

1 [Initiative Ordinance - Administrative Code - Paid Sick Leave Ordinance Amendments]

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3 **Motion ordering submitted to the voters an ordinance amending the Administrative**  
4 **Code to revise the City's Paid Sick Leave Ordinance (PSLO) to include protections for**  
5 **employees under the PSLO that largely parallel recent State law enactments pertaining**  
6 **to paid sick leave, primarily the Healthy Workplaces, Healthy Families Act of 2014, as**  
7 **amended, at an election to be held on June 7, 2016.**

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9 **MOVED, That the Board of Supervisors hereby submits the following ordinance to the**  
10 **voters of the City and County of San Francisco, at an election to be held on June 7, 2016.**

11  
12 **Ordinance amending the Administrative Code to revise the City's Paid Sick Leave**  
13 **Ordinance (PSLO) to include protections for employees under the PSLO that largely**  
14 **parallel recent State law enactments pertaining to paid sick leave, primarily the Healthy**  
15 **Workplaces, Healthy Families Act of 2014, as amended.**

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17 **NOTE: Unchanged Code text and uncodified text are in plain font.**  
18 **Additions to Codes are in *single-underline italics Times New Roman font.***  
19 **Deletions to Codes are in strikethrough italics Times New Roman font.**  
20 **Asterisks (\* \* \* \*) indicate the omission of unchanged Code subsections or**  
21 **parts of tables.**

22 **Be it ordained by the People of the City and County of San Francisco:**

23 **Section 1. Background, Findings, and Purpose.**

24 **(a) At the election of November 7, 2006, San Francisco voters adopted Proposition F,**  
25 **the Paid Sick Leave Ordinance ("PSLO"), codified at Chapter 12W of the Administrative Code.**  
**The PSLO, which requires employers to provide paid sick leave to employees for work**

1 performed in San Francisco, was the first such law in the United States. The PSLO contained  
2 extensive uncodified findings, including the determination that the “absence or inadequacy of  
3 paid sick leave among workers in San Francisco poses serious problems not only for affected  
4 workers but also for their families, their employers, the health care system, and the community  
5 as a whole.” After detailing the problems then associated with the absence or inadequacy of  
6 paid sick leave, the findings concluded that “[i]t is in the interest of all San Franciscans to  
7 require that employers benefiting from the opportunity to do business here make available to  
8 their employees a reasonable amount of paid sick leave.”

9 (b) Eight years after the adoption of the PSLO, the State of California enacted the  
10 Healthy Workplaces, Healthy Families Act of 2014 (“Act”) (A.B. 1522; Stats. 2014, Ch. 317,  
11 section 3). The Act was amended in 2015 to clarify a number of its provisions. (A.B. 304;  
12 Stats. 2015, Ch. 67.) The Act, which is codified at California Labor Code Sections 245-249,  
13 requires employers throughout California to provide paid sick leave to employees. In adopting  
14 the Act, the Legislature made extensive findings that parallel many of the findings made in  
15 support of the PSLO when it was adopted by the voters, including that providing paid sick  
16 leave to employees ensures a healthier and more productive workforce; improves public  
17 health by lessening recovery time for employees and reducing the likelihood of spreading  
18 illness to other members of the workforce or, in the case of public contact positions such as  
19 service workers and restaurant workers, to customers; and provides greater job security and  
20 retention for employees. The findings in the Act recognize the importance of providing  
21 parental care for children, which makes a child’s speedy recovery from illness more likely and  
22 the child’s development of more serious illnesses less likely, and improves children’s overall  
23 mental and physical health. The findings also recognize that many employees have  
24 significant elder care responsibilities involving medical care for loved ones. And, going  
25 beyond the PSLO and its findings, the Act also expressly recognizes the devastating effects of

1 domestic violence, sexual assault, and stalking, and the need for victims who are employees  
2 to take time off from work for reasons related to those dangerous circumstances. In addition,  
3 in 2011, the State of California enacted a measure related to paid sick leave, the Michelle  
4 Maykin Memorial Donation Protection Act, codified at California Labor Code Sections 1508-  
5 1513, which requires many employers to provide paid time off for employees making a bone  
6 marrow or organ donation.

