

## ORDINANCE NO. 2023-24

### AN ORDINANCE AMENDING CHAPTER 23 OF THE CITY CODE RELATED TO EARNED SICK AND SAFE LEAVE TIME

The City Council for the City of Bloomington, Minnesota, ordains:

Section 1. That Chapter 23 of the City Code is hereby amended by adding those words that are underlined and deleting those words within brackets [ ] and ~~stricken through~~, to read as follows:

#### CHAPTER 23: EARNED SICK AND SAFE ~~[LEAVE]~~ TIME

#### ARTICLE I: EARNED SICK AND SAFE ~~[LEAVE]~~ TIME

##### § 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]~~ time 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]~~ time. The same employees that are least likely to have sick and safe ~~[leave]~~ time 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]~~ time 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]~~ time to their employees;
- (c) Family economic security is at risk for workers who lack adequate sick and safe ~~[leave]~~ time because workers who lack sick and safe ~~[leave]~~ time 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]~~ time 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]~~ time disproportionately experience poverty, unstable housing and hunger;
- (d) Access to sick and safe ~~[leave]~~ time and the ability to take sick and safe ~~[leave]~~ time 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]~~ time 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]~~ time or an inadequate amount of sick and safe ~~[leave]~~ time 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]~~ time, 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]~~ time 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]~~ time are less able to receive medical treatment, participate in legal proceedings, and obtain other necessary services. In addition, without sick and safe ~~[leave]~~ time, 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]~~ time 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]~~ time 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]~~ time, because doing so will ensure a more stable workforce in our community, thereby benefitting workers, their

families, employers, and the community as a whole.

## § 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]~~ time, 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]~~ time 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]~~ time to their employees if they already provide the same amount of sick and safe ~~[leave]~~ time that can be used for the same purposes and under the same conditions as required in this article.

\* \* \*

## § 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.

\* \* \*

~~[**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.]~~

\* \* \*

~~**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.] A "family member" is:

(1) an employee's:

- (i) child, foster child, adult child, legal ward, child for whom the employee is legal guardian, or child to whom the employee stands or stood in *loco parentis*;
- (ii) spouse;
- (iii) sibling, stepsibling, or foster sibling;
- (iv) biological, adoptive, or foster parent, stepparent, or a person who stood in *loco parentis* when the employee was a minor child;
- (v) grandchild, foster grandchild, or stepgrandchild;
- (vi) grandparent or stepgrandparent;
- (vii) a child of a sibling of the employee;
- (viii) a sibling of the parents of the employee; or
- (ix) a child-in-law or sibling-in-law;

(2) any of the family members listed in clause (1) above of a spouse;

(3) any other individual related by blood or whose close association with the employee is the equivalent of a family relationship; and

(4) up to one individual annually designated by the employee.

\* \* \*

***SICK AND SAFE [LEAVE] TIME.*** Paid leave [~~paid or unpaid,~~] that may be used for the same purposes and under the same conditions as § 23.07.

\* \* \*

#### **§ 23.06 ACCRUAL OF SICK AND SAFE [LEAVE] TIME.**

~~[(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.*~~

~~[(4)]~~ (a) 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)]~~ (b) 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)]~~ (c) Except as provided in clause (1) below, ~~[E]~~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.

(1) In lieu of permitting the carryover of accrued but unused sick and safe time into the following year as provided under § 23.07 (d), (e), (f), (g), (h), and (i), an employer may provide an employee with earned sick and safe time for the year that meets or exceeds the requirements of this section that is available for the employee's immediate use at the beginning of the subsequent year as follows: (i) 48 hours, if an employer pays an employee for accrued but unused sick and safe time at the end of a year at the same hourly rate as an employee earns from employment; or (ii) 80 hours, if an employer does not pay an employee for accrued but unused sick and safe time at the end of a year at the same or greater hourly rate as an employee earns from employment. In no case shall this hourly rate be less than that provided under M.S. § 177.24.

