

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, and Ms. Lekakis:

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 Albany County Human Rights Commission
- B) “Calendar year” shall mean a regular and consecutive twelve month period, as determined by an employer.
- C) “Child” shall mean a biological, adopted or foster child, a legal ward, or a child of an employee standing in loco parentis.
- D) “Domestic partner” shall be as defined in section 4 of the workers’ compensation law of New York.
- E) “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, but this definition does not include those who are employed by (i) the United States government; (ii) the state of New York, including any office, department, independent Agency, authority, institution, association, society or other body of the state including the legislature and the judiciary; or (iii) any local government or municipality other than Albany County, or any entity governed by section 92 of the general municipal law or section 207 of the county law.
- F) “Employer” shall mean any “employer” as defined in subdivision 3 of section 190 of the labor law, but not including (i) the United States government; (ii) the state of New York, including any office, department, independent Agency, authority, institution, association, society or other body of the state including the legislature and the judiciary; or (iii) any local government or municipality

other than Albany County, or any entity governed by section 92 of the general municipal law or section 207 of the county law. 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.

- G) "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; any other individual related by blood to the employee; and any other individual whose close association with the employee is the equivalent of a family relationship.
- H) "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.
- I) "Grandchild" shall mean a child of an employee's child.
- J) "Grandparent" shall mean a parent of an employee's parent.
- K) "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.

- L) “Hourly professional employee” shall mean any individual (i) who is professionally licensed by the New York state education department, office of professions, under the direction of the New York state board of regents under education law sections 6732, 7902 or 8202, (ii) who calls in for work assignments at will determining his or her own work schedule with the ability to reject or accept any assignment referred to them and (iii) who is paid an average hourly wage which is at least four times the federal minimum wage for hours worked during the calendar year.
- 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) “Member of the same family or household” shall mean (i) persons related by consanguinity or affinity; (ii) persons legally married to or in a domestic partnership with one another; (iii) persons formerly married to or in a domestic partnership with one another regardless of whether they still reside in the same household; (iv) persons who have a child in common, regardless of whether such persons have been married or domestic partners or have lived together at any time; and (v) persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time.
- O) “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 4 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 earned paid sick time than the employee’s regular rate of pay at the time the employee uses such earned paid sick time.
- P) “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.
- Q) “Public disaster” shall mean an event such as fire, explosion, terrorist attack, severe weather conditions or other catastrophe that is declared a public emergency or disaster by the president of the United States, the governor of the state of New York or the County Executive of Albany County.

- R) “Public health emergency” shall mean a declaration made by the Albany County Commissioner of Health.
- S) “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.
- T) “Safe 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.
- U) “Sexual offense” shall mean an act or threat of an act that may constitute a violation of article 130 of the penal law.
- V) “Sibling” shall mean an employee’s brother or sister, including half-siblings, step-siblings and siblings related through adoption.
- W) “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.
- X) “Spouse” shall mean a person to whom an employee is legally married under the laws of the state of New York.
- Y) “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 Earned Paid 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 ten (10) or more employees shall be entitled to earn and use up to 72 hours of earned paid sick time in a year, unless the employer selects a higher limit.
 - 2) Employees of an employer who employs fewer than ten (10) but more than five (5) employees shall be entitled to earn and use up to 40 hours of earned paid sick time in a year unless the employer selects a higher limit.

- 3) 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 4 during the first twelve (12) month period following the effective date of this law unless the employer selects a higher limit. Beginning twelve (12) months following the effective date of this law employees of an employer who employs five (5) or fewer employees shall be entitled to earn and use up to twenty-four (24) hours of earned paid sick time and sixteen (16) hours of unpaid sick time unless the employer selects a higher limit for either earned paid sick time or unpaid sick time; twenty-four (24) months following the effective date of this law employees of an employer with fewer than five (5) employees shall be entitled to earn and use up to thirty-two (32) hours of earned paid sick time and eight (8) hours of unpaid sick time unless the employer selects a higher limit for either earned paid sick time or earned unpaid sick time; 36 months following the effective date of this law, employees of employers with five (5) or fewer employees shall be entitled to earn and use up to forty (40) hours of earned paid sick time unless the employer selects a higher limit. During the time period in which employees earn both earned paid and unpaid sick time, employees shall earn paid sick time first and may choose whether to use paid or unpaid sick time if needed for a purpose in Section 4.
- B) 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 40 hours in each work week for purposes of earned paid sick time accrual unless their normal work week is less than 40 hours, in which case earned paid sick time accrues based upon that normal work week.
- C) Earned paid 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 sick time that an employee is expected to accrue in a year at the beginning of the year.
- D) Employees shall not be entitled to use accrued earned paid 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 earned paid sick time as it is accrued.
- E) Earned paid sick time shall be carried over to the following year. Alternatively, in lieu of carryover of unused earned paid sick time from one year to the next, an employer may pay an employee for unused earned 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.

