



City of Chicago



O2016-2678

Office of the City Clerk

Document Tracking Sheet

Meeting Date:

4/13/2016

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Mendoza (Clerk)
Burke (14)
Harris (8)

Type:

Ordinance

Title:

Amendment of Municipal Code Chapter 1-24 concerning

Committee(s) Assignment:

Chicago Minimum Wage Ordinance by including paid sick
leave
Committee on Workforce Development and Audit

ORDINANCE

WHEREAS, The City of Chicago is a home-rule unit of government under Article VII, Section 6(a) of the 1970 Constitution of the State of Illinois and, as such, may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, Promoting the welfare of those who work within the City's borders plainly meets this criterion; and

WHEREAS, Employees in every industry occasionally require time away from the workplace to tend to their own health or the health of family members. Parents and guardians without paid sick days lose income and risk losing their jobs when a child is ill or needs medical care; and

WHEREAS, In Chicago, forty-three percent of private sector workers receive no paid sick leave; and

WHEREAS, Paid sick leave has a positive effect on the health of not only employees and their family members, but also the health of fellow workers and the public at large. The most comprehensive national survey of U.S. restaurant workers found that two-thirds of restaurant waitstaff and cooks have come to work sick; and

WHEREAS, Parents who lack paid sick leave are more than twice as likely as parents who have paid sick leave to send a sick child to school or daycare, and five times more likely to take their child or a family member to a hospital emergency room because they were unable to take time off work during their regular work hours; and

WHEREAS, Paid sick leave reduces health care expenditures by promoting access to primary and preventive care. Nationally, providing all workers with paid sick leave would result in \$1.1 billion in annual savings in hospital emergency department costs; and

WHEREAS, Many employers recognize that a healthy workforce is more productive and that paid sick leave retains valued employees, and therefore already have such policies in place. Replacing workers can cost anywhere from twenty-five to two hundred percent of an employee's annual compensation; and

WHEREAS, Nearly one in four American women report domestic violence by an intimate partner, nearly one in five women have been raped, and nearly one in six women have been stalked. Many workers, men and women, need time off to care for themselves after these incidents, or to find solutions, such as protective orders or new housing, to avoid or prevent further domestic or sexual violence. Without paid time off, victims are in grave danger of losing their jobs, which can be devastating when victims need economic security to ensure their own safety and that of their children; and

WHEREAS, Over twenty municipalities, including Jersey City, New York City, San Francisco, Seattle, and Portland have passed legislation requiring employers within their jurisdictions to provide paid sick leave; and

WHEREAS, At a time when the economy shows significant signs of improvement, it behooves this legislative body to require Chicago employers to implement paid sick leave policies to promote and protect the health and well-being of the working citizens of our City; and

WHEREAS, A cost model developed by the Civic Consulting Alliance found that the paid sick leave framework reflected in this ordinance would result in only a small, 0.7% to 1.5% increase in labor costs for most employers; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. The foregoing recitals, as well as Section 2 of the report of Mayor Rahm Emanuel's Working Families Task Force, are hereby incorporated as the findings of the City Council.

SECTION 2. Section 2-25-050 of the Municipal Code of Chicago is hereby amended by deleting the language stricken and inserting the language underscored, as follows:

2-25-050 Powers and duties of the department.

(Omitted text is not affected by this ordinance)

(b) Powers and duties of the commissioner and the department. The powers and duties of the commissioner and department shall be as follows:

(Omitted text is not affected by this ordinance)

(19) To supervise the investigation, execution, and enforcement of the Chicago Minimum Wage and Paid Sick Leave Ordinance, Chapter 1-24 of this Code, the Toy Safety Ordinance, Chapter 7-36 of this Code, the Condominium Ordinance, Chapter 13-72 of this Code, and any other ordinance administered or enforced by the department, including all rules or regulations pertaining thereto or promulgated thereunder;

(Omitted text is not affected by this ordinance)

SECTION 3. Chapter 1-24 of the Municipal Code of Chicago is hereby amended by deleting the language stricken and inserting the language underscored, as follows:

CHAPTER 1-24

THE CHICAGO MINIMUM WAGE AND PAID SICK LEAVE ORDINANCE

1-24-010 Definitions.

For purposes of this chapter, the following definitions apply:

(Omitted text is not affected by this ordinance)

"Construction industry" means any constructing, altering, reconstructing, repairing, rehabilitating, refinishing, refurbishing, remodeling, remediating, renovating, custom fabricating, maintenance, landscaping, improving, wrecking, painting, decorating, demolishing, and adding to or subtracting from any building, structure, highway, roadway, street, bridge, alley, sewer, ditch, sewage disposal plant, water works, parking facility, railroad, excavation or other structure, project, development, real property or improvement, or to do any part thereof, whether or not the performance of the work herein described involves the addition to, or fabrication into, any structure, project, development, real property or improvement herein described of any material or article of merchandise. Construction shall also include

moving construction related materials on the job site to or from the job site, snow plowing, snow removal, and refuse collection.