7 (c) In some respects the PSLO and the Act have essentially identical provisions. In  
8 some other respects, the PSLO provides greater protections for employees and greater scope  
9 of coverage than the Act. These more expansive provisions remain in effect following  
10 passage of the Act, which states that the provisions of the Act are in addition to and  
11 independent of any other rights, remedies, or procedures available under any other law and  
12 do not diminish, alter, or negate any other legal rights, remedies, or procedures available to  
13 an aggrieved person. The Act establishes minimum statewide requirements and does not  
14 preempt, limit, or otherwise affect the applicability of any other paid sick leave law, including  
15 the PSLO.

16 (d) But in some respects, the Act provides greater protections for employees and  
17 greater scope of coverage than the PSLO. As a result, the City now finds itself in the ironic  
18 position that its pioneering paid sick leave law is in some ways less expansive than State law.  
19 Further, employers now find themselves bound by two legal regimes, enforced respectively by  
20 two distinct governmental entities, because the Act does not authorize the City to enforce its  
21 provisions; rather, the City may only enforce the PSLO. But if the PSLO is amended to  
22 include provisions that parallel those provisions in State law that are currently more protective  
23 of employees and provide a greater scope of coverage than the PSLO, there will be a greater  
24 degree of congruence between the PSLO and the Act, and a less fragmented enforcement  
25 process.

1 (e) The general purpose of this ordinance is to include within the PSLO provisions that  
2 parallel those provisions in the Act that provide greater protections for employees and greater  
3 scope of coverage than the PSLO, and thereby to enhance the City's ability to enforce  
4 employee rights regarding paid sick leave. This ordinance is not intended and shall not be  
5 construed to narrow, restrict, or otherwise limit in any manner the present or future  
6 application, interpretation, implementation, or enforcement of the PSLO. Nevertheless, it is  
7 hoped that, without weakening any provision of the PSLO, this ordinance will simplify the  
8 efforts of employers to comply with their legal obligations under both the PSLO and the Act.

9 (f) This ordinance also looks to the future, anticipating that at some point there may be  
10 enhanced paid sick leave requirements imposed by State or federal law, going beyond what  
11 the PSLO, as amended by this ordinance, would provide. This ordinance gives the Board of  
12 Supervisors power to amend the PSLO's substantive requirements or scope of coverage for  
13 the purpose of adopting provisions parallel to State or federal law if and to the extent State or  
14 federal law provides greater or additional protections or broader coverage than the PSLO.  
15 This ordinance also gives the Board of Supervisors power to amend the PSLO as to those  
16 amendments contained in this ordinance, if the State amends the provisions of State law on  
17 which those amendments are based.

18  
19 Section 2. The Administrative Code is hereby amended by revising Sections 12W.2,  
20 12W.3, 12W.4, 12W.5, 12W.8, 12W.12, 12W.13, and 12W.16, to read as follows:

21 **SEC. 12W.2. DEFINITIONS.**

22 For purposes of this Chapter, the following definitions apply.

23 (a) "Agency" shall mean the Office of Labor Standards Enforcement or any department  
24 or office that by ordinance or resolution is designated the successor to the Office of Labor  
25 Standards Enforcement.

1 (b) "City" shall mean the City and County of San Francisco.

2 (c) "Employee" shall mean any person who is employed within the geographic  
3 boundaries of the City by an employer, including part-time and temporary employees.  
4 "Employee" includes a participant in a Welfare-to-Work Program when the participant is  
5 engaged in work activity that would be considered "employment" under the federal Fair Labor  
6 Standards Act, 29 U.S.C. §201 et seq., and any applicable U.S. Department of Labor  
7 Guidelines. "Welfare-to-Work Program" shall include any public assistance program  
8 administered by the Human Services Agency, including but not limited to CalWORKS and the  
9 County Adult Assistance Program (CAAP), and any successor programs that are substantially  
10 similar to them, that require a public assistance applicant or recipient to work in exchange for  
11 their grant.

