

## LOCAL LAW “C” FOR 2018

### A LOCAL LAW TO PROVIDE ACCESS TO PAID SICK TIME TO QUALIFIED EMPLOYEES WITHIN ALBANY COUNTY

Introduced: 3/12/18

By: Messrs. Bullock, Reinhardt, A. Joyce, Fein, Higgins, Mss. Lekakis, McLean Lane, Cunningham, Chapman and Mr. Simpson:

BE IT ENACTED BY THE COUNTY LEGISLATURE OF THE COUNTY OF ALBANY, as follows:

#### **Section 1. Legislative Intent**

The Legislature hereby finds and determines that access to paid sick time promotes a healthy and safe county by reducing the spread of illness, reducing health care costs, reducing work-family conflict and providing greater flexibility to those with caregiving responsibilities.

The Legislature finds that 40% of workers in Albany County lack access to paid sick time.

The Legislature finds that paid sick leave may diminish public and private health care costs and promote preventive health services in Albany County by enabling workers to seek early and routine medical care for themselves and their family members.

The Legislature finds that some employees are without any protection from losing their jobs or facing workplace discipline when they use the paid sick time they earn to care for themselves or their families.

The Legislature finds, that paid sick leave may allow for victims of domestic violence and their family members in recovery, by providing them job-protected time away from work to receive treatment and to take the necessary steps to ensure their safety.

The Legislature finds that it is necessary to safeguard the public welfare, health, safety and prosperity of the people of Albany County as well as to reduce the risk of contagion by ensuring employees of Albany County may enjoy paid sick leave.

The Legislature finds that the reality of employment in Albany County requires implementing this mandate in a manner that is feasible for employers.

Therefore, passage of this law guaranteeing paid sick time is necessary to ensure that all workers in Albany County can address their own health and safety needs and the health and safety needs of their families by requiring employers to provide a minimum level of earned paid sick time, including time to care for their family members.

## **Section 2. Title.**

This Local Law shall be known as “The Albany County Paid Sick Leave Act.”

## **Section 3. Definitions.**

For the purposes of this Local Law

- A) “Agency” means the County of Albany.
- B) “Calendar year” shall mean a regular and consecutive twelve month period, as determined by an employer.
- C) “Chain business” shall mean any employer that is part of a group of establishments that share a common owner or principal who owns at least thirty percent of each establishment where such establishments (i) engage in the same business or (ii) operate pursuant to franchise agreements with the same franchisor as defined in general business law section 681; provided that the total number of employees of all such establishments in such group is at least fifteen.
- D) “Child” shall mean a biological, adopted or foster child, a legal ward, or a child of an employee standing in loco parentis.
- E) “Domestic partner” shall be as defined in section 4 of the workers’ compensation law of New York.
- F) “Employee” shall mean any “employee” as defined in subdivision 2 of section 190 of the labor law who is employed for hire within Albany County for more than eighty hours in a calendar year who performs work on a full-time or part-time basis, including work performed in a transitional jobs program pursuant to section 336-f of the social services law, but not including work performed as a participant in a work experience program pursuant to section 336-c of the social services law or work performed pursuant to work study programs under 42 U.S.C. section 2753, but this definition does not include those who are employed by employers exempted under subsection G of this section.

