CHAPTER 23: EARNED SICK AND SAFE LEAVE

Section

Article I: Earned Sick and Safe Leave

23.01 Findings
23.02 Purpose
23.03 Severability
23.04 Preemption
23.05 Definitions
23.06 Accrual of sick and safe leave
23.07 Use of accrued sick and safe leave
23.08 Exercise of rights; retaliation prohibited
23.09 Notice and posting
23.10 Required statement to employee
23.11 Employer records
23.12 Termination; transfer; separation
23.13 Employer succession
23.14 Employee exchange of hours
23.15 Authority
23.16 Implementation
23.17 Enforcement
23.18 Relief and administrative penalties
23.19 Appeal
23.20 Civil enforcement
23.21 No effect more generous sick and safe leave policies

ARTICLE I: EARNED SICK AND SAFE LEAVE

Editor's note: This Article I is not effective until July 1, 2023.

§ 23.01 FINDINGS.

It is necessary for the City Council to exercise its legislative power to protect and promote the health, safety, and welfare of those individuals working within the City of Bloomington. The City Council finds:

(a) Healthy individuals, families, and communities are the foundation of well-functioning societies. Many factors contribute to health, including the policies and systems that shape our lives. Among these policies, the availability of sick and safe leave is a key contributor, as it creates the opportunity for family members both to earn a living and to provide care for their loved ones;

(b) Forty-one percent of employed Minnesota residents lack access to earned sick and safe leave . The same employees that are least likely to have sick and safe leave or the financial ability to forego wages are in occupations most likely to have contact with the public, especially food services, long-term care, and health care. Minnesota workers who work in public-contact occupations, such as service occupations, are less likely to have sick and safe leave than workers in other occupations. Bloomington's largest employment industries include health care, education, retail, manufacturing, lodging, and food services. A recent Bloomington employer survey found 48% of employers did not offer sick and safe leave to their employees ;

(c) Family economic security is at risk for workers who lack adequate sick and safe leave because workers who lack sick and safe leave lose earnings if they miss work to care for themselves, their children, or other family members who are ill or injured. Employees in the city working in low-wage occupations are least likely to have access to sick and safe leave and are the least able to forego wages to take time off to recover or care for others who may be sick. Employees without earned sick and safe leave disproportionately experience poverty, unstable housing and hunger;

(d) Access to sick and safe leave and the ability to take sick and safe leave are not available equally across populations of different incomes or race/ethnicity. Structural racism is a factor not only in health disparities but also in the conditions that create health, such as sick and safe leave policies. The city continues to increase in diversity of both residents and those who work in the city . People of color are more likely than white people in Bloomington to be in low-paying, frontline jobs with less security and benefits or to work multiple jobs;

(e) When individuals have no sick and safe leave or an inadequate amount of sick and safe leave 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;

(f) Individuals 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 or coronaviruses like SARS-CoV and MERS-CoV. Individuals with no sick and safe leave , or an inadequate amount of time to take off to care for a sick child, are likely to send sick children to school or a childcare center, thereby potentially spreading contagious illnesses. The lack of access to sick and safe leave has public health implications and has contributed to contagious disease outbreaks in Bloomington;

(g) Victims of domestic abuse , sexual assault , and stalking that have no sick and safe leave are less able to receive medical treatment, participate in legal proceedings, and obtain other necessary services. In addition, without sick and safe leave , domestic abuse victims are less able to maintain the financial independence necessary to leave abusive situations, achieve safety, and minimize physical and emotional injuries;

(h) Sick and safe leave will promote the safety, health, and welfare of the people of Bloomington 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;

(i) Sick and safe leave will enable victims of domestic abuse , 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;

(j) Over the last few decades, the demographics of the nation's workforce and the structures of the nation's families have undergone significant changes; 80% of children are raised in households that are headed by either a working single parent or two working parents. As a result of these changes, the demands placed on workers with family responsibilities are greater and more complex today than they were in an earlier era;

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

(Ord. 2022-31, passed 6-6-2022)

§ 23.02 PURPOSE.