12 (d) "Employer" shall mean any person, as defined in Section 18 of the California Labor  
13 Code, including corporate officers or executives, who directly or indirectly or through an agent  
14 or any other person, including through the services of a temporary services or staffing agency  
15 or similar entity, employs or exercises control over the wages, hours, or working conditions of  
16 an employee.

17 (e) "Paid sick leave" shall mean paid "sick leave" as defined in California Labor Code §  
18 233(b)(4), except that the definition extends beyond the employee's own illness, injury,  
19 medical condition, need for medical diagnosis, care including preventive care, or treatment, or  
20 other medical reason, to also encompass time taken off work by an employee for the purpose  
21 of providing care or assistance to other persons, as specified further in Section 12W.4(a), with  
22 an illness, injury, medical condition, need for medical diagnosis, care including preventive care,  
23 or treatment, or other medical reason. "Paid sick leave" shall also include time taken off work for  
24 purposes related to domestic violence, sexual assault, or stalking, suffered by an employee, as specified  
25

1 in Section 12W.4(b), and for purposes related to bone marrow donation or organ donation, as specified  
2 in Section 12W.4(c).

3 (f) "Small business" shall mean an employer for which fewer than ten persons work for  
4 compensation during a given week. In determining the number of persons performing work for  
5 an employer during a given week, all persons performing work for compensation on a full-  
6 time, part-time, or temporary basis shall be counted, including persons made available to work  
7 through the services of a temporary services or staffing agency or similar entity.

8 **SEC. 12W.3. ACCRUAL OF PAID SICK LEAVE.**

9 (a) For employees working for an employer on or before the operative date of this  
10 Chapter, paid sick leave shall begin to accrue as of the operative date of this Chapter. For  
11 employees hired by an employer after the operative date of this Chapter; but before January 1,  
12 2017, paid sick leave shall begin to accrue 90 days after the commencement of employment  
13 with the employer, or on January 1, 2017, whichever date is earlier. For employees hired on or after  
14 January 1, 2017, paid sick leave shall begin to accrue on commencement of employment with the  
15 employer.

16 (b) For every 30 hours worked after paid sick leave begins to accrue for an employee,  
17 the employee shall accrue one hour of paid sick leave. Paid sick leave shall accrue only in  
18 hour-unit increments; there shall be no accrual of a fraction of an hour of paid sick leave.

19 (c) An employer may, in the employer's discretion, make available to an employee a lump sum  
20 of paid sick leave at the beginning of each year of employment, calendar year, or other 12-month  
21 period (an "upfront allocation"). In such cases, the Agency shall treat the upfront allocation as an  
22 advance on paid sick leave to be accrued under this Section 12W.3; that is, accrual of paid sick leave  
23 under this Section would temporarily halt and the employee would not continue to accrue paid sick  
24 leave until after the employee has worked the number of hours necessary to have accrued the upfront  
25 allocation amount, at which point the employee would then resume accruing paid sick leave under this

1 Section. This subsection (c) shall not be construed to prevent an employer, in the employer's  
2 discretion, from advancing paid sick leave to an employee at other times, and shall not be construed to  
3 limit the amount of paid sick leave that may be advanced to an employee. Any advance of paid sick  
4 leave shall affect the employee's accrual of paid sick leave under this Section 12W.3 as described in  
5 this subsection (c). Any advance of paid sick leave shall occur pursuant to an employer's written  
6 policy or, absent an applicable written policy, shall be documented in writing to the affected employee.