- G) “Employer” shall mean any “employer” as defined in subdivision 3 of section 190 of the labor law, except that employer includes Albany County government for its employees that are not subject to a collective bargaining agreement. In determining the number of employees performing work for an employer for compensation during a given week, all employees performing work for compensation on a full-time, part-time or temporary basis shall be counted, provided that where the number of employees who work for an employer for compensation per week fluctuates, business size may be determined for the current calendar year based upon the average number of employees who worked for compensation per week during the preceding calendar year and provided further that in determining the number of employees performing work for an employer that is a chain business, the total number of employees in that group of establishments shall be counted.
- H) “Family member” shall mean an employee’s child, spouse, domestic partner, parent, sibling, grandchild or grandparent; the child or parent of an employee’s spouse or domestic partner; and any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.
- I) “Family offense matter” shall mean an act or threat of an act that may constitute disorderly conduct, harassment in the first degree, harassment in the second degree, aggravated harassment in the second degree, sexual misconduct, forcible touching, sexual abuse in the third degree, sexual abuse in the second degree as set forth in subdivision 1 of section 130.60 of the penal law, stalking in the first degree, stalking in the second degree, stalking in the third degree, stalking in the fourth degree, criminal mischief, menacing in the second degree, menacing in the third degree, reckless endangerment, strangulation in the first degree, strangulation in the second degree, criminal obstruction of breathing or blood circulation, assault in the second degree, assault in the third degree, an attempted assault, identity theft in the first degree, identity theft in the second degree, identity theft in the third degree, grand larceny in the fourth degree, grand larceny in the third degree or coercion in the second degree as set forth in subdivisions 1, 2 and 3 of section 135.60 of the penal law between spouses or former spouses, or between parent and child or between members of the same family or household.
- J) “Grandchild” shall mean a child of an employee’s child.
- K) “Grandparent” shall mean a parent of an employee’s parent.
- L) “Health care provider” shall mean any person licensed under federal or New York state law to provide medical or emergency services, including, but not limited to, doctors, nurses and emergency room personnel.

- M) "Human trafficking" shall mean an act or threat of an act that may constitute sex trafficking, as defined in section 230.34 of the penal law, or labor trafficking, as defined in section 135.35 and 135.36 of the penal law.
- N) "Paid sick time" shall mean time that is compensated at the same hourly rate and with the same benefits, including health care benefits, as the employee normally earns during hours worked and is provided by an employer to an employee for the purposes described in Section 5 of this law, but in no case shall this hourly amount be less than that provided under section 652 (1) of the labor law of New York. In no case shall an employer be required to pay more to an employee for paid sick time than the employee's regular rate of pay at the time the employee uses such paid sick time.
- O) "Parent" shall mean a biological, foster, step- or adoptive parent, or a legal guardian of an employee, or a person who stood in loco parentis when the employee was a minor child.
- P) "Public health emergency" shall mean a declaration made by the Albany County Commissioner of Health.
- Q) "Retaliation" shall mean any threat, discipline, discharge, demotion, suspension, reduction in employee hours or any other adverse employment action against any employee for exercising or attempting to exercise any right guaranteed under this Local Law.
- R) "Safe time" shall mean time that is provided by an employer to an employee that can be used for the purposes described in Section 5 of this Local Law, whether or not compensation for that time is required pursuant to this Local Law.
- S) "Sexual offense" shall mean an act or threat of an act that may constitute a violation of article 130 of the penal law.
- T) "Sibling" shall mean an employee's brother or sister, including half-siblings, step-siblings and siblings related through adoption.
- U) "Sick time" shall mean time that is provided by an employer to an employee that can be used for the purposes described in section 4 of this Local Law, whether or not compensation for that time is required pursuant to this Local Law.
- V) "Spouse" shall mean a person to whom an employee is legally married under the laws of the state of New York.

W) “Stalking” shall mean an act or threat of an act that may constitute a violation of section 120.45, 120.50, 120.55, or 120.60 of the penal law.