The purposes of this article are to:

(a) To ensure that individuals employed in Bloomington can address their own health needs and the health needs of their families by requiring employers to provide a minimum level of sick and safe leave , including time for family care;

(b) To reduce public and private health care costs in Bloomington by enabling individuals to seek early and routine medical care for themselves and their family members ;

(c) To protect the public's health in Bloomington by reducing the risk and spread of contagion;

(d) To assist victims of domestic abuse and their family members by providing them with job-protected sick and safe leave time away from work to allow them to receive treatment and to take the necessary steps to ensure their protection and wellbeing;

(e) To protect individuals employed in Bloomington from losing their jobs while they use sick and safe leave to care for themselves or their families;

(f) To safeguard the public welfare, health, safety, and prosperity of the people of and visitors to Bloomington; and

(g) To accomplish the purposes described in subsections (a)-(f) in a manner that is feasible for employers and that does not require employers to provide any additional sick and safe leave to their employees if they already provide the same amount of sick and safe leave that can be used for the same purposes and under the same conditions as required in this article.

(Ord. 2022-31, passed 6-6-2022)

§ 23.03 SEVERABILITY.

If any part, term, or provision of this article is held by a court of competent jurisdiction to be invalid or unconstitutional, such portion shall be deemed severable and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this article, which remaining portions shall continue in full force and effect.

(Ord. 2022-31, passed 6-6-2022)

§ 23.04 PREEMPTION.

Nothing in this article shall be interpreted or applied so as to create any power or duty in conflict with federal or state law.

(Ord. 2022-31, passed 6-6-2022)

§ 23.05 DEFINITIONS.

When used in this article, the following words, terms, and phrases shall have the following meanings, unless the context clearly indicates otherwise.

CALENDAR YEAR. A regular and consecutive 12-month period as determined by an employer and may be based on an employee's employment anniversary date.

CHAIN ESTABLISHMENT. An establishment doing business under the same trade name used by two or more establishments, or under the same ownership and doing the same business, whether such other establishments are located in the city or elsewhere and regardless of the type of ownership of each individual establishment.

CITY. The City of Bloomington, Minnesota.

DOMESTIC ABUSE. Has the meaning defined in M.S. § 518B.01, as it may be amended from time to time.

EMPLOYEE. Any individual who performs services for hire and compensation for an employer , including temporary employees and part-time employees and who performs work at a location or locations within the geographic boundaries of the city for at least 80 hours in a year for that employer . For purposes of this article, "employee" does not include the following:

(1) Employees classified as extended employment program workers as defined in Minnesota Rules part 3300.6000 and participating in the M.S. § 268A.15, as it may be amended from time to time, extended employment program;

(2) Independent contractors; or

(3) Student Interns .

EMPLOYER. A person or entity that employs one or more employees . The term includes an individual, corporation, partnership, association, nonprofit organization, or group of persons. For purposes of this article, "employer" does not include any of the following:

(1) The United States government;

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

(3) Any county or local government, except the city .

EXEMPT EMPLOYEE. An employee who is exempt from overtime payment requirements under federal or state law.

FAMILY MEMBER. An employee's child, step-child, adopted child, foster child, adult child, spouse, sibling, parent, step-parent, mother-in-law, father-in-law, grandchild, grandparent, guardian, ward, or members of the employee's household.

HEALTH CARE PROVIDER. A person licensed in good standing in Minnesota to provide medical or emergency services and employed in that capacity, including but not limited to doctors, nurses and emergency room personnel.

PREVAILING WAGE RATE. Has the meaning given in M.S. § 177.42, as it may be amended from time to time, and as calculated by the Minnesota Department of Labor and

Industry.

REGULAR RATE OF PAY. The employee's hourly rate, including payments for shift differentials, for an hourly employee or an equivalent rate for an exempt employee . Regular rate of pay does not include:

(1) Tips;

(2) Commissions;

(3) Reimbursements for expenses incurred on the employee's behalf;

(4) Premium payments for overtime work or work on Saturdays, Sundays, holidays, or scheduled days off, if the premium rate is at least one and one-half times the normal rate;

(5) Bonuses;

(6) Cash or other valuables in the nature of gifts on special occasions;

(7) Payments made pursuant to a bona fide profit-sharing plan or trust or bona fide thrift or savings plan; or

(8) Contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old-age, retirement, life, accident, or health insurance or similar benefits for employees .

SAFE TIME. The need for time off under circumstances described in M.S. § 181.9413(b), as it may be amended from time to time.

SEXUAL ASSAULT. An act that would constitute a violation under M.S. §§ 609.342 to 609.3453 or § 609.352, as they may be amended from time to time.