7 (ed) For employees of small businesses, there shall be a cap of 40 hours of accrued  
8 paid sick leave. For employees of other employers, there shall be a cap of 72 hours of  
9 accrued paid sick leave. Accrued paid sick leave for employees carries over from year to year  
10 (whether calendar year or fiscal year), but is limited to the aforementioned caps.

11 (de) If an employer has a paid leave policy, such as a paid time off policy, that makes  
12 available to employees an amount of paid leave that may be used for the same purposes as  
13 paid sick leave under this Chapter and that is sufficient to meet the requirements for accrued  
14 paid sick leave as stated in subsections (a)-(c), the employer is not required to provide  
15 additional paid sick leave.

16 (f) On the same written notice that an employer is required to provide under Section 246(h) of  
17 the California Labor Code, an employer shall set forth the amount of paid sick leave that is available to  
18 the employee under this Section 12W.3, or paid time off an employer provides in lieu of sick leave. If  
19 an employer provides unlimited paid sick leave or unlimited paid time off to an employee, the employer  
20 may satisfy this subsection by indicating on the notice or the employee's itemized wage statement  
21 "unlimited." This subsection (f) shall apply only to employers that are required by state law to provide  
22 such notice to employees regarding paid sick leave available under state law.

23 (eg) An employer is not required to provide financial or other reimbursement to an  
24 employee upon the employee's termination, resignation, retirement, or other separation from  
25 employment, for accrued paid sick leave that the employee has not used. But if an employee

1 separates from an employer for any reason and is rehired by the employer within one year from the  
2 date of separation, previously accrued and unused paid sick leave shall be reinstated. The employee  
3 shall be entitled to use the previously accrued and unused paid sick leave and to accrue additional paid  
4 sick leave upon rehiring. This subsection (g) shall not apply if and to the extent that, upon the  
5 employee's separation from employment, the employee received cash compensation for previously  
6 accrued and unused paid sick leave.

7 (h) For the purposes of this Chapter, an employer shall calculate paid sick leave using any of  
8 the following calculations:

9 (1) Paid sick leave for nonexempt employees shall be calculated in the same manner as  
10 the regular rate of pay for the workweek in which the employee uses paid sick leave, whether or not the  
11 employee actually works overtime in that workweek.

12 (2) Paid sick leave for nonexempt employees shall be calculated by dividing the  
13 employee's total wages, not including overtime premium pay, by the employee's total hours worked in  
14 the full pay periods of the prior 90 days of employment.

15 (3) Paid sick leave for exempt employees shall be calculated in the same manner as the  
16 employer calculates wages for other forms of paid leave time.

17 (4) In no circumstance may paid sick leave be provided at less than the minimum wage  
18 rate required by the Minimum Wage Ordinance, Administrative Code Chapter 12R.

#### 19 **SEC. 12W.4. USE OF PAID SICK LEAVE.**

20 (a) An employee may use paid sick leave not only when he or she is ill or injured or for  
21 the purpose of the employee's receiving medical care, treatment, or diagnosis, as specified  
22 more fully in California Labor Code §Section 233(b)(4) and Section 12W.2(e) of this Code, but also  
23 to aid or care for the following persons when they are likewise ill or injured or receiving medical  
24 care, treatment, or diagnosis: Child; parent; legal guardian or ward; sibling; grandparent;  
25 grandchild; and spouse, registered domestic partner under any state or local law, or

1 designated person. The employee may use all or any percentage of his or her paid sick leave  
2 to aid or care for the aforementioned persons.

3 (1) "Child," "parent," "sibling," "grandparent," "grandchild." The  
4 aforementioned child, parent, sibling, grandparent, and grandchild relationships include not  
5 only biological relationships but also relationships resulting from adoption; step-relationships;  
6 and foster care relationships.

7 (2) "Child" also includes a child of a domestic partner and a child of a person  
8 standing in loco parentis.