(Omitted text is not affected by this ordinance)

“Domestic partner” means any person who has a registered domestic partnership, or qualifies as a domestic partner under Section 2-152-072 of this Code or as a party to a civil union under the Illinois Religious Freedom Protection and Civil Union Act, 750 ILCS 75/1 et seq., as currently in force and hereafter amended.

(Omitted text is not affected by this ordinance)

“Employee”, “Gratuities”, and “Occupation” have the meanings ascribed to those terms in the Minimum Wage Law, with the exception that: (1) all Domestic Workers, including Domestic Workers employed by Employers with fewer than 4-four employees, shall fall under the definition of the term “Employee-;” and (2) for purposes of Section 1-24-045, any individual permitted to work by an Employer in an Occupation, regardless of the number of persons the Employer employs, shall fall under the definition of the term “Employee.”

(Omitted text is not affected by this ordinance)

“Fair Labor Standards Act” means the United States Fair Labor Standards Act of 1938, 29 USC § 201 et seq., as currently in force on the effective date of this chapter and as thereafter hereafter amended.

“Family and Medical Leave Act” means the United States Family and Medical Leave Act of 1993, 29 USC § 2601 et seq., as currently in force and hereafter amended.

“Family member” means a Covered Employee’s child, legal guardian or ward, spouse under the laws of any state, domestic partner, parent, spouse or domestic partner’s parent, sibling, grandparent, grandchild, or any other individual related by blood or whose close association with the Employee is the equivalent of a family relationship. A child includes not only a biological relationship, but also a relationship resulting from an adoption, step-relationship, and/or foster care relationship, or a child to whom the Employee stands in loco parentis. A parent includes a biological, foster, stepparent or adoptive parent or legal guardian of an Employee, or a person who stood in loco parentis when the Employee was a minor child.

“Health care provider” means any person licensed to provide medical or emergency services, including, but not limited to, doctors, nurses, and emergency room personnel.

“Minimum Wage Law” means the Illinois Minimum Wage Law, 820 ILCS 105/1 et seq., as currently in force on the effective date of this chapter and as thereafter hereafter amended.

“Paid Sick Leave” means time that is provided by an Employer to a Covered Employee that is eligible to be used for the purposes described in subsection 1-24-045(b) of this chapter, and is compensated at the same rate and with the same benefits, including health care benefits, that the Covered Employee regularly earns during hours worked.

(Omitted text is not affected by this ordinance)

“Wage” means compensation due an Employee by reason of his or her employment.

(Omitted text is not affected by this ordinance)

1-24-045 Paid Sick Leave.

(a) General Provisions.

(1) Any Covered Employee who works at least 80 hours for an Employer within any 120-day period shall be eligible for Paid Sick Leave as provided under this section.

(2) Where a Covered Employee is engaged in an Occupation in which Gratuities have customarily and usually constituted part of the remuneration, his or her Employer shall pay at least the full Chicago minimum wage, as provided in Section 1-24-020, for Paid Sick Leave.

(3) Unless an applicable collective bargaining agreement provides otherwise, upon a Covered Employee's termination, resignation, retirement, or other separation from employment, his or her Employer is not required to provide financial or other reimbursement for unused Paid Sick Leave.

(b) Accrual of Paid Sick Leave.

(1) Paid Sick Leave shall begin to accrue either on the 1st calendar day after the commencement of a Covered Employee's employment or on the effective date of this amendatory ordinance of 2016, whichever is later.

(2) For every 40 hours worked after a Covered Employee's Paid Sick Leave begins to accrue, he or she shall accrue one hour of Paid Sick Leave. Paid Sick Leave shall accrue only in hourly increments; there shall be no fractional accruals.

(3) A Covered Employee who is exempt from overtime requirements under this chapter shall be assumed to work 40 hours in each work week for purposes of Paid Sick Leave accrual, unless his or her normal work week is less than 40 hours, in which case Paid Sick Leave shall accrue based upon that normal work week.

(4) For each Covered Employee, there shall be a cap of 40 hours Paid Sick Leave accrued per 12-month period, unless his or her Employer sets a higher limit. The 12-month period for a Covered Employee shall be calculated from the date he or she began to accrue Paid Sick Leave.

