Ordinance No. 123698

Council Bill No. 117216

AN ORDINANCE relating to employment in Seattle; adding a new chapter 14.16 to the Seattle Municipal Code; establishing minimum standards for the provision of paid sick and paid safe time; prescribing penalties, remedies and enforcement procedures; amending Section 3.14.931 of the Seattle Municipal Code; and requesting a post-implementation assessment from the Seattle Office for Civil Rights.

Related Legislation File:

Date Introduced and Referred: June 27, 2011	To: (committee): Housing, Human Services, Health, and Culture
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Date Veto Sustained:	Date Returned Without Signature:

The City of Seattle – Legislative Department

Council Bill/Ordinance sponsored by: Nick Licata / Jean Godden

Committee Action:

Date	Recommendation	Vote
7-0-1 as amended	M, MO, SC, JG yes RC abstain	9/12/11 (LH)
held	11	9/12

This file is complete and ready for presentation to Full Council.

Full Council Action:

Date	Decision	Vote
9.12.11	Passed as Amended	8-1 (No: RC)

Law Department

Ben Noble
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ORDINANCE 123698

AN ORDINANCE relating to employment in Seattle; adding a new chapter 14.16 to the Seattle Municipal Code; establishing minimum standards for the provision of paid sick and paid safe time; prescribing penalties, remedies and enforcement procedures; amending Section 3.14.931 of the Seattle Municipal Code; and requesting a post-implementation assessment from the Seattle Office for Civil Rights.

WHEREAS, A large number of workers in the city of Seattle will at some time during the year need temporary time off from work to take care of their own or their family members' health needs or their own or their family members' safety or other needs resulting from domestic violence, sexual assault, or stalking; and

WHEREAS, many workers do not have access to any paid leave for sick or safe days or have an inadequate number of paid sick or safe days;

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The City Council makes the following findings:

When workers have no paid sick leave or an inadequate amount available to them, they are more likely to come to work when they or their family members are sick. Workers who are compensated through tips still have a financial incentive to work when ill, even if they do have paid leave. Absent the proper care needed for treatment or recovery, the ill worker's or ill family member's health problems may intensify or be prolonged.

Employees who come to work when they are sick are likely to expose other employees, customers, and members of the public to infectious diseases, such as the flu.

Workers with no paid sick leave, or an inadequate amount to take time off to care for a sick child, are likely to send sick children to school or a child care center, thereby potentially spreading contagious illnesses.

Family economic security is at risk for workers who lack adequate paid sick leave because workers who lack paid sick leave lose earnings if they miss work to care for themselves, their children, or other family members who are ill or injured.

Victims of domestic violence, sexual assault and stalking with no paid sick leave are less able to receive medical treatment, participate in legal proceedings and obtain other necessary services. In addition, without paid sick leave, domestic violence victims are less able to maintain the financial independence necessary to leave abusive situations, achieve safety, and minimize physical and emotional injuries.

Paid sick and safe days will promote the safety, health and welfare of the people of the City of Seattle by reducing the chances that worker's illnesses will intensify or be prolonged, by reducing the exposure of co-workers and members of the public to infectious diseases, and by reducing the exposure of children at schools and day cares to infectious diseases; resulting in a healthier and more productive workforce, better health for older family members and children, enhanced public health and improved family economic security.

Paid sick and safe days will enable victims of domestic violence, sexual assault and stalking and their family members to participate in legal proceedings, receive medical treatment, or obtain other necessary services and, thus, to maintain the financial independence necessary to leave abusive situations, achieve safety, and minimize physical and emotional injuries.

Through the collective bargaining process, employers and represented workers can develop alternative means of meeting the policy goals underlying the paid leave requirements established by this ordinance.

To safeguard the public welfare, health, safety, and prosperity of the city of Seattle, all persons working in our community should have access to adequate paid sick and safe leave, because doing so will ensure a more stable workforce in our community, thereby benefiting workers, their families, employers, and the community as a whole.

Section 2. A new Chapter 14.16 "Paid Sick Time and Paid Safe Time" is added to Title 14 of the Seattle Municipal Code as follows:

14.16.010. Definitions

For purposes of this chapter

A. "Adverse action" means the discharge, suspension, discipline, transfer, demotion or denial of promotion by an employer of an employee for any reason prohibited by 14.16.040.

B. "Agency" shall mean the Seattle Office for Civil Rights.

C. "Business" and "engaging in business" has the same meanings as in Chapter 5.30.

D. "City" shall mean the City of Seattle.

E. "City department" means any agency, office, board or commission of the City, or any Department employee acting on its behalf, but shall not mean a public corporation chartered under Ordinance 103387, or its successor ordinances, or any contractor, consultant, concessionaire or lessee.

F. "Charging party" means the person aggrieved by an alleged violation of this chapter or the person making a charge on another person's behalf, or the Director when the Director files a charge.

G. "Commission" means the Seattle Human Rights Commission.

H. "Director" means the Director of the Office for Civil Rights.

I. "Eating and/or drinking establishment" means a place where food and/or beverages are prepared and sold at retail for immediate consumption either on- or off-premise, but excludes food and beverage service sites, such as cafeterias, that are accessory to other activities and primarily serve students, patients and/or on-site employees.

J. "Employee" shall mean any individual employed by an employer, and shall include traditional employees, temporary workers, and part-time employees. Individuals performing services under a work study agreement are not covered by this chapter. Employees are covered by this chapter if they perform their work in Seattle. An employee who performs work in Seattle on an occasional basis is covered by this chapter only if he performs more than 240 hours of work in Seattle within a calendar year. An employee who is not covered by this Chapter is still

included in any determination of the size of the employer. In the event that a temporary employee is supplied by a staffing agency or similar entity, absent a contractual agreement stating otherwise, that individual shall be deemed to be an employee of the staffing agency for all purposes of this chapter, except as provided in subsection 14.16.010.T.4.b.

K. "Employer" shall mean, as defined in subsection 14.04.030.K, any person who has one or more employees, or the employer's designee or any person acting in the interest of such employer. Employer size shall be determined as provided in subsection 14.16.010.T. For purposes of this act, "employer" does not include any of the following:

1. The United States government;

2. The State of Washington, including any office, department, agency, authority, institution, association, society or other body of the state, including the legislature and the judiciary;

3. Any county or local government other than the City.

L. "Employment agency" or "staffing agency" means any person undertaking with or without compensation to procure opportunities to work or to procure, recruit, refer, or place individuals with an employer or in employment.

M. "Full-time equivalent" shall mean the number of hours worked for compensation that add up to one full-time employee, based either on an eight-hour day and a five-day week or as full-time is defined, in writing or in practice, by the employer.

N. "Health care professional" shall mean any person authorized by the City, any state government and/or the federal government to diagnose and treat physical or mental health conditions, including a doctor, nurse, emergency medical care provider, and/or a public health clinic worker, so long as that person is performing within the scope of their practice as defined by the relevant law.

O. "Paid sick time" and/or "paid sick days" shall mean accrued hours of paid leave provided by an employer for use by an employee for an absence from work for any of the

reasons specified in 14.16.030.A.1 of this chapter, for which time an employee shall be compensated at the same hourly rate and with the same benefits, including health care benefits, as the employee would have earned during the time the paid leave is taken. Employees are not entitled to compensation for lost tips or commissions and compensation shall only be required for hours that an employee is scheduled to have worked.

1. For purposes of determining eligibility for "paid sick time," "family member" shall mean, as defined in the Washington Family Care Act, RCW 49.12.265 and 49.12.903, as follows:

a. "Child" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is: (a) Under eighteen years of age; or (b) eighteen years of age or older and incapable of self-care because of a mental or physical disability.

b. "Grandparent" means a parent of a parent of an employee.

c. "Parent" means a biological or adoptive parent of an employee or an individual who stood in loco parentis to an employee when the employee was a child.

d. "Parent-in-law" means a parent of the spouse of an employee.

e. "Spouse" means husband, wife or domestic partner. For purposes of this chapter, the terms spouse, marriage, marital, husband, wife, and family shall be interpreted as applying equally to city or state registered domestic partnerships or individuals in city or state registered domestic partnerships as well as to marital relationships and married persons to the extent that such interpretation does not conflict with federal law. Where necessary to implement this chapter, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in city or state registered domestic partnerships.

P. "Paid safe time" and/or "paid safe days" shall mean accrued hours of paid leave provided by an employer for use by an employee for an absence from work for any of the reasons specified in 14.16.030.A.2, for which time an employee shall be compensated at the same hourly rate and with the same benefits, including health care benefits, as the employee would have earned during the time the paid leave is taken.

1. For the purposes of determining eligibility for "paid safe time":

a. "Family or household members" shall mean, as defined in RCW 49.76.020, spouses, domestic partners, former spouses, former domestic partners, persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage, adult persons who are presently residing together or who have resided together in the past, persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

b. "Domestic violence" shall mean:

1) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members;

2) sexual assault of one family or household member by another; or

3) stalking, as defined below in subsection 14.16.010.P.1.c, of one family or household member by another family or household member.

c. "Stalking" shall be defined as in RCW 9A.46.110,

d. "Dating relationship" shall mean, as defined in RCW 49.76.020, a social relationship of a romantic nature.

e. "Sexual assault" shall be defined as in RCW 49.76.020.

Q. "Party" includes the person charging or making a complaint or upon whose behalf a complaint is made alleging a violation of this chapter, the person alleged or found to have committed a violation of this chapter and the Office for Civil Rights.

R. "Person," as used in this chapter, includes one or more individuals, partnerships, associations, organizations, trade or professional associations, corporations, public corporations, cooperatives, legal representatives, trustees, trustees in bankruptcy and receivers, firm, institution, or any group of persons; it includes any owner, lessee, proprietor, manager, agent or employee, whether one or more natural persons, and further includes any department, office, agency or instrumentality of the City.

S. "Respondent" means any person who is alleged or found to have committed a violation of this chapter.

T. "Tier One," "Tier Two," and "Tier Three" employers are defined as follows:

1. "Tier One employer" shall mean an employer that employs more than 4 and fewer than 50 full-time equivalents on average per calendar week.

2. "Tier Two employer" shall mean an employer that employs at least 50 and fewer than 250 full-time equivalents on average per calendar week.

3. "Tier Three employer" shall mean an employer that employs 250 or more full-time equivalents on average per calendar week.

4. The determination of employer tier for the current calendar year will be calculated based upon the average number of full-time equivalents paid for per calendar week during the preceding calendar year for any and all weeks during which at least one employee worked for compensation. To determine the number of full-time equivalents, all compensated hours of all employees shall be counted, including:

a. work performed outside of the City; and

b. compensated hours made available by part-time employment, temporary employment or through the services of a temporary services or staffing agency or similar entity.

5. For employers that did not have any employees during the previous calendar year, the employer tier will be calculated based upon the average number of full-time equivalents paid for per calendar week during the first 90 calendar days of the current year in which the employer engaged in business.

14.16.020. Accrual of Paid Sick Time and Paid Safe Time

A. All employees of Tier 1, Tier 2 and Tier 3 employers have the right to paid sick time and paid safe time as provided in this section.

B. Employees shall accrue paid time, to be used as either paid sick or safe time, as follows:

1. Employees of a Tier One or Tier Two employer shall accrue at least one hour of paid time for every 40 hours worked.

2. Employees of a Tier Three employer shall accrue at least one hour of paid time for every 30 hours worked.

C. No Tier One employer shall be required to allow an employee to use a combined total of paid sick time and paid safe time exceeding 40 hours in a calendar year. No Tier Two employer shall be required to allow an employee to use a combined total of paid sick time and paid safe time exceeding 56 hours in a calendar year. No Tier Three employer shall be required to allow an employee to use a combined total of paid sick time and paid safe time exceeding 72 hours in a calendar year.

D. In the case of employees who are exempt from overtime payment under section 213(a)(1) of the Fair Labor Standards Act of 1938, approved June 25, 1938 (52 Stat. 1060; 29 U.S.C. § 201 et seq.) (hereinafter referred to as "FLSA" exempt employees), no employer shall be required to accrue leave for such employees for hours worked beyond a 40-hour work week. If their normal work in a work week is less than 40 hours, paid sick time and paid safe time accrues based upon that employee's normal work week.

E. Paid sick time and paid safe time as provided in this section shall begin to accrue at the commencement of employment. For individuals who are employed on the date this ordinance takes effect, accrual shall begin on the date this ordinance takes effect. Accrual rates shall not apply to hours worked before this ordinance takes effect.

F. Except as provided in Section 14.16.090, employees shall be entitled to use accrued paid sick time or safe time beginning on the 180th calendar day after the commencement of their employment. When an employee is separated from employment and rehired within seven months of separation by the same employer, the previous period of employment shall be counted for purposes of determining the employee's eligibility to use accrued sick time or safe time under this subsection, provided that if separation does occur, the total time of employment used to determine eligibility must occur within two calendar years.

G. Unused paid sick time and paid safe time shall be carried over to the following calendar year; however, no Tier One employer shall be required to allow an employee to carry over a combined total of paid sick time and paid safe time in excess of 40 hours, no Tier Two employer shall be required to allow an employee to carry over a combined total of paid sick time and paid safe time in excess of 56 hours and no Tier Three employer shall be required to allow an employee to carry over a combined total of paid sick time and paid safe time in excess of 72 hours.

H. A Tier One or Tier Two employer with a combined or universal paid leave policy, such as a paid time off (PTO) policy, is not required to provide additional paid sick and safe leave, provided that:

1. Available paid leave may be used for the same purposes and under the same conditions as paid sick and safe time as set forth in Section 14.16.030; and

2. Paid leave is accrued at the rate consistent with subsection 14.16.020.B.1; and

3. Use of paid leave within any calendar year is limited to no less than the amounts specified respectively for Tier One and Tier Two employers in subsection 14.16.020.C; and

4. Any accrued but unused paid leave may be carried over to the following calendar year consistent with subsection 14.16.020.G.

I. A Tier Three employer with a combined or universal paid leave policy, such as a paid time off (PTO) policy, is not required to provide additional paid sick and safe leave, provided that:

1. Available paid leave may be used for the same purposes and under the same conditions as paid sick and safe time as set forth in Section 14.16.030; and

2. Paid leave is accrued at a rate consistent with subsection 14.16.020.B.2; and

3. Use of paid leave within any calendar year is limited to no less than 108 hours; and

4. Any accrued but unused paid leave may be carried over to the following calendar year; however no Tier Three employer with a combined or universal leave policy shall be required to carry over unused leave in excess of 108 hours.

J. Nothing in this section 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 paid sick and safe time that has not been used.

K. If an employee is transferred to a separate division, entity, or location within the City, or transferred out of the City and then transferred back to a division, entity, or location within the City, but remains employed by the same employer, the employee is entitled to all paid sick and safe time accrued at the prior division, entity, or location and is entitled to use all paid sick and safe time as provided in this section.

L. When there is a separation from employment and the employee is rehired within 7 months of separation by the same employer, previously accrued paid sick and safe time that had not been used shall be reinstated. Further, the employee shall be entitled to use accrued paid sick and safe time and accrue additional sick and safe time immediately upon the re-commencement of employment, provided that the employee had previously been eligible to use paid sick and safe time. If there is a separation of more than 7 months, an employer shall not be required to reinstate accrued paid sick and safe time and for the purposes of this chapter the rehired employee shall be considered to have newly commenced employment.

M. Subject to terms and conditions established by the employer, the employer may, but is not required to, loan paid sick time and paid safe time to the employee in advance of accrual by such employee.

14.16.030. Use of Paid Sick Time and Paid Safe Time

A. 1. Paid sick time shall be provided to an employee by an employer for the following reasons:

a. An absence resulting from an employee's mental or physical illness, injury or health condition; to accommodate the 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 preventive medical care;

b. To allow the employee to provide care of a family member with a mental or physical illness, injury or health condition; care of a family

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

2. Paid safe time shall be provided to an employee by an employer for the following reasons:

a. When the employee's place of business has been closed by order of a public official to limit exposure to an infectious agent, biological toxin or hazardous material,

b. To accommodate the employee's need to care for a child whose school or place of care has been closed by order of a public official for such a reason.

c. For any of the following reasons related to domestic violence, sexual assault, or stalking, as set out in RCW 49.76.030:

1) To enable the employee to seek legal or law enforcement assistance or remedies to ensure the health and safety of the employee or the employee's family members including, but not limited to, preparing for, or participating in, any civil or criminal legal proceeding related to or derived from domestic violence, sexual assault, or stalking;

2) To enable the employee to seek treatment by a health care provider for physical or mental injuries caused by domestic violence, sexual assault, or stalking, or to attend to health care treatment for a victim who is the employee's family member;

3) To enable the employee to obtain, or assist a family member in obtaining, services from a domestic violence shelter, rape crisis center, or other social services program for relief from domestic violence, sexual assault, or stalking;

4) To enable the employee to obtain, or assist a family member in obtaining, mental health counseling related to an incident of domestic violence, sexual assault, or stalking, in which the employee or the employee's family member was a victim of domestic violence, sexual assault, or stalking; or

5) To enable the employee to participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members from future domestic violence, sexual assault, or stalking.

B. Paid sick time and paid safe time shall be provided upon the request of an employee. When possible, the request shall include the expected duration of the absence. An employer may require an employee to comply with the employer's usual and customary notice and procedural requirements for absences and/or requesting leave, provided that such requirements do not interfere with the purposes for which the leave is needed.

1. If the paid leave is foreseeable, a written request shall be provided at least 10 days, or as early as possible, in advance of the paid leave, unless the employer's normal notice policy requires less advance notice;

2. If the paid leave is unforeseeable, the employee must provide notice as soon as is practicable and must generally comply with an employer's reasonable normal notification policies and/or call-in procedures, provided that such requirements do not interfere with the purposes for which the leave is needed.

C. For employees covered by the overtime requirements of the FLSA, accrued paid sick time and paid safe time may be used in hourly increments or smaller increments if an employer so designates. For FLSA exempt employees, an employer may make deductions of paid sick time and paid safe time in accordance with the FLSA. For FLSA exempt public employees, paid sick time and paid safe time must be used in accordance with a pay system established by statute,

ordinance or regulation or by a policy or practice established pursuant to the principles of public accountability

D. When the use of accrued time is foreseeable, the employee shall make a reasonable effort to schedule the use of sick or safe time in a manner that does not unduly disrupt the operations of the employer.

E. For use of paid sick time of more than three consecutive days for a reason set out in subsection 14.16.030.A.1, an employer may require reasonable documentation that the sick time is covered by subsection 14.16.030.A.1. Documentation signed by a health care provider indicating that sick time is necessary shall be considered reasonable documentation. An employer may not require that the documentation explain the nature of the illness. For any employee who is not offered health insurance by the employer, the employer and the employee shall each pay half the cost of any out-of-pocket expense incurred by the employee in obtaining the employer-requested documentation. These expenses are limited to the cost of services provided by health care professionals, the services of health care facilities, testing prescribed by health care professionals and transportation to the location where such services are provided. An employee who has declined to participate in the health insurance program offered by his or her employer shall not be entitled to reimbursement for out-of-pocket expenses.

F. For use of "paid safe time" of more than three consecutive days for a reason set out in subsection 14.16.030.A.2,

1. an employer may require that requests under subsections 14.16.030.A.2.a and 14.16.030.A.2.b be supported by verification of a closure order by a public official of the employee's child's school or childcare establishment, and the employee may satisfy this verification request by providing notice of the closure order in whatever format the employee received the notice;

2. an employer may require that requests under subsection 14.16.030.A.2.c be supported by verification that the employee or employee's family member is a victim of domestic

violence, sexual assault, or stalking, and that the leave taken was for one of the purposes covered by subsection 14.16.030.A.2.c. As set out in RCW 49.76.040(4), an employee may satisfy this verification requirement by one or more of the following methods:

a. a police report indicating that the employee or employee's family member was a victim of domestic violence, sexual assault, or stalking;

b. a court order protecting or separating the employee or employee's family member from the perpetrator of the act of domestic violence, sexual assault, or stalking, or other evidence from the court or the prosecuting attorney that the employee or employee's family member appeared, or is scheduled to appear, in court in connection with an incident of domestic violence, sexual assault, or stalking; or

c. documentation that the employee or the employee's family member is a victim of domestic violence, sexual assault, or stalking, from any of the following persons from whom the employee or employee's family member sought assistance in addressing the domestic violence, sexual assault, or stalking: An advocate for victims of domestic violence, sexual assault, or stalking; an attorney; a member of the clergy; or a medical or other professional. The provision of documentation under this section does not waive or diminish the confidential or privileged nature of communications between a victim of domestic violence, sexual assault, or stalking with one or more of the individuals named in this subsection c; or

d. an employee's written statement that the employee or the employee's family member is a victim of domestic violence, sexual assault, or stalking and that the leave taken was for one of the purposes of subsection 14.16.030.A.2.c.