#### **Section 4. Accrual of Sick Time**

- A) All employees shall accrue a minimum of one hour of sick time for every 30 hours worked.
- 1) Employees of an employer who employs six (6) or more employees shall be entitled to earn and use up to forty (40) hours of paid sick time in a year, for all the purposes in Section 5, unless the employer selects a higher limit.
  - 2) Employees of an employer who employs five (5) or fewer employees shall be entitled to earn and use up to forty (40) hours of unpaid sick time for all the purposes in Section 5 unless the employer selects a higher limit. Employees who are exempt from overtime requirements under 29 U.S.C. § 213(a)(1) of the Federal Fair Labor Standards Act will be assumed to work forty (40) hours in each work week for purposes of paid and unpaid sick time accrual unless their normal work week is less than forty (40) hours, in which case paid and unpaid sick time accrues based upon that normal work week.
- B) Paid and unpaid sick time as provided in this section shall begin to accrue at the commencement of employment or on the date this law goes into effect, whichever is later. An employer may provide all paid and unpaid sick time that an employee is expected to accrue in a year at the beginning of the year.
- C) Employees shall not be entitled to use accrued paid and unpaid sick time until the 90th calendar day following commencement of their employment, unless otherwise permitted by the employer. On and after the 90th calendar day of employment, employees may use paid and unpaid sick time as it is accrued.
- D) Paid and unpaid sick time shall be carried over to the following year. Alternatively, in lieu of carryover of unused paid sick time from one year to the next, an employer may pay an employee for unused paid sick time at the end of a year and provide the employee with an amount of paid sick time 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.
- E) Any employer with a paid leave policy, such as a paid time off policy, who makes available an amount of paid leave sufficient to meet the accrual requirements of this section that may be used for the same purposes and under the same conditions as sick time under this law is not required to provide additional paid sick time.

- F) Nothing in this section shall be construed as requiring financial or other reimbursement to an employee from an employer upon the employee's termination, resignation, retirement or other separation from employment for accrued paid sick time that has not been used.
- G) If an employee is transferred to a separate division, entity or location, but remains employed by the same employer, the employee is entitled to all paid and unpaid sick time accrued at the prior division, entity or location and is entitled to use all paid and unpaid sick time as provided in this section. When there is a separation from employment and the employee is rehired within 12 months of separation by the same employer, previously accrued paid and unpaid sick time that had not been used shall be reinstated. Further, the employee shall be entitled to use accrued paid and unpaid sick time and accrue additional paid and unpaid sick time at the re-commencement of employment.
- H) 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 or who execute new employment agreements with the successor employer are entitled to all paid and unpaid sick time they accrued when employed by the original employer, and are entitled to use paid and unpaid sick time previously accrued.
- I) At its discretion, an employer may loan paid sick time to an employee in advance of accrual by such employee.
- J) At its discretion and pursuant to its own policies, an employer may permit employees to donate sick time to other employees of the same employer.

## **Section 5. Use of Sick Time**

A) An employee shall be entitled to use sick time for absence from work due to:

- 1) Such employee's mental or physical illness, injury or health condition or need for medical diagnosis, care or treatment of a mental or physical illness, injury or health condition or need for preventive medical care;
- 2) Care of a family member who needs medical diagnosis, care or treatment of a mental or physical illness, injury or health condition or who needs preventive medical care;
- 3) Closure of such employee's place of business by order of a public official due to a public health emergency or such employee's need to care for a child whose school or childcare provider has been closed by order of a public official due to

a public health emergency; or care for oneself or a family member when it has been determined by the health authorities having jurisdiction or by a health care provider that the presence of the employee or family member in the community may jeopardize the health of others because of his or her exposure to a communicable disease, whether or not the employee or family member has actually contracted the communicable disease;

4) Any of the following reasons when the employee or a family member has been the victim of a family offense matter, sexual offense, stalking, or human trafficking, except in the case where the employee has perpetrated the family offense matter, sexual offense, stalking or human trafficking and is seeking to use the time on behalf of the family member who is the victim;

a) To participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members from future family offense matters, sexual offenses, stalking, or human trafficking;

b) To meet with a civil attorney or other social service provider to obtain information and advice on, and prepare for or participate in any criminal or civil proceeding, including but not limited to, matters related to a family offense matter, sexual offense, stalking, human trafficking, custody, visitation, matrimonial issues, orders of protection, immigration, housing, discrimination in employment, housing or consumer credit;

c) To file a complaint or domestic incident report with law enforcement;

d) To meet with a district attorney's office;

e) To enroll children in a new school; or

f) To take other actions necessary to maintain, improve, or restore the physical, psychological, or economic health or safety of the employee or the employee's family member or to protect those who associate or work with the employee.