SICK AND SAFE LEAVE. Leave, paid or unpaid, that may be used for the same purposes and under the same conditions as § 23.07.

STALKING. Has the meaning given in M.S. § 609.749, as it may be amended from time to time.

STUDENT INTERN. An unpaid student who is acquiring hands on training, work experience, or clinical training in connection to a course of study or higher education program for a limited period of time.

(Ord. 2022-31, passed 6-6-2022)

§ 23.06 ACCRUAL OF SICK AND SAFE LEAVE.

(a) *Determination of business size.*

(1) An employer's business size for the current calendar year is based upon the average number of employees per week during the previous calendar year .

(2) For a new business, the employer's business size for the current calendar year is based upon the average number of employees per week during the first 90 days after its first employee began work.

(3) In determining the number of employees , all persons performing work for hire and compensation on a full-time, part-time, or temporary basis shall be counted, whether or not the persons work in the city .

(4) Employees jointly employed by two employers must be counted by both employers , whether or not maintained on one of the employer's payroll in determining an employer's business size. In those cases in which a professional employer organization is determined to be a joint employer of a client employer's employees , the client employer would only be required to count employees of the professional employer organization, or employees of other clients of the professional employer organization, if the client employer jointly employed those employees .

(b) *Accrual of sick and safe time .*

(1) Employees accrue a minimum of one hour of sick and safe time for every 30 hours worked within the geographic boundaries of the city up to a maximum of 48 hours in a calendar year . Employees may not accrue more than 48 hours of accrued sick and safe time in a calendar year unless the employer agrees to a higher amount. Sick and safe time shall accrue in hour-unit increments. An employer may exceed this minimum standard by recording time in fractions of an hour.

(2) Exempt employees are deemed to work 40 hours in each work week for purposes of accruing sick and safe time , except that such an employee whose normal work week is less than 40 hours will accrue sick and safe time based upon the employee's normal work week.

(3) Employers shall permit an employee to carry over accrued but unused sick and safe time into the following year. The total amount of accrued but unused sick and safe time for an employee may not exceed 80 hours at any time, unless an employer agrees to a higher amount.

(4) Sick and safe time under this article begins to accrue at the commencement of employment of the employee or this article's effective date, whichever is later.

(5) An employer may satisfy this section by providing at least 48 hours of sick and safe time following the initial 90 days of employment for use by the employee during the first calendar year and providing at least 80 hours of sick and safe time beginning each subsequent calendar year .

(6) The frequency with which an employer records sick and safe time accrual may be in a manner consistent with current payroll practices as defined by industry standards or existing employer policies, provided such practice or policy is no less frequent than a monthly basis.

(Ord. 2022-31, passed 6-6-2022; Ord. 2023-1, passed 1-23-2023)

§ 23.07 USE OF ACCRUED SICK AND SAFE LEAVE.

(a) Employees are entitled to use accrued sick and safe time beginning 90 calendar days following commencement of their employment. After 90 calendar days of employment, employees may use sick and safe time as it is accrued.

(b) An employee may use accrued sick and safe time for:

(1) The employee's mental or physical illness; injury; health condition; need for medical diagnosis; care, including prenatal care; treatment of a mental or physical illness, injury, or health condition; or need for preventive medical or health care.

(2) The care of a family member with a mental or physical illness, injury, or health condition who needs medical diagnosis, care including prenatal care, treatment of a mental or physical illness, injury, or health condition; who needs preventive medical or health care; or the death of a family member .

(3) An absence due to domestic abuse , sexual assault , or stalking of the employee or employee's family member , provided the absence is to:

i. Seek medical attention or psychological or other counseling services related to physical or psychological injury or disability caused by domestic abuse , sexual assault , or stalking ;

ii. Obtain services from a victim services organization;

iii. Seek relocation due to domestic abuse , sexual assault , or stalking ; or

iv. Seek legal advice or take legal action, including preparing for or participating in any civil or criminal legal proceeding related to or resulting from domestic abuse , sexual assault , or stalking .

(4) The closure of the employee's place of business by order of a public official to limit exposure to an infectious agent, biological toxin, hazardous material, or other public health emergency.

(5) To accommodate the employee's need to care for a family member whose school or place of care has been closed by order of a public official to limit exposure to an infectious agent, biological toxin, hazardous material, or other public health emergency.