G. Upon mutual consent by the employee and the employer, an employee may work additional hours or shifts during the same or next pay period without using available paid sick or safe time for the original missed hours or shifts. However, the employer may not require the

employee to work such additional hours or shifts. Should the employee work additional shifts, the employer shall comply with any applicable federal, state or local laws concerning overtime pay.

H. Nothing in this chapter shall be construed to prohibit an employer from establishing a policy whereby employees may voluntarily exchange assigned hours or "trade shifts".

I. When paid sick or safe time is requested by an employee who works in an eating and/or drinking establishment, the employer may offer the employee substitute hours or shifts. If the employee accepts the offer and works these substitute hours or shifts, the amount of time worked during the substitute period or the amount of time requested for sick and safe time, whichever is smaller, may be deducted from the employee's accrued sick and safe time. Should the employee work the substitute hours or shifts, the employer shall comply with any applicable federal, state or local laws concerning overtime pay. However, no employer is required to offer such substitute hours or shifts, and no employee is required to accept such hours or shifts if they are offered.

J. Nothing in this chapter shall be construed to prohibit an employer from establishing a policy whereby employees may donate unused accrued paid sick leave to another employee.

K. Each time wages are paid, employers shall provide, in writing, information stating an updated amount of paid time available to each employee for use as either sick time or safe time. Employers may choose a reasonable system for providing this notification, including, but not limited to, listing remaining available paid time on each pay stub or developing an online system where employees can access their own paid leave information.

14.16.040. Exercise of Rights Protected; Retaliation Prohibited

A. It shall be a violation 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 chapter.

B. It shall be a violation for an employer to take adverse action or to discriminate against an employee because the employee has exercised in good faith the rights protected under this chapter. Such rights include but are not limited to the right to use paid sick time and/or paid safe time pursuant to this chapter; the right to file a complaint with the Agency about any employer's alleged violation of this chapter; the right to inform his or her employer, union or similar organization, and/or legal counsel about an employer's alleged violation of this section; the right to cooperate with the Agency in its investigations of alleged violations of this chapter; the right to oppose any policy, practice, or act that is unlawful under this section; and the right to inform other employees of his or her potential rights under this section.

C. It shall be a violation for an employer's absence control policy to count paid sick or safe time covered under this chapter as an absence that may lead to or result in any adverse action taken against the employee.

D. The protections afforded under subsection 14.16.040.B shall apply to any person who mistakenly but in good faith alleges violations of this Section 14.16.040.

14.16.050. Notice and Posting

A. Employers shall give notice that employees are entitled to paid sick time and paid safe time; the amount of paid sick and safe time and the terms of its use guaranteed under this chapter; that retaliation against employees who request or use paid sick and safe time is prohibited; and that each employee has the right to file a complaint or bring a civil action if paid sick time or paid safe time as required by this section is denied by the employer or the employee is retaliated against for requesting or taking paid sick time or paid safe time.

B. The Agency shall create and make available to employers a poster and a model notice, hereinafter referred to as the "Notice," which contains the information required under subsection A of this Section for their use in complying with this subsection. The poster shall be printed in English and Spanish and any other languages that the Agency determines are needed to notify employees of their rights under this chapter.

C. Employers may comply with this section by displaying the Agency's poster in a conspicuous and accessible place in each establishment where such employees are employed.

D. Employers may also comply with this section by including the Notice in employee handbooks or other written guidance to employees concerning employee benefits or leave rights, if such written materials exist, or by distributing a copy of the Notice to each new employee upon hiring. In either case, distribution may be accomplished electronically.

E. To meet the requirements of paragraph D of this section, employers may duplicate the text of the Notice or may use another format so long as the information provided includes, at a minimum, all of the information contained in that Notice.

F. An employer who willfully violates the notice and posting requirements of this section shall be subject to a civil fine in an amount not to exceed $125 for the first violation and $250 for subsequent violations.

14.16.060. Employer Records

A. Employers shall retain records documenting hours worked by employees and paid sick time taken by employees, for a period of two years, and shall allow the Agency access to such records, with appropriate notice and at a mutually agreeable time, to investigate potential violations and to monitor compliance with the requirements of this chapter.

B. Employers shall not be required to modify their recordkeeping policies to comply with this section, as long as records reasonably indicate employee hours worked in Seattle, accrued paid sick and safe time, and paid sick and safe time taken. When an issue arises as to the amount of accrued paid sick time and/or paid safe time available to an employee under this chapter, if the employer does not maintain or retain adequate records documenting hours worked by the employee and paid sick and safe time taken by the employee, or does not allow the Agency reasonable access to such records, it shall be presumed that the employer has violated this chapter.

C. Records and documents relating to medical certifications, re-certifications or medical histories of employees or employees' family members, created for purposes of this chapter, are required to be maintained as confidential medical records in separate files/records from the usual personnel files. If the Americans with Disabilities Act (ADA) applies, then these records must comply with the ADA confidentiality requirements.

14.16.070. Regulations

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

14.16.080. Enforcement

A. Powers and duties

1. of Agency

a. The Agency shall receive, investigate, and pass upon charges alleging violations of this chapter as defined herein, conciliate and settle the same by agreement, and monitor and enforce any agreements or orders resulting therefrom or from a subsequent hearing thereon under and pursuant to the terms of this chapter; and shall have such powers and duties in the performance of these functions as are defined in this chapter and otherwise necessary and proper in the performance of the same and provided for by law. The Agency shall further assist other City agencies and departments upon request in effectuating and promoting the purposes of this chapter.

b. The Director of the Agency is authorized and directed to promulgate rules consistent with this chapter and the Administrative Code.

2. of Commission

The Seattle Human Rights Commission shall study, advise, and make recommendations for legislation on policies, procedures, and practices which would further the purposes of this

chapter. The Commission shall hear appeals from the Director's determinations of no reasonable cause and, in cases involving respondents who are City departments, hear appeals from determinations of reasonable cause and the orders relating to the remedy thereof. It shall, where appropriate and necessary, in its judgment, hear and determine complaints jointly with the Hearing Examiner as provided in subsections 14.16.080.H and 14.16.080.I. The Commission shall have such powers and authority in carrying out these functions as are provided for by this chapter or otherwise established by law.

B. Charge filing, timing, amendments, notice and investigation.

1. A charge alleging a violation of this chapter shall be in writing on a form or in a format determined by the Agency, and signed by or on behalf of a charging party, and shall describe the violation complained of and should include a statement of the dates, places and circumstances and the persons responsible for such acts and practices.

2. Whenever charges are made by or on behalf of a person claiming to be aggrieved, the person making the charge must provide the Director with the name, address and telephone number of the individual on whose behalf the charge is made. Thereafter, the Director shall verify the authorization of such charge by the person on whose behalf the charge is made.

3. A charge shall not be rejected as insufficient because of failure to include all required information so long as it substantially satisfies the informational requirements necessary for processing.

4. A charge alleging a violation of this chapter or pattern of such violations may also be filed by the Director whenever the Director has reason to believe that any person has been engaged or is engaging in a violation of this chapter.

5. Charges filed under this chapter must be filed within 180 days after the occurrence of the alleged violation of this chapter with the Agency.

6. In addition to any relief authorized by this chapter, liability may accrue and an aggrieved person may obtain relief as provided in this chapter, including recovery of back pay for up to two years preceding the filing of the charge, where the unlawful practices that have occurred during the charge filing period are similar or related to unlawful practices with regard to sick time or safe time that occurred outside the time for filing a charge.

7. The charging party or the Agency may amend a charge to cure technical defects or omissions; or to clarify and amplify allegations made therein; or to add allegations related to or arising out of the subject matter set forth, or attempted to be set forth, in the original charge. For jurisdictional purposes, such amendments shall relate back to the date the original charge was first filed. The amendment must be filed within 180 days after the occurrence of the additional violation and/or retaliation and prior to the Agency's issuance of findings of fact and a determination with respect to the original charge. Such amendments may be made at any time during the investigation of the original charge so long as the Agency will have adequate time to investigate such additional allegations and the parties will have adequate time to present the Agency with evidence concerning such allegations before the issuance of findings of fact and a determination.

8. The Director shall cause to be served or mailed by certified mail, return receipt requested, a copy of the charge on the respondent within twenty (20) days after the filing of the charge and shall promptly make an investigation thereof.

9. The investigation shall be directed to ascertain the facts concerning the violation of this Chapter alleged in the charge, and shall be conducted in an objective and impartial manner.

10. During the investigation the Director shall consider any statement of position or evidence with respect to the allegations of the charge which the charging party

or the respondent wishes to submit. The Director shall have authority to sign and issue subpoenas requiring the attendance and testimony of witnesses, the production of evidence including but not limited to books, records, correspondence or documents in the possession or under the control of the person subpoenaed, and access to evidence for the purpose of examination and copying, and conduct discovery procedures which may include the taking of interrogatories and oral depositions.

11. The Director may require a fact finding conference or participation in another process with the respondent and any of respondent's agents and witnesses and charging party during the investigation in order to define the issues, determine which elements are undisputed, resolve those issues which can be resolved, and afford an opportunity to discuss or negotiate settlement. Parties may have their legal counsel present if desired.

C. Findings of fact and determination of reasonable cause or no reasonable cause.

1. The results of the investigation shall be reduced to written findings of fact and a determination shall be made by the Director that there is or is not reasonable cause for believing that a violation of this chapter has been or is being committed, which determination shall also be in writing and issued with the written findings of fact. Where a City department is a respondent the Director shall issue such findings and determination only after having submitted proposed findings and determinations to the respondent and charging party for review and comment. With respect to the findings and determination, "issued" shall be defined as signed and dated by the Director.

2. The findings of fact and determination shall be furnished promptly to the respondent and charging party.

3. Once issued to the parties, the Director's findings of fact, determination and order may not be amended or withdrawn except upon the agreement of the parties or in response to an order by the Seattle Human Rights Commission after an appeal taken pursuant to Section 14.16.080.D or 14.16.080.G provided, that the Director may correct clerical mistakes or errors arising from oversight or omission upon a motion from a party or upon the Director's own motion.

D. Determination of no reasonable cause – Appeal from and dismissal.

If a determination is made that there is no reasonable cause for believing a violation of this chapter has been committed, the charging party shall have the right to appeal such determination to the Commission within 30 days of the date the determination is signed by the Director by filing a written statement of appeal with the Commission. Such statement shall state specifically the grounds on which it is based and the reasons the determination or order or both is in error. The Commission shall promptly deliver a copy of the statement to the Agency and respondent and shall promptly consider and act upon such appeal by either affirming the Director's determination or remanding it to the Director with appropriate instructions. In considering such appeals the Commission shall only review whether the investigation was adequate and the Director's findings are supported by a preponderance of the evidence. The burden shall be on the charging party to demonstrate that the matter should be remanded to the Director. In the event no appeal is taken or such appeal results in affirmance, the determination of the Director shall be final and the charge deemed dismissed and the same shall be entered on the records of the Agency.

E. Determination of reasonable cause -- Conciliation and settlement of cases involving all respondents except City departments.

1. In all cases except a case in which a City department is the respondent, if a reasonable cause determination is made, the Director shall endeavor to eliminate the unlawful practice by conference, conciliation and persuasion. Conditions of

settlement may include (but are not limited to) the elimination of the unlawful practice, hiring, reinstatement or upgrading with or without back pay, lost benefits, attorney's fees, admittance or restoration to membership in a labor organization, or such other action which will effectuate the purposes of this chapter, including action which could be ordered by a court, except that damages for humiliation and mental suffering shall not exceed $10,000. Any settlement agreement shall be reduced to writing and signed by the Director, the charging party and the respondent. An order shall then be entered by the Director setting forth the terms of the agreement. Copies of such order shall be delivered to all affected parties.

2. In case of failure to reach an agreement and of conciliation and upon a written finding to that effect furnished to the charging party and respondent, except a case in which a City department is a respondent, the Director shall promptly cause to be delivered the entire investigatory file, including the charge and any and all findings made, to the City Attorney for further proceedings and hearing under this chapter pursuant to Section 14.16.080.H.

F. Determinations of reasonable cause -- Conciliation, settlement and conclusion of cases involving City departments as respondents.

In all cases in which a City department is a respondent:

1. A determination of reasonable cause by the Director shall be deemed a finding that an unlawful practice has been committed by respondent and is dispositive of this issue for all future proceedings under this chapter, unless appealed, reversed and remanded as provided in this chapter.

2. Within sixty days of a determination of reasonable cause, the Director shall confer with the parties and determine an appropriate remedy, which remedy may include (but is not limited to) hiring, reinstatement or upgrading with or without

back pay, lost benefits, attorney's fees, or such other action as will effectuate the purposes of this chapter, including action which could be ordered by a court, except that damages for humiliation and mental suffering shall not exceed $10,000. Such remedy shall be reduced to writing in an order of the Director.

3. The charging party must sign a release in the form and manner requested by the Department, releasing the City from further liability for acts giving rise to the charge in order to obtain the benefits of the remedy provided under this section and before payment can be made. Without such release, the Director's order with respect to the charging party's individual relief shall have no force and effect. In such event the Director shall notify the parties involved in writing.

4. In all cases where the remedy determined by the Director before or after any appeal includes a monetary payment which exceeds the sum of $5,000, the charge or claim, the Director's determination, order, the charging party's signed release and such further documentation as may be required shall be presented to the City Council for passage by separate ordinance. If the City Council fails or refuses to appropriate the amount ordered by the Director within 90 days, the Director shall certify the case to the Hearing Examiner for a hearing to determine the appropriate monetary relief in the case which determination shall be final and binding upon the City.

5. Where the Director's order includes a monetary payment of $5,000 or less, such payment shall be made under the authority and in the form and manner otherwise provided for by law for payment of such claims.

G. Appeals to the Commission from determinations of reasonable cause and orders of excess involving City departments as respondents.

In all cases in which a City department is a respondent:

1. The charging party or respondent may appeal the Director's order and determination of reasonable cause to the Commission within 30 days of the Director's order by filing a written statement of appeal with the Commission. Such statement shall state specifically the grounds on which it is based and the reasons the determination or order or both is in error.

2. The Commission shall promptly mail a copy of the statement to the Department and to the other party and shall promptly consider and act upon such appeal by either affirming the Director's determination or order or remanding it to the Director with appropriate instructions.

3. The filing of an appeal shall stay the enforcement of any remedy provided for in the Director's determination or order during the pendency of the appeal.

4. In such appeal, the Commission shall consider only the record submitted to it by the Department and written statements of positions by the parties involved and, in its discretion, oral presentation. The Commission shall reverse the Director's determination or order only upon a finding that it is clearly erroneous.

H. Complaint and hearing of cases with all respondents except City departments.

1. Following submission of the investigatory file from the Director in cases involving all respondents under 14.16.080.E, the City Attorney shall prepare a complaint against such respondent relating to the charge and facts discovered during the investigation thereof and prosecute the same in the name and on behalf of the Department and the City at a hearing before the Hearing Examiner sitting alone or with representatives of the Commission as provided in this chapter and to appear for and represent the interests of the Department and the City at all subsequent proceedings; provided, if the City Attorney determines that there is no legal basis for a complaint to be filed or for proceedings to continue, a statement

of the reasons therefore shall be filed with the Department, charging party and the respondent.

2. The complaint shall be served on respondent in the usual manner provided by law for service of complaints and filed with the Seattle Hearing Examiner. A copy of such complaint shall be furnished to the charging party.

3. Within 20 days of the service of such complaint upon it, the respondent shall file its answer with the Hearing Examiner and serve a copy of the same on the City Attorney.

4. Upon the filing of the complaint, the Hearing Examiner shall promptly establish a date for the hearing of such complaint and give notice thereof to the Commission, the City Attorney and respondent, and shall thereafter hold a public hearing on the complaint, which hearing shall commence no earlier than 90 days nor later than 120 days from the filing of the complaint, unless otherwise ordered by the Hearing Examiner.

5. After the filing of a complaint with the Hearing Examiner, it may be amended only with the permission of the Hearing Examiner, which permission shall be granted when justice will be served thereby and all parties are allowed time to prepare their case with respect to additional or expanded charges which they did not and could not have reasonably foreseen would be in issue at the hearing.

6. The hearing shall be conducted by a Hearing Examiner from the Office of Hearing Examiner, or a hearing examiner pro tempore appointed by the Hearing Examiner from a list approved by the Commission, sitting alone or with representatives of the Commission if any are designated. Such hearings shall be conducted in accordance with SMC Chapter 3.02 and the Hearing Examiner rules applicable to cases brought under this Title 14.

7. The Commission, within 30 days after notice of the date of hearing from the Hearing Examiner, at its discretion, may appoint two of its members who have not otherwise been involved in the charge, investigation, fact finding, or other resolution and proceeding on the merits of the case, who have not formed an opinion on the merits of the case, and who otherwise have no pecuniary, private or personal interest or bias in the matter, to hear the case with the Hearing Examiner. If the Commission has designated representatives they shall each have an equal vote with the Hearing Examiner, except the Hearing Examiner shall be the chairperson of the panel and make all evidentiary rulings. Should a question arise as to previous involvement, interest or bias of an appointed Commissioner, the Hearing Examiner shall resolve the issue in conformance with the law on the subject.

8. The review of all matters properly brought under this subsection 14.16.080.H shall be de novo. Nothing in this paragraph shall be construed to limit or prevent de novo review of matters brought before the Hearing Examiner (or the Hearing Examiner and members of the Commission as the case may be) under Sections 14.04.170, 14.06.110, 14.08.170, or 14.10.130.

I. Decision and order.

1. Within 30 days after conclusion of the hearing, the Hearing Examiner presiding at the hearing (or the Examiner and Commissioners as the case may be) shall prepare a written decision and order. The final decision shall be filed as a public record with the City Clerk, and copies thereof mailed to each party of record and to the Agency.

2. Such decision shall contain a brief summary of the evidence considered and shall contain findings of fact, conclusions of law upon which the decision is

based, and an order detailing the relief deemed appropriate, together with a brief statement of the reasons therefore.

3. In the event the Hearing Examiner (or a majority of the panel composed of the Examiner and Commissioners), determines that a respondent has committed a violation of this chapter, the Hearing Examiner (or panel majority) may order the respondent to take such affirmative action or provide for such relief as is deemed necessary to correct the practice, effectuate the purpose of this chapter, and secure compliance therewith, including but not limited to hiring, reinstatement, or upgrading with or without back pay, lost benefits, attorney's fees, admittance or restoration to membership in a labor organization, or such other action which will effectuate the purposes of this chapter, including action which could be ordered by a court, except that damages for humiliation and mental suffering shall not exceed $10,000. Back pay liability shall not accrue from a date more than 2 years prior to the initial filing of the charge.

4. Respondent shall comply with the provisions of any order affording relief and shall furnish proof of compliance to the Agency as specified in the order. In the event respondent refuses or fails to comply with the order, the Director shall notify the City Attorney of the same and the City Attorney shall invoke the aid of the appropriate court to secure enforcement or compliance with the order.

K. Violation -- Penalty.

It is unlawful for any person to willfully engage in an unfair practice under this chapter or willfully resist, prevent, impede or interfere with the Director or Hearing Examiner in the performance of their duties under this chapter, or to fail, refuse, or neglect to comply with any lawful order of the Director or Hearing Examiner. Conduct made unlawful by this section constitutes a violation subject to the provisions of Chapter 12A.02 of the Seattle Criminal Code

(Ordinance 102843, as amended), and any person convicted thereof may be punished by a civil fine or forfeiture not to exceed $500.