B) For an absence of more than three consecutive work days under Section 5 an employer may require reasonable documentation that the use of sick time was authorized in the following manner:

1) For sick time used pursuant to subdivisions 1 through 3 of subdivision A of Section 5, an employer may require reasonable documentation that the use of sick time was authorized by this subdivision. For sick time used pursuant to

these subdivisions, documentation signed by a licensed health care provider indicating the need for the amount of sick time taken shall be considered reasonable documentation and an employer shall not require that such documentation specify the nature of the employee's or the employee's family member's injury, illness or condition, except as required by law.

2) For sick time used pursuant to subdivision 4 of subdivision A of Section 5, documentation signed by an employee, agent, or volunteer of a victim services organization, an attorney, a member of the clergy, or a medical or other professional service provider from whom the employee or that employee's family member has sought assistance in addressing family offense matters, sex offenses, stalking, or human trafficking and their effects; a police or court record; or a notarized letter from the employee explaining the need for such time shall be considered reasonable documentation and an employer shall not require that such documentation specify the details of the family offense matter, sexual offense, stalking, or human trafficking.

C) An employer may require reasonable notice of the need to use sick time. Where such need is foreseeable, an employer may require reasonable advance notice of the intention to use such sick time, not to exceed seven days prior to the date such sick time is to begin. Where such need is not foreseeable, an employer may require an employee to provide notice of the need for the use of sick time as soon as practicable.

D) An employer that requires notice of the need to use paid sick time where the need is not foreseeable shall provide a written policy that contains procedures for the employee to provide notice. An employer that has not provided to the employee a copy of its written policy for providing such notice shall not deny paid sick time to the employee based on non-compliance with such a policy.

E) Nothing herein shall prevent an employer from requiring an employee to provide written confirmation that an employee used sick time pursuant to this section.

F) An employer shall not require an employee, as a condition of using sick time, to search for or find a replacement worker to cover the hours during which such employee is utilizing time.

G) Paid sick time may be used in the smaller of hourly increments or the smallest increment that the employer's payroll system uses to account for absences or use of other time.

H) Nothing in this Local Law shall be construed to prohibit an employer from taking disciplinary action, up to and including termination, against a worker who uses sick time provided pursuant to this Local Law for purposes other than those described in this section.

## **Section 6. Notice and Posting**

A) An employer shall provide an employee either at the commencement of employment or within 90 days of the effective date of this section, whichever is later, with written notice of such employee's right to sick time pursuant to this Local Law, including the accrual and use of sick time, the calendar year of the employer, and the right to be free from retaliation and to bring a complaint to the Agency. Such notice shall be in English and in the primary language spoken by the employee if the Agency makes notices available on the Agency's website in such language. Such notice shall be conspicuously posted at an employer's place of business in an area accessible to employees.

B) The Agency shall create and make available notices that contain the information required pursuant to subdivision A of this section concerning sick time and safe time and such notices shall allow for the employer to fill in applicable dates for such employer's calendar year. Such notices shall be posted in a downloadable format on the Agency's website in English and in all languages spoken by more than 10% of the County's workforce and any language deemed appropriate by the Agency.

C) An employer who willfully violates the notice and posting requirements of this section shall be subject to a civil fine in an amount not to exceed one hundred dollars (\$100) for each separate offense.

## **Section 7. Employer Records**

Employers shall retain records documenting hours worked by employees and paid sick time taken by employees, for a period of three years, and shall allow the Agency access to such records, with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of this law. When an issue arises as to an employee's entitlement to paid sick time under this section, if the employer does not maintain or retain adequate records documenting hours worked by the employee and paid sick time taken by the employee, or does not allow the Agency reasonable access to such records, it shall be presumed that the employer has violated the law, absent clear and convincing evidence otherwise.

## **Section 8. Exercise of Rights Protected; Retaliation Prohibited**

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

B) An employer shall not engage in retaliation or discriminate against an employee or former employee because the person has exercised rights protected under this Local Law. Such rights include but are not limited to the right to request or use sick time pursuant to this law; the right to file a complaint with the agency or courts or

inform any person about any employer's alleged violation of this law; the right to participate in an investigation, hearing or proceeding or cooperate with or assist the agency in its investigations of alleged violations of this Local Law; and the right to inform any person of his or her potential rights under this Local Law.