- F) 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 earned paid sick time under this law is not required to provide additional paid sick time.
- G) 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 earned paid sick time that has not been used.
- H) 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 earned paid sick time accrued at the prior division, entity or location and is entitled to use all earned paid 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 earned paid sick time that had not been used shall be reinstated. Further, the employee shall be entitled to use accrued earned paid sick time and accrue additional earned paid sick time at the re-commencement of employment.
- I) 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 earned paid sick time they accrued when employed by the original employer, and are entitled to use earned paid sick time previously accrued.
- J) At its discretion, an employer may loan earned paid sick time to an employee in advance of accrual by such employee.

Section 5. Use of Earned 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;

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 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;

c) 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;

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

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

f) To enroll children in a new school; or

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

E) 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.

F) 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.

§ 20-915 Changing schedule. Upon mutual consent of the employee and the employer, an employee who is absent for a reason listed in subdivision a of section 20-914 of this Local Law may work additional hours during the immediately preceding seven days if the absence was foreseeable or within the immediately subsequent seven days from that absence without using [sick] safe/sick time to make up for the original hours for which such employee was absent, provided that an adjunct professor who is an employee at an institute of higher education may work such additional hours at any time during the academic term. An employer shall not require such employee to work additional hours to make up for the original hours for which such employee was absent or to search for or find a replacement employee to cover the hours during which the employee is absent pursuant to this section. If such employee works additional hours, and such hours are fewer than the number of hours such employee was originally scheduled to work, then such employee shall be able to use [sick] safe/sick time provided pursuant to this Local Law for the difference. Should the employee work additional hours, the employer shall comply with any applicable federal, state or local labor laws.

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.

B) Such notice shall be in English, and any language that is the first language spoken by at least 10% of the employer's workforce, provided that such poster has been provided by the Agency. Such notice may also be conspicuously posted at an employer's place of business in an area accessible to employees.

C) 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.

D) 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 \$100 for each separate offense.

E) When an employer becomes aware that an employee is absent or has been absent from employment due to a reason covered by Section 4 (1), the employer shall inform the employee that paid sick time may be available for that absence.

Section 7. Employer Records

Employers shall retain records documenting hours worked by employees and earned 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 earned paid sick time under this section, if the employer does not maintain or retain adequate records documenting hours worked by the employee and earned 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. 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 telephone and 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 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: (i) 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, whichever is greater; (ii) 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; (iii) for each instance of unlawful retaliation not including discharge from employment: full compensation including wages and benefits lost, five hundred dollars and equitable relief as appropriate; and (iv) for each instance of unlawful discharge from employment: full compensation including wages and benefits lost, two thousand five hundred dollars 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 \$500 for the first violation and, for subsequent violations that occur within two years of any previous violation, not to exceed \$750 for the second violation and not to exceed \$1,000 for each successive violation.

6) The department 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.

(2) Civil Enforcement

(A) The agency, the county attorney, 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. Such action may be brought by a person aggrieved by a violation of this section without first filing an administrative complaint.

(B) 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.

(C) 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.

(D) The statute of limitations for a civil action brought pursuant to this section shall be for a period of 3 years from the date the alleged violation occurred or the date the employee knew or should have known of the violation.

(E) Actions brought pursuant to this section may be brought as a class action pursuant to the laws of New York.

(3) County officials are hereby authorized to consider, to the maximum extent permitted by law, an employer's record of noncompliance with this law in making decisions on contracts, land use approvals and other entitlements to expand or operate within the county. The county is authorized to either deny approval or to condition approval on the employer's future compliance.

Section 9. Collective bargaining agreements.

The provisions of this Local Law shall not apply to any employee covered by a valid collective bargaining agreement if (1) such provisions are expressly waived in such collective bargaining agreement and (2) 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, sick time, and holiday and Sunday time pay at premium rates.

Section 10. 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 11. 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 12. 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 13. 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 14. 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.

Section 15. 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