14.16.090. New Employers

The provisions of this Chapter shall not apply to Tier One and Tier Two employers until 24 months after the hire date of their first employee. For the purposes of this section, employer tier shall be calculated based upon the average number of full-time equivalents employed per calendar week during the first 90 calendar days following the hire date of their first employee.

14.16.100. Confidentiality and Nondisclosure

A. Except as provided in subsection B of this section, an employer shall maintain the confidentiality of information provided by the employee or others in support of an employee's request for sick or safe days under this section, including health information and the fact that the employee or employee's family member is a victim of domestic violence, sexual assault, or stalking, that the employee has requested or obtained leave under this act, and any written or oral statement, documentation, record, or corroborating evidence provided by the employee.

B. Information given by an employee may be disclosed by an employer only if it is

1. requested or consented to by the employee;
2. ordered by a court or administrative agency; or
3. otherwise required by applicable federal or state law.

14.16.110. Encouragement of more generous sick time policies; no effect on more generous policies

A. Nothing in this chapter shall be construed to discourage or prohibit an employer from the adoption or retention of a paid sick and safe time policy more generous than the one required herein.

B. 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 sick and safe time to an employee than required herein.

C. Nothing in this chapter shall be construed as diminishing the rights of public employees regarding paid sick or safe time or use of sick or safe time as provided under federal or Washington state law, or the Seattle Municipal Code.

14.16.120. Waiver of the Provisions of the Chapter

The provisions of this chapter shall not apply to any employees covered by a bona fide collective bargaining agreement to the extent that such requirements are expressly waived in the collective bargaining agreement in clear and unambiguous terms.

Any waiver by an individual of any provisions of this chapter shall be deemed contrary to public policy and shall be void and unenforceable.

14.16.130. Other Legal Requirements

This chapter provides minimum requirements pertaining to paid sick and safe time and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for greater accrual or use by employees of sick or safe time, whether paid or unpaid, or that extends other protections to employees; and nothing in this chapter shall be interpreted or applied so as to create any power or duty in conflict with federal or state law. Nor shall this chapter be construed to preclude any person aggrieved from seeking judicial review of any final administrative decision or order made under this chapter affecting such person.

Section 3. Consistent with the duties established for the Seattle Human Rights Commission in Section 2 of this ordinance, subsection 3.14.931.E of the Seattle Municipal Code, last amended by ordinance 118392, is amended as follows:

3.14.931 Seattle Human Rights Commission -- Duties

***

E. Hear appeals and hearings as set forth in Chapters 14.04,((~~and~~)) 14.08, and 14.16 of the Seattle Municipal ((~~Court~~))Code.

Section 4. Eighteen months after the effective date of this ordinance, the Seattle Office for Civil Rights and the Seattle Office of City Auditor will provide Council with a written evaluation of the impacts this ordinance has had on employees and employers. This evaluation will include an assessment of patterns and practices relating to shift swapping, the potential abuse of leave by employees who take time for other than the intended purposes, use of explicit waivers of the requirements of this ordinance in collective bargaining agreements, and of complaints and enforcement actions.

Section 5. This ordinance shall take effect on September 1, 2012.

Section 6. Severability. The several provisions of this ordinance are declared to be separate and severable and an order of any court of competent jurisdiction holding invalid any clause, sentence, paragraph, subdivision, section, or portion of this ordinance, or holding invalid the application thereof to any person or circumstance, shall not affect the validity of the remainder of this ordinance or the validity of its application to other persons or circumstances.

Ben Noble
Leg – paid sick leave
Sep 12, 2011
Version #6

Passed by the City Council the 12th day of September, 2011, and signed by me in open session in authentication of its passage this 12th day of September, 2011.

President _____ of the City Council

Approved by me this 23rd day of September 2011.

Michael McGinn, Mayor

Filed by me this 23rd day of September, 2011.

Monica Martinez Simmons, City Clerk

(Seal)

Form revised: December 14, 2010

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Legislative	Ben Noble / 684-8160	Not Applicable

Legislation Title:
AN ORDINANCE relating to employment in Seattle; adding a new chapter to the Seattle Municipal Code; establishing minimum standards for the provision of paid sick and paid safe time; prescribing penalties, remedies and enforcement procedures; amending Section 3.14.931 of the Seattle Municipal Code; and requesting a post-implementation assessment from the Seattle Office for Civil Rights.

Summary of the Legislation:
This legislation establishes a requirement that employees working in the city of Seattle be provided paid sick and safe time. This time is to made be available when: (i) the employee is sick, (ii) a member of their immediate family is sick and needs care; (iii) the employee's place of work or their child's school or place of care is ordered closed by a public health official; or (iv) as the victim of domestic violence, or acting in support of family-member who has been a victim, the employee needs time off to address matters related to follow-up care or legal action. As detailed in the legislation, the minimum amount of leave that must be provided varies by firm size.

The legislation provides an exemption for the first two years of operation for Tier 1 and Tier 2 firms, and also delays initial implementation of the overall ordinance until September 1, 2011 for all firms.

> Following the same enforcement model that is now applied by the Seattle Office for Civil Rights (OCR) to address violations of fair employment standards, complaints regarding an employer's failure to provide leave can be submitted to SOCR for investigation and potential findings. In situations where an employer is formally found to be out of compliance, SOCR will seek conciliation. The terms of a conciliation settlement can include elimination of the unlawful practice, restoration of back-pay, rehiring, attorney's fees and other remedies that could be ordered by a court, expect that damages for humiliation and suffering cannot exceed $10,000. If no voluntary agreement is reached, SOCR will refer the matter to the City Attorney for a hearing before the Hearing Examiner. If the Hearing Examiner concurs with the findings of a violation, its settlement order could require affirmative action or other relief deemed necessary to "correct the practice, effectuate the purpose of this ordinance, and secure compliance there with, including but not limited to hiring, reinstatement, or upgrading . . . restoration of lost benefits, attorney's fees . . . except that damages for humiliation and mental suffering shall not exceed $10,000"; essentially the same remedies that SOCR would seek through conciliation.

A separate "companion" Council Bill provides the position authority (for one new full-time equivalent) and funding needed for implementation, enforcement and outreach. The sick leave

requirements would not become effective until Sep 1, 2011, but staff will be needed sooner than that to begin the required rule making and outreach.

The legislation also calls upon SOCR and the City Auditor to provide Council with a written assessment of whether the policy goals of the ordinance have been achieved and whether the notice and enforcement provisions established by the ordinance have been effective in achieving compliance with the minimum standards for sick and safe time. To the extent that any shortcomings are identified, this report will include recommendations for potential modifications to the legislation. The report is due 18 months after the effective date of the ordinance. This assessment is projected to a have a cost of approximately $200,000, of which $50,000 would be needed in 2012, and the remainder in 2013.

Background:
Consistent with the findings found in Section 1, the ordinance is designed to address a number of related public policy concerns:

- Without paid sick time, employees are more likely to come to work while ill, risking their own health, that of their colleagues, and potentially that of customers and clients.
- Without paid sick time, employees will be less likely to take time off to seek preventive care for themselves or their children; and may be tempted to send unhealthy children to school. Either of these practices could lead to poorer health for workers and their children.
- Without paid safe time, employees are less likely to take the time needed to address situations where they or a family member has been the victim of domestic violence. Given the social costs associated with domestic violence, this is not a desirable outcome.
- Workers who do not have paid sick time place themselves and their families at economic risk, due to the impact of lost wages, when they choose to take sick or safe time without pay.

Please check one of the following:

____ **This legislation does not have any financial implications.**
(Stop here and delete the remainder of this document prior to saving and printing.)

_X_ **This legislation has financial implications.** (Please complete all relevant sections that follow.)

The potential fiscal impacts to the City of this ordinance include both the direct costs of enforcement and the "indirect" costs associated with extending paid sick and safe time to certain temporary employees of the City, and expanding the uses of City employee's existing sick time benefit. The magnitude of these various cost drivers are estimated as follows:

- **Direct costs – outreach, enforcement and assessment.** To fully inform employers and employees about the effects of the paid leave requirements, OCR will need to undertake a significant one-time outreach effort. This will include meetings with stakeholders,

distribution of materials, advertisements etc. The projected cost of this effort is approximately $105,000, including some temporary staffing costs. These one-time costs would be incurred during the 12-18 months following passage of the ordinance.

Rule-making and on-going enforcement responsibilities for SOCR will require the addition of one Civil Rights Analyst. The pro-rated cost of one quarter of staffing in 2011 is $20,900; the on-going full year costs for 2012 and beyond is $84,000. The position authority and appropriation required for enforcement are the subject of a separate "companion" ordinance that includes its own fiscal note. In addition, on-going outreach and the cost of printing updated informational materials for distribution to employers could represent as much as $15,000 per year in additional costs.

And as noted above, the assessment called for in the legislation is expected to have a cost of up to $200,000. This money will be used to fund an independent entity to conduct the assessment.

- **Indirect costs – temporary employees now to be eligible for sick time.** Currently the City does not offer paid sick and safe time to certain temporary employees. Instead, these employees receive "premium" pay in lieu of benefits (all benefits, not just sick time). This premium is computed as a percentage of base salary and varies between 5% and 25%.

  If sick time were added to the total compensation for these positions, one obvious step would be lower the premium to offset the value of sick time. However, at least some of the existing premium levels are linked to collective bargaining agreements. Adjustments could still be made, but will likely require significant discussion with the interested parties.

  Therefore, the current analysis assumes no such changes and computes the potential cost to the City assuming no decreases in the current premium levels. An analysis of 2010 staffing data showed that roughly 1,865 individuals worked as temporary employees for the City of Seattle at some point during the year. In total, these individuals worked more than 720,000 hours. And at a rate of 1 paid sick hour per 30 worked, they would have earned nearly 21,600 sick hours. Compensated at their existing hourly rates, this time would have cost the City approximately $375,000.

  However, under the proposed ordinance employees cannot take sick time until they have been employed for 180 days, and some share of temporary workers will not reach this threshold. Further, it is unlikely that all individuals would take full advantage of the sick time that is made available. Recognizing that all temporary employees would not be eligible to take sick time, and assuming that those who are eligible will take, on average, half their available time, the effective costs to the City will be less than $200,000 per year. These additional costs will first arise in 2012, given that the ordinance will take effect until 180 days after its passage.

  Department of Parks and Recreation and Seattle Center are among the heaviest users of

temporary workers, so they would bear a significant share of the total costs. In particular, these two departments account for 60% of the total and would face estimated annual of costs of $80,000 and $35,000, respectively. A portion of the impact to these two departments will be borne directly by the General Subfund, and both might seek financial relief from the General Subfund to address the portion of temporary labor costs that are now supported by other sources. SPU, City light and HSD are the other departments to face notable impacts, with annual costs of between $20,000 and $30,000. Given the City's current financial situation, there would need to be offsetting reductions in other expenses and likely some reduction in direct services as a result.

- **Indirect costs – public health closure eligible use of sick time.** The proposed ordinance will extend the eligible use of sick time to the "closure of the employee's place of business by order of a public official to limit exposure to an infectious agent, biological toxin or hazardous material, or an employee's need to care for a child whose school or place of care has been closed by order of a public official for such a reason." This extension could have some future cost to the City, but these situations are likely to rare and the costs small.

- **Indirect costs – sick time restored to re-hired employees.** The proposed ordinance will mandate that sick time be restored to any employee who is rehired within a year of separation, without regard to what caused the original separation from employment. Current City policy does not provide for restoration of sick time when separation was due to resignation, quitting or discharge. However, given that, such rehires are relatively infrequent, the cumulative cost of the restored sick time is likely to be insignificant.

This ordinance will also have fiscal impacts on private employers with employees who are working in the city. This fiscal note is not intended to capture such effects. Instead, these impacts will be discussed separately as part of Council consideration of the proposed ordinance.

What is the financial cost of not implementing the legislation?
There are no direct costs associated with not implementing this legislation. Indirect societal costs may arise from having sick employees report to work, having their children attend school while sick, etc.

Does this legislation affect any departments besides the originating department?
As described above, this legislation will increase costs for any City department that employs temporary workers who receive premium pay in lieu of benefits.

What are the possible alternatives to the legislation that could achieve the same or similar objectives?
There are no obvious approaches that would ensure sick and safe time for the full set of workers who would be eligible under this ordinance.

Is the legislation subject to public hearing requirements?
No

List attachments to the fiscal note below:
None

Ben Noble
Leg – paid sick leave
Aug 9, 2011
Version #3b

ORDINANCE _____

AN ORDINANCE relating to employment in Seattle; adding a new chapter 14.16 to the Seattle Municipal Code; establishing minimum standards for the provision of paid sick and paid safe time; prescribing penalties, remedies and enforcement procedures; amending Section 3.14.931 of the Seattle Municipal Code; and requesting a post-implementation assessment from the Seattle Office for Civil Rights.

WHEREAS, A large number of workers in the city of Seattle will at some time during the year need temporary time off from work to take care of their own or their family members' health needs or their own or their family members' safety or other needs resulting from domestic violence, sexual assault, or stalking; and

WHEREAS, many workers do not have access to any paid leave for sick or safe days or have an inadequate number of paid sick or safe days;

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The City Council makes the following findings:

When workers have no paid sick leave or an inadequate amount available to them, they are more likely to come to work when they or their family members are sick. Absent the proper care needed for treatment or recovery, the ill worker's or ill family member's health problems may intensify or be prolonged.

Employees who come to work when they are sick are likely to expose other employees, customers, and members of the public to infectious diseases, such as the flu.

Workers with no paid sick leave, or an inadequate amount to take time off to care for a sick child, are likely to send sick children to school or a child care center, thereby potentially spreading contagious illnesses.

Family economic security is at risk for workers who lack adequate paid sick leave because workers who lack paid sick leave lose earnings if they miss work to care for themselves, their children, or other family members who are ill or injured.

Victims of domestic violence, sexual assault and stalking with no paid sick leave are less able to receive medical treatment, participate in legal proceedings and obtain other necessary

services. In addition, without paid sick leave, domestic violence victims are less able to maintain the financial independence necessary to leave abusive situations, achieve safety, and minimize physical and emotional injuries.

Paid sick and safe days will promote the safety, health and welfare of the people of the City of Seattle by reducing the chances that worker's illnesses will intensify or be prolonged, by reducing the exposure of co-workers and members of the public to infectious diseases, and by reducing the exposure of children at schools and day cares to infectious diseases; resulting in a healthier and more productive workforce, better health for older family members and children, enhanced public health and improved family economic security.

Paid sick and safe days will enable victims of domestic violence, sexual assault and stalking and their family members to participate in legal proceedings, receive medical treatment, or obtain other necessary services and, thus, to maintain the financial independence necessary to leave abusive situations, achieve safety, and minimize physical and emotional injuries.

To safeguard the public welfare, health, safety, and prosperity of the city of Seattle, all persons working in our community should have access to adequate paid sick and safe leave, because doing so will ensure a more stable workforce in our community, thereby benefiting workers, their families, employers, and the community as a whole.

Section 2. A new Chapter 14.16 "Paid Sick Time and Paid Safe Time" is added to Title 14 of the Seattle Municipal Code as follows:

14.16.010. Definitions

For purposes of this chapter

A. "Adverse action" means the discharge, suspension, discipline, transfer, demotion or denial of promotion by an employer of an employee for any reason prohibited by 14.16.040.

B. "Agency" shall mean the Seattle Office for Civil Rights.

C. "Business" and "engaging in business" has the same meanings as in Chapter 5.30.

D. "City" shall mean the City of Seattle.

E. "City department" means any agency, office, board or commission of the City, or any Department employee acting on its behalf, but shall not mean a public corporation chartered under Ordinance 103387, or its successor ordinances, or any contractor, consultant, concessionaire or lessee.

F. "Charging party" means the person aggrieved by an alleged violation of this chapter or the person making a charge on another person's behalf, or the Director when the Director files a charge.

G. "Commission" means the Seattle Human Rights Commission.

H. "Director" means the Director of the Office for Civil Rights.

I. "Employee" shall mean any individual employed by an employer, and shall include traditional employees, temporary workers, and part-time employees. Individuals performing services under a work study agreement are not covered by this chapter. Employees are covered by this chapter if they perform their work in Seattle. An employee who performs work in Seattle on an occasional basis is covered by this chapter only if he performs more than 120 hours of work in Seattle within a calendar year. An employee who is not covered by this Chapter is still included in any determination of the size of the employer. In the event that a temporary employee is supplied by a staffing agency or similar entity, absent a contractual agreement stating otherwise, that individual shall be deemed to be an employee of the staffing agency for all purposes of this chapter, except as provided in subsection 14.16.010.T.4.b.

J. "Employer" shall mean, as defined in Section 14.04.030.K, any person who has one or more employees, or the employer's designee or any person acting in the interest of such employer. Employer size shall be determined as provided in Section 14.16.010.N and T. For purposes of this act, "employer" does not include any of the following:

1. The United States government;

2. The State of Washington, including any office, department, agency, authority, institution, association, society or other body of the state, including the legislature and the judiciary;

3. Any county or local government other than the City.

K. "Employment agency" or "staffing agency" means any person undertaking with or without compensation to procure opportunities to work or to procure, recruit, refer, or place individuals with an employer or in employment.

L. "Full-time equivalent" shall mean the number of hours worked for compensation that add up to one full-time employee, based either on an eight-hour day and a five-day week or as full-time is defined, in writing or in practice, by the employer.

M. "Health care professional" shall mean any person authorized by the City, any state government and/or the federal government to diagnose and treat physical or mental health conditions, including a doctor, nurse, emergency medical care provider, and/or a public health clinic worker, so long as that person is performing within the scope of their practice as defined by the relevant law.

N. "Major employer" shall mean any employer for which greater than 1,000 employees work for compensation. In determining the number of employees performing work for compensation, all employees performing work for compensation on a full-time, part-time or temporary basis shall be counted, including employees made available to work through the services of a temporary services or staffing agency or similar entity. Whether an employer is a Major Employer for the current calendar year will be calculated based upon the average number of employees who worked for compensation per calendar week during the preceding calendar year for any and all weeks during which at least one employee worked for compensation. For employers that did not employ any employees during the previous calendar year, the size will be calculated based upon the average number of employees who worked for compensation per calendar week during the first 90 calendar days in which the employer engaged in business.

O. "Paid sick time" and/or "paid sick days" shall mean accrued hours of paid leave provided by an employer for use by an employee for an absence from work for any of the reasons specified in 14.16.030(A)(1 - 2) of this chapter, for which time an employee shall be compensated at the same hourly rate and with the same benefits, including health care benefits, as the employee would have earned during the time the paid leave is taken. Employees are not entitled to compensation for lost tips or commissions and compensation shall only be required for hours that an employee is scheduled to have worked.

1. For purposes of determining eligibility for "paid sick time," "family member" shall mean, as defined in the Washington Family Care Act, RCW 49.12.265 and 49.12.903, as follows:

a. "Child" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is: (a) Under eighteen years of age; or (b) eighteen years of age or older and incapable of self-care because of a mental or physical disability.

b. "Grandparent" means a parent of a parent of an employee.

c. "Parent" means a biological or adoptive parent of an employee or an individual who stood in loco parentis to an employee when the employee was a child.

d. "Parent-in-law" means a parent of the spouse of an employee.

e. "Spouse" means husband, wife or domestic partner. For purposes of this chapter, the terms spouse, marriage, marital, husband, wife, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons to the extent that such interpretation does not conflict with federal law. Where necessary to implement this chapter, gender-specific terms such as husband and wife used in any statute, rule, or other law

shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships.

P. "Paid safe time" and/or "paid safe days" shall mean accrued hours of paid leave provided by an employer for use by an employee for an absence from work for any of the reasons specified in 14.16.030(A)(3 - 4), for which time an employee shall be compensated at the same hourly rate and with the same benefits, including health care benefits, as the employee would have earned during the time the paid leave is taken.

1. For the purposes of determining eligibility for "paid safe time":

a. "Family or household members" shall mean, as defined in RCW 49.76.020, spouses, domestic partners, former spouses, former domestic partners, persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage, adult persons who are presently residing together or who have resided together in the past, persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

b. "Domestic violence" shall mean:

1) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members;

2) sexual assault of one family or household member by another; or

3) stalking, as defined below in subsection 14.16.010.P.1.c, of one family or household member by another family or household member.

c. "Stalking" shall be defined as in RCW 9A.46.110,

d. "Dating relationship" shall mean, as defined in RCW 49.76.020, a social relationship of a romantic nature.

e. "Sexual assault" shall be defined as in RCW 49.76.020.

