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Title: A substitute ordinance requiring employers within the city to provide paid sick leave to employes.

Sponsors: THE CHAIR

Indexes: SICK LEAVE

Attachments: 1. Fiscal Note, 2. Letter transmitting proposed ordinance to City Clerk from 9 to 5, National Association of Working Women, 3. Request for a Legal Opinion, 4. Legal Opinion, 5. Cover Letter Transmitting Milwaukee Paid Sick Days Ordinace, 6. E-Mail from a Citizen Opposed to Forced Paid Sick Leave, 7. Letter in Support from David Riemer, 8. E-mails to Common Council, 9. Good Jobs and Livable Neighborhoods Coalition, 10. Letter from Dr. Peter Blewett, 11. Speakers Registration Form, 12. Nonspeakers Registration Form, 13. Milwaukeeans Testify For paid Sick time at Common Council, 14. A Voice For Working Women, 15. 10 out of 10 Milwaukeeans deserve paid sick days, 16. 10 things That Could Happen to You if You Didn't Have Paid Sick Days, 17. Working Women Vote Our Values, 18. Milwaukee Paid Sick Days Ordinance, 19. Family Values at Work: It's About Time!, 20. Notice List, 21. Support Lettter from Julia Kleppin, 22. Notice Published on 11-12-08

Date	Ver.	Action By	Action	Result	Tally
7/1/2008	0	COMMON COUNCIL	ASSIGNED TO		
7/8/2008	1	CITY CLERK	DRAFT SUBMITTED		
7/9/2008	0	JUDICIARY & LEGISLATION COMMITTEE	HEARING NOTICES SENT		
7/9/2008	0	JUDICIARY & LEGISLATION COMMITTEE	HEARING NOTICES SENT		
7/9/2008	0	JUDICIARY & LEGISLATION COMMITTEE	HEARING NOTICES SENT		
7/9/2008	0	JUDICIARY & LEGISLATION COMMITTEE	HEARING NOTICES SENT		
7/21/2008	0	JUDICIARY & LEGISLATION COMMITTEE	RECOMMENDED FOR PLACING ON FILE	Pass	5:0
7/30/2008	1	COMMON COUNCIL	PLACED ON FILE	Pass	13:1
11/12/2008	1	CITY CLERK	PUBLISHED		

080420
SUBSTITUTE 1

THE CHAIR
A substitute ordinance requiring employers within the city to provide paid sick leave to employes.
109-15-4-h cr
109-15-4-i cr
112 cr
This ordinance requires employers located within the geographic boundaries of the city to provide paid sick leave benefits as follows:

1. All employers shall provide a minimum of one hour of paid sick leave for every 30 hours worked by an employe. Employers will not be required to provide more than 72 hours of sick leave for an employe in a calendar year.

2. Employes of small businesses will not accrue more than 40 hours of paid sick leave in a calendar year, unless the employer selects a higher limit.

3. Paid sick leave shall begin to accrue at the commencement of employment, and employes shall be entitled to use accrued paid sick leave beginning on the 90th calendar day following commencement of their employment. After the 90th calendar day of employment, employes may use sick leave as it is accrued.

4. 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 accrual requirements of this ordinance that may be used for the same purposes and under the same conditions as paid leave under this ordinance, is not required to provide additional paid sick leave.

The requirements of this ordinance apply to all employers within the city, except the federal government, the state of Wisconsin, including any office, department, agency, authority, institution, association, society or other body of the state, including the legislative and judiciary, or county or local government.

Authority to enforce the provisions of this ordinance, including but not limited to the power to receive complaints, remedy violations, adopt rules, issue subpoenas and other redress following a hearing regarding a violation, is assigned to the equal rights commission.
Whereas, A large number of workers in the city of Milwaukee do not have paid sick days available to them. This problem is most prevalent among part-time employes but also is widespread among full-time employes working in many sectors of the local economy. The problem is greatest among workers of the local economy. The problem is greatest among workers toward the lower end of the economic spectrum, although it is by no means limited to such workers and affects many middle-income workers as well as higher-income workers. Further, a large number of workers who have paid sick days available to them do not have an adequate number of hours of such leave to reasonably meet their needs. Even more of these workers are not allowed to use what paid sick days they have for the care of a family member.