(6) To accommodate the employee's need to care for a family member whose school or place of care has been closed due to inclement weather, loss of power, loss of heating, loss of water, or other unexpected closure.

(c) If the need for use is foreseeable, an employer may require advance notice of the intention to use sick and safe time , but in no case shall an employer require more than seven days' advance notice. If the need is not foreseeable, an employer may require an employee to give notice of the need for sick and safe time as soon as practicable.

(d) It is not a violation of this article for an employer to require reasonable documentation that the sick and safe time covered by subsection (b)(1), (b)(2), and (b)(3)i. for absences of more than three consecutive days, only if the employer provides health insurance benefits to the employee .

(e) An employer may not require, as a condition of an employee's use of sick and safe time , that the employee seek or find a replacement worker to cover the hours during which the employee uses sick and safe time .

(f) An employer must allow an employee to use sick and safe time in increments consistent with current payroll practices as defined by industry standards or existing employer policies, provided such increment is not more than four hours.

(g) An employer with five or more employees must compensate the employee at the regular rate of pay for the hours the employee was scheduled to work during the time the employee uses their accrued sick and safe time . In no case shall the employee be compensated at a rate less than the rate requirement in M.S. § 177.24, as it may be amended from time to time. Compensation is only required for hours that an employee is scheduled to have worked.

(h) An employer with less than five employees must allow employees unpaid use of accrued sick and safe time . An employer with less than five employees may compensate the employee at the employee's regular rate of pay for the hours the employee was scheduled to work during the time the employee uses their accrued sick and safe time .

(i) A health care provider may only use sick and safe time when the health care provider has been scheduled to work. A health care provider has not been scheduled to work for shifts for which the health care provider chooses to call in and request a shift occurring within 24 hours, or for shifts for which the health care provider has only been asked to remain available or on call, unless the health care provider has been asked to remain on the employer's premises.

(j) An employer may opt to satisfy the requirements of this article for construction industry employees by:

(1) Paying at least the prevailing wage rate as defined by M.S. § 177.42, as it may be amended from time to time, and as calculated by the Minnesota Department of Labor and Industry; or

(2) Paying at least the required rate established in a registered apprenticeship agreement for apprentices registered with the Minnesota Department of Labor and Industry.

An employer electing this option shall be deemed in compliance with this article for construction industry employees who receive either at least the prevailing wage rate or the rate required in the applicable apprenticeship agreement regardless of whether the employees are working on private or public projects.

(k) An employer is only required to allow an employee to use sick and safe time that is accrued pursuant to this article when the employee is scheduled to perform work within the geographic boundaries of the city . An employer may allow use of accrued sick and safe time when an employee is scheduled to perform work for the employer outside of the city .

(Ord. 2022-31, passed 6-6-2022)

§ 23.08 EXERCISE OF RIGHTS; RETALIATION PROHIBITED.

(a) It shall be unlawful for an employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this article.

(b) An employer shall not take adverse employment action or discriminate against an employee because the employee has exercised rights under this article. Such rights include, but are not limited to, requesting accrued sick and safe time , using accrued sick and safe time , informing any person about any employer's alleged violation of this article, making a complaint or filing an action to enforce a right to accrued sick and safe time under this article.

(c) If an employee exercises rights under this article and within 90 days of the exercise of those rights, the employer materially changes the terms and conditions of the employee's

employment, including terminating, constructively discharging, reducing the employee's wages or benefits, or making other changes in the employment that affect the employee's future career prospects, there is a rebuttable presumption the employer has retaliated against the employee . The employer may rebut this presumption by presenting clear and convincing evidence that the action was taken for a legitimate, non-retaliatory purpose.

(Ord. 2022-31, passed 6-6-2022)

§ 23.09 NOTICE AND POSTING.

(a) The City Attorney's Office shall, by the effective date of this article, publish and make available to employers , in all languages spoken by more than 5% of the workforce in the city , as calculated by the city , notices suitable for posting by employers in the workplace informing employees of their rights under this article. The City Attorney's Office shall update this notice on December 1 of any year in which there is a change in the languages spoken by more than 5% of the city workforce.

(b) Every employer shall post, in a conspicuous place at any workplace or job site where any employee works, the notices required by subsection (a). Every employer shall post this notice in English, and any language spoken by at least 5% of the employees at the workplace or job site if published by the City Attorney's Office.