Q. "Party" includes the person charging or making a complaint or upon whose behalf a complaint is made alleging a violation of this chapter, the person alleged or found to have committed a violation of this chapter and the Office for Civil Rights.

R. "Person," as used in this chapter, includes one or more individuals, partnerships, associations, organizations, trade or professional associations, corporations, public corporations, cooperatives, legal representatives, trustees, trustees in bankruptcy and receivers, firm, institution, or any group of persons; it includes any owner, lessee, proprietor, manager, agent or employee, whether one or more natural persons, and further includes any department, office, agency or instrumentality of the City.

S. "Respondent" means any person who is alleged or found to have committed a violation of this chapter.

T. "Tier One," "Tier Two," and "Tier Three" employers are defined as follows:

1. "Tier One employer" shall mean an employer that employs more than 4 and fewer than 50 full-time equivalents on average per calendar week.

2. "Tier Two employer" shall mean an employer that employs at least 50 and fewer than 250 full-time equivalents on average per calendar week.

3. "Tier Three employer" shall mean an employer that employs 250 or more full-time equivalents on average per calendar week.

4. The determination of employer tier for the current calendar year will be calculated based upon the average number of full-time equivalents paid for per calendar week during the preceding calendar year for any and all weeks during which at least one

employee worked for compensation. To determine the number of full-time equivalents, all compensated hours of all employees shall be counted, including:

a. work performed outside of the City; and

b. compensated hours made available by part-time employment, temporary employment or through the services of a temporary services or staffing agency or similar entity.

5. For employers that did not have any employees during the previous calendar year, the employer tier will be calculated based upon the average number of full-time equivalents paid for per calendar week during the first 90 calendar days of the current year in which the employer engaged in business.

14.16.020. Accrual of Paid Sick Time and Paid Safe Time

A. All employees of Tier 1, Tier 2 and Tier 3 employers have the right to paid sick time and paid safe time as provided in this section.

B. Employees shall accrue paid time, to be used as either paid sick or safe time, as follows:

1. Employees of a Tier One employer shall accrue at least one hour of paid time for every 50 hours worked.

2. Employees of a Tier Two employer shall accrue at least one hour of paid time for every 35 hours worked.

3. Employees of a Tier Three employer shall accrue at least one hour of paid time for every 30 hours worked.

4. For any employee who works fewer than 40 hours per calendar week, a Tier One or Tier Two employer may limit the employee's maximum accrual and carryover of paid time by pro-rating using the following ratio. The ratio shall be calculated as the number of hours an employee worked during the two quarters of employment during which they worked the most hours over the past 12 months divided by the number of hours an

employee working 40 hours per calendar week would have worked during the same period. For example, an employee of a Tier One employer that worked 20 hours per week may have his accrual, and carryover, capped at 20 hours in a calendar year.

C. No Tier One employer shall be required to allow an employee to use a combined total of paid sick time and paid safe time exceeding 40 hours in a calendar year. No Tier Two employer shall be required to allow an employee to use a combined total of paid sick time and paid safe time exceeding 56 hours in a calendar year. No Tier Three employer shall be required to allow an employee to use a combined total of paid sick time and paid safe time exceeding 72 hours in a calendar year.

D. In the case of employees who are exempt from overtime payment under section 213(a)(1) of the Fair Labor Standards Act of 1938, approved June 25, 1938 (52 Stat. 1060; 29 U.S.C. § 201 et seq.) (hereinafter referred to as "FLSA" exempt employees), no employer shall be required to accrue leave for such employees for hours worked beyond a 40-hour work week. If their normal work in a work week is less than 40 hours, paid sick time and paid safe time accrues based upon that employee's normal work week.

E. Paid sick time and paid safe time as provided in this section shall begin to accrue at the commencement of employment. For individuals who are employed on the date this ordinance takes effect, accrual shall begin on the date this ordinance takes effect. Accrual rates shall not apply to hours worked before this ordinance takes effect.

F. Except as provided in Sections 14.16.090 and 14.16.100, employees shall be entitled to use accrued paid sick time or safe time beginning on the 180th calendar day after the commencement of their employment. When there is a separation from employment and the employee is rehired within 9 months of separation by the same employer the employees previous period of employment shall contribute to the total time of employment required under this subsection for the employee to become entitled to take leave. If a separation(s) does occur, the

total time of employment required under this subsection for the employee to be become entitled to take leave must be accumulated within two calendar years.

G. Unused paid sick time and paid safe time shall be carried over to the following calendar year; however, no Tier One employer shall be required to allow an employee to carry over a combined total of paid sick time and paid safe time in excess of 40 hours, no Tier Two employer shall be required to allow an employee to carry over a combined total of paid sick time and paid safe time in excess of 56 hours and no Tier Three employer shall be required to allow an employee to carry over a combined total of paid sick time and paid safe time in excess of 72 hours.

H. Any employer with a paid leave policy, such as a paid time off (PTO) policy, who makes available an amount of paid leave sufficient to meet the accrual requirements of this section is not required to provide additional paid sick and safe time paid leave, provided that such available paid leave may be used for the same purposes and under the same conditions as paid sick and safe time under this section; provided that any accrued but unused paid leave may be carried over to the following calendar year consistent with 14.16.020(G) .

Major employers with a paid leave policy, such as a paid time off policy, must provide sufficient paid leave such that total paid time off is at least double the accrual rate required of a Tier Three employer, and that at least half of total paid time off be available for the same purposes and under the same conditions as paid sick time and paid safe time under this section.

I. Nothing in this section 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 paid sick and safe time that has not been used.

J. If an employee is transferred to a separate division, entity, or location within the City, or transferred out of the City and then transferred back to a division, entity, or location within the City, but remains employed by the same employer, the employee is entitled to all paid sick and

safe time accrued at the prior division, entity, or location and is entitled to use all paid sick and safe time as provided in this section.

K. When there is a separation from employment and the employee is rehired within 9 months of separation by the same employer, previously accrued paid sick and safe time that had not been used shall be reinstated. Further, the employee shall be entitled to use accrued paid sick and safe time and accrue additional sick and safe time immediately upon the re-commencement of employment, provided that the employee had previously been eligible to use paid sick and safe time. If there is a separation of more than 9 months, an employer shall not be required to reinstate accrued paid sick and safe time and for the purposes of this chapter the rehired employee shall be considered to have newly commenced employment.

L. Subject to terms and conditions established by the employer, the employer may, but is not required to, loan paid sick time and paid safe time to the employee in advance of accrual by such employee.

14.16.030. Use of Paid Sick Time and Paid Safe Time

A. 1. Paid sick time shall be provided to an employee by an employer for the following reasons:

a. An absence resulting from an employee's mental or physical illness, injury or health condition; to accommodate the 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 preventive medical care;

b. To allow the employee to provide care of a family member with a mental or physical illness, injury or health condition; care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury or health condition; or care of a family member who needs preventive medical care.

2. Paid safe time shall be provided to an employee by an employer for the following reasons:

a. When the employee's place of business has been closed by order of a public official to limit exposure to an infectious agent, biological toxin or hazardous material,

b. To accommodate the employee's need to care for a child whose school or place of care has been closed by order of a public official for such a reason.

c. For any of the following reasons related to domestic violence, sexual assault, or stalking, as set out in RCW 49.76.030:

1) To enable the employee to seek legal or law enforcement assistance or remedies to ensure the health and safety of the employee or the employee's family members including, but not limited to, preparing for, or participating in, any civil or criminal legal proceeding related to or derived from domestic violence, sexual assault, or stalking;

2) To enable the employee to seek treatment by a health care provider for physical or mental injuries caused by domestic violence, sexual assault, or stalking, or to attend to health care treatment for a victim who is the employee's family member;

3) To enable the employee to obtain, or assist a family member in obtaining, services from a domestic violence shelter, rape crisis center, or other social services program for relief from domestic violence, sexual assault, or stalking;

4) To enable the employee to obtain, or assist a family member in obtaining, mental health counseling related to an incident of domestic violence, sexual assault, or stalking, in which the employee or the

employee's family member was a victim of domestic violence, sexual assault, or stalking; or

5) To enable the employee to participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members from future domestic violence, sexual assault, or stalking.

B. Paid sick time and paid safe time shall be provided upon the request of an employee. When possible, the request shall include the expected duration of the absence. An employer may require an employee to comply with the employer's usual and customary notice and procedural requirements for absences and/or requesting leave, absent unusual circumstances, provided that such requirements do not interfere with the purposes for which the leave is needed.

1. If the paid leave is foreseeable, a written request shall be provided at least 10 days, or as early as possible, in advance of the paid leave, unless the employer's normal notice policy requires less advance notice;

2. If the paid leave is unforeseeable, the employee must provide notice as soon as is practicable and must generally comply with an employer's reasonable normal notification policies and/or call-in procedures, absent unusual circumstances, provided that such requirements do not interfere with the purposes for which the leave is needed.

C. For employees covered by the overtime requirements of the FLSA, accrued paid sick time and paid safe time may be used in hourly increments or smaller increments if an employer so designates. For FLSA exempt employees, an employer may make deductions of paid sick time and paid safe time in accordance with the FLSA. For FLSA exempt public employees, paid sick time and paid safe time must be used in accordance with a pay system established by statute, ordinance or regulation or by a policy or practice established pursuant to the principles of public accountability

D. When the use of accrued time is foreseeable, the employee shall make a reasonable effort to schedule the use of sick or safe time in a manner that does not unduly disrupt the operations of the employer.

E. For use of paid sick time of more than three consecutive days for a reason set out in subsection 14.16.030(A)(1), an employer may require reasonable documentation that the sick time is covered by subsection 14.16.030(A)(1). Documentation signed by a health care provider indicating that sick time is necessary shall be considered reasonable documentation. An employer may not require that the documentation explain the nature of the illness. For any employee who is not offered health insurance by the employer, the employer and the employee shall each pay half the cost of any out-of-pocket expense incurred by the employee in obtaining the employer-requested documentation. These expenses are limited to the cost of services provided by health care professionals, the services of health care facilities, testing prescribed by health care professionals and transportation to the location where such services are provided. An employee who has declined to participate in the health insurance program offered by his or her employer shall not be entitled to reimbursement for out-of-pocket expenses.

F. For use of "paid safe time" of more than three consecutive days for a reason set out in subsection 14.16.030(A)(2),

1. an employer may require that requests under subsection 14.16.030(A)(2)(a) be supported by verification of a closure order by a public official of the employee's child's school or childcare establishment, and the employee may satisfy this verification request by providing notice of the closure order in whatever format the employee received the notice;

2. an employer may require that requests under subsection 14.16.030(A)(2)(b) be supported by verification that the employee or employee's family member is a victim of domestic violence, sexual assault, or stalking, and that the leave taken was for one of the purposes covered by subsection 14.16.030(A)(2)(b). As set out in RCW 49.76.040(4), an

employee may satisfy this verification requirement by one or more of the following methods:

a. a police report indicating that the employee or employee's family member was a victim of domestic violence, sexual assault, or stalking;

b. a court order protecting or separating the employee or employee's family member from the perpetrator of the act of domestic violence, sexual assault, or stalking, or other evidence from the court or the prosecuting attorney that the employee or employee's family member appeared, or is scheduled to appear, in court in connection with an incident of domestic violence, sexual assault, or stalking; or

c. documentation that the employee or the employee's family member is a victim of domestic violence, sexual assault, or stalking, from any of the following persons from whom the employee or employee's family member sought assistance in addressing the domestic violence, sexual assault, or stalking: An advocate for victims of domestic violence, sexual assault, or stalking; an attorney; a member of the clergy; or a medical or other professional. The provision of documentation under this section does not waive or diminish the confidential or privileged nature of communications between a victim of domestic violence, sexual assault, or stalking with one or more of the individuals named in this subsection (c); or

d. an employee's written statement that the employee or the employee's family member is a victim of domestic violence, sexual assault, or stalking and that the leave taken was for one of the purposes of subsection 14.16.030(A)(2)(b).

G. Upon mutual consent by the employee and the employer, an employee may work additional hours or shifts during the same or next pay period without using available paid sick or safe time for the original missed hours or shifts. However, the employer may not require the employee to work such additional hours or shifts. Should the employee work additional shifts,

the employer shall comply with any applicable federal, state or local laws concerning overtime pay.

H. Nothing in this chapter shall be construed to prohibit an employer from establishing a policy whereby employees may voluntarily exchange assigned hours or "trade shifts".

I. When paid sick or safe time is requested by an employee of a Tier One or Tier Two employer, the employer may offer the employee substitute hours or shifts. If the employee accepts the offer and works these substitute hours or shifts, the amount of time worked during the substitute period or the amount of time requested for sick and safe time, whichever is smaller, shall be deducted from the employee's accrued sick and safe time. Should the employee work the substitute hours or shifts, the employer shall comply with any applicable federal, state or local laws concerning overtime pay. However, no employer is required to offer such substitute hours or shifts, and no employee is required to accept such hours or shifts if they are offered.

J. Nothing in this chapter shall be construed to prohibit an employer from establishing a policy whereby employees may donate unused accrued paid sick leave to another employee.

K. Each time wages are paid, employers shall provide, in writing, information stating an updated amount of paid time available to each employee for use as either sick time or safe time. Employers may choose a reasonable system for providing this notification, including, but not limited to, listing remaining available paid time on each pay stub or developing an online system where employees can access their own paid leave information.

14.16.040. 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 chapter.

B. An employer shall not take adverse action or discriminate against an employee because the employee has exercised in good faith the rights protected under this chapter. Such rights include but are not limited to the right to use paid sick time and/or paid safe time pursuant

to this chapter; the right to file a complaint or civil action about any employer's alleged violation of this chapter; and the right to cooperate with the Agency in its investigations of alleged violations of this chapter; and the right to inform other employees of his or her potential rights under this section.

C. It shall be unlawful for an employer's absence control policy to count paid sick or safe time covered under this chapter as an absence that may lead to or result in any adverse action taken against the employee.

D. There shall be a rebuttable presumption of unlawful retaliation under this Section 14.16.040 whenever an employer takes any adverse action against a person within 90 days of when that person:

1. files a complaint with the Agency or a court alleging a violation of any provision of this section;

2. informs his or her employer, union or similar organization, legal counsel, and/or the Agency about an employer's alleged violation of this section;

3. cooperates with the Agency in the investigation or prosecution of any alleged violation of this section;

4. opposes any policy, practice, or act that is unlawful under this section; or

5. informs any other employee of his or her rights under this section.

E. The protections afforded under subsection 14.16.040.D shall apply to any person who mistakenly but in good faith alleges violations of this Section 14.16.040.

14.16.050. Notice and Posting

A. Employers shall give notice that employees are entitled to paid sick time and paid safe time; the amount of paid sick and safe time and the terms of its use guaranteed under this chapter; that retaliation against employees who request or use paid sick and safe time is prohibited; and that each employee has the right to file a complaint or bring a civil action if paid

sick time or paid safe time as required by this section is denied by the employer or the employee is retaliated against for requesting or taking paid sick time or paid safe time.

B. The Agency shall create and make available to employers a poster and a model notice, hereinafter referred to as the "Notice," which contains the information required under subsection A of this Section for their use in complying with this subsection. The poster shall be printed in English and Spanish any other languages that the Agency determines are needed to notify employees of their rights under this chapter.

C. Employers may comply with this section by displaying the Agency's poster in a conspicuous and accessible place in each establishment where such employees are employed.

D. Employers may also comply with this section by including the Notice in employee handbooks or other written guidance to employees concerning employee benefits or leave rights, if such written materials exist, or by distributing a copy of the Notice to each new employee upon hiring. In either case, distribution may be accomplished electronically.

E. To meet the requirements of paragraph (D) of this section, employers may duplicate the text of the Notice or may use another format so long as the information provided includes, at a minimum, all of the information contained in that Notice.

F. An employer who willfully violates the notice and posting requirements of this section shall be subject to a civil fine in an amount not to exceed $125 for the first violation and $250 for subsequent violations.

14.16.060. Employer Records

A. Employers shall retain records documenting hours worked by employees and paid sick time taken by employees, for a period of two years, and shall allow the Agency access to such records, with appropriate notice and at a mutually agreeable time, to investigate potential violations and to monitor compliance with the requirements of this chapter.

B. Employers shall not be required to modify their recordkeeping policies to comply with this section, as long as records reasonably indicate employee hours worked in Seattle, accrued paid sick and safe time, and paid sick and safe time taken. When an issue arises as to the amount of accrued paid sick time and/or paid safe time available to an employee under this chapter, if the employer does not maintain or retain adequate records documenting hours worked by the employee and paid sick and safe time taken by the employee, or does not allow the Agency reasonable access to such records, it shall be presumed that the employer has violated this chapter.

C. Records and documents relating to medical certifications, re-certifications or medical histories of employees or employees' family members, created for purposes of this chapter, are required to be maintained as confidential medical records in separate files/records from the usual personnel files. If the Americans with Disabilities Act (ADA) applies, then these records must comply with the ADA confidentiality requirements.

14.16.070. Regulations

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

14.16.080. Enforcement

A. Powers and duties

1. of Agency

a. The Agency shall receive, investigate, and pass upon charges alleging violations of this chapter as defined herein, conciliate and settle the same by agreement, and monitor and enforce any agreements or orders resulting therefrom or from a subsequent hearing thereon under and pursuant to the terms of this chapter; and shall have such powers and duties in the

performance of these functions as are defined in this chapter and otherwise necessary and proper in the performance of the same and provided for by law. The Agency shall further assist other City agencies and departments upon request in effectuating and promoting the purposes of this chapter.

b. The Director of the Agency is authorized and directed to promulgate rules consistent with this chapter and the Administrative Code.

2. of Commission

The Seattle Human Rights Commission shall study, advise, and make recommendations for legislation on policies, procedures, and practices which would further the purposes of this chapter. The Commission shall hear appeals from the Director's determinations of no reasonable cause and, in cases involving respondents who are City departments, hear appeals from determinations of reasonable cause and the orders relating to the remedy thereof. It shall, where appropriate and necessary, in its judgment, hear and determine complaints jointly with the Hearing Examiner as provided in subsections 14.16.080(H) and 14.16.080(I). The Commission shall have such powers and authority in carrying out these functions as are provided for by this chapter or otherwise established by law.

B. Charge filing, timing, amendments, notice and investigation.

1. A charge alleging a violation of this chapter shall be in writing on a form or in a format determined by the Agency, and signed by or on behalf of a charging party, and shall describe the violation complained of and should include a statement of the dates, places and circumstances and the persons responsible for such acts and practices.

2. Whenever charges are made by or on behalf of a person claiming to be aggrieved, the person making the charge must provide the Director with the name, address and telephone number of the individual on whose behalf the charge is made. Thereafter, the Director shall verify the authorization of such charge by the person on whose behalf the charge is made.

3. A charge shall not be rejected as insufficient because of failure to include all required information so long as it substantially satisfies the informational requirements necessary for processing.

4. A charge alleging a violation of this chapter or pattern of such violations may also be filed by the Director whenever the Director has reason to believe that any person has been engaged or is engaging in a violation of this chapter.

5. Charges filed under this chapter must be filed within 180 days after the occurrence of the alleged violation of this chapter with the Agency.

6. In addition to any relief authorized by this chapter, liability may accrue and an aggrieved person may obtain relief as provided in this chapter, including recovery of back pay for up to two years preceding the filing of the charge, where the unlawful practices that have occurred during the charge filing period are similar or related to unlawful practices with regard to sick time or safe time that occurred outside the time for filing a charge.

7. The charging party or the Agency may amend a charge to cure technical defects or omissions; or to clarify and amplify allegations made therein; or to add allegations related to or arising out of the subject matter set forth, or attempted to be set forth, in the original charge. For jurisdictional purposes, such amendments shall relate back to the date the original charge was first filed. The amendment must be filed within 180 days after the occurrence of the additional violation and/or retaliation and prior to the Agency's issuance of findings of fact and a

determination with respect to the original charge. Such amendments may be made at any time during the investigation of the original charge so long as the Agency will have adequate time to investigate such additional allegations and the parties will have adequate time to present the Agency with evidence concerning such allegations before the issuance of findings of fact and a determination.

