutive work days, an employer may require reasonable documentation that the earned paid sick time has been used for a purpose covered by Sec. X(a)(2) through (a)(4). An employer may not require that the documentation explain the nature of the reasons for leave. However, nothing in this section shall be construed to limit an employer's rights with respect to documentation of leave allowed under state or federal law.~~

~~(d)~~

~~(e) Documentation signed by a health care professional indicating that earned paid sick time is necessary shall be considered reasonable documentation for purposes of this section.~~

~~(f)~~

~~(g) If an employer requires documentation of the reasons for taking earned paid sick time, the employer is responsible for paying the employee's out-of-pocket costs for obtaining such documentation.~~

Section 5. Exercise of Rights Protected; Retaliation Prohibited

(a) 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 Article.

(b) It shall be unlawful for an employer or any other person to retaliate against an employee for exercising his or her rights under this Article, including requesting or using earned paid sick time; filing a complaint or otherwise complaining about an employer's alleged violation of this Article; participating in an investigation or other proceeding under this Article; or informing others of their rights under this Article.

(c) It shall be unlawful for an employer's absence control policy to count earned 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.

~~(e)(d)~~ However, nothing in this Article shall be construed to prohibit an employer

from taking disciplinary action against an employee who uses earned paid sick time for purposes other than those described in this Article.

~~(d)~~(e) Protections of this section shall apply to any person who mistakenly but reasonably alleges a violation of this Article.

Section 6. Notice of Rights

(a) Employers shall both display a poster notifying employees of their rights under this Article, and give employees written notice at the commencement of employment or the effective date of this ordinance, whichever is later. The poster and notice shall be consistent with this section.

(b) The notice and poster shall contain the following information: that employees are entitled to earned paid sick time and the amount of earned paid sick time; the terms of its use guaranteed under this Act; that retaliation is prohibited; that each employee has the right to file a complaint or bring a civil action if earned 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 earned paid sick time, and the contact information for the City of Portland where questions about rights and responsibilities under this Act can be answered.

(c) The notice and poster shall be provided in English, Spanish, Somali, Chinese, Vietnamese, Russian, Croatian, French, Arabic, Polish, Acholi, Farsi, Dinka, Khmer, Creole and any language that is the first language spoken by at least 5% of the employer's workforce, provided that such notice has been ~~provided~~ created by the City of Portland.

(d) The City of Portland shall create and make available to employers, in all languages spoken by more than 5% of the City's workforce and any language deemed appropriate by the City of Portland, model notices and posters meeting the requirements of this section. This requirement may be satisfied by posting the model notices and posters on the City's website and making them available for download.

(e) The amount of earned paid sick time available to the employee, the amount of earned paid sick time taken by the employee to date in the year and the amount of pay the employee has received as earned paid sick time shall be ~~recorded in, or on an attachment to, the employee's regular paycheck provided to the employee in writing at least once per month, and upon request of the employee.~~

(f) An employer who willfully violates this section shall be subject to a civil fine in an amount not to exceed \$100 for each separate offense. Each day that an employer allows a violation of this section to continue shall be a separate offense.

Commented [AT12]: Committee: Consider how many translations, etc. the City will provide. What threshold level or trigger for additional translations?

Section 7. Recordkeeping Requirements

(a) Employers shall retain records documenting hours worked by employees and earned paid sick time earned and taken by employees for a period of ~~threesix~~ (36) years. Separate records of earned paid sick time need not be kept if earned paid sick time is not tracked separately by the employer.

(b) Employers shall allow the City of Portland access to the records required by this section, with appropriate notice and at a mutually agreeable time.

~~(c) When an issue arises as to an employee's entitlement to earned paid sick time under this Article, if the employer has not maintained adequate records required by this section, or does not allow the City of Portland reasonable access to such records, it shall be presumed that the employer has violated this Article, absent clear and convincing evidence otherwise.~~

Section 8. Enforcement

(a) Enforcement.