(c) An employer that provides an employee handbook to its employees must include in the handbook notice of employee rights and remedies under this article.

(Ord. 2022-31, passed 6-6-2022)

§ 23.10 REQUIRED STATEMENT TO EMPLOYEE.

An employer must comply with the requirements of M.S. § 181.032. The earnings statement required by M.S. § 181.032 must also include information stating the employee's then-current amount of:

(a) Accrued sick and safe time available to the employee ; and

(b) Used sick and safe time .

This sick and safe time information must be provided in the same format as is required for the earning statement required by M.S. § 181.032.

(Ord. 2022-31, passed 6-6-2022; Ord. 2023-1, passed 1-23-2023)

§ 23.11 EMPLOYER RECORDS.

(a) An employer must maintain accurate records for each employee showing:

(1) For non-exempt employees , hours worked.

(2) Hours of leave available for sick and safe time purposes.

(3) Hours of leave used for sick and safe time purposes.

(b) The records required by this section must be retained for a period of not less than three years in addition to the current calendar year .

(c) An employer must allow an employee to inspect records required by this section and relating to that employee at a reasonable time and place.

(d) The City Attorney's Office shall have access to the records required by both this section and M.S. Ch. 181, as it may be amended from time to time, with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of this article, including, but not limited to, inspection and copying of books and records, interviewing employees and former employees , and investigating alleged violations of this article. Social Security numbers and employees ' personal addresses shall not be a matter of public record.

(e) If an employer fails to maintain or retain adequate records or does not allow the City Attorney's Office reasonable access to the records and an issue arises as to an alleged violation of an employee's rights under this article, it shall be presumed that the employer has violated this article, absent clear and convincing evidence otherwise.

(f) If, in conjunction with this article, an employer possesses health or medical information regarding an employee or an employee's family member or information pertaining to domestic abuse , sexual assault , or stalking of an employee or an employee's family member , the employer must treat such information as confidential and not disclose the information except with permission of the employee , when ordered by a court or administrative agency, or when otherwise required by federal or state law.

(Ord. 2022-31, passed 6-6-2022)

§ 23.12 TERMINATION; TRANSFER; SEPARATION.

(a) Nothing in this article may 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 sick and safe time that has not been used.

(b) If an employee is transferred to a separate division, entity, or location out of the city , but remains employed by the same employer , and the employer does not allow the use of accrued paid sick and safe time outside the city , the employer must maintain the employee's accrued sick and safe time on the books for a period of three years from the time of the transfer. If, within three years of the time of the employee's transfer to separate division, entity, or location out of the city , the employee is transferred back to a division, entity, or location within the city , but remains employed by the same employer , the employee is entitled to all previously accrued sick and safe time accrued but not used at the prior division, entity, or location within the city and is entitled to use all accrued sick and safe time as provided in this article.

(c) If an employee is transferred to a separate division, entity, or location within the city , but remains employed by the same employer , the employee is entitled to all accrued sick and safe time accrued but not used at the prior division, entity, or location and is entitled to use all accrued sick and safe time as provided in this article.

(d) When there is a separation from employment and the employee is rehired within 120 days of separation by the same employer , previously accrued sick and safe time that had not been used or paid out upon separation from employment, must be reinstated. An employee is entitled to use accrued sick and safe time and accrue additional sick and safe time at the commencement of reemployment.

(Ord. 2022-31, passed 6-6-2022)

§ 23.13 EMPLOYER SUCCESSION.

When a different employer succeeds or takes the place of an existing employer , all employees of the original employer who remain employed by the successor employer are entitled to all accrued sick and safe time accrued, but not used when employed by the original employer and are entitled to use all accrued sick and safe time previously accrued but not used.

(Ord. 2022-31, passed 6-6-2022)

§ 23.14 EMPLOYEE EXCHANGE OF HOURS.

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

(Ord. 2022-31, passed 6-6-2022)

§ 23.15 AUTHORITY.

(a) The City Attorney's Office has broad authority to implement, administer and enforce this article. The City Attorney's Office shall have broad authority to investigate possible violations of this article whenever it has cause to believe that any violation of this article has occurred, either on the basis of a report of a suspected violation or on the basis of any other credible information, including violations found during the course of an investigation.