8. The Director shall cause to be served or mailed by certified mail, return receipt requested, a copy of the charge on the respondent within twenty (20) days after the filing of the charge and shall promptly make an investigation thereof.

9. The investigation shall be directed to ascertain the facts concerning the violation of this Chapter alleged in the charge, and shall be conducted in an objective and impartial manner.

10. During the investigation the Director shall consider any statement of position or evidence with respect to the allegations of the charge which the charging party or the respondent wishes to submit. The Director shall have authority to sign and issue subpoenas requiring the attendance and testimony of witnesses, the production of evidence including but not limited to books, records, correspondence or documents in the possession or under the control of the person subpoenaed, and access to evidence for the purpose of examination and copying, and conduct discovery procedures which may include the taking of interrogatories and oral depositions.

11. The Director may require a fact finding conference or participation in another process with the respondent and any of respondent's agents and witnesses and charging party during the investigation in order to define the issues, determine which elements are undisputed, resolve those issues which can be resolved, and afford an opportunity to discuss or negotiate settlement. Parties may have their legal counsel present if desired.

C. Findings of fact and determination of reasonable cause or no reasonable cause.

1. The results of the investigation shall be reduced to written findings of fact and a determination shall be made by the Director that there is or is not reasonable cause for believing that a violation of this chapter has been or is being committed, which determination shall also be in writing and issued with the written findings of fact. Where a City department is a respondent the Director shall issue such findings and determination only after having submitted proposed findings and determinations to the respondent and charging party for review and comment. With respect to the findings and determination, "issued" shall be defined as signed and dated by the Director.

2. The findings of fact and determination shall be furnished promptly to the respondent and charging party.

3. Once issued to the parties, the Director's findings of fact, determination and order may not be amended or withdrawn except upon the agreement of the parties or in response to an order by the Seattle Human Rights Commission after an appeal taken pursuant to Section 14.16.080(D) or 14.16.080(G) provided, that the Director may correct clerical mistakes or errors arising from oversight or omission upon a motion from a party or upon the Director's own motion.

D. Determination of no reasonable cause – Appeal from and dismissal.

If a determination is made that there is no reasonable cause for believing a violation of this chapter has been committed, the charging party shall have the right to appeal such determination to the Commission within 30 days of the date the determination is signed by the Director by filing a written statement of appeal with the Commission. Such statement shall state specifically the grounds on which it is based and the reasons the determination or order or both is in error. The Commission shall promptly deliver a copy of the statement to the Agency and respondent and shall promptly consider and act upon such appeal by either affirming the

Director's determination or remanding it to the Director with appropriate instructions. In the event no appeal is taken or such appeal results in affirmance, the determination of the Director shall be final and the charge deemed dismissed and the same shall be entered on the records of the Agency.

E. Determination of reasonable cause -- Conciliation and settlement of cases involving all respondents except City departments.

1. In all cases except a case in which a City department is the respondent, if a reasonable cause determination is made, the Director shall endeavor to eliminate the unlawful practice by conference, conciliation and persuasion. Conditions of settlement may include (but are not limited to) the elimination of the unlawful practice, hiring, reinstatement or upgrading with or without back pay, lost benefits, attorney's fees, admittance or restoration to membership in a labor organization, or such other action which will effectuate the purposes of this chapter, including action which could be ordered by a court, except that damages for humiliation and mental suffering shall not exceed $10,000. Any settlement agreement shall be reduced to writing and signed by the Director, the charging party and the respondent. An order shall then be entered by the Director setting forth the terms of the agreement. Copies of such order shall be delivered to all affected parties.

2. In case of failure to reach an agreement and of conciliation and upon a written finding to that effect furnished to the charging party and respondent, except a case in which a City department is a respondent, the Director shall promptly cause to be delivered the entire investigatory file, including the charge and any and all findings made, to the City Attorney for further proceedings and hearing under this chapter pursuant to Section 14.16.080(H).

F. Determinations of reasonable cause -- Conciliation, settlement and conclusion of cases involving City departments as respondents.

In all cases in which a City department is a respondent:

1. A determination of reasonable cause by the Director shall be deemed a finding that an unlawful practice has been committed by respondent and is dispositive of this issue for all future proceedings under this chapter, unless appealed, reversed and remanded as provided in this chapter.

2. Within sixty days of a determination of reasonable cause, the Director shall confer with the parties and determine an appropriate remedy, which remedy may include (but is not limited to) hiring, reinstatement or upgrading with or without back pay, lost benefits, attorney's fees, or such other action as will effectuate the purposes of this chapter, including action which could be ordered by a court, except that damages for humiliation and mental suffering shall not exceed $10,000. Such remedy shall be reduced to writing in an order of the Director.

3. The charging party must sign a release in the form and manner requested by the Department, releasing the City from further liability for acts giving rise to the charge in order to obtain the benefits of the remedy provided under this section and before payment can be made. Without such release, the Director's order with respect to the charging party's individual relief shall have no force and effect. In such event the Director shall notify the parties involved in writing.

4. In all cases where the remedy determined by the Director before or after any appeal includes a monetary payment which exceeds the sum of $5,000, the charge or claim, the Director's determination, order, the charging party's signed release and such further documentation as may be required shall be presented to the City Council for passage by separate ordinance. If the City Council fails or refuses to appropriate the amount ordered by the Director within 90 days, the Director shall

certify the case to the Hearing Examiner for a hearing to determine the appropriate monetary relief in the case which determination shall be final and binding upon the City.

5. Where the Director's order includes a monetary payment of $5,000 or less, such payment shall be made under the authority and in the form and manner otherwise provided for by law for payment of such claims.

G. Appeals to the Commission from determinations of reasonable cause and orders of excess involving City departments as respondents.

In all cases in which a City department is a respondent:

1. The charging party or respondent may appeal the Director's order and determination of reasonable cause to the Commission within 30 days of the Director's order by filing a written statement of appeal with the Commission. Such statement shall state specifically the grounds on which it is based and the reasons the determination or order or both is in error.

2. The Commission shall promptly mail a copy of the statement to the Department and to the other party and shall promptly consider and act upon such appeal by either affirming the Director's determination or order or remanding it to the Director with appropriate instructions.

3. The filing of an appeal shall stay the enforcement of any remedy provided for in the Director's determination or order during the pendency of the appeal.

4. In such appeal, the Commission shall consider only the record submitted to it by the Department and written statements of positions by the parties involved and, in its discretion, oral presentation. The Commission shall reverse the Director's determination or order only upon a finding that it is clearly erroneous.

H. Complaint and hearing of cases with all respondents except City departments.

1. Following submission of the investigatory file from the Director in cases involving all respondents under 14.16.080(E), the City Attorney shall prepare a complaint against such respondent relating to the charge and facts discovered during the investigation thereof and prosecute the same in the name and on behalf of the Department and the City at a hearing before the Hearing Examiner sitting alone or with representatives of the Commission as provided in this chapter and to appear for and represent the interests of the Department and the City at all subsequent proceedings; provided, if the City Attorney determines that there is no legal basis for a complaint to be filed or for proceedings to continue, a statement of the reasons therefore shall be filed with the Department, charging party and the respondent.

2. The complaint shall be served on respondent in the usual manner provided by law for service of complaints and filed with the Seattle Hearing Examiner. A copy of such complaint shall be furnished to the charging party.

3. Within 20 days of the service of such complaint upon it, the respondent shall file its answer with the Hearing Examiner and serve a copy of the same on the City Attorney.

4. Upon the filing of the complaint, the Hearing Examiner shall promptly establish a date for the hearing of such complaint and give notice thereof to the Commission, the City Attorney and respondent, and shall thereafter hold a public hearing on the complaint, which hearing shall commence no earlier than 90 days nor later than 120 days from the filing of the complaint, unless otherwise ordered by the Hearing Examiner.

5. After the filing of a complaint with the Hearing Examiner, it may be amended only with the permission of the Hearing Examiner, which permission shall be granted when justice will be served thereby and all parties are allowed time to

prepare their case with respect to additional or expanded charges which they did not and could not have reasonably foreseen would be in issue at the hearing.

6. The hearing shall be conducted by a Hearing Examiner from the Office of Hearing Examiner, or a hearing examiner pro tempore appointed by the Hearing Examiner from a list approved by the Commission, sitting alone or with representatives of the Commission if any are designated. Such hearings shall be conducted in accordance with written rules and procedures consistent with this ordinance and the Administrative Code of the City (Ordinance 102228).

7. The Commission, within 30 days after notice of the date of hearing from the Hearing Examiner, at its discretion, may appoint two of its members who have not otherwise been involved in the charge, investigation, fact finding, or other resolution and proceeding on the merits of the case, who have not formed an opinion on the merits of the case, and who otherwise have no pecuniary, private or personal interest or bias in the matter, to hear the case with the Hearing Examiner. If the Commission has designated representatives they shall each have an equal vote with the Hearing Examiner, except the Hearing Examiner shall be the chairperson of the panel and make all evidentiary rulings. Should a question arise as to previous involvement, interest or bias of an appointed Commissioner, the Hearing Examiner shall resolve the issue in conformance with the law on the subject.

I. Decision and order.

1. Within 30 days after conclusion of the hearing, the Hearing Examiner presiding at the hearing (or the Examiner and Commissioners as the case may be) shall prepare a written decision and order. The final decision shall be filed as a public record with the City Clerk, and copies thereof mailed to each party of record and to the Agency.

2. Such decision shall contain a brief summary of the evidence considered and shall contain findings of fact, conclusions of law upon which the decision is based, and an order detailing the relief deemed appropriate, together with a brief statement of the reasons therefore.

3. In the event the Hearing Examiner (or a majority of the panel composed of the Examiner and Commissioners), determines that a respondent has committed a violation of this chapter, the Hearing Examiner (or panel majority) may order the respondent to take such affirmative action or provide for such relief as is deemed necessary to correct the practice, effectuate the purpose of this chapter, and secure compliance therewith, including but not limited to hiring, reinstatement, or upgrading with or without back pay, lost benefits, attorney's fees, admittance or restoration to membership in a labor organization, or such other action which will effectuate the purposes of this chapter, including action which could be ordered by a court, except that damages for humiliation and mental suffering shall not exceed $10,000. Back pay liability shall not accrue from a date more than 2 years prior to the initial filing of the charge.

4. Respondent shall comply with the provisions of any order affording relief and shall furnish proof of compliance to the Agency as specified in the order. In the event respondent refuses or fails to comply with the order, the Director shall notify the City Attorney of the same and the City Attorney shall invoke the aid of the appropriate court to secure enforcement or compliance with the order.

J. Enforcement by private persons.

1. Any person who claims to have been injured by a violation of this chapter may commence a civil action in Superior Court or any other court of competent jurisdiction, not later than two years after the occurrence of the alleged violation of this chapter or 90 days after a determination of reasonable cause by the

Director, whichever occurs last, to obtain appropriate relief with respect to such unlawful practice. In an action brought under this section, the court having jurisdiction may, upon written findings by the judge that the action was frivolous and advanced without reasonable cause, require the nonprevailing party to pay the prevailing party the reasonable expenses, including attorneys fees, incurred in opposing such action pursuant to RCW 4.84.185.

2. A complaint may be filed under this section whether or not an administrative charge has been filed under the 14.16.080(B), and without regard to the status of such charge, but if the Agency has obtained a pre-finding or post-finding settlement or conciliation agreement with the consent of the charging party, no action may be filed under this section with respect to the alleged violation which forms the basis for such complaint except for the purpose of enforcing the terms of the agreement. To preclude such filing, the charging party must be provided with written notice that consent to a pre-finding or post-finding settlement or conciliation agreement will terminate the charging party's right to file a civil action under this section.

3. a. Subject to the provisions of subsection 3(b), upon the filing of a civil action involving the same claim or arising from the same facts and circumstances, whether under this subchapter or similar law, a complaint of an alleged violation may be administratively closed by the Director.

b. In the event that a court dismisses a private cause of action on grounds that would not preclude pursuit of a charge under this subchapter, the charging party may request, within 90 days of the entry of the Court's order of dismissal, that the Agency reopen a previously filed charged. Upon such request, the Director may reopen a case that was administratively closed upon the filing of a civil action. If

the Agency closes a case based on a "no reasonable cause" finding, the case shall not be reopened except as provided through appeal pursuant to 14.16.080(D).

c. No complainant or aggrieved person may secure relief from more than one governmental agency, instrumentality or tribunal for the same harm or injury.

d. Where the complainant or aggrieved person elects to pursue simultaneous claims in more than one forum, the factual and legal determinations issued by the first tribunal to rule on the claims may, under the doctrines of "res judicata" or "collateral estoppel," be binding on all or portions of the claims pending before other tribunals.

e. No civil action may be commenced under this section with respect to an alleged violation of this chapter which forms the basis of a complaint if a hearing on the record has been commenced by The City of Seattle Office of the Hearing Examiner. To preclude such filing, a charging party must be provided with written notice at least 30 days prior to the commencement of a hearing before The City of Seattle Office of the Hearing Examiner that the commencement of such a hearing will terminate the charging party's right to file a civil action.

4. In a civil action under this section, if the court, or jury, finds that a violation of this chapter has occurred, the court may grant such relief as may be awarded by the hearing examiner under this chapter. Damages awarded under this section for humiliation and mental suffering are not subject to the limitation of subsections 14.16.080(E) and 14.16.080(F).

5. Upon timely application, the City Attorney may intervene in such civil action, if the City Attorney certifies that the case is of general public importance, and may obtain such relief as would be available in an action brought under subsections 14.16.080(E) and 14.16.080(I). Such intervention shall not be permitted in an action in which the City is a defendant.

6. It is the intent of The City of Seattle, in enacting this section, to provide private judicial remedies for violations of this chapter that are as expansive as possible consistent with the powers granted by the Constitution and Laws of The State of Washington. In the event that any provision or aspect of this section is adjudicated to be invalid or unenforceable under applicable law, the validity or enforceability of the remaining provisions shall be unaffected.

K. Construction with other laws.

Nothing in this chapter shall be construed to invalidate or restrict or deny any right or remedy any person may have under state or federal law or preclude any cause of action in court otherwise provided for the violation of any person's civil rights; nor shall this chapter be construed to preclude any person aggrieved from seeking judicial review of any final administrative decision or order made under this chapter affecting such person.

L. Violation -- Penalty.

It is unlawful for any person to willfully engage in an unfair practice under this chapter or willfully resist, prevent, impede or interfere with the Director or Hearing Examiner in the performance of their duties under this chapter, or to fail, refuse, or neglect to comply with any lawful order of the Director or Hearing Examiner. Conduct made unlawful by this section constitutes a violation subject to the provisions of Chapter 12A.02 of the Seattle Criminal Code (Ordinance 102843, as amended)1, and any person convicted thereof may be punished by a civil fine or forfeiture not to exceed $500.

14.16.090. New Employers

The provisions of this Chapter shall not apply to Tier One and Tier Two employers that have engaged in business activity for less than 24 months. For the purposes of this section, employer tier shall be calculated based upon the average number of full-time equivalents

employed per calendar week during the first 90 calendar days in which the employer has engaged in business.

14.16.100. Implementation for Tier One and Tier Two Employers

The provisions of this Chapter shall not apply to Tier One and Tier Two employers until 185 days after the effective date of the authorizing legislation.

14.16.110. Confidentiality and Nondisclosure

A. Except as provided in subsection B of this section, an employer shall maintain the confidentiality of information provided by the employee or others in support of an employee's request for sick or safe days under this section, including health information and the fact that the employee or employee's family member is a victim of domestic violence, sexual assault, or stalking, that the employee has requested or obtained leave under this act, and any written or oral statement, documentation, record, or corroborating evidence provided by the employee.

B. Information given by an employee may be disclosed by an employer only if it is

1. requested or consented to by the employee;
2. ordered by a court or administrative agency; or
3. otherwise required by applicable federal or state law.

14.16.120. Encouragement of more generous sick time policies; no effect on more generous policies

A. Nothing in this chapter shall be construed to discourage or prohibit an employer from the adoption or retention of a paid sick and safe time policy more generous than the one required herein.

B. 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 sick and safe time to an employee than required herein.

C. Nothing in this chapter shall be construed as diminishing the rights of public employees regarding paid sick or safe time or use of sick or safe time as provided under federal or Washington state law, or the Seattle Municipal Code.

14.16.130. Waiver of the Provisions of the Chapter

The provisions of this chapter shall not apply to any employees covered by a bona fide collective bargaining agreement to the extent that such requirements are expressly waived in the collective bargaining agreement in clear and unambiguous terms.

A waiver of the requirements of all or any part of the provisions of this chapter shall not be permitted if it is imposed through an employer's unilateral implementation of terms and conditions of employment.

Any waiver by an individual of any provisions of this chapter shall be deemed contrary to public policy and shall be void and unenforceable.

14.16.140. Other Legal Requirements

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

Section 3. If any provision of this chapter or application thereof to any person or circumstance is judged invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared severable.

Section 4. Consistent with the duties established for the Seattle Human Rights Commission in Section 2 of this ordinance, subsection 3.14.931(E) of the Seattle Municipal Code, last amended by ordinance 118392, is amended as follows:

3.14.931 Seattle Human Rights Commission -- Duties

***

E. Hear appeals and hearings as set forth in Chapters 14.04,((~~and~~)) 14.08, and 14.16 of the Seattle Municipal ((~~Court~~))Code.

Section 5. Twenty-four months after the effective date of this ordinance, the Seattle Office for Civil Rights will provide Council with a written assessment of whether the notice and enforcement provisions established here have been effective in achieving compliance with the minimum standards for paid sick and safe time. To the extent that any shortcomings are identified, this report should include recommendations for potential modifications to these provisions.

Section 6. This ordinance shall take effect and be in force 180 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Section 7. Severability. The several provisions of this ordinance are declared to be separate and severable and an order of any court of competent jurisdiction holding invalid any clause, sentence, paragraph, subdivision, section, or portion of this ordinance, or holding invalid the application thereof to any person or circumstance, shall not affect the validity of the remainder of this ordinance or the validity of its application to other persons or circumstances.

Passed by the City Council the ____ day of _____, 2011, and signed by me in open session in authentication of its passage this _____ day of _____, 2011.

_____

President _____ of the City Council

Approved by me this ____ day of _____, 2011.

_____

Michael McGinn, Mayor

Filed by me this ____ day of _____, 2011.

_____

Monica Martinez Simmons, City Clerk

(Seal)

Form revised: December 14, 2010

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Legislative	Ben Noble / 684-8160	Not Applicable

Legislation Title:
AN ORDINANCE relating to employment in Seattle; adding a new chapter to the Seattle Municipal Code; establishing minimum standards for the provision of paid sick and paid safe time; prescribing penalties, remedies and enforcement procedures; amending Section 3.14.931 of the Seattle Municipal Code; and requesting a post-implementation assessment from the Seattle Office for Civil Rights.

Summary of the Legislation:
This legislation establishes a requirement that employees working in the city of Seattle be provided paid sick and safe time. This time is to made be available when: (i) the employee is sick, (ii) a member of their immediate family is sick and needs care; (iii) the employee's place of work or their child's school or place of care is ordered closed by a public health official; or (iv) as the victim of domestic violence, or acting in support of family-member who has been a victim, the employee needs time off to address matters related to follow-up care or legal action.

Employers will be required to provide sick and safe days as follows:

Business Size		Accrual Rate	Max. Allowed Per Yr.	Max. Carried Over	When Eligible to Use Days
Tier 1	< 50 FTE	1 hr of leave per every 50 worked (5 days per yr)	40 hours (5 days)	40 hours (5 days)	After 180 days
Tier 2	50-249 FTE	1 hr of leave per every 35 worked (7 days per yr)	56 hours (7 days)	56 hours (7 days)	After 180 days
Tier 3	250+ FTE	1 hr of leave per every 30 worked (9 days per yr)	72 hours (9 days)	72 hours (9 days)	After 90 days

In addition, any major employer (1,000+ employees) that offers a paid-time-off (PTO) program must provide 18 total days of leave, of which at least 9 must be available as paid sick and safe time.