; and

Whereas, The absence or inadequacy of paid sick days among workers in Milwaukee poses serious problems not only for affected workers but also for their families, their employers, the health care system, and the community as a whole. Among these problems are the following:
1. When workers have no paid sick days or an inadequate amount available to them, they are more likely to come to work when they are sick. Working when sick is often counterproductive from a health standpoint, because it may cause the employe's condition to worsen or may delay the employe's recovery, thus compounding the hardship to the employe and his or her family caused by the illness. In addition, the employe's job productivity is likely to suffer if he or she is working while sick or injured.
2. Employes who come to work when they are sick may expose other employes to infectious diseases, such as the flu. When that occurs, some of the employes who have been exposed will also become ill, which not only creates hardships for those workers and their families but also increases costs to the health care system and undermines job productivity.
3. In those industries where workers have substantial contact with customers, or with certain goods

that come into contact with customers, such as food, there is a risk that a sick worker will jeopardize the health of members of the public by exposing them, directly or indirectly, to germs and disease.
4. When workers do not have paid sick days or an adequate amount of paid sick days available to them, they are more likely to come to work notwithstanding the medical problems facing their children or other family members. When that occurs, ill or injured family members may not receive the care, attention and medical assistance necessary to aid their recovery. Their health problems consequently may intensify or be prolonged, because it often will take longer for them to recover when responsible adult family members are not able to care for them at home or take them to medical appointments.
5. A worker who has no paid sick days or an inadequate amount to take time off to care for a sick child may send the child, even though sick, to school or a child care center, thereby exposing other children to germs and disease. Inevitably, some children thus exposed will become ill due to their close proximity to and interactions with the sick child. Equally problematic, a worker may keep an older child home from school to care for a younger ill sibling.
6. Without adequate paid sick days, working parents who must stay home when they, their children, or other family members are ill or injured lose earnings and may risk a loss of employment, thereby placing the family's economic security in jeopardy and increasing the likelihood that taxpayer-funded sources will have to be used to provide for the family's needs.
7. Without adequate paid sick days, it is much more difficult for workers to schedule medical appointments for themselves and their children and other family members. As a result, routine medical appointments that can prevent the onset of illness or injury are often not scheduled; and medical appointments to treat an existing illness or injury are not scheduled, or are scheduled only after the illness or injury has become acute. When medical care is sacrificed in the short run, medical costs increase in the long run. Hospitalization of patients, with its attendant costs, sometimes becomes necessary because preventive health measures were not taken earlier.
8. Without adequate paid sick days, it is much more difficult for workers to care for family members on a short-term basis. As a result, it sometimes becomes necessary for family members to be placed in nursing homes, thereby increasing nursing care costs.

; and

Whereas, The foregoing problems are particularly serious for single-parent households. The unavailability or inadequacy of paid sick leave hits women and people of color in the Milwaukee workforce particularly hard, but no demographic or ethnic group is spared from hardship when sick leave is unavailable or inadequate. To safeguard the public welfare, health, safety and prosperity of Milwaukee, it is essential that all persons working in our community be able to earn paid sick days that are adequate to ensure a decent and healthy life for them and their families. Ensuring the adequacy of paid sick days for employes in Milwaukee will ensure a more stable workforce in our community and thereby benefit not only workers and their families but employers and the community as a whole. It is in the interest of all Milwaukeeans to require that employers benefiting from the opportunity to do business here make available to their employes a reasonable number of paid sick days. Implementation of this policy serves the public interest and constitutes a significant public benefit.

;now, therefore

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. Section 109-15-4-h and i of the code is created to read:
109-15. Equal Rights Commission.
4.

h. Enforce the provisions of ch. 112. The commission shall exercise all authority granted under this subsection with respect to violations of ch. 112 including but not limited to the power to receive complaints, remedy violations, adopt rules, issue subpoenas and order redress following a hearing regarding violation of ch. 112.
i. Use the procedures described in s. 109-17 in acting on complaints concerning violations of ch. 112.
i-1. Any party aggrieved by failure to act on a complaint filed or by the decision of an administrative law judge pursuant to the procedures described in s. 109-17 may seek review pursuant to s. 109-21 within the time limits and the procedure described in that section.
i-2. In the event the commission is abolished or reconstituted and its authority transferred to a successor entity, the successor entity shall have full authority to enforce the provisions of ch. 112.
i-3. In the event the commission, due to lack of funding or staffing, is unable to enforce the provisions of ch. 112, any agency enforcing rights protected under ch. 109 shall also have full authority to enforce the provisions of ch. 112.