(b) The City Attorney's Office shall promulgate appropriate rules to implement, administer, and enforce this article. Such rules shall:

(1) Be consistent with this article and may be relied on by employers , employees , and other persons to determine their rights and responsibilities under this article.

(2) Establish procedures for fair, efficient, and cost-effective implementation and enforcement of this article, including rules ensuring timely review of reports of violation and governing procedure for any appeals to an administrative hearing officer under § 23.19.

(3) Establish procedures for informing employers of their duties and employees of their rights under this article and monitoring employer compliance.

The City Attorney's Office shall publish, maintain, and make available to the public any such initial rules at least 90 days prior to their effective date. Any revisions to published rules shall be published, maintained, and made available to the public at least 30 days prior to their effective date.

(Ord. 2022-31, passed 6-6-2022)

§ 23.16 IMPLEMENTATION.

(a) The City Attorney's Office shall work with all relevant city departments, state, and federal agencies, divisions, departments, bureaus, or institution of government to implement, promote, and enforce this article.

(b) The City Attorney's Office shall develop and implement a multilingual and culturally specific outreach and community engagement program to educate employees and employers about their rights and obligations under this article. This outreach program shall include

media, trainings and materials accessible to the diversity of employees and employers in the city .

(Ord. 2022-31, passed 6-6-2022)

§ 23.17 ENFORCEMENT.

(a) *Report of violations.* An employee or other person may report to the City Attorney's Office any suspected violation of this article. A report of a suspected violation may be filed only if the matter complained of occurred after the effective date of this article and within 365 days prior to filing of the report.

(b) Investigation process:

(1) The City Attorney's Office has sole discretion to decide whether to investigate or to pursue a violation of this article. If the City Attorney's Office decides not to investigate or otherwise pursue a report of suspected violation, the City Attorney's Office must provide a written notification to any employee or other person who filed the report that the City Attorney's Office is declining to further investigate the report and reason for declining. The employee or other person may within 21 days, file a request for reconsideration with the City Attorney. The City Attorney's Office must provide a written response on the reconsideration within 20 days.

(2) The City Attorney's Office may initiate an investigation pursuant to a complaint or when the City Attorney's Office has reason to believe that a violation has occurred.

(3) To pursue a violation of this article, the City Attorney's Office must serve a notice of investigation setting forth the allegations and pertinent facts upon an employer by U.S. mail. The notice of investigation shall be accompanied by a request for a written position statement and may include a request for records or other information. The notice shall also inform the employer that retaliation for claiming rights under this article is a basis for additional monetary damages.

(4) An employer's position and response to any request for records must be provided to the City Attorney's Office as provided in the City Attorney's Office's rules. An employer's failure to provide a position statement or to timely and fully respond to a request for records or any other reasonable request issued by the department pursuant to an investigation creates a rebuttable presumption of a violation of this article for the purposes of the investigation and determination of violation. An employer that fails to respond to a request for records may not use such records in any appeal pursuant to § 23.19 to challenge the correctness of any determination of violation by the City Attorney's Office of damages owed or penalties assessed.

(5) Investigations shall be conducted in an objective and impartial manner.

(6) The City Attorney's Office shall consider any statement of position or evidence with respect to the alleged violation which the employee or person who filed the report of suspected violation or employer wishes to submit.

(7) The City Attorney's Office may require a fact-finding conference or participation in another process with the employer , employee , or other person who filed the report of a suspected violation, and any of their agents and witnesses during the investigation in order to

define the issues, determine which elements are undisputed, resolve those issues that can be resolved and afford an opportunity to discuss or negotiate settlement.

(c) The City Attorney's Office determination of violation. Except when there is an agreed upon settlement, the City Attorney's Office must issue a written determination of violation with findings of fact resulting from the investigation and a statement of whether a violation of this article has or has not occurred based upon a preponderance of the evidence presented to the City Attorney's Office. The determination of violation must be issued to the employer and any employee or other person who filed the suspected violation report.

(d) For alleged first violations arising during the first 365 days following the effective date of this article, the City Attorney's office must issue a warning letter and notice to correct and attempt to mediate disputes. For subsequent alleged violations arising during the first 365 days following the effective date of this article, the City Attorney's Office may impose the relief and penalties provided in § 23.18.