The legislation provides an exemption for the first two years of operation for Tier 1 and Tier 2 firms, and also delays initial implementation of the overall ordinance for one year for this same set of businesses.

The ordinance provides for two paths for enforcement in situations where employers have failed

to meet the sick and safe time requirements:

1. Following the same enforcement model that is now applied by the Seattle Office for Civil Rights (OCR) to address violations of fair employment standards, complaints can be submitted to SOCR for investigation and potential findings. In situations where an employer is formally found to be out of compliance, SOCR will seek conciliation. The terms of a conciliation settlement can include elimination of the unlawful practice, restoration of back-pay, rehiring, attorney's fees and other remedies that could be ordered by a court, expect that damages for humiliation and suffering cannot exceed $10,000. If no voluntary agreement is reached, COR will refer the matter to the City Attorney for a hearing before the Hearing Examiner. If the Hearing Examiner concurs with the findings of a violation, its settlement order could require affirmative action or other relief deemed necessary to "correct the practice, effectuate the purpose of this ordinance, and secure compliance there with, including but not limited to hiring, reinstatement, or upgrading . . . restoration of lost benefits, attorney's fees . . . except that damages for humiliation and mental suffering shall not exceed $10,000"; essentially the same remedies that SOCR would seek through conciliation.
2. Individuals will also have a right to pursue civil litigation in an appropriate court of law.

A separate "companion" Council Bill provides the position authority (for one new full-time equivalent) and funding needed for implementation and enforcement. The sick leave requirements would not become effective until 180 days after passage of the ordinance, but staff will be needed immediately to begin the required rule making.

The legislation also calls upon SOCR to provide Council with a written assessment of whether the notice and enforcement provisions established by the ordinance have been effective in achieving compliance with the minimum standards for sick and safe time. And to the extent that any shortcomings are identified, this report will include recommendations for potential modifications to these provisions.

Background:

Consistent with the findings found in Section 1, the ordinance is designed to address a number of related public policy concerns:

- Without paid sick time, employees are more likely to come to work while ill, risking their own health, that of their colleagues, and potentially that of customers and clients.
- Without paid sick time, employees will be less likely to take time off to seek preventive care for themselves or their children; and may be tempted to send unhealthy children to school. Either of these practices could lead to poorer health for workers and their children.
- Without paid safe time, employees are less likely to take the time needed to address situations where they or a family member has been the victim of domestic violence. Given the social costs associated with domestic violence, this is not a desirable outcome.
- Workers who do not have paid sick time place themselves and their families at economic risk, due to the impact of lost wages, when they choose to take sick or safe time without pay.

Please check one of the following:

____ **This legislation does not have any financial implications.**
(Stop here and delete the remainder of this document prior to saving and printing.)

_X_ **This legislation has financial implications.** (Please complete all relevant sections that follow.)

The potential fiscal impacts to the City of this ordinance include both the direct costs of enforcement and the "indirect" costs associated with extending paid sick and safe time to certain temporary employees of the City, and expanding the uses of City employee's existing sick time benefit. The magnitude of these various cost drivers are estimated as follows:

- **Direct costs – outreach and enforcement.** To fully inform employers and employees about the effects of the paid leave requirements, OCR will need to undertake a significant one-time outreach effort. This will include meetings with stakeholders, distribution of materials, advertisements etc. The projected cost of this effort is approximately $105,000, including some temporary staffing costs. These one-time costs would be incurred during the 12-18 months following passage of the ordinance.

  Rule-making and on-going enforcement responsibilities for SOCR will require the addition of one Civil Rights Analyst. The pro-rated cost of one quarter of staffing in 2011 is $20,900; the on-going full year costs for 2012 and beyond is $84,000. The position authority and appropriation required for enforcement are the subject of a separate "companion" ordinance that includes its own fiscal note. In addition, on-going outreach and the cost of printing updated informational materials for distribution to employers could represent as much as $15,000 per year in additional costs.

- **Indirect costs – temporary employees now to be eligible for sick time.** Currently the City does not offer paid sick and safe time to certain temporary employees. Instead, these employees receive "premium" pay in lieu of benefits (all benefits, not just sick time). This premium is computed as a percentage of base salary and varies between 5% and 25%.

  If sick time were added to the total compensation for these positions, one obvious step would be lower the premium to offset the value of sick time. However, at least some of the existing premium levels are linked to collective bargaining agreements. Adjustments could still be made, but will likely require significant discussion with the interested parties.

  Therefore, the current analysis assumes no such changes and computes the potential cost to the City assuming no decreases in the current premium levels. An analysis of 2010 staffing data showed that roughly 1,865 individuals worked as temporary employees for the City of Seattle at some point during the year. In total, these individuals worked more than 720,000 hours. And at a rate of 1 paid sick hour per 30 worked, they would have earned nearly 21,600 sick hours. Compensated at their existing hourly rates, this time

would have cost the City approximately $375,000.

However, under the proposed ordinance employees cannot take sick time until they have been employed for 90 days, and some share of temporary workers will not reach this threshold. Further, it is unlikely that all individuals would take full advantage of the sick time that is made available. Recognizing that all temporary employees would not be eligible to take sick time, and assuming that those who are eligible will take, on average, half their available time, the effective costs to the City will be less than $200,000 per year. These additional costs will first arise in 2012, given that the ordinance will take effect until 180 days after its passage.

Department of Parks and Recreation and Seattle Center are among the heaviest users of temporary workers, so they would bear a significant share of the total costs. In particular, these two departments account for 60% of the total and would face estimated annual of costs of $80,000 and $35,000, respectively. A portion of the impact to these two departments will be borne directly by the General Subfund, and both might seek financial relief from the General Subfund to address the portion of temporary labor costs that are now supported by other sources. SPU, City light and HSD are the other departments to face notable impacts, with annual costs of between $20,000 and $30,000. Given the City's current financial situation, there would need to be offsetting reductions in other expenses and likely some reduction in direct services as a result.

- **Indirect costs – public health closure eligible use of sick time.** The proposed ordinance will extend the eligible use of sick time to the "closure of the employee's place of business by order of a public official to limit exposure to an infectious agent, biological toxin or hazardous material, or an employee's need to care for a child whose school or place of care has been closed by order of a public official for such a reason." This extension could have some future cost to the City, but these situations are likely to rare and the costs small.

- **Indirect costs – sick time restored to re-hired employees.** The proposed ordinance will mandate that sick time be restored to any employee who is rehired within a year of separation, without regard to what caused the original separation from employment. Current City policy does not provide for restoration of sick time when separation was due to resignation, quitting or discharge. However, given that, such rehires are relatively infrequent, the cumulative cost of the restored sick time is likely to be insignificant.

This ordinance will also have fiscal impacts on private employers with employees who are working in the city. This fiscal note is not intended to capture such effects. Instead, these impacts will be discussed separately as part of Council consideration of the proposed ordinance.

What is the financial cost of not implementing the legislation?
There are no direct costs associated with not implementing this legislation. Indirect societal costs may arise from having sick employees report to work, having their children attend school while sick, etc.

Does this legislation affect any departments besides the originating department?

As described above, this legislation will increase costs for any City department that employs temporary workers who receive premium pay in lieu of benefits.

What are the possible alternatives to the legislation that could achieve the same or similar objectives?
There are no obvious approaches that would ensure sick and safe time for the full set of workers who would be eligible under this ordinance.

Is the legislation subject to public hearing requirements?
No

List attachments to the fiscal note below:
None

Ben Noble
Leg – paid sick leave
June 21, 2011
Version #2a

ORDINANCE _____

AN ORDINANCE relating to employment in Seattle; adding a new chapter 14.16 to the Seattle Municipal Code; establishing minimum standards for the provision of paid sick and paid safe time; prescribing penalties, remedies and enforcement procedures; amending Section 3.14.931 of the Seattle Municipal Code; and requesting a post-implementation assessment from the Seattle Office for Civil Rights.

WHEREAS, A large number of workers in the city of Seattle will at some time during the year need temporary time off from work to take care of their own or their family members' health needs or their own or their family members' safety or other needs resulting from domestic violence, sexual assault, or stalking; and

WHEREAS, many workers do not have access to any paid leave for sick or safe days or have an inadequate number of paid sick or safe days;

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The City Council makes the following findings:

When workers have no paid sick leave or an inadequate amount available to them, they are more likely to come to work when they or their family members are sick. Absent the proper care needed for treatment or recovery, the ill worker's or ill family member's health problems may intensify or be prolonged.

Employees who come to work when they are sick are likely to expose other employees, customers, and members of the public to infectious diseases, such as the flu.

Workers with no paid sick leave, or an inadequate amount to take time off to care for a sick child, are likely to send sick children to school or a child care center, thereby potentially spreading contagious illnesses.

Family economic security is at risk for workers who lack adequate paid sick leave because workers who lack paid sick leave lose earnings if they miss work to care for themselves, their children, or other family members who are ill or injured.

Victims of domestic violence with no paid sick leave are less able to receive medical treatment, participate in legal proceedings and obtain other necessary services. In addition,

without paid sick leave, domestic violence victims are less able to maintain the financial independence necessary to leave abusive situations, achieve safety, and minimize physical and emotional injuries.

Paid sick and safe days will promote the safety, health and welfare of the people of the City of Seattle by reducing the chances that worker's illnesses will intensify or be prolonged, by reducing the exposure of co-workers and members of the public to infectious diseases, and by reducing the exposure of children at schools and day cares to infectious diseases; resulting in a healthier and more productive workforce, better health for older family members and children, enhanced public health and improved family economic security.

Paid sick and safe days will enable victims of domestic violence and their family members to participate in legal proceedings, receive medical treatment, or obtain other necessary services and, thus, to maintain the financial independence necessary to leave abusive situations, achieve safety, and minimize physical and emotional injuries.

To safeguard the public welfare, health, safety, and prosperity of the city of Seattle, all persons working in our community should have access to adequate paid sick and safe leave, because doing so will ensure a more stable workforce in our community, thereby benefiting workers, their families, employers, and the community as a whole.

Section 2. A new Chapter 14.16 "Paid Sick Time and Paid Safe Time" is added to Title 14 of the Seattle Municipal Code as follows:

14.16.010. Definitions

For purposes of this chapter

A. "Adverse action" means the discharge, suspension, discipline, transfer, demotion or denial of promotion by an employer of an employee for any reason prohibited by 14.16.040.

B. "Agency" shall mean the Seattle Office for Civil Rights.

C. "Business" and "engaging in business" has the same meanings as in Chapter 5.30.

D. "City" shall mean the City of Seattle.

E. "City department" means any agency, office, board or commission of the City, or any Department employee acting on its behalf, but shall not mean a public corporation chartered under Ordinance 103387, or its successor ordinances, or any contractor, consultant, concessionaire or lessee.

F. "Charging party" means the person aggrieved by an alleged violation of this chapter or the person making a charge on another person's behalf, or the Director when the Director files a charge.

G. "Commission" means the Seattle Human Rights Commission.

H. "Director" means the Director of the Office for Civil Rights.

I. "Employee" shall mean any individual employed by an employer, and shall include traditional employees, temporary workers, and part-time employees. Employees are covered by this chapter if they perform their work in Seattle. An employee who performs work in Seattle on an occasional basis is covered by this chapter only if he performs more than 80 hours of work in Seattle within a calendar year. An employee who is not covered by this Chapter is still included in any determination of the size of the employer. In the event that a temporary employee is supplied by a staffing agency or similar entity, absent a contractual agreement stating otherwise, that individual shall be deemed to be an employee of the staffing agency for all purposes of this chapter, except as provided in subsection 14.16.010.T.4.b.

J. "Employer" shall mean, as defined in Section 14.04.030.K, any person who has one or more employees, or the employer's designee or any person acting in the interest of such employer. Employer size shall be determined as provided in Section 14.16.010.N and T. For purposes of this act, "employer" does not include any of the following:

1. The United States government;

2. The State of Washington, including any office, department, agency, authority, institution, association, society or other body of the state, including the legislature and the judiciary;

3. Any county or local government other than the City.

K. "Employment agency" or "staffing agency" means any person undertaking with or without compensation to procure opportunities to work or to procure, recruit, refer, or place individuals with an employer or in employment.

L. "Full-time equivalent" shall mean the number of hours worked for compensation that add up to one full-time employee, based either on an eight-hour day and a five-day week or as full-time is defined, in writing or in practice, by the employer.

M. "Health care professional" shall mean any person authorized by the City, any state government and/or the federal government to diagnose and treat physical or mental health conditions, including a doctor, nurse, emergency medical care provider, and/or a public health clinic worker, so long as that person is performing within the scope of their practice as defined by the relevant law.

N. "Major employer" shall mean any employer for which greater than 1,000 employees work for compensation. In determining the number of employees performing work for compensation, all employees performing work for compensation on a full-time, part-time or temporary basis shall be counted, including employees made available to work through the services of a temporary services or staffing agency or similar entity. Whether an employer is a Major Employer for the current calendar year will be calculated based upon the average number of employees who worked for compensation per calendar week during the preceding calendar year for any and all weeks during which at least one employee worked for compensation. For employers that did not employ any employees during the previous calendar year, the size will be calculated based upon the average number of employees who worked for compensation per calendar week during the first 90 calendar days in which the employer engaged in business.

O. "Paid sick time" and/or "paid sick days" shall mean accrued hours of paid leave provided by an employer for use by an employee for an absence from work for any of the reasons specified in 14.16.030(A)(1 - 2) of this chapter, for which time an employee shall be compensated at the same hourly rate and with the same benefits, including health care benefits, as the employee would have earned during the time the paid leave is taken.

1. For purposes of determining eligibility for "paid sick time," "family member" shall mean, as defined in the Washington Family Care Act, RCW 49.12.265 and 49.12.903, as follows:

a. "Child" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is: (a) Under eighteen years of age; or (b) eighteen years of age or older and incapable of self-care because of a mental or physical disability.

b. "Grandparent" means a parent of a parent of an employee.

c. "Parent" means a biological or adoptive parent of an employee or an individual who stood in loco parentis to an employee when the employee was a child.

d. "Parent-in-law" means a parent of the spouse of an employee.

e. "Spouse" means husband, wife or domestic partner. For purposes of this chapter, the terms spouse, marriage, marital, husband, wife, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons to the extent that such interpretation does not conflict with federal law. Where necessary to implement this chapter, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships.

P. "Paid safe time" and/or "paid safe days" shall mean accrued hours of paid leave provided by an employer for use by an employee for an absence from work for any of the reasons specified in 14.16.030(A)(3 - 4), for which time an employee shall be compensated at the same hourly rate and with the same benefits, including health care benefits, as the employee would have earned during the time the paid leave is taken.

1. For the purposes of determining eligibility for "paid safe time":

a. "Family or household members" shall mean, as defined in RCW 49.76.020, spouses, domestic partners, former spouses, former domestic partners, persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage, adult persons who are presently residing together or who have resided together in the past, persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

b. "Domestic violence" shall mean:

1) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members;

2) sexual assault of one family or household member by another; or

3) stalking, as defined below in subsection 14.16.010.P.1.c, of one family or household member by another family or household member.

c. "Stalking" shall be defined as in RCW 9A.46.110,

d. "Dating relationship" shall mean, as defined in RCW 49.76.020, a social relationship of a romantic nature.

e. "Sexual assault" shall be defined as in RCW 49.76.020.

Q. "Party" includes the person charging or making a complaint or upon whose behalf a complaint is made alleging a violation of this chapter, the person alleged or found to have committed a violation of this chapter and the Office for Civil Rights.

R. "Person," as used in this chapter, includes one or more individuals, partnerships, associations, organizations, trade or professional associations, corporations, public corporations, cooperatives, legal representatives, trustees, trustees in bankruptcy and receivers, firm, institution, or any group of persons; it includes any owner, lessee, proprietor, manager, agent or employee, whether one or more natural persons, and further includes any department, office, agency or instrumentality of the City.

S. "Respondent" means any person who is alleged or found to have committed a violation of this chapter.

T. "Tier One," "Tier Two," and "Tier Three" employers are defined as follows:

1. "Tier One employer" shall mean an employer that employs 49 or fewer full-time equivalents on average per calendar week.

2. "Tier Two employer" shall mean an employer that employs more than 49 and fewer than 250 full-time equivalents on average per calendar week.

3. "Tier Three employer" shall mean an employer that employs 250 or more full-time equivalents on average per calendar week.

4. The determination of employer tier for the current calendar year will be calculated based upon the average number of full-time equivalents paid for per calendar week during the preceding calendar year for any and all weeks during which at least one employee worked for compensation. To determine the number of full-time equivalents, all compensated hours of all employees shall be counted, including:

a. work performed outside of the City; and

b. compensated hours made available by part-time employment, temporary employment or through the services of a temporary services or staffing agency or similar entity.

5. For employers that did not have any employees during the previous calendar year, the employer tier will be calculated based upon the average number of full-time equivalents paid for per calendar week during the first 90 calendar days of the current year in which the employer engaged in business.

14.16.020. Accrual of Paid Sick Time and Paid Safe Time

A. All employees have the right to paid sick time and paid safe time as provided in this section.

B. Employees shall accrue paid time, to be used as either paid sick or safe time, as follows:

1. Employees of a Tier One employer shall accrue at least one hour of paid time for every 50 hours worked.

2. Employees of a Tier Two employer shall accrue at least one hour of paid time for every 35 hours worked.

3. Employees of a Tier Three employer shall accrue at least one hour of paid time for every 30 hours worked.

4. For any employee who works less than 100% full time equivalent, a Tier One or Tier Two employer may limit the employee's maximum accrual and carryover of paid time by pro-rating using that employee's full-time equivalent ratio. The full-time equivalent ratio shall be calculated as the number of hours worked during the two highest quarters of employment over the past 12 months divided by the number of hours an employee working 40 hours per calendar week would have worked during the same period. For

example, an employee of a Tier One employer that worked 20 hours per week may have his accrual, and carryover, capped at 20 hours in a calendar year.

C. No Tier One employer shall be required to allow an employee to use a combined total of paid sick time and paid safe time exceeding 40 hours in a calendar year. No Tier Two employer shall be required to allow an employee to use a combined total of paid sick time and paid safe time exceeding 56 hours in a calendar year. No Tier Three employer shall be required to allow an employee to use a combined total of paid sick time and paid safe time exceeding 72 hours in a calendar year.

D. In the case of employees who are exempt from overtime payment under section 213(a)(1) of the Fair Labor Standards Act of 1938, approved June 25, 1938 (52 Stat. 1060; 29 U.S.C. § 201 et seq.), employees shall not accrue leave for hours worked beyond a 40-hour work week. If their normal work in a work week is less than 40 hours, paid sick time and paid safe time accrues based upon that employee's normal work week.

E. Paid sick time and paid safe time as provided in this section shall begin to accrue at the commencement of employment. For individuals who are employed on the date this ordinance takes effect, accrual shall begin on the date this ordinance takes effect.

F. Except as provided in Sections 14.16.090 and 14.16.100, employees of a Tier One or Tier Two employer shall be entitled to use accrued paid sick time or safe time beginning on the 180th calendar day after the commencement of their employment. Employees of a Tier Three employer shall be entitled to use accrued paid sick time or safe time beginning on the 90th calendar day after the commencement of their employment.

G. Unused paid sick time and paid safe time shall be carried over to the following calendar year; however, no Tier One employer shall be required to allow an employee to carry over a combined total of paid sick time and paid safe time in excess of 40 hours, no Tier Two employer shall be required to allow an employee to carry over a combined total of paid sick time and paid safe time in excess of 56 hours and no Tier Three employer shall be required to allow

an employee to carry over a combined total of paid sick time and paid safe time in excess of 72 hours.

H. 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 section is not required to provide additional paid sick and safe time paid leave, provided that such available paid leave may be used for the same purposes and under the same conditions as paid sick and safe time under this section; provided that any accrued but unused paid leave may be carried over to the following calendar year consistent with 14.16.020(G) .

Major employers with a paid leave policy, such as a paid time off policy, must provide sufficient paid leave such that total paid time off is at least double the accrual rate required of a Tier Three employer, and that at least half of total paid time off be available for the same purposes and under the same conditions as paid sick time and paid safe time under this section.