Part 2. Chapter 112 of the code is created to read:

CHAPTER 112
PAID SICK LEAVE FOR EMPLOYES PROVIDED BY
EMPLOYERS WITHIN THE CITY

112-1. Definitions. In this chapter:
1. CITY means as defined in ch. 1 of the city charter.
2. DOMESTIC ABUSE means as defined in s. 968.075(1)(a), Wis. Stats.
3. EMPLOYE means any person who is employed within the geographic boundaries of the city by an employer, and includes a part-time or temporary employe.
4. EMPLOYER means as defined in s. 104.01(3)(a), Wis. Stats. For purposes of this chapter, "employer" does not include any of the following: a. The United States government.
b. The state of Wisconsin, including any office, department, agency, authority, institution, association, society or other body of the state, including the legislature and the judiciary.
c. Any county or local government.
5. FAMILY MEMBER means any of the following:
a. A child as defined in s. 103.10(1)(a), Wis. Stats.
b. A parent as defined in s. 103.10(1)(f), Wis. Stats.
c. A person to whom the employe is legally married under the laws of Wisconsin.
d. A grandparent defined as the parent of a parent or spouse of a grandparent.
e. A grandchild defined as the child of a child.
f. A biological, foster or adopted sibling or spouse of a biological, foster or adopted sibling.
g. A domestic partner as defined in s. 111-3.
h. Any other individual related by blood or affinity whose close association with the employe is the equivalent of a family relationship.
6. PAID SICK LEAVE means leave that is compensated at the same hourly rate as the employe earns from his or her employment and is provided by an employer to an employe for the purposes described in s. 112-3.
7. RETALIATORY PERSONNEL ACTION means the discharge, suspension or demotion by an employer of an employe or any other adverse employment action.
8. SEXUAL ASSAULT means as defined in s. 940.225, Wis. Stats.
9. SMALL BUSINESS means any private individual, firm, partnership, institution, corporation, or association for which fewer than 10 persons work for compensation during a given week. In determining the number of persons performing work for compensation during a given week, all persons performing work for compensation on a full-time, part-time, or temporary basis shall be counted, including persons made available to work through the services of a temporary services or

staffing agency or similar entity. In situations in which the number of persons who work for compensation per week fluctuates above and below 10 or more per week over the course of a year, business size will be determined for the current calendar year based upon the average number of persons who worked for compensation per week during the preceding calendar year.

10. STALKING means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or suffer substantial emotional distress.

112-3. Accrual of Paid Sick Leave.

1. All employes have the right to paid sick leave as provided in this chapter.

2. Except as provided in sub.3, all employers shall provide a minimum of one hour of paid sick leave for every 30 hours worked by an employe. Employers will not be required under this section to provide more than 72 hours of sick leave for an employe in a calendar year.

3. Employes of small businesses will not accrue more than 40 hours of paid sick leave in a calendar year, unless the employer selects a higher limit.

4. Employes who are exempt from requirements under s. 13(a)(1) of the Federal Fair Labor Standards Act with respect to payment of overtime will be assumed to work 40 hours in each work week for purposes of paid sick leave accrual unless their regular work week is less than 40 hours, in which case paid sick leave accrues based upon that regular work week.

5. Paid sick leave shall accrue in hour unit increments.

6. Paid sick leave as provided in this section shall begin to accrue at the commencement of employment.

7. Employes shall be entitled to use accrued paid sick leave beginning on the 90th calendar day following commencement of their employment. After the 90th calendar day of employment, employes may use sick leave as it is accrued.

8. Paid sick leave shall be carried over to the following calendar year; however, an employe's use of sick leave provided in each calendar year shall not exceed 40 hours for employes of small businesses and 72 hours for employes of all other businesses.

9. 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 accrual requirements of this chapter that may be used for the same purposes and under the same conditions as paid sick leave under this chapter is not required to provide additional paid sick leave.

10. Nothing in this chapter shall be construed to prevent employers from adopting or retaining leave policies that are more generous than the policies required under this chapter.

11. Nothing in this chapter shall be construed as requiring financial or other reimbursement to an employe from an employer upon the employe's termination, resignation, retirement or other separation from employment for accrued paid sick leave that has not been used.

12. When there is a separation from employment and the employe is rehired within one year of separation by the same employer, previously accrued paid sick leave that had not been used shall be reinstated. Further, the employe shall be entitled to use accrued paid sick leave at the commencement of employment following a separation from employment of one year or less.

112-5. Use of Paid Sick Leave.