(5) At the end of a Covered Employee's 12-month accrual period, he or she shall be allowed to carry over to the following 12-month period half of his or her unused accrued Paid Sick Leave, up to a maximum of 20 hours.

(6) If an Employer is subject to the Family and Medical Leave Act, each of the Employer's Covered Employees shall be allowed, at the end of his or her 12-month Paid Sick Leave accrual period, to carry over up to 40 hours of his or her unused accrued Paid Sick Leave, in addition to the carryover allowed under subsection 1-24-045(b)(5), to use exclusively for Family and Medical Leave Act eligible purposes.

(7) If an Employer has a policy that grants Covered Employees paid time off in an amount and a manner that meets the requirements for Paid Sick Leave under this section, the Employer is not required to provide additional paid leave. If such Employer's policy awards the full complement of paid time off immediately upon date of eligibility, rather than using an accrual model, the

Employer must award each Covered Employee 40 hours paid time off within one calendar year of his or her date of eligibility.

(c) Use of Paid Sick Leave.

(1) An Employer shall allow a Covered Employee to begin using Paid Sick Leave no later than on the 180th calendar day following the commencement of his or her employment. A Covered Employee is entitled to use no more than 40 hours of Paid Sick Leave per 12-month period, unless his or her Employer sets a higher limit. The 12-month period for a Covered Employee shall be calculated from the date he or she began to accrue Paid Sick Leave. If a Covered Employee carries over 40 hours of Family and Medical Leave Act leave pursuant to subsection 1-24-045(b)(6) and uses that leave, he or she is entitled to use no more than an additional 20 hours of accrued Paid Sick Leave in the same 12 month period, unless the Employer sets a higher limit. Within these limitations, Covered Employee shall be allowed to determine how much accrued Paid Sick Leave he or she needs to use, provided that his or her Employer may set a reasonable minimum increment requirement not to exceed four hours per day.

(2) A Covered Employee may use Paid Sick Leave when:

(A) he or she is ill or injured, or for the purpose of receiving medical care, treatment, diagnosis, or preventive medical care;

(B) a member of his or her family is ill or injured, or to care for a family member receiving medical care, treatment, diagnosis, or preventive medical care;

(C) he or she, or a member of his or her family, is the victim of domestic violence, as defined in Section 103 of the Illinois Domestic Violence Act of 1986, or a sex offense, as defined in Article 11 and Sections 12-7.3, 12-7.4, and 12-7.5 of the Illinois Criminal Code of 2012; or

(D) his or her place of business is closed by order of a public official due to a public health emergency, or he or she needs to care for a child whose school or place of care has been closed by order of a public official due to a public health emergency.

(3) An Employer shall not require, as a condition of a Covered Employee taking Paid Sick Leave, that he or she search for or find a replacement worker to cover the hours during which he or she is on Paid Sick Leave.

(4) If a Covered Employees's need for Paid Sick Leave is reasonably foreseeable, an Employer may require up to seven days' notice before leave is taken. If the need for Paid Sick Leave is not reasonably foreseeable, an Employer may require a Covered Employee to give notice as soon as is practicable on the day the Covered Employee intends to take Paid Sick Leave by notifying the Employer through via phone, e-mail, or text message. For purposes of this subsection, needs that are "reasonably foreseeable" include, but are not limited to, prescheduled appointments with health care providers for the Covered Employee or for a family member, and court dates in domestic violence cases. Any notice requirement imposed by an Employer pursuant to this subsection shall be waived in the event a Covered Employee is unable to give notice because he or she is unconscious, or otherwise medically incapacitated.

(5) Where a Covered Employee is absent for more than three consecutive work days, his or her Employer may require certification that the use of Paid Sick Leave was authorized under subsection 1-24-045(c)(2). For time used pursuant to subsections 1-24-045(c)(2)(A) or (B),

documentation signed by a licensed health care provider shall satisfy this requirement. An Employer shall not require that such documentation specify the nature of the Covered Employee's or the Covered Employee's family member's injury, illness, or condition, except as required by law. For Paid Sick Leave used pursuant to subsection 1-24-045(c)(2)(C), a police report, court document, a signed statement from an attorney, a member of the clergy, or a victim services advocate, or any other evidence that supports the Covered Employee's claim, including a written statement from him or her, or any other person who has knowledge of the circumstances, shall satisfy this requirement. The Covered Employee may choose which document to submit, and no more than one document shall be required if the Paid Sick Leave is related to the same incident of violence or the same perpetrator. The Employer shall not delay the commencement of Paid Sick Leave taken for one of the purposes in subsection 1-24-045(c)(2), nor delay payment of Wages, on the basis that the Employer has not yet received the required certification.

