

Title 09 Employment Standards

Chapter 09.01 Earned Sick and Safe Leave

Section 09.01.010 Definitions

For purposes of this chapter, the following definitions shall be applied. Words used in the singular shall include the plural, and vice-versa.

- A. "Adverse action" means any action taken or threatened by an employer against an employee including without limitation: discharge from employment, suspension, discipline, transfer, demotion, or denial of promotion.
- B. "Agency" means the City of Spokane Contract and Business Standards Compliance Office within the City's Department of Grants Management and Financial Assistance, and its director, who is the "code enforcement officer" designated in SMC 01.05.020(B)(1).
- C. "Charging Party" means a person filing a claim of violation of this chapter with the Agency.
- D. "City" means the City of Spokane.
- E. "Construction work" has the same meaning as that stated in WAC 296.155.012, as the same is amended from time to time.
- F. "Domestic Worker" has the same meaning as specified in RCW 51.12.020(1) and (2).
- G. "Earned sick and safe leave" or "leave" means paid leave accrued, utilized, and compensated for as provided in this chapter.
- H. "Employee" means an individual natural person who performs work in the City of Spokane for compensation but does not include seasonal or domestic workers, or independent contractors. For purposes of this chapter, immediate family members of business owners are not included within the definition of "employee".
- I. "Employer" means any individual, partnership, association, corporation, business trust, entity, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee, having a permanent location in the City of Spokane, and having at least one employee in the City of Spokane. For purposes of this chapter, "Employer" does not include:
 - 1. The United States government;
 - 2. The state of Washington;
 - 3. Any city, county, or local government;

4. Any business owned and operated by one person (or one person and his or her spouse) and having zero employees; or
 5. Any federally-recognized Indian tribe.
- J. "Family member" means a:
1. Spouse or domestic partner;
 2. Child who is:
 - a. Under 18 years of age or;
 - b. 18 years of age or older and incapable of self-care due to a mental or physical disability;
 3. Parent or guardian;
 4. Grandparent; or
 5. Grandchild.
- K. "Person" means any individual, partnership, corporation, association, organization, trade or professional association, labor union, cooperative, legal representative, trustee, trustee in bankruptcy and receiver, firm, institution, or any other group of persons acting in concert; this definition also includes any owner, lessee, proprietor, manager, agent, or employee, whether consisting of one or more natural persons.
- L. "Paid Time Off" ("PTO") means a combined or universal paid leave program which can be used by an employee for the purposes stated in SMC 09.01.040(A) and which either accrues at the rate required by SMC 09.01.030(A) or is provided in the amounts required by SMC 09.01.030(B).
- M. "Retaliation" means an adverse action taken by an employer against an employee because of an employee's status as a charging party or because of an employee's exercise of rights established by this chapter.
- N. "Seasonal Worker" means a worker with a term of employment expected to last less than one year and which is intermittent or recurs annually.
- O. "Separation" means an involuntary discharge of employment, not for cause, including, without limitation, a business-related or seasonal layoff.
- P. "Work-study students" means students engaged in a course of instruction and whose employment is included under the state work-study program (chapter 28B.12 RCW) or the federal work study program (42 U.S.C. 2751-2756b).
- Q. "Year" means calendar year, fiscal year, benefit year, employment year, or any other fixed consecutive twelve-month period established by the employer and used in the

ordinary course of the employer's business for the purpose of calculating wages and benefits.

Section 09.01.020 Applicability

- A. This chapter applies to all employers in the City of Spokane who employ employees who physically perform work within the City of Spokane. Occasional employees who work fewer than 240 hours per year within the City of Spokane are not covered by this chapter.
- B. This chapter does not apply to work-study students, seasonal workers, or those employed by firm(s) engaged in "construction work" as defined in SMC 09.01.010(E).