1. Paid sick leave shall be provided to an employe by an employer for:

a. An employe's mental or physical illness, injury or health condition or need for medical diagnosis, care or treatment of a mental or physical illness, injury or health condition or need for preventive medical care.

b. Care of a family member with a mental or physical illness, injury or health condition who needs medical diagnosis, care or treatment of a mental or physical illness, injury or health condition or who needs preventive medical care.

c. Absence necessary due to domestic abuse, sexual assault or stalking, provided the leave is for any of the following:
c-1. Seek medical attention for the employe or employe's child, spouse, parent, grandparent or extended family member to recover from physical or psychological injury or disability caused by domestic or sexual violence.
c-2. Obtain services from a victim services organization.
c-3. Obtain psychological or other counseling.
c-4. Seek relocation due to the domestic or sexual violence or stalking.
c-5. Take legal action, including preparing for or participating in any civil or criminal legal proceeding related to or resulting from the domestic or sexual violence.
2. An employer may not require, as a condition of an employe's taking paid sick leave, that the employe search for or find a replacement worker to cover the hours during which the employe is on paid sick leave.
3. An employer may not impose unreasonable barriers to use of paid sick leave or require unreasonable documentation of illness when an employe takes sick leave.
4. An employer may not penalize an employe for use of sick leave by reducing any benefits of employment otherwise due the employe.

112-7. Exercise of Rights Protected; Retaliation Prohibited.
1. An employer or any other person shall not interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this chapter.
2. An employer shall not take retaliatory personnel action or discriminate against an employe because the employe has exercised rights protected under this chapter. Such rights include but are not limited to the right to use paid sick leave pursuant to this chapter; the right to file a complaint or inform any person about any employer's alleged violation of this chapter; and the right to inform any person of his or her potential rights under this chapter.
3. No employer may treat sick leave taken under this chapter as an absence that may lead to or result in discipline, discharge, demotion, suspension or any other adverse action, or treat the use of paid sick leave guaranteed under this chapter as a negative factor in hiring, evaluation or promotion.
4. Protections of this section shall apply to any person who mistakenly but in good faith alleges violations of this chapter.

112-9. Notice and Posting.
1. Employers shall give notice that employes are entitled to paid sick leave, the amount of paid sick leave, and the terms of its use guaranteed under this chapter and that retaliation against employes who request or use paid sick leave is prohibited.
2. Employers may comply with this section by supplying each of their employes with a notice in English, Hmong and Spanish that contains the information required in sub. 1.
3. Employers may comply with this section by displaying a poster in a conspicuous and accessible place in each establishment where such employes are employed which contains in English, Hmong and Spanish all information required under sub. 1.

112-11. Employer Records. Employers shall retain records documenting hours worked by employes and paid sick leave taken by employes, for a period of 5 years.

112-13. Confidentiality and Nondisclosure. An employer may not require disclosure of information relating to domestic abuse, sexual assault or stalking or the details of an employe's medical condition as a condition of providing paid sick leave under this chapter. If an employer possesses health information or information pertaining to domestic abuse, sexual assault or stalking about an employe or employe's child, parent, spouse, extended family member or other individual described in s. 112-1-

4, such information shall be treated as confidential and not disclosed except to the affected employe or with the permission of the affected employe.

112-15. Encouragement of More Generous Leave Policies; No Effect on More Generous Policies.
1. Nothing in this chapter shall be construed to discourage or prohibit an employer from the adoption or retention of a paid leave policy more generous than the one required herein.
2. Nothing in this chapter shall be construed as diminishing the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous leave to an employe than required herein.
3. Nothing in this chapter shall be construed as diminishing the rights of public employes regarding paid sick leave or use of sick leave.

112-17. Other Legal Requirements. This chapter provides minimum requirements pertaining to paid sick leave 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 greater accrual or use by employes of sick leave, whether paid or unpaid, or that extends other protections to employes.

112-19. Preemption. Nothing in this chapter shall be interpreted or applied so as to create any power or duty in conflict with federal or state law.

Part 3. This ordinance shall be effective upon publication as provided in s. 9.20(7), Wis. Stats. Implementation of all provisions of this ordinance shall be accomplished no later than 90 days following publication.

APPROVED AS TO FORM

_____
Legislative Reference Bureau
Date: _____
IT IS OUR OPINION THAT THE ORDINANCE
IS LEGAL AND ENFORCEABLE

_____
Office of the City Attorney
Date: _____

LRB08343-1
TWM:mbh
7/8/2008