1. The City Manager or his/her designee shall enforce the provisions of this ordinance.

~~2. The City Manager shall adopt rules and regulations for the proper administration and enforcement of this ordinance.~~

(b) Complaint Process

1. Any Employee, ~~including, but not limited to, a Service Employee,~~ alleging a violation of this ordinance may file a written complaint with the City Manager's office.

2. The City Manager or his or her designee may investigate and issue a response to the complaint within fifteen (15) work days following the receipt of a complaint. The City Manager's or his or her designee's response to the complaint shall be final.

3. If the City Manager finds that a violation of this chapter has occurred, he or she may order any and all appropriate relief including, but not limited to, three times the amount of any back wages withheld and the payment of not less than \$100.00 to the employee as a penalty for each day that a violation of this chapter has occurred. If a violation occurred but did not result in wages being withheld, such as in the case of an employee who worked after being unlawfully denied permission to use earned paid sick time, appropriate relief shall include an additional amount of two times what the employee was paid.

4. A violation of this Ordinance may also be considered a civil violation subject to the general penalty provisions of section 1-15 of this Code.

(c) Private Cause of Action.

1. Any Employee, ~~including, but not limited to, a Service Employee,~~ the City or any person aggrieved by a violation of this ordinance may bring an action in a Court of competent jurisdiction against the Employer for any and all violations of this ordinance, including, but not limited to, wages owed under this ordinance. Such action may be brought by a person aggrieved by a violation of this section without first filing a complaint with the City Manager. Actions brought pursuant to this section may be brought as a class action pursuant to the laws of Maine.
2. Upon a judgment being rendered in favor of any employee(s), in any action brought pursuant to this ordinance, such judgment shall include, in addition to the wages adjudged to be due and any penalties assessed, any and all costs of suit including, but not limited to, reasonable attorney's fees.
3. Where applicable, remedies shall also include equitable relief, including reinstatement and back pay, and injunctive relief.
4. The City of Portland shall annually report on the City of Portland website the number and nature of the complaints received pursuant to this ordinance, the results of investigations undertaken pursuant to this ordinance, including the number of complaints not substantiated and the number of notices of violations issued, the number and nature of adjudications pursuant to this ordinance, and the average time for a complaint to be resolved pursuant to this chapter.

Section 9. Confidentiality and Nondisclosure

If an employer possesses health information or information pertaining to domestic violence, sexual assault, harassment or stalking about an employee or employee's family member, such information shall be treated as confidential and not disclosed except to the affected employee, with the permission of the affected employee, as required for the administration of the leave, or as otherwise required by law.

Section 10. Encouragement of More Generous Earned Paid Sick Time Policies; No Effect on More Generous Policies or Laws

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

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

Section 11. Public Education and Outreach

The City of Portland shall develop and implement a multilingual outreach program to inform employees and employers about the availability of earned paid sick time under this ordinance. ~~This program shall include the distribution of notices and other written materials in English, and well as Spanish, Somali, Chinese, Vietnamese, Russian, Croatian, French, Arabic, Polish, Acholi, Farsi, Dinka, Khmer, Creole to all child care and elder care providers, domestic violence shelters, schools, hospitals, community health centers and other health care providers.~~

Section 12. Regulations

The city manager, or his or her designee, shall be authorized to coordinate implementation and enforcement of this Article and shall promulgate appropriate guidelines or regulations for such purposes.

Section 13. 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 14. Effective Date

This Act will take effect on July 1, 2018.

Commented [AT13]: Committee: Consider delay in implementation to allow businesses time to comply.

**PROPOSED CHANGES TO SEC. 8 OF THE PAID SICK LEAVE ORDINANCE
DRAFTED BY CORPORATION COUNSEL AT THE RECOMMENDATION OF THE
HEALTH AND HUMAN SERVICES AND PUBLIC SAFETY COMMITTEE**

Section 8. Enforcement

(a) Enforcement.