9 (3) "Parent" also includes a person who stood in loco parentis when the employee was  
10 a minor child, and a person who is a biological, adoptive, or foster parent, stepparent, or guardian of  
11 the employee's spouse or registered domestic partner.

12 (4) "Designated person." If the employee has no spouse or registered domestic  
13 partner, the employee may designate one person as to whom the employee may use paid  
14 sick leave to aid or care for the person. The opportunity to make such a designation shall be  
15 extended to the employee no later than the date on which the employee has worked 30 hours  
16 after paid sick leave begins to accrue pursuant to Section 12W.3(a). There shall be a window  
17 of 10 work days for the employee to make this designation. Thereafter, the opportunity to  
18 make such a designation, including the opportunity to change such a designation previously  
19 made, shall be extended to the employee on an annual basis, with a window of 10 work days  
20 for the employee to make the designation.

21 (b) In addition to the purposes for which an employee may use paid sick leave under subsection  
22 (a), an employee who is a victim of domestic violence, sexual assault, or stalking may use paid sick  
23 leave for the purposes described in Sections 230(c) and 231.1(a) of the California Labor Code.

24 (c) An employee may use paid sick leave for purposes related to donating the employee's bone  
25 marrow or an organ of the employee to another person. Further, an employee may use paid sick leave

1 to care for or assist a person, as specified in Section 12W.4(a), for purposes related to that person's  
2 donating bone marrow or an organ to another person.

3 (d) An employee shall be entitled to use accrued paid sick leave beginning on the 90th day of  
4 employment, after which day the employee may use paid sick leave as it is accrued.

5 (be) An employer may not require, as a condition of an employee's taking paid sick  
6 leave, that the employee search for or find a replacement worker to cover the hours during  
7 which the employee is on paid sick leave.

8 (f) An employer may not require, as a condition of an employee's taking paid sick leave, that  
9 the employee take paid sick leave in increments of more than one hour, unless the Agency, by rule or  
10 regulation, authorizes a larger increment in particular circumstances provided that the increment is no  
11 larger than the employer may require under state law.

12 (eg) An employer may require employees to give reasonable notification of an absence  
13 from work for which paid sick leave is or will be used.

14 (dh) An employer may only take reasonable measures to verify or document that an  
15 employee's use of paid sick leave is lawful.

16 (i) An employer shall provide payment for sick leave taken by an employee no later than the  
17 payday for the next regular payroll period after the sick leave was taken.

18 **SEC. 12W.5. NOTICE AND POSTING OF RIGHTS.**

19 (a) The Agency shall, by the operative date of this Chapter, publish and make  
20 available to employers, in all languages spoken by more than 5% of the San Francisco  
21 workforce, a notice suitable for posting by employers in the workplace informing employees of  
22 their rights under this Chapter. The Agency shall update this notice on December 1 of any  
23 year in which there is a change in the languages spoken by more than 5% of the San  
24 Francisco workforce. In its discretion, the Agency may combine the notice required herein with  
25 the notice required by Section 12R.5(a) of the Administrative Code. In addition, the Agency

1 shall combine into one document the notice required by this subsection (a) with the poster required by  
2 California Labor Code Section 247, provided that such a combined notice fulfills all the requirements  
3 of this subsection and that the Agency has received written assurance from the appropriate State  
4 authority that the combined notice satisfies the requirements of California Labor Code Section 247.

5 (b) Every employer shall post in a conspicuous place at any workplace or job site  
6 where any employee works the notice required by subsection (a). Every employer shall post  
7 this notice in English, Spanish, Chinese, and any language spoken by at least 5% of the  
8 employees at the workplace or job site.