C) Protections of this section shall apply to any person who mistakenly but in good faith alleges violations of this Local Law.

## **Section 9. Regulations.**

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

## **Section 10. Enforcement**

### **A) Administrative Enforcement**

1) The Agency shall enforce the provisions of this Local Law. In effectuating such enforcement, the Agency shall establish a system utilizing multiple means of communication including but not limited to online means, to receive complaints regarding non-compliance with this Local Law and investigate complaints received by the Agency in a timely manner.

2) Any person alleging a violation of this Local Law shall have the right to file a written complaint with the Agency within one year of the date the person knew or should have known of the alleged violation. The Agency shall encourage reporting pursuant to this subsection by keeping confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the employee or person reporting the violation, provided, however, that with the authorization of such person, the Agency may disclose his or her name and identifying information as necessary to enforce this Local Law or for other appropriate purposes.

3) Upon receiving a complaint alleging a violation of this Local Law, the Agency shall investigate such complaint and attempt to resolve it through mediation between the complainant and the subject of the complaint, or other means. The Agency shall keep complainants notified regarding the status of their complaint and any resultant investigation. If the Agency believes that a violation has occurred, it shall issue to the offending person or entity a notice of violation and the relief required of the offending person or entity. The Agency shall prescribe the form and wording of such notices of violation including any method of appealing the decision of the Agency.

4) The Agency shall have the power to impose penalties provided for in this law and to grant an employee or former employee all appropriate relief. Such relief

shall include but not be limited to: The Agency shall have the power to impose penalties provided for in this chapter and to grant an employee or former employee all appropriate relief. Such relief shall include in addition to actual damages: (a) for each instance of sick time taken by an employee but unlawfully not compensated by the employer: three times the wages that should have been paid under this chapter or two hundred fifty dollars (\$250), whichever is greater; (b) for each instance of sick time requested by an employee but unlawfully denied by the employer and not taken by the employee or unlawfully conditioned upon searching for or finding a replacement worker: five hundred dollars (\$500); (c) for each instance of unlawful retaliation not including discharge from employment: full compensation including wages and benefits lost, five hundred dollars (\$500) and equitable relief as appropriate; and (d) for each instance of unlawful discharge from employment: full compensation including wages and benefits lost, up to one thousand dollars (\$1,000) and equitable relief, including reinstatement, as appropriate.

5) Any entity or person found to be in violation of the provisions of this law shall be liable for a civil penalty payable to Albany County not to exceed five hundred dollars (\$500) for the first violation and, for subsequent violations that occur within two years of any previous violation, not to exceed seven hundred fifty dollars (\$750) for the second violation and not to exceed one thousand dollars (\$1,000) for each successive violation.

6) The Agency shall send a notice indicating final administrative action after full investigation and resolution of a complaint.

7) The Agency shall annually report on its website the number and nature of the complaints received pursuant to this Local Law, the results of investigations undertaken pursuant to this Local Law, including the number of complaints not substantiated and the number of notices of violations issued, the number and nature of adjudications pursuant to this Local Law, and the average time for a complaint to be resolved pursuant to this chapter.

## B) Civil Enforcement

1) Any person aggrieved by a violation of this law, or any entity a member of which is aggrieved by a violation of this law may bring a civil action in a court of competent jurisdiction against an employer violating this law following: (a) a notice of final administrative action under subsection A of Section 10 or (b) after 120 days following the filing of a written complaint with the Agency under Section 10(A)(2) if there has been no administrative action resolving the complaint. If the action follows a final decision of the Agency, the court shall review the administrative decision to insure that it is supported by substantial

evidence. If a civil action is filed under (b) the court shall make a *de novo* determination with respect to the complaint and the administrative complaint with the Agency will be considered withdrawn.

2) Upon prevailing in an action brought pursuant to this section, aggrieved persons shall recover the full amount of any unpaid earned sick time plus any actual damages suffered as the result of the employer's violation of this law plus an equal amount of liquidated damages. Aggrieved persons shall also be entitled to reasonable attorney's fees.