1. The City Manager or his/her designee shall enforce the provisions of this ordinance.
2. A violation of this Ordinance may also be considered is a civil violation subject to the general penalty provisions of section 1-15 of this Code.
- ~~2. The City Manager shall adopt rules and regulations for the proper administration and enforcement of this ordinance.~~

(b) Complaint Process

1. Any Employee, ~~including, but not limited to, a Service Employee,~~ alleging a violation of this ordinance may file a written complaint with the City Manager's office.
2. The City Manager or his or her designee may investigate, educate the employer and/or employee, and attempt to mediate a mutually agreeable resolution between the employer and employee.
- ~~2.3. If the City Manager or his or her designee is unable to mediate a mutually agreeable resolution, he or she shall issue a letter to the parties stating his or her findings and determination with respect to whether this Article has been violated. issue a response to the complaint within fifteen (15) work days following the receipt of a complaint. The City Manager's or his or her designee's response to the complaint shall be final.~~
- ~~3. If the City Manager finds that a violation of this chapter has occurred, he or she may order any and all appropriate relief including, but not limited to, three times the amount of any back wages withheld and the payment of not less than \$100.00 to the employee as a penalty for each day that a violation of this chapter has occurred. If a violation occurred but did not result in wages being withheld, such as in the case of an employee who worked after being unlawfully denied permission to use earned paid sick time, appropriate relief shall include an additional amount of two times what the employee was paid.~~
- 4.1. A violation of this Ordinance may also be considered a civil violation subject to the general penalty provisions of section 1-15 of this Code.

(c) Private Cause of Action.

1. Any Employee, ~~including, but not limited to, a Service Employee, the City or any person~~ aggrieved by a violation of this ordinance, who has followed the complaint process in subsection (b) above, and who has received a written determination by the City Manager or his or her designee, may bring an action in a Court of competent jurisdiction against the Employer for any and all violations of this ordinance, including, but not limited to, wages owed under this ordinance. Such action may not be brought by a person aggrieved by a violation of this section without first filing a complaint with the City Manager and receiving a determination. Actions brought pursuant to this section may be brought as a class action pursuant to the laws of Maine.
2. Upon a judgment being rendered in favor of any employee(s), in any action brought pursuant to this ordinance, such judgment shall include, in addition to the wages adjudged to be due and any penalties assessed, any and all costs of suit including, but not limited to, reasonable attorney's fees.
3. Where applicable, remedies shall also include equitable relief, including reinstatement and back pay, and injunctive relief.
4. The City of Portland shall annually report on the City of Portland website the number and nature of the complaints received pursuant to this ordinance, the results of investigations undertaken pursuant to this ordinance, including the number of complaints not substantiated and the number of notices of violations issued, the number and nature of adjudications pursuant to this ordinance, and the average time for a complaint to be resolved pursuant to this chapter.

To: Portland City Council's H&HS Committee

From: Eliza Townsend, Maine Women's Lobby, DrewChristopher Joy, Southern Maine Workers' Center, and Kate Sykes, Southern Maine Democratic Socialists of America

October 18, 2018

Councilors Ray, Ali, and Batson,

As you conclude your first pass of reviewing the proposed ordinance to allow all Portland workers to earn paid sick and safe time, I want to thank you for your time and attention and reiterate a few points.

Urgency

We have been discussing the policy for more than a year and are now heading in to another flu and cold season. Let's remember that in the 2017-18 season, there were 85 deaths from the flu in Maine, and the Maine CDC tells us this is likely an underrepresentation. While other counties experienced higher rates, Cumberland County had the highest number of resulting hospitalizations. This information comes from the CDC's weekly Influenza Surveillance Reports, available at:

<https://www.maine.gov/dhhs/mecdc/infectious-disease/epi/influenza/influenza-surveillance-weekly-updates.shtml>



The flu is not the only form of illness we are concerned about, but it serves as an example of the importance of the ability to earn paid sick time because it is a highly contagious, *preventable* disease. The CDC tells us to wash our hands and to stay home when we are sick, yet many workers cannot afford to stay home. Paid sick time is an important strategy to improve public health.