~~[(4)]~~ (d) 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)]~~ (e) 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 immediate 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)]~~ (f) 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.

\* \* \*

#### **§ 23.07 USE OF ACCRUED SICK AND SAFE ~~[LEAVE]~~ TIME.**

(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.]~~

(1) an employee's:

(i) mental or physical illness, injury, or other health condition;

(ii) need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or

(iii) need for preventive medical or health care;

(2) care of a family member:

(i) with a mental or physical illness, injury, or other health condition;

(ii) who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or other health condition; or

(iii) who needs preventive medical or health care;

(3) 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 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) obtain psychological or other counseling;

(iv) seek relocation or take steps to secure an existing home due to domestic abuse, sexual assault, or stalking; or

(v) 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) closure of the employee's place of business due to weather or other public emergency or an employee's need to care for a family member whose school or place of care has been closed due to weather or other public emergency;

(5) the employee's inability to work or telework because the employee is: (i) prohibited from working by the employer due to health concerns related to the potential transmission of a communicable illness related to a public emergency; or (ii) seeking or awaiting the results of a diagnostic test for, or a medical diagnosis of, a communicable disease related to a public emergency and such employee has been exposed to a communicable disease or the employee's employer has requested a test or diagnosis; and

(6) when it has been determined by the health authorities having jurisdiction or by a health care professional that the presence of the employee or family member of the employee in the community would jeopardize the health of others because of the exposure of the employee or family member of the employee to a communicable disease, whether or not the employee or family member has actually contracted the communicable disease.

(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]~~ When an employee uses earned sick and safe time for more than three consecutive days, an employer may require reasonable documentation that the earned sick and safe time is pursuant to § 23.07(b).

(e) For earned sick and safe time pursuant to § 23.07(b) (1), (2), (5), or (6), reasonable documentation may include a signed statement by a health care professional indicating the need for use of earned sick and safe time. However, if the employee or employee's family member did not receive services from a health care professional, or if documentation cannot be obtained from a health care professional in a reasonable time or without added expense, then reasonable documentation for the purposes of this paragraph may include a written statement from the employee indicating that the employee is using or used earned sick and safe time for a qualifying purpose pursuant to § 23.07(b) (1), (2), (5), or (6).

(f) For earned sick and safe time pursuant to § 23.07(b)(3), an employer must accept a court record or documentation signed by a volunteer or employee of a victim services organization, an attorney, a police officer, or an antiviolence counselor as reasonable documentation.

(g) For earned sick and safe time to care for a family member pursuant to § 23.07(b)(4), an

employer must accept as reasonable documentation a written statement from the employee indicating that the employee is using or used earned sick and safe time for a qualifying purpose as reasonable documentation.

(h) An employer must not require disclosure of details relating to domestic abuse, sexual assault, or stalking or the details of an employee's or an employee's family member's medical condition as related to an employee's request to use earned sick and safe time pursuant to § 23.07.

(i) Written statements by an employee may be written in the employee's first language and need not be notarized or in any particular format.

~~[(e)]~~ (j) 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)]~~ (k) 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)]~~ (l) 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)]~~ (m) 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)]~~ (n) 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.



~~[(4)]~~ (o) 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.

\* \* \*

#### **§ 23.12 TERMINATION; TRANSFER; SEPARATION.**

\* \* \*

(d) When there is a separation from employment and the employee is rehired within ~~[(420)]~~ 180 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.

\* \* \*

#### **§ 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]~~ July 1, 2023.

\*\*\*

#### **§ 23.21 NO EFFECT ON MORE GENEROUS SICK AND SAFE ~~[LEAVE]~~ TIME POLICIES.**

\*\*\*

Section 2. Effective Date. This Ordinance shall be in full force and effect from and on January 1, 2024.

Passed and adopted this 25<sup>th</sup> day of September, 2023.

/s/ Tim Busse  
Mayor

ATTEST:

APPROVED:

/s/ Matt Brillhart  
Secretary to the Council

/s/ Melissa J. Manderschied  
City Attorney