(6) Nothing in this section shall be construed to prohibit an Employer from taking disciplinary action, up to and including termination, against a Covered Employee who uses Paid Sick Leave for purposes other than those described in this subsection 1-24-045(c)(2).

(c) This Section 1-24-045 provides minimum Paid Sick Leave requirements; it shall not be construed to affect the applicability of any other law, regulation, requirement, policy, or standard that provides for greater Paid Sick Leave benefits.

1-24-050 Exclusions.

(Omitted text is not affected by this ordinance)

(b) By any person subject to subsection 4(a)(3), subsection 4(d), subsection 4(e), Section 5, or Section 6 of the Minimum Wage Law, with the exception that persons subject to Section 5 of the Minimum Wage Law shall be entitled to all the rights provided under Section 1-24-045 of this chapter;

(Omitted text is not affected by this ordinance)

1-24-060 Application to collective bargaining agreements.

Nothing in this chapter shall be deemed to interfere with, impede, or in any way diminish the right of eEmployees to bargain collectively with their eEmployers through representatives of their own choosing in order to establish wages or other conditions of work in excess of the applicable minimum standards of the provisions of this chapter. The minimum wage requirements of this chapter may be waived in a bona fide collective bargaining agreement, but only if the waiver is set forth explicitly in such agreement in clear and unambiguous terms. Nothing in Section 1-24-045 shall be deemed to affect the validity or change the terms of bona fide collective bargaining agreements in force on the effective date of this amendatory ordinance of 2016. After that date, requirements of Section 1-24-045 may be waived in a bona fide collective bargaining agreement, but only if the waiver is set forth explicitly in such agreement in clear and unambiguous terms. In no event shall Section 1-24-045 apply to any Employee working in the construction industry who is covered by a bona fide collective bargaining agreement.

1-24-070 Notice and posting.

(a) Every Employer shall post in a conspicuous place at each facility where any Covered Employee works that is located within the geographic boundaries of the City a notice advising the Covered Employee of the current minimum Wages under this chapter, and of his or her rights under

this chapter, including his or her right to Paid Sick Leave. The commissioner shall prepare and make available a form notice that satisfies the requirements of this subsection 1-24-070(a). Employers that do not maintain a business facility within the geographic boundaries of the City and households that serve as the worksites for Domestic Workers are exempt from this subsection 1-24-070(a).

(b) Every Employer shall provide with the first paycheck subject to this chapter issued to a Covered Employee a notice advising the Covered Employee of the current minimum Wages under this chapter, and of ~~the Employee's~~ his or her rights under this chapter, including his or her right to Paid Sick Leave. The commissioner shall prepare and make available a form notice that satisfies the requirements of this subsection 1-24-070(b).

1-24-080 Retaliation prohibited.

It shall be unlawful for any Employer to discriminate in any manner or take any adverse action against any Covered Employee in retaliation for exercising, or attempting in good faith to exercise, any right under this chapter, including, but not limited to, disclosing, reporting, or testifying about any violation of this chapter or regulations promulgated thereunder. For purposes of this Section, prohibited adverse actions include, but are not limited to, unjustified termination, unjustified denial of promotion, unjustified negative evaluations, punitive schedule changes, punitive decreases in the desirability of work assignments, and other acts of harassment shown to be linked to such exercise of rights. An Employer shall not use its absence-control policy to count Paid Sick Leave as an absence that triggers discipline, discharge, demotion, suspension, or any other adverse activity.

(Omitted text is not affected by this ordinance)

1-24-110 Private cause of action.

If any Covered Employee is paid by his or her Employer less than the Wage to which he or she is entitled under this chapter, the Covered Employee may recover in a civil action three times the amount of any such underpayment, together with costs and such reasonable attorney's fees as the court allows. An agreement by the Covered Employee to work for less than the Wage required under this chapter is no defense to such action. If an Employer violates any of the Paid Sick Leave provisions in this chapter, the affected Covered Employee may recover in a civil action damages equal to three times the full amount of any unpaid sick time denied or lost by reason of the violation, and the interest on that amount calculated at the prevailing rate, together with costs and such reasonable attorney's fees as the court allows.

SECTION 4. After passage and publication, this ordinance shall take effect on July 1, 2017.

~~Robert J. [unclear]~~

Maty [unclear] 13 ✓

James Appleman 46 ✓

[unclear] 4/15 ✓

Alley [unclear] (31) ✓

Robert [unclear] 26 ✓

Suzanne A. Munday ✓
City Clerk

Robert [unclear] 74 ✓

Michelle [unclear] 8th