(Ord. 2022-31, passed 6-6-2022; Ord. 2023-1, passed 1-23-2023)

§ 23.18 RELIEF AND ADMINISTRATIVE PENALTIES.

As set forth in City Code Appendix A, the City Attorney may order any appropriate relief for a determination including, but not limited to:

(a) Reinstatement and back pay;

(b) Relief for uncredited accrued sick and safe time ;

(c) Relief for unlawfully withheld sick and safe time ;

(d) Fine for a second violation by an employer against the same employee ;

(e) Fine for a third or subsequent violations by an employer against the same employee ;

(f) Fine for failure to comply with § 23.08;

(g) Fine for failure to comply with §§ 23.09 or 23.10, and for a second or third violation of the same section within three years; and

(h) Fine for failure to comply with § 23.11 and for a second or third violation within three years.

(Ord. 2022-31, passed 6-6-2022)

§ 23.19 APPEAL.

(a) An employee , former employee , or employer may appeal from a determination by filing an appeal in writing with the City Attorney's Office within 21 days of the date of service of the determination. Failure by the employer to file a timely, written appeal shall constitute admission to the violation, and the violation shall be deemed final upon expiration of the 21-day period.

(b) Upon an appeal of the City Attorney's determination, the City Attorney's Office shall refer the matter to an administrative hearing officer pursuant to Chapter 1 of the City Code.

(c) In such appeal, the hearing officer shall consider the record submitted to it by the City Attorney's Office, the written statements of positions by the parties involved, and may, in the

discretion of the hearing officer, take testimony to resolve issues of credibility or factual disputes and hear oral arguments. The hearing officer shall reverse the City Attorney's Office's determination only upon a finding that it is clearly erroneous. The hearing officer's decision of the appeal shall constitute the city's final decision without any further right of administrative appeal.

(d) The City Attorney's Office shall notify the employer and the employee or other person who filed the suspected violation report at issue of the hearing officer's decision.

(e) An employer or employee , to the extent provided by law, may appeal the hearing officer's decision by petition for writ of certiorari to the Minnesota Court of Appeals pursuant to M.S. § 606.01, as it may be amended from time to time.

(f) If there is no appeal of the City Attorney's Office's determination, the determination shall constitute the city's final decision. A failure to appeal the City Attorney's Office's determination by either the employee , former employee , or employer shall constitute a failure to exhaust administrative remedies, which shall serve as a complete defense to any petition or claim regarding the City Attorney's Office's determination.

(Ord. 2022-31, passed 6-6-2022)

§ 23.20 CIVIL ENFORCEMENT.

(a) Where prompt compliance is not forthcoming with a final determination of violation, the City Attorney's Office may initiate a civil action in a court of competent jurisdiction against an employer , for violating any requirement of this article and, upon prevailing, shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation, including, without limitation, the payment of lost wages, the payment of an additional sum as a civil penalty not to exceed twice the amount awarded for lost wages, and reinstatement in employment and/or injunctive relief and shall be awarded reasonable attorneys' fees and costs.

(b) A person injured by a violation of this article may, in addition to other remedies provided in this article, bring a civil action in the district court wherein the alleged violation is alleged to have been committed or where the employer has a principal place of business, to recover any and all damages recoverable at law, together with costs and disbursements, including reasonable attorney's fees, and may receive other equitable relief as determined by the court.

(Ord. 2022-31, passed 6-6-2022)

§ 23.21 NO EFFECT ON MORE GENEROUS SICK AND SAFE LEAVE POLICIES.

(a) Nothing in this article shall be construed to discourage employers from adopting or retaining other leave policies, including accrued sick and safe time policies, that provide for greater accrual or use by employees of sick and safe time or that extends other protections to employees .

(b) Employers , who provide their employees sick and safe time under a paid time off policy, other paid leave policy, or collective bargaining agreement that is sufficient to meet the accrual requirements for sick and safe time under § 23.06 and may be used by the employee for the same purposes and under the same conditions as sick and safe time under § 23.07, are not required to provide additional sick and safe time .

(c) Nothing in this article shall be construed to prohibit an employer from establishing a policy whereby employees may donate unused accrued sick and safe time to another employee .

(d) Nothing in this article shall be construed to prohibit an employer from advancing sick and safe time to an employee prior to accrual by such employee .

(Ord. 2022-31, passed 6-6-2022)