9 **SEC. 12W.8. IMPLEMENTATION AND ENFORCEMENT.**

10 (a) **Implementation.** The Agency shall be authorized to coordinate implementation  
11 and enforcement of this Chapter and may promulgate appropriate guidelines or rules for such  
12 purposes. Any guidelines or rules promulgated by the Agency shall have the force and effect  
13 of law and may be relied on by employers, employees, and other persons to determine their  
14 rights and responsibilities under this Chapter. Any guidelines or rules may establish  
15 procedures for ensuring fair, efficient, and cost-effective implementation of this Chapter,  
16 including supplementary procedures for helping to inform employees of their rights under this  
17 Chapter, for monitoring employer compliance with this Chapter, and for providing  
18 administrative hearings to determine whether an employer or other person has violated the  
19 requirements of this Chapter. As of January 1, 2017, in promulgating guidelines and rules pursuant  
20 to this subsection (a), the Agency shall consider any relevant guidelines, rules, or interpretations issued  
21 by the California Department of Labor Standards Enforcement pertaining to the Healthy Workplaces,  
22 Healthy Families Act of 2014, as amended, California Labor Code Sections 245-249, but shall not be  
23 bound by such guidelines, rules, or interpretations.

24 \* \* \* \*

25 **SEC. 12W.12. OPERATIVE DATE.**

1           (a) This Chapter shall become operative 90 days after its adoption by the voters at the  
2 November 7, 2006 election. This Chapter shall have prospective effect only.

3           **(b) Amendments to this Chapter adopted by the voters at the June 7, 2016 election shall**  
4 **become operative on January 1, 2017. These amendments shall have prospective effect only.**

5           **SEC. 12W.13. PREEMPTION.**

6           Nothing in this Chapter shall be interpreted or applied so as to create any power or  
7 duty in conflict with federal or state law. The term "conflict," as used in this Section 12W.13,  
8 means a conflict that is preemptive under federal or state law. For purposes of this Section, consistent  
9 with California Labor Code Section 249(d), a difference between this Chapter and the provisions of the  
10 Healthy Workplaces, Healthy Families Act of 2014, as amended, California Labor Code Sections 245-  
11 249, is not a preemptive conflict under state law.

12           **SEC. 12W.16. AMENDMENT BY THE BOARD OF SUPERVISORS.**

13           (a) The Board of Supervisors may amend this Chapter with respect to matters relating  
14 to its implementation and enforcement (including but not limited to those matters addressed in  
15 section 12W.8) and matters relating to employer requirements for verification or  
16 documentation of an employee's use of sick leave, but not with respect to this Chapter's  
17 substantive requirements or scope of coverage, except as stated in subsections (b) and (c);  
18 provided, however, that, in the event any provision in this Chapter is held legally invalid, the  
19 Board retains the power to adopt legislation concerning the subject matter that was covered in  
20 the invalid provision.

21           **(b) The Board of Supervisors may amend this Chapter's substantive requirements or scope of**  
22 **coverage for the purpose of adopting provisions parallel to state or federal law, if and to the extent**  
23 **state or federal law provides greater or additional substantive requirements, or broader coverage, than**  
24 **this Chapter.**

1            (c) Notwithstanding subsection (b), the Board of Supervisors may amend this Chapter's  
2 substantive requirements or scope of coverage as to the amendments adopted by the voters at the June  
3 7, 2016 election, for the purpose of adopting provisions that parallel any changes in State law  
4 regarding those provisions of State law on which those amendments are based. This subsection (c)  
5 shall not be construed to authorize any other amendment of this Chapter or to reduce the substantive  
6 requirements or scope of coverage of this Chapter below that which existed before the amendments  
7 adopted at the June 7, 2016 election.

8  
9            Section 3. Scope of Ordinance. In enacting this ordinance, the People of the City and  
10 County of San Francisco intend to amend only those words, phrases, paragraphs,  
11 subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other  
12 constituent parts of the Administrative Code that are explicitly shown in this ordinance as  
13 additions or deletions, in accordance with the "Note" that appears under the official title of the  
14 ordinance.

15 APPROVED AS TO FORM:

16 DENNIS J. HERRERA, City Attorney

17  
18 By:

  
19 FRANCESCA GESSNER  
Deputy City Attorney

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