Section 09.01.030 Accrual Rates, Annual Cap, Use of Leave, and Carry-Over

- A. All employees shall, beginning with the first day of employment, accrue leave at the rate of at least one (1) hour of leave for every thirty (30) hours worked up to the total number of hours required according to employer size as described in paragraph B below. An employer may choose to comply with this chapter by providing earned sick and safe leave in advance of accrual such as by "front-loading" leave hours at the beginning of each year and/or by providing a combined or universal paid leave program ("PTO") as defined in SMC 09.01.010(L).
- B. Use of leave.
 - 1. Employees of businesses having fewer than ten (10) employees may use, in minimum increments of one (1) hour, up to twenty-four (24) hours of leave accrued under this chapter in any year.
 - 2. Employees of businesses with ten (10) or more employees may use, in minimum increments of one (1) hour, up to forty (40) hours of leave accrued under this chapter in any year.
 - 3. Earned sick and safe leave shall be provided by the employer upon the request of an employee. Whenever possible, the employee's request shall include a reasonable estimate of the expected duration of the absence.
- C. Employees of employers having fewer than ten (10) employees may carry over into the next year unused leave hours, up to a total of twenty-four (24) hours. Employees of businesses having ten (10) or more employees may carry over into the next year unused leave hours, up to a total of forty (40) hours. This section does not apply to those employers choosing to "front-load" leave hours for employees at the beginning of each year in the applicable amount described in SMC 09.01.030(B)(1) and (2).

- D. Nothing in this chapter requires employers reinstate a previously separated employee's earned sick and safe leave balance which was accrued during a prior period of employment or to compensate an employee for the employee's accrued and unused earned sick and safe leave upon an employee's termination, resignation, retirement, or other separation from employment.
- E. No employer shall be required to accrue leave for employees who are exempt from overtime payment under 29 U.S.C. § 201 et seq and RCW 49.46.130(2) for hours worked beyond a 40-hour work week. If an exempt employee's normal work week is less than 40 hours, earned sick and safe leave for that employee shall accrue based on the employee's normal work week.

Section 09.01.040 Permitted Uses of Leave and Compensation

- A. An Employee may use accrued earned sick and safe leave for:
 - 1. Diagnosis, care, or treatment of the Employee's mental or physical illness, injury, or health condition;
 - 2. The diagnosis, care, or treatment for the Employee's Family Member's mental or physical illness, injury, or health condition;
 - 3. Any reason identified in RCW 49.76.030 or to seek protection or safety from events or conduct specified in SMC 10.09.010(B);
 - 4. Any period in which the Employer's business or the Employee's child's school or place of care is closed by order of a public official to limit exposure to an infectious agent, biological toxin, or hazardous material; or
 - 5. Bereavement leave in connection with a Family Member of the Employee.
- B. Compensation due to an Employee during the period of leave used by the Employee is at the same rate of pay and with the same benefits as the Employee would have earned during the time during those hours in which the Employee was scheduled to work but for which leave is taken; provided, however, that Employers are not required to compensate Employees who take leave under this chapter for tips or commissions the Employee would have earned during the leave period.
- C. An employer will be in full compliance with this chapter by allowing shift-swapping or the use of PTO for the same purposes as are required by SMC 09.01.040(A) above and in the same amounts as provided in SMC 09.01.030 above.
- D. Nothing in this chapter prohibits or requires an Employer from allowing an Employee to donate earned sick and safe leave hours to another Employee of the same employer.

- E. Nothing in this chapter prohibits an Employer from requiring that covered Employees complete a probationary period before using accrued leave; provided, however, that any such probationary period may be no longer than ninety (90) days.

Section 09.01.050 Notices and Posting

Beginning on the effective date of this chapter, Employers shall post, in a place commonly accessible to employees, the notice attached in Attachment A, summarizing employees' and employers' rights and obligations concerning earned sick and safe leave as provided for in this chapter.

Section 09.01.060 Employer Responsibilities

- A. Employers shall maintain records, consistent with the employer's usual and customary business practices, of each employee's earned sick and safe leave accrual and use, for three (3) years. In any enforcement action, an employer's failure to maintain such records shall create a rebuttable presumption of a violation of this chapter.
- B. Each employer shall provide information concerning the requesting employee's accrued earned sick and safe leave, including without limitation that employee's leave balance and amount of leave used by that employee during the current year, each time wages are paid.
- C. Beginning on the effective date of this chapter, when making application for a new business registration or a renewal of business registration, each applicant or registrant must certify its compliance with this chapter, in the manner prescribed by the Agency.

Section 09.01.070 Effective Date

This chapter shall be effective January 1, 2017; provided, however, that businesses which receive their first business registration in the City of Spokane after the enactment of this chapter but before the effective date shall not be subject to this chapter for a period of one (1) year after the date of their first business registration in the City of Spokane. Notwithstanding the foregoing, nothing in this Chapter prohibits an employer from offering earned sick and safe leave to its employees at any point in time earlier than the effective date of this Chapter.