I. Nothing in this section 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 paid sick and safe time that has not been used.

J. If an employee is transferred to a separate division, entity, or location within the City, or transferred out of the City and then transferred back to a division, entity, or location within the City, but remains employed by the same employer, the employee is entitled to all paid sick and safe time accrued at the prior division, entity, or location and is entitled to use all paid sick and safe time as provided in this section.

K. When there is a separation from employment and the employee is rehired within 9 months of separation by the same employer, previously accrued paid sick and safe time that had not been used shall be reinstated. Further, the employee shall be entitled to use accrued paid sick and safe time and accrue additional sick and safe time immediately upon the re-commencement of employment, provided that the employee had previously been eligible to use paid sick and safe time.

L. Subject to terms and conditions established by the employer, the employer may, but is not required to, loan paid sick time and paid safe time to the employee in advance of accrual by such employee.

14.16.030. Use of Paid Sick Time and Paid Safe Time

A. 1. Paid sick time shall be provided to an employee by an employer for the following reasons:

a. An absence resulting from an employee's mental or physical illness, injury or health condition; to accommodate the 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 preventive medical care;

b. To allow the employee to provide care of a family member with a mental or physical illness, injury or health condition; care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury or health condition; or care of a family member who needs preventive medical care.

2. Paid safe time shall be provided to an employee by an employer for the following reasons:

a. When the employee's place of business has been closed by order of a public official to limit exposure to an infectious agent, biological toxin or hazardous material,

b. To accommodate the employee's need to care for a child whose school or place of care has been closed by order of a public official for such a reason.

c. For any of the following reasons related to domestic violence, sexual assault, or stalking, as set out in RCW 49.76.030:

1) To enable the employee to seek legal or law enforcement assistance or remedies to ensure the health and safety of the employee or the employee's family members including, but not limited to, preparing for, or participating in, any civil or criminal legal proceeding related to or derived from domestic violence, sexual assault, or stalking;

2) To enable the employee to seek treatment by a health care provider for physical or mental injuries caused by domestic violence, sexual assault, or stalking, or to attend to health care treatment for a victim who is the employee's family member;

3) To enable the employee to obtain, or assist a family member in obtaining, services from a domestic violence shelter, rape crisis center, or other social services program for relief from domestic violence, sexual assault, or stalking;

4) To enable the employee to obtain, or assist a family member in obtaining, mental health counseling related to an incident of domestic violence, sexual assault, or stalking, in which the employee or the employee's family member was a victim of domestic violence, sexual assault, or stalking; or

5) To enable the employee to participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members from future domestic violence, sexual assault, or stalking.

B. Paid sick time and paid safe time shall be provided upon the request of an employee. When possible, the request shall include the expected duration of the absence. An employer may require an employee to comply with the employer's usual and customary notice and procedural

requirements for absences and/or requesting leave, absent unusual circumstances, provided that such requirements do not interfere with the purposes for which the leave is needed.

1. If the paid leave is foreseeable, a written request shall be provided at least 10 days, or as early as possible, in advance of the paid leave, unless the employer's normal notice policy requires less advance notice;

2. If the paid leave is unforeseeable, the employee must provide notice as soon as is practicable and must generally comply with an employer's reasonable normal notification policies and/or call-in procedures, absent unusual circumstances, provided that such requirements do not interfere with the purposes for which the leave is needed.

C. Accrued paid sick time and paid safe 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.

D. When the use of accrued time is foreseeable, the employee shall make a reasonable effort to schedule the use of sick or safe time in a manner that does not unduly disrupt the operations of the employer.

E. For use of paid sick time of more than three consecutive days for a reason set out in subsection 14.16.030(A)(1), an employer may require reasonable documentation that the sick time is covered by subsection 14.16.030(A)(1). Documentation signed by a health care provider indicating that sick time is necessary shall be considered reasonable documentation. An employer may not require that the documentation explain the nature of the illness. For any employee of a Tier One or Tier Two employer who is not provided health insurance by the employer, the employer and the employee shall each pay half the cost of any out-of-pocket expense incurred by the employee in obtaining the employer-requested documentation. For any employee of a Tier Three employer who is not provided health insurance by the employer, the employer shall pay the full cost of any out-of-pocket expense incurred by the employee in obtaining the employer-requested documentation.

F. For use of "paid safe time" of more than three consecutive days for a reason set out in subsection 14.16.030(A)(2),

1. an employer may require that requests under subsection 14.16.030(A)(2)(a) be supported by verification of a closure order by a public official of the employee's child's school or childcare establishment, and the employee may satisfy this verification request by providing notice of the closure order in whatever format the employee received the notice;

2. an employer may require that requests under subsection 14.16.030(A)(2)(b) be supported by verification that the employee or employee's family member is a victim of domestic violence, sexual assault, or stalking, and that the leave taken was for one of the purposes covered by subsection 14.16.030(A)(2)(b). As set out in RCW 49.76.040(4), an employee may satisfy this verification requirement by one or more of the following methods:

a. a police report indicating that the employee or employee's family member was a victim of domestic violence, sexual assault, or stalking;

b. a court order protecting or separating the employee or employee's family member from the perpetrator of the act of domestic violence, sexual assault, or stalking, or other evidence from the court or the prosecuting attorney that the employee or employee's family member appeared, or is scheduled to appear, in court in connection with an incident of domestic violence, sexual assault, or stalking; or

c. documentation that the employee or the employee's family member is a victim of domestic violence, sexual assault, or stalking, from any of the following persons from whom the employee or employee's family member sought assistance in addressing the domestic violence, sexual assault, or stalking: An advocate for victims of domestic violence, sexual assault, or stalking; an attorney; a member of

the clergy; or a medical or other professional. The provision of documentation under this section does not waive or diminish the confidential or privileged nature of communications between a victim of domestic violence, sexual assault, or stalking with one or more of the individuals named in this subsection (c); or

d. an employee's written statement that the employee or the employee's family member is a victim of domestic violence, sexual assault, or stalking and that the leave taken was for one of the purposes of subsection 14.16.030(A)(2)(b).

G. Upon mutual consent by the employee and the employer, an employee may work additional hours or shifts during the same or next pay period without using available paid sick or safe time for the original missed hours or shifts. However, the employer may not require the employee to work such additional hours or shifts. Should the employee work additional shifts, the employer shall comply with any applicable federal, state or local laws concerning overtime pay.

H. When paid sick or safe time is requested by an employee of a Tier One or Tier Two employer, the employer may offer the employee substitute hours or shifts. If the employee accepts the offer and works these substitute hours or shifts, the amount of time worked during the substitute period or the amount of time requested for sick and safe time, whichever is smaller, shall be deducted from the employee's accrued sick and safe time. Should the employee work the substitute hours or shifts, the employer shall comply with any applicable federal, state or local laws concerning overtime pay. However, no employer is required to offer such substitute hours or shifts, and no employee is required to accept such hours or shifts if they are offered.

I. Each time wages are paid, employers shall provide, in writing, information stating an updated amount of paid time available to each employee for use as either sick time or safe time. Employers may choose a reasonable system for providing this notification, including, but not limited to, listing remaining available paid time on each pay stub or developing an online system where employees can access their own paid leave information.

14.16.040. 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 chapter.

B. An employer shall not take retaliatory personnel action or discriminate against an employee because the employee has exercised rights protected under this chapter. Such rights include but are not limited to the right to use paid sick time and/or paid safe time pursuant to this chapter; the right to file a complaint or civil action about any employer's alleged violation of this chapter; and the right to cooperate with the Agency in its investigations of alleged violations of this chapter; and the right to inform other employees of his or her potential rights under this section.

C. It shall be unlawful for an employer's absence control policy to count paid sick or safe time covered under this chapter as an absence that may lead to or result in any adverse action taken against the employee.

D. There shall be a presumption of unlawful retaliation under this Section 14.16.040 whenever an employer takes any adverse action against a person within 90 days of when that person:

1. files a complaint with the Agency or a court alleging a violation of any provision of this section;
2. informs his or her employer, union or similar organization, legal counsel, and/or the Agency about an employer's alleged violation of this section;
3. cooperates with the Agency in the investigation or prosecution of any alleged violation of this section;
4. opposes any policy, practice, or act that is unlawful under this section; or
5. informs any other employee of his or her rights under this section.

E. The protections afforded under subsection 14.16.040.D shall apply to any person who mistakenly but in good faith alleges violations of this Section 14.16.040.

14.16.050. Notice and Posting

A. Employers shall give notice that employees are entitled to paid sick time and paid safe time; the amount of paid sick and safe time and the terms of its use guaranteed under this chapter; that retaliation against employees who request or use paid sick and safe time is prohibited; and that each employee has the right to file a complaint or bring a civil action if paid sick time or paid safe time as required by this section is denied by the employer or the employee is retaliated against for requesting or taking paid sick time or paid safe time.

B. The Agency shall create and make available to employers a poster and a model notice, hereinafter referred to as the "Notice," which contains the information required under subsection A of this Section for their use in complying with this subsection. The poster shall be printed in English and Spanish any other languages that the Agency determines are needed to notify employees of their rights under this chapter.

C. Employers may comply with this section by displaying the Agency's poster in a conspicuous and accessible place in each establishment where such employees are employed.

D. Employers may also comply with this section by including the Notice in employee handbooks or other written guidance to employees concerning employee benefits or leave rights, if such written materials exist, or by distributing a copy of the Notice to each new employee upon hiring. In either case, distribution may be accomplished electronically.

E. To meet the requirements of paragraph (D) of this section, employers may duplicate the text of the Notice or may use another format so long as the information provided includes, at a minimum, all of the information contained in that Notice.

F. An employer who willfully violates the notice and posting requirements of this section shall be subject to a civil fine in an amount not to exceed $125 for the first violation and $250 for subsequent violations.

14.16.060. Employer Records

A. Employers shall retain records documenting hours worked by employees and paid sick time taken by employees, for a period of two years, and shall allow the Agency access to such records, with appropriate notice and at a mutually agreeable time, to investigate potential violations and to monitor compliance with the requirements of this chapter.

B. Employers shall not be required to modify their recordkeeping policies to comply with this section, as long as records reasonably indicate employee hours worked in Seattle, accrued paid sick and safe time, and paid sick and safe time taken. When an issue arises as to the amount of accrued paid sick time and/or paid safe time available to an employee under this chapter, if the employer does not maintain or retain adequate records documenting hours worked by the employee and paid sick and safe time taken by the employee, or does not allow the Agency reasonable access to such records, it shall be presumed that the employer has violated this chapter.

14.16.070. Regulations

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

14.16.080. Enforcement

A. Powers and duties

1. of Agency

a. The Agency shall receive, investigate, and pass upon charges alleging violations of this chapter as defined herein, conciliate and settle the same by agreement, and monitor and enforce any agreements or orders resulting therefrom or from a subsequent hearing thereon under and pursuant to the

terms of this chapter; and shall have such powers and duties in the performance of these functions as are defined in this chapter and otherwise necessary and proper in the performance of the same and provided for by law. The Agency shall further assist other City agencies and departments upon request in effectuating and promoting the purposes of this chapter.

b. The Director of the Agency is authorized and directed to promulgate rules consistent with this chapter and the Administrative Code.

2. of Commission

The Seattle Human Rights Commission shall study, advise, and make recommendations for legislation on policies, procedures, and practices which would further the purposes of this chapter. The Commission shall hear appeals from the Director's determinations of no reasonable cause and, in cases involving respondents who are City departments, hear appeals from determinations of reasonable cause and the orders relating to the remedy thereof. It shall, where appropriate and necessary, in its judgment, hear and determine complaints jointly with the Hearing Examiner as provided in subsections 14.16.080(H) and 14.16.080(I). The Commission shall have such powers and authority in carrying out these functions as are provided for by this chapter or otherwise established by law. .

B. Charge filing, timing, amendments, notice and investigation.

1. A charge alleging a violation of this chapter shall be in writing on a form or in a format determined by the Agency, and signed by or on behalf of a charging party, and shall describe the violation complained of and should include a statement of the dates, places and circumstances and the persons responsible for such acts and practices.

2. Whenever charges are made by or on behalf of a person claiming to be aggrieved, the person making the charge must provide the Director with the name, address and telephone number of the individual on whose behalf the charge is made. Thereafter, the Director shall verify the authorization of such charge by the person on whose behalf the charge is made.

3. A charge shall not be rejected as insufficient because of failure to include all required information so long as it substantially satisfies the informational requirements necessary for processing.

4. A charge alleging a violation of this chapter or pattern of such violations may also be filed by the Director whenever the Director has reason to believe that any person has been engaged or is engaging in a violation of this chapter.

5. Charges filed under this chapter must be filed within 180 days after the occurrence of the alleged violation of this chapter with the Agency.

6. In addition to any relief authorized by this chapter, liability may accrue and an aggrieved person may obtain relief as provided in this chapter, including recovery of back pay for up to two years preceding the filing of the charge, where the unlawful practices that have occurred during the charge filing period are similar or related to unlawful practices with regard to sick time or safe time that occurred outside the time for filing a charge.

7. The charging party or the Agency may amend a charge to cure technical defects or omissions; or to clarify and amplify allegations made therein; or to add allegations related to or arising out of the subject matter set forth, or attempted to be set forth, in the original charge. For jurisdictional purposes, such amendments shall relate back to the date the original charge was first filed. The amendment must be filed within 180 days after the occurrence of the additional violation and/or retaliation and prior to the Agency's issuance of findings of fact and a

determination with respect to the original charge. Such amendments may be made at any time during the investigation of the original charge so long as the Agency will have adequate time to investigate such additional allegations and the parties will have adequate time to present the Agency with evidence concerning such allegations before the issuance of findings of fact and a determination.

8. The Director shall cause to be served or mailed by certified mail, return receipt requested, a copy of the charge on the respondent within twenty (20) days after the filing of the charge and shall promptly make an investigation thereof.

9. The investigation shall be directed to ascertain the facts concerning the violation of this Chapter alleged in the charge, and shall be conducted in an objective and impartial manner.

10. During the investigation the Director shall consider any statement of position or evidence with respect to the allegations of the charge which the charging party or the respondent wishes to submit. The Director shall have authority to sign and issue subpoenas requiring the attendance and testimony of witnesses, the production of evidence including but not limited to books, records, correspondence or documents in the possession or under the control of the person subpoenaed, and access to evidence for the purpose of examination and copying, and conduct discovery procedures which may include the taking of interrogatories and oral depositions.

11. The Director may require a fact finding conference or participation in another process with the respondent and any of respondent's agents and witnesses and charging party during the investigation in order to define the issues, determine which elements are undisputed, resolve those issues which can be resolved, and afford an opportunity to discuss or negotiate settlement. Parties may have their legal counsel present if desired.

C. Findings of fact and determination of reasonable cause or no reasonable cause.

1. The results of the investigation shall be reduced to written findings of fact and a determination shall be made by the Director that there is or is not reasonable cause for believing that a violation of this chapter has been or is being committed, which determination shall also be in writing and issued with the written findings of fact. Where a City department is a respondent the Director shall issue such findings and determination only after having submitted proposed findings and determinations to the respondent and charging party for review and comment. With respect to the findings and determination, "issued" shall be defined as signed and dated by the Director.

2. The findings of fact and determination shall be furnished promptly to the respondent and charging party.

3. Once issued to the parties, the Director's findings of fact, determination and order may not be amended or withdrawn except upon the agreement of the parties or in response to an order by the Seattle Human Rights Commission after an appeal taken pursuant to Section 14.16.080(D) or 14.16.080(G) provided, that the Director may correct clerical mistakes or errors arising from oversight or omission upon a motion from a party or upon the Director's own motion.

D. Determination of no reasonable cause – Appeal from and dismissal.

If a determination is made that there is no reasonable cause for believing a violation of this chapter has been committed, the charging party shall have the right to appeal such determination to the Commission within 30 days of the date the determination is signed by the Director by filing a written statement of appeal with the Commission. Such statement shall state specifically the grounds on which it is based and the reasons the determination or order or both is in error. The Commission shall promptly deliver a copy of the statement to the Agency and respondent and shall promptly consider and act upon such appeal by either affirming the

Director's determination or remanding it to the Director with appropriate instructions. In the event no appeal is taken or such appeal results in affirmance, the determination of the Director shall be final and the charge deemed dismissed and the same shall be entered on the records of the Agency.

E. Determination of reasonable cause -- Conciliation and settlement of cases involving all respondents except City departments.

1. In all cases except a case in which a City department is the respondent, if a reasonable cause determination is made, the Director shall endeavor to eliminate the unlawful practice by conference, conciliation and persuasion. Conditions of settlement may include (but are not limited to) the elimination of the unlawful practice, hiring, reinstatement or upgrading with or without back pay, lost benefits, attorney's fees, admittance or restoration to membership in a labor organization, or such other action which will effectuate the purposes of this chapter, including action which could be ordered by a court, except that damages for humiliation and mental suffering shall not exceed $10,000. Any settlement agreement shall be reduced to writing and signed by the Director, the charging party and the respondent. An order shall then be entered by the Director setting forth the terms of the agreement. Copies of such order shall be delivered to all affected parties.

2. In case of failure to reach an agreement and of conciliation and upon a written finding to that effect furnished to the charging party and respondent, except a case in which a City department is a respondent, the Director shall promptly cause to be delivered the entire investigatory file, including the charge and any and all findings made, to the City Attorney for further proceedings and hearing under this chapter pursuant to Section 14.16.080(H).

F. Determinations of reasonable cause -- Conciliation, settlement and conclusion of cases involving City departments as respondents.

In all cases in which a City department is a respondent:

1. A determination of reasonable cause by the Director shall be deemed a finding that an unlawful practice has been committed by respondent and is dispositive of this issue for all future proceedings under this chapter, unless appealed, reversed and remanded as provided in this chapter.

2. Within sixty days of a determination of reasonable cause, the Director shall confer with the parties and determine an appropriate remedy, which remedy may include (but is not limited to) hiring, reinstatement or upgrading with or without back pay, lost benefits, attorney's fees, or such other action as will effectuate the purposes of this chapter, including action which could be ordered by a court, except that damages for humiliation and mental suffering shall not exceed $10,000. Such remedy shall be reduced to writing in an order of the Director.

3. The charging party must sign a release in the form and manner requested by the Department, releasing the City from further liability for acts giving rise to the charge in order to obtain the benefits of the remedy provided under this section and before payment can be made. Without such release, the Director's order with respect to the charging party's individual relief shall have no force and effect. In such event the Director shall notify the parties involved in writing.

4. In all cases where the remedy determined by the Director before or after any appeal includes a monetary payment which exceeds the sum of $5,000, the charge or claim, the Director's determination, order, the charging party's signed release and such further documentation as may be required shall be presented to the City Council for passage by separate ordinance. If the City Council fails or refuses to appropriate the amount ordered by the Director within 90 days, the Director shall

certify the case to the Hearing Examiner for a hearing to determine the appropriate monetary relief in the case which determination shall be final and binding upon the City.

5. Where the Director's order includes a monetary payment of $5,000 or less, such payment shall be made under the authority and in the form and manner otherwise provided for by law for payment of such claims.

G. Appeals to the Commission from determinations of reasonable cause and orders of excess involving City departments as respondents.

In all cases in which a City department is a respondent:

1. The charging party or respondent may appeal the Director's order and determination of reasonable cause to the Commission within 30 days of the Director's order by filing a written statement of appeal with the Commission. Such statement shall state specifically the grounds on which it is based and the reasons the determination or order or both is in error.

2. The Commission shall promptly mail a copy of the statement to the Department and to the other party and shall promptly consider and act upon such appeal by either affirming the Director's determination or order or remanding it to the Director with appropriate instructions.

3. The filing of an appeal shall stay the enforcement of any remedy provided for in the Director's determination or order during the pendency of the appeal.

4. In such appeal, the Commission shall consider only the record submitted to it by the Department and written statements of positions by the parties involved and, in its discretion, oral presentation. The Commission shall reverse the Director's determination or order only upon a finding that it is clearly erroneous.