Need

The argument that "employers can always have a stronger policy" misses the point. Laws governing public health, public safety, and employment exist to address those who will not act in the interest of others unless required to do so. That is why we have health and safety codes, a minimum wage, speed limits, or noise regulations.

An earned paid sick time ordinance will benefit workers in low-wage jobs, primarily women and immigrants. These are the people least able to advocate for themselves with their employers.

The impact on public health and the benefit to low wage workers are two reasons we support a universal policy.

Decisions not yet resolved

There are issues that remain undecided that are very important to our coalition and the workers we represent. These are our positions on several of these issues.

1. Cap on accrual We remain committed to allowing up to 6 full work days in one year. According the CDC, adults with the flu can infect others within 6 feet for up to 7 days after becoming sick. Children may remain contagious longer. <https://www.cdc.gov/flu/about/disease/spread.htm>
As Mayor Strimling documented on October 9, many municipalities require 48 hours as a minimum. The proposal to cut by half the total number of sick hours an employee of a small business can earn penalizes their workers and isn't aligned with good public health policy. We are not in favor of a tiered policy,

however, if this is the policy Council that council pursues, it should add hours over 48 for large businesses, rather than lowering the total accrual for workers in small businesses.

2. Exempting businesses based on size or on their start-up status We are committed to a universal policy that covers businesses of all sizes, in order to achieve the best public health benefit and to improve the well-being of the highest number of employees. This is consistent with most states and municipalities that have adopted earned paid sick time policies and is consistent with the recent trend toward stronger protections. We are unclear as to whether the committee is weighing a phase-in approach for new businesses. If so, it would be important to differentiate between established businesses moving to Portland and start-ups.
3. Accrual of time We remain committed to allowing all workers to accrue time beginning with the commencement of employment. All work has value and should be appropriately compensated. Delaying the accrual by as much as 90 days would have the effect of excluding seasonal workers, which we strongly oppose. The chart distributed by Councilor Ray at the September 25 meeting makes clear that accrual is slow even for full time employees, who would need to work 6 weeks to earn one full day off; part-time workers would accrue at a pro-rated rate.
4. Penalties and back-wages We listened with interest when Ms. Torregossa stated that section 8 (b) 3 conflicts with state law. We direct your attention to a related state law, Title 26, Chapter 7, Subsection 6-B which can be found at: <http://legislature.maine.gov/legis/statutes/26/title26sec850.html> That law provides for liquidated damages paid to the affected individual in an amount equal to 3 times the amount of total assessed fines. Thus, there is precedent in state law for damages being payable to the individual rather than the government.

Decisions made to date

We congratulate and thank you for adhering to a broad definition of family. We are delighted that you have chosen not to exclude part-time, seasonal workers, and most per diem workers.

Other decisions need not hold up the passage of this ordinance. We are comfortable with the requirement of 7 days' notice if the situation is foreseeable; access to information monthly or on request instead of on a pay stub; retaining records for 3 years rather than 6. We are confident that the city can find a solution and translate a poster into multiple languages, which is an important strategy to reach immigrant workers.

Several decisions are ones we can live with, depending on the final details. We look forward to:

- A specific definition of a health care worker (as it pertains to per diem workers)
- A proposed Return to Work affidavit as an alternative to documentation from a doctor
- The city's proposal for how it will hold accountable employers with inadequate documentation.

To summarize, we appreciate your time and attention to this important matter of public health and basic rights for all workers. We recognize the heavy workload of your committee but ask you to move this policy forward before Portland finds itself in the throes of another flu season.

As you move forward, we urge you to adopt a strong policy to protect the widest number of workers (and their coworkers, customers and charges), allow them to accrue time immediately and truly get well before returning to work, and that includes strong enforcement mechanisms.

We look forward to continuing to work with you to advance this important policy.