Section 09.01.080 Administrative Enforcement

- A. The Agency shall receive, investigate, and make determinations concerning alleged violations of this chapter; conciliate and settle the same by agreement; monitor and enforce any agreements or orders resulting from enforcement actions; and have such other powers and duties in the performance of these functions as are defined in

this chapter and otherwise necessary and proper in the performance of the same and provided for by law. From January 1, 2017 to December 31, 2017, the Agency's enforcement posture shall be that of informing employers and employees of their rights and obligations under this chapter and providing technical assistance to employers in order to increase compliance with this chapter.

B. Charge filing, timing, amendments, notice and investigation.

1. A charge alleging a violation(s) of this chapter shall be filed with the Agency in writing on a form or in a format(s) determined by the Agency, signed by or on behalf of a charging party, and shall describe the facts and circumstances of the violation complained of including a statement of the dates, places, and circumstances as well as the person(s) responsible for the alleged violation(s) of this chapter.
2. Upon receipt of a charge of violation of this chapter, the Agency shall proceed as specified in chapter 01.05, SMC (civil infraction system).
3. In addition to any other relief authorized by this chapter, a charging party may obtain full restitution of all wages the employee lost due to the unlawful withholding of earned sick and safe leave.
4. Administrative enforcement by the Agency as specified in this chapter and in chapter 01.05, SMC, shall be the sole and exclusive remedy for violations of this chapter.

C. Prohibited acts.

It shall be unlawful for any employer to retaliate against any employee covered by this chapter or to misrepresent its business activities in order to evade the requirements of this chapter.

D. Penalties for violation

1. A violation of this chapter is a class 1 civil infraction, as shown in SMC 01.05.170(B).
2. The Agency is authorized to triple the applicable penalty in cases where an employer has been found to have retaliated against an employee within the meaning of this chapter.
3. For repeat violations of this chapter by an employer, the Agency is authorized to double the penalty stated in SMC 01.02.950(C)(1).

Section 09.01.090 No Waiver

Nothing in this chapter is or shall be construed to be a waiver, limitation, or preemption, by the City or by any other person, of any other rights, whether arising under state, federal, or local law or regulation, or due to the existence of any bona fide collective bargaining agreement entered into pursuant to chapters 41.56 or 41.80 RCW.

Section 09.01.100 Severability

If any court of law determines that any particular provision of this chapter is void or of no legal effect, the offending provision(s) shall be deemed struck from this chapter and the remainder of the chapter shall continue unaffected.

Section 09.01.110 Effect of Other Existing Law

Nothing herein shall affect in any way any other requirement of state or federal law concerning the conditions of employment.

Section 09.01.120 More Generous Employer Policies Encouraged

- A. Nothing in this chapter prohibits employers from implementing an earned sick and safe leave policy which exceeds the minimum standards prescribed in this chapter.
- B. Nothing in this chapter prohibits employers from offering “all-purpose” PTO in lieu of earned sick and safe leave; provided, however, that any such PTO policy shall accrue and be available for use in at least the same amounts and for at least the same purposes as is the earned sick and safe leave provided in this chapter; provided also, that any such Employer which provides “all-purpose” PTO is not be obligated to provide additional leave in excess of the earned sick and safe leave amounts described in this chapter.

Section 09.01.130 Evaluation

- A. Beginning on the effective date specified in section 09.01.070, the Agency shall track and maintain the following information:
 - 1. Feedback from employers and employees concerning the implementation and effectiveness of this chapter;
 - 2. Any data concerning new business formation and business closures considered fairly attributable to the implementation of this chapter; and
 - 3. The number, type, and disposition of any complaints concerning the implementation or enforcement of this chapter.
- B. One (1) year after the effective date of this chapter, the Agency shall present findings and data concerning the fiscal impact and public health effectiveness of this chapter, in collaboration with public health agency(ies) and/or public health researchers, to the City Council’s Community Health and Environment Committee, as well as any recommendations concerning amendment or repeal of all or any part of this chapter.

Section 09.01.140 Sunset

This chapter shall be effective until December 31, 2017, or until the implementation by the state of Washington of the paid sick leave requirements established by the passage of I-1433, whichever occurs last.

PASSED by the City Council on November 14, 2016.

Council President

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

Mayor

Date

Effective Date