H. Complaint and hearing of cases with all respondents except City departments.

1. Following submission of the investigatory file from the Director in cases involving all respondents under 14.16.080(E), the City Attorney shall prepare a complaint against such respondent relating to the charge and facts discovered during the investigation thereof and prosecute the same in the name and on behalf of the Department and the City at a hearing before the Hearing Examiner sitting alone or with representatives of the Commission as provided in this chapter and to appear for and represent the interests of the Department and the City at all subsequent proceedings; provided, if the City Attorney determines that there is no legal basis for a complaint to be filed or for proceedings to continue, a statement of the reasons therefore shall be filed with the Department, charging party and the respondent.

2. The complaint shall be served on respondent in the usual manner provided by law for service of complaints and filed with the Seattle Hearing Examiner. A copy of such complaint shall be furnished to the charging party.

3. Within 20 days of the service of such complaint upon it, the respondent shall file its answer with the Hearing Examiner and serve a copy of the same on the City Attorney.

4. Upon the filing of the complaint, the Hearing Examiner shall promptly establish a date for the hearing of such complaint and give notice thereof to the Commission, the City Attorney and respondent, and shall thereafter hold a public hearing on the complaint, which hearing shall commence no earlier than 90 days nor later than 120 days from the filing of the complaint, unless otherwise ordered by the Hearing Examiner.

5. After the filing of a complaint with the Hearing Examiner, it may be amended only with the permission of the Hearing Examiner, which permission shall be granted when justice will be served thereby and all parties are allowed time to

prepare their case with respect to additional or expanded charges which they did not and could not have reasonably foreseen would be in issue at the hearing.

6. The hearing shall be conducted by a Hearing Examiner from the Office of Hearing Examiner, or a hearing examiner pro tempore appointed by the Hearing Examiner from a list approved by the Commission, sitting alone or with representatives of the Commission if any are designated. Such hearings shall be conducted in accordance with written rules and procedures consistent with this ordinance and the Administrative Code of the City (Ordinance 102228).

7. The Commission, within 30 days after notice of the date of hearing from the Hearing Examiner, at its discretion, may appoint two of its members who have not otherwise been involved in the charge, investigation, fact finding, or other resolution and proceeding on the merits of the case, who have not formed an opinion on the merits of the case, and who otherwise have no pecuniary, private or personal interest or bias in the matter, to hear the case with the Hearing Examiner. If the Commission has designated representatives they shall each have an equal vote with the Hearing Examiner, except the Hearing Examiner shall be the chairperson of the panel and make all evidentiary rulings. Should a question arise as to previous involvement, interest or bias of an appointed Commissioner, the Hearing Examiner shall resolve the issue in conformance with the law on the subject.

I. Decision and order.

1. Within 30 days after conclusion of the hearing, the Hearing Examiner presiding at the hearing (or the Examiner and Commissioners as the case may be) shall prepare a written decision and order. The final decision shall be filed as a public record with the City Clerk, and copies thereof mailed to each party of record and to the Agency.

2. Such decision shall contain a brief summary of the evidence considered and shall contain findings of fact, conclusions of law upon which the decision is based, and an order detailing the relief deemed appropriate, together with a brief statement of the reasons therefore.

3. In the event the Hearing Examiner (or a majority of the panel composed of the Examiner and Commissioners), determines that a respondent has committed a violation of this chapter, the Hearing Examiner (or panel majority) may order the respondent to take such affirmative action or provide for such relief as is deemed necessary to correct the practice, effectuate the purpose of this chapter, and secure compliance therewith, including but not limited to hiring, reinstatement, or upgrading with or without back pay, lost benefits, attorney's fees, admittance or restoration to membership in a labor organization, or such other action which will effectuate the purposes of this chapter, including action which could be ordered by a court, except that damages for humiliation and mental suffering shall not exceed $10,000. Back pay liability shall not accrue from a date more than 2 years prior to the initial filing of the charge.

4. Respondent shall comply with the provisions of any order affording relief and shall furnish proof of compliance to the Agency as specified in the order. In the event respondent refuses or fails to comply with the order, the Director shall notify the City Attorney of the same and the City Attorney shall invoke the aid of the appropriate court to secure enforcement or compliance with the order.

J. Enforcement by private persons.

1. Any person who claims to have been injured by a violation of this chapter may commence a civil action in Superior Court or any other court of competent jurisdiction, not later than two years after the occurrence of the alleged violation of this chapter or 90 days after a determination of reasonable cause by the

Director, whichever occurs last, to obtain appropriate relief with respect to such unlawful practice. In an action brought under this section, the court having jurisdiction may, upon written findings by the judge that the action was frivolous and advanced without reasonable cause, require the nonprevailing party to pay the prevailing party the reasonable expenses, including attorneys fees, incurred in opposing such action pursuant to RCW 4.84.185.

2. A complaint may be filed under this section whether or not an administrative charge has been filed under the 14.16.080(B), and without regard to the status of such charge, but if the Agency has obtained a pre-finding or post-finding settlement or conciliation agreement with the consent of the charging party, no action may be filed under this section with respect to the alleged violation which forms the basis for such complaint except for the purpose of enforcing the terms of the agreement. To preclude such filing, the charging party must be provided with written notice that consent to a pre-finding or post-finding settlement or conciliation agreement will terminate the charging party's right to file a civil action under this section.

3. a. Subject to the provisions of subsection 3(b), upon the filing of a civil action involving the same claim or arising from the same facts and circumstances, whether under this subchapter or similar law, a complaint of an alleged violation may be administratively closed by the Director.

b. In the event that a court dismisses a private cause of action on grounds that would not preclude pursuit of a charge under this subchapter, the charging party may request, within 90 days of the entry of the Court's order of dismissal, that the Agency reopen a previously filed charged. Upon such request, the Director may reopen a case that was administratively closed upon the filing of a civil action. If

the Agency closes a case based on a "no reasonable cause" finding, the case shall not be reopened except as provided through appeal pursuant to 14.16.080(D).

c. No complainant or aggrieved person may secure relief from more than one governmental agency, instrumentality or tribunal for the same harm or injury.

d. Where the complainant or aggrieved person elects to pursue simultaneous claims in more than one forum, the factual and legal determinations issued by the first tribunal to rule on the claims may, under the doctrines of "res judicata" or "collateral estoppel," be binding on all or portions of the claims pending before other tribunals.

e. No civil action may be commenced under this section with respect to an alleged violation of this chapter which forms the basis of a complaint if a hearing on the record has been commenced by The City of Seattle Office of the Hearing Examiner. To preclude such filing, a charging party must be provided with written notice at least 30 days prior to the commencement of a hearing before The City of Seattle Office of the Hearing Examiner that the commencement of such a hearing will terminate the charging party's right to file a civil action.

4. In a civil action under this section, if the court, or jury, finds that a violation of this chapter has occurred, the court may grant such relief as may be awarded by the hearing examiner under this chapter or is authorized by the Washington Law Against Discrimination, Chapter 49.60 RCW. Damages awarded under this section for humiliation and mental suffering are not subject to the limitation of subsections 14.16.080(E) and 14.16.080(F).

5. Upon timely application, the City Attorney may intervene in such civil action, if the City Attorney certifies that the case is of general public importance, and may obtain such relief as would be available in an action brought under

subsections 14.16.080(E) and 14.16.080(I). Such intervention shall not be permitted in an action in which the City is a defendant.

6. It is the intent of The City of Seattle, in enacting this section, to provide private judicial remedies for violations of this chapter that are as expansive as possible consistent with the powers granted by the Constitution and Laws of The State of Washington. In the event that any provision or aspect of this section is adjudicated to be invalid or unenforceable under applicable law, the validity or enforceability of the remaining provisions shall be unaffected.

K. Construction with other laws.

Nothing in this chapter shall be construed to invalidate or restrict or deny any right or remedy any person may have under state or federal law or preclude any cause of action in court otherwise provided for the violation of any person's civil rights; nor shall this chapter be construed to preclude any person aggrieved from seeking judicial review of any final administrative decision or order made under this chapter affecting such person.

L. Violation -- Penalty.

It is unlawful for any person to willfully engage in an unfair practice under this chapter or willfully resist, prevent, impede or interfere with the Director or Hearing Examiner in the performance of their duties under this chapter, or to fail, refuse, or neglect to comply with any lawful order of the Director or Hearing Examiner. Conduct made unlawful by this section constitutes a violation subject to the provisions of Chapter 12A.02 of the Seattle Criminal Code (Ordinance 102843, as amended)1, and any person convicted thereof may be punished by a civil fine or forfeiture not to exceed $500.

14.16.090. New Employers

The provisions of this Chapter shall not apply to Tier One and Tier Two employers that have engaged in business activity for less than 24 months. For the purposes of this section,

employer tier shall be calculated based upon the average number of full-time equivalents employed per calendar week during the first 90 calendar days in which the employer has engaged in business.

14.16.100. Implementation for Tier One and Tier Two Employers

The provisions of this Chapter shall not apply to Tier One and Tier Two employers until 185 days after the effective date of the authorizing legislation.

14.16.110. Confidentiality and Nondisclosure

A. Except as provided in subsection B of this section, an employer shall maintain the confidentiality of information provided by the employee or others in support of an employee's request for sick or safe days under this section, including health information and the fact that the employee or employee's family member is a victim of domestic violence, sexual assault, or stalking, that the employee has requested or obtained leave under this act, and any written or oral statement, documentation, record, or corroborating evidence provided by the employee.

B. Information given by an employee may be disclosed by an employer only if it is

1. requested or consented to by the employee;
2. ordered by a court or administrative agency; or
3. otherwise required by applicable federal or state law.

14.16.120. Encouragement of more generous sick time policies; no effect on more generous policies

A. Nothing in this chapter shall be construed to discourage or prohibit an employer from the adoption or retention of a paid sick and safe time policy more generous than the one required herein.

B. 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 sick and safe time to an employee than required herein.

C. Nothing in this chapter shall be construed as diminishing the rights of public employees regarding paid sick or safe time or use of sick or safe time as provided under federal or Washington state law, or the Seattle Municipal Code.

14.16.130. Waiver of the Provisions of the Chapter

The provisions of this chapter shall not apply to any employees covered by a bona fide collective bargaining agreement to the extent that such requirements are expressly waived in the collective bargaining agreement in clear and unambiguous terms.

A waiver of the requirements of all or any part of the provisions of this chapter shall not be permitted if it is imposed through an employer's unilateral implementation of terms and conditions of employment.

Any waiver by an individual of any provisions of this chapter shall be deemed contrary to public policy and shall be void and unenforceable.

14.16.140. Other Legal Requirements

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

Section 3. If any provision of this chapter or application thereof to any person or circumstance is judged invalid, the invalidity shall not affect other provisions or applications of

this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared severable.

Section 4. Consistent with the duties established for the Seattle Human Rights Commission in Section 2 of this ordinance, subsection 3.14.931(E) of the Seattle Municipal Code, last amended by ordinance 118392, is amended as follows:

3.14.931 Seattle Human Rights Commission -- Duties

***

E. Hear appeals and hearings as set forth in Chapters 14.04,((~~and~~)) 14.08, and 14.16 of the Seattle Municipal ((~~Court~~))Code.

Section 5. Twenty-four months after the effective date of this ordinance, the Seattle Office for Civil Rights will provide Council with a written assessment of whether the notice and enforcement provisions established here have been effective in achieving compliance with the minimum standards for paid sick and safe time. To the extent that any shortcomings are identified, this report should include recommendations for potential modifications to these provisions.

Section 6. This ordinance shall take effect and be in force 180 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the ____ day of _____, 2011, and signed by me in open session in authentication of its passage this _____ day of _____, 2011.

_____

President _____of the City Council

Approved by me this ____ day of _____, 2011.

_____

Michael McGinn, Mayor

Filed by me this ____ day of _____, 2011.

_____

Monica Martinez Simmons, City Clerk

(Seal)

Ben Noble
Leg Paid Sick Leave FISC
June 21, 2011
Version #2

Form revised: December 14, 2010

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Legislative	Ben Noble / 684-8160	Not Applicable

Legislation Title:
AN ORDINANCE relating to employment in Seattle; adding a new chapter 14.16 to the Seattle Municipal Code; establishing minimum standards for the provision of paid sick and paid safe time; prescribing penalties, remedies and enforcement procedures; amending Section 3.14.931 of the Seattle Municipal Code; and requesting a post-implementation assessment from the Seattle Office for Civil Rights.

Summary of the Legislation:
This legislation establishes a requirement that employees working in the city of Seattle be provided paid sick and safe time. This time is to made be available when: (i) the employee is sick, (ii) a member of their immediate family is sick and needs care; (iii) the employee's place of work or their child's school or place of care is ordered closed by a public health official; or (iv) as the victim of domestic violence, or acting in support of family-member who has been a victim, the employee needs time off to address matters related to follow-up care or legal action.

Employers will be required to provide sick and safe days as follows:

Business Size		Accrual Rate	Max. Allowed Per Yr.	Max. Carried Over	When Eligible to Use Days
Tier 1	< 50 FTE	1 hr of leave per every 50 worked (5 days per yr)	40 hours (5 days)	40 hours (5 days)	After 180 days
Tier 2	50-249 FTE	1 hr of leave per every 35 worked (7 days per yr)	56 hours (7 days)	56 hours (7 days)	After 180 days
Tier 3	250+ FTE	1 hr of leave per every 30 worked (9 days per yr)	72 hours (9 days)	72 hours (9 days)	After 90 days

In addition, any major employer (1,000+ employees) that offers a paid-time-off (PTO) program must provide 18 total days of leave, of which at least 9 must be available as paid sick and safe time.

The legislation provides an exemption for the first two years of operation for Tier 1 and Tier 2 firms, and also delays initial implementation of the overall ordinance for one year for this same set of businesses.

The ordinance provides for two paths for enforcement in situations where employers have failed

to meet the sick and safe time requirements:

1. Following the same enforcement model that is now applied by the Seattle Office for Civil Rights (OCR) to address violations of fair employment standards, complaints can be submitted to SOCR for investigation and potential findings. In situations where an employer is formally found to be out of compliance, SOCR will seek conciliation. The terms of a conciliation settlement can include elimination of the unlawful practice, restoration of back-pay, rehiring, attorney's fees and other remedies that could be ordered by a court, expect that damages for humiliation and suffering cannot exceed $10,000. If no voluntary agreement is reached, COR will refer the matter to the City Attorney for a hearing before the Hearing Examiner. If the Hearing Examiner concurs with the findings of a violation, its settlement order could require affirmative action or other relief deemed necessary to "correct the practice, effectuate the purpose of this ordinance, and secure compliance there with, including but not limited to hiring, reinstatement, or upgrading . . . restoration of lost benefits, attorney's fees . . . except that damages for humiliation and mental suffering shall not exceed $10,000"; essentially the same remedies that SOCR would seek through conciliation.
2. Individuals will also have a right to pursue civil litigation in an appropriate court of law.

A separate "companion" Council Bill provides the position authority (for one new full-time equivalent) and funding needed for implementation and enforcement. The sick leave requirements would not become effective until 180 days after passage of the ordinance, but staff will be needed immediately to begin the required rule making.

The legislation also calls upon SOCR to provide Council with a written assessment of whether the notice and enforcement provisions established by the ordinance have been effective in achieving compliance with the minimum standards for sick and safe time. And to the extent that any shortcomings are identified, this report will include recommendations for potential modifications to these provisions.

Background:

Consistent with the findings found in Section 1, the ordinance is designed to address a number of related public policy concerns:

- Without paid sick time, employees are more likely to come to work while ill, risking their own health, that of their colleagues, and potentially that of customers and clients.
- Without paid sick time, employees will be less likely to take time off to seek preventive care for themselves or their children; and may be tempted to send unhealthy children to school. Either of these practices could lead to poorer health for workers and their children.
- Without paid safe time, employees are less likely to take the time needed to address situations where they or a family member has been the victim of domestic violence. Given the social costs associated with domestic violence, this is not a desirable outcome.
- Workers who do not have paid sick time place themselves and their families at economic risk, due to the impact of lost wages, when they choose to take sick or safe time without pay.

Please check one of the following:

____ **This legislation does not have any financial implications.**
(Stop here and delete the remainder of this document prior to saving and printing.)

_X_ **This legislation has financial implications.** (Please complete all relevant sections that follow.)

The potential fiscal impacts to the City of this ordinance include both the direct costs of enforcement and the "indirect" costs associated with extending paid sick and safe time to certain temporary employees of the City, and expanding the uses of City employee's existing sick time benefit. The magnitude of these various cost drivers are estimated as follows:

- **Direct costs – enforcement personnel.** Rule-making and on-going enforcement responsibilities for SOCR will require the addition of one Civil Rights Analyst. The pro-rated cost of one quarter of staffing in 2011 is $20,900; the on-going full year costs for 2012 and beyond is $84,000. The position authority and appropriation required for enforcement are the subject of a separate "companion" ordinance that includes its own fiscal note.

- **Indirect costs – temporary employees now to be eligible for sick time.** Currently the City does not offer paid sick and safe time to certain temporary employees. Instead, these employees receive "premium" pay in lieu of benefits (all benefits, not just sick time). This premium is computed as a percentage of base salary and varies between 5% and 25%.

  If sick time were added to the total compensation for these positions, one obvious step would be lower the premium to offset the value of sick time. However, at least some of the existing premium levels are linked to collective bargaining agreements. Adjustments could still be made, but will likely require significant discussion with the interested parties.

  Therefore, the current analysis assumes no such changes and computes the potential cost to the City assuming no decreases in the current premium levels. An analysis of 2010 staffing data showed that roughly 1,865 individuals worked as temporary employees for the City of Seattle at some point during the year. In total, these individuals worked more than 720,000 hours. And at a rate of 1 paid sick hour per 30 worked, they would have earned nearly 21,600 sick hours. Compensated at their existing hourly rates, this time would have cost the City approximately $375,000.

  However, under the proposed ordinance employees cannot take sick time until they have been employed for 90 days, and some share of temporary workers will not reach this threshold. Further, it is unlikely that all individuals would take full advantage of the sick time that is made available. Recognizing that all temporary employees would not be eligible to take sick time, and assuming that those who are eligible will take, on average, half their available time, the effective costs to the City will be less than $200,000 per

year. These additional costs will first arise in 2012, given that the ordinance will take effect until 180 days after its passage.

Because the Department of Parks and Recreation and Seattle Center are among the heaviest users of temporary workers, much of this total would be borne by the General Subfund. In particular, these two departments account for 60% of the total and would face estimated annual of costs of $80,000 and $35,000, respectively. SPU, City light and HSD are the other departments to face notable impacts, with annual costs of between $20,000 and $30,000. Given the City's current financial situation, there would need to be offsetting reductions in other expenses and likely some reduction in direct services as a result.

- **Indirect costs – public health closure eligible use of sick time.** The proposed ordinance will extend the eligible use of sick time to the "closure of the employee's place of business by order of a public official to limit exposure to an infectious agent, biological toxin or hazardous material, or an employee's need to care for a child whose school or place of care has been closed by order of a public official for such a reason." This extension could have some future cost to the City, but these situations are likely to rare and the costs small.

- **Indirect costs – sick time restored to re-hired employees.** The proposed ordinance will mandate that sick time be restored to any employee who is rehired within a year of separation, without regard to what caused the original separation from employment. Current City policy does not provide for restoration of sick time when separation was due to resignation, quitting or discharge. However, given that, such rehires are relatively infrequent, the cumulative cost of the restored sick time is likely to be insignificant.

This ordinance will also have fiscal impacts on private employers with employees who are working in the city. This fiscal note is not intended to capture such effects. Instead, these impacts will be discussed separately as part of Council consideration of the proposed ordinance.

What is the financial cost of not implementing the legislation?
There are no direct costs associated with not implementing this legislation. Indirect societal costs may arise from having sick employees report to work, having their children attend school while sick, etc.

Does this legislation affect any departments besides the originating department?
As described above, this legislation will increase costs for any City department that employs temporary workers who receive premium pay in lieu of benefits.

What are the possible alternatives to the legislation that could achieve the same or similar objectives?
There are no obvious approaches that would ensure sick and safe time for the full set of workers who would be eligible under this ordinance.

Is the legislation subject to public hearing requirements?
No

List attachments to the fiscal note below:
None