3) Upon prevailing in an action brought pursuant to this section, aggrieved persons shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation, including, without limitation, reinstatement to employment, back pay and injunctive relief.

4) The statute of limitations for a civil action brought pursuant to this section shall be (a) for actions brought pursuant to Section 10 (B) (1) (a), a period of 1 year from the date of the notice of final agency action issued under Section 10(A)(6) and (b) for actions brought pursuant to Section 10 (B) (1) (b) a period of 1 year and 120 days from the date the administrative complaint was filed.

### **Section 11. Collective bargaining agreements.**

A) The provisions of this chapter shall not apply to any employee covered by a valid collective bargaining agreement if (i) such provisions are expressly waived in such collective bargaining agreement and (ii) such agreement provides for a comparable benefit for the employees covered by such agreement in the form of paid days off; such paid days off shall be in the form of leave, compensation, other employee benefits, or some combination thereof. Comparable benefits shall include, but are not limited to, vacation time, personal time, safe time or sick time, and holiday and Sunday time pay at premium rates.

B) Notwithstanding subdivision (A) of this section, the provisions of this chapter shall not apply to any employee with respect to work performed in the construction industry pursuant to a valid collective bargaining agreement.

### **Section 12. Encouragement of more generous policies; no effect on more generous policies.**

A) Nothing in this Local Law shall be construed to discourage or prohibit the adoption or retention of a safe time or sick time policy more generous than that which is required herein.

B) Nothing in this Local Law shall be construed as diminishing the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous safe time or sick time to an employee than required herein.

C) Nothing in this Local Law shall be construed as diminishing the rights of public employees regarding safe time or sick time as provided pursuant to federal, state or city law.

### **Section 13. Confidentiality and nondisclosure.**

An employer may not require the disclosure of details relating to an employee's or his or her family member's medical condition or require the disclosure of details relating to an employee's or his or her family member's status as a victim of family offenses, sexual offenses, stalking, or human trafficking as a condition of providing sick time under this Local Law. Health information about an employee or an employee's family member, and information concerning an employee's or his or her family member's status or perceived status as a victim of family offenses, sexual offenses, stalking or human trafficking obtained solely for the purposes of utilizing sick time pursuant to this Local Law, shall be treated as confidential and shall not be disclosed except by the affected employee, with the written permission of the affected employee or as required by law.

### **Section 14. Other legal requirements.**

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

### **Section 15. Severability**

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

### **Section 16. Effective Date**

This local law takes effect 180 days after it becomes law, provided that in the case of employees covered by a valid collective bargaining agreement in effect on such date, this local law takes effect on the date of the termination of such agreement and further provided that in the case of employees of an organization which is tax exempt

under Section 501(c)(3) of Title 26 of the United States Code with 200 or less employees employed exclusively under a single contract or grant, such employees will accrue unpaid sick time as provided in Section 4(3) of this local law beginning on the effective date specified herein until the stated date of termination of such contract or grant at which time such employees will accrue paid sick time as provided in this local law.

## **Section 17. Public Education and Outreach**

The agency shall develop and implement a multilingual outreach program to inform employees, employers, parents and persons who are under the care of a health care provider about the availability of earned paid sick time under this law. The agency shall contract with community groups in carrying out public education and outreach.

*Referred to Law Committee - 3/12/18*

*Without Recommendation Law Committee - 5/30/19*

*On long roll call vote the following members voted in favor: Messrs. Bullock, Ms. Chapman, Messrs. Clay, Domalewicz, Fein, Higgins, A. Joyce, R. Joyce, Mss. Lekakis, McKnight, McLean Lane, Messrs. Miller, O'Brien, Reinhardt, Simpson, Touchette, and Ms. Willingham – 17*

*Those opposed – Messrs. Beston, Burgdorf, Cahill, Commisso, Crouse, Dawson, Drake, Ethier, Feeney, Frainier, Grimm, Hogan, Ms. Lockart, Messrs. Mauriello, Mayo, Mendick, Ms. Plotsky, Messrs. Smith, Stevens, Tunny and Ward – 21*

*Local Law was defeated – 6/10/19*