

## ORDINANCE NO. C-35300

An ordinance relating to earned sick and safe leave in the City of Spokane; creating a new Title 09 to the Spokane Municipal Code; amending sections 01.05.170, and 04.04.050 of the Spokane Municipal Code.

**WHEREAS**, most workers will, at some time during the year, need time off from work to take care of their own health or safety needs and/or the health or safety needs of their families and loved ones; and

**WHEREAS**, many workers employed in the City of Spokane must make the unreasonable choice between their paycheck and their children, because they do not have the option of taking paid time off when they, their children, or other family members, get sick or when their life or the lives of their children are potentially in jeopardy due to domestic violence, sexual assault, or stalking; and

**WHEREAS**, earned sick and safe leave will allow parents to provide personal care for their sick children, making children's recovery faster, preventing more serious illnesses, and improving their children's overall mental and physical health; and

**WHEREAS**, as many businesses in Spokane already know, providing for employees' sick and safe leave is affordable for employers and good for business because it can reduce employee turnover; improve the ability to recruit and retain talent; increase productivity; minimize the loss of firm-specific skills and human capital; reduce "presenteeism," namely, the tendency of employees to report to work sick, thereby increasing the risk of transmission of infectious diseases; and boost worker morale; and

**WHEREAS**, studies on implementation of paid sick leave policies around the country (San Francisco (2011); Connecticut (2013); Washington, D.C. (2013)) show repeatedly that business profitability is affected to a very small degree by implementation of paid sick leave laws; and

**WHEREAS**, a March, 2011 report by the Bureau of Labor Statistics estimated that the cost of implementing paid sick leave averages about 26 cents per hour overall and 14 cents per hour in the service industry specifically; and

**WHEREAS**, because domestic violence, sexual assault, and stalking have an impact on many workers, the availability of earned safe leave will protect victims of domestic violence, sexual assault, and stalking, as well as their families, and enable them to focus on obtaining the assistance they need; and

**WHEREAS**, the National Association of County and City Health Officials (NACCHO), of which the Spokane Regional Health District is affiliated, supports the passage and implementation of local legislation which requires employers to provide earned sick leave; and

**WHEREAS**, the City Council convened a working group made up of stakeholders from industry, public health, non-profits, government agencies, labor unions, and small business to examine the concept of enacting an earned sick and safe leave policy as well as the possible implications and unintended consequences of enacting such a policy and to recommend a framework for an earned sick and safe leave policy; and

**WHEREAS**, the Spokane City Council finds that Spokane’s public health will be most effectively safeguarded by ensuring that workers in Spokane have access to paid earned sick and safe leave.

**NOW, THEREFORE**, the City of Spokane does ordain:

Section 1. That there is adopted a new Title 9 of the Spokane Municipal Code to read as follows:

**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 by an Employer to discharge from employment, suspend, discipline, transfer, demote, or deny promotion, or to threaten to do any of the foregoing.
- B. “Agency” means the City of Spokane department responsible for the enforcement of this chapter, as specified in the process described in SMC 09.01.090(A).
- C. “Business” has the same meaning as stated in SMC 08.01.020(A).
- D. “Charging Party” means a person filing a claim of violation of this chapter with the Agency.
- E. “City” means the City of Spokane.
- F. “Contractor” or “Independent Contractor” means those persons meeting all the criteria stated in RCW 51.08.195(1)-(6).
- G. “Domestic violence” has the same meaning as stated in RCW 10.99.020(5), and includes “stalking” as defined in RCW 9A.46.110 and in SMC 10.09.010(B).
- H. “Domestic Worker” has the same meaning as specified in RCW 51.12.020(1) and (2).
- I. “Earned sick and safe leave” or “leave” means paid leave accrued, utilized, and compensated for as provided in this chapter.
- J. “Employee” means an individual natural person who performs more than two hundred forty (240) hours of work in the City of Spokane for compensation for an

Employer in a calendar year, but does not include seasonal or domestic workers, or independent contractors.

- K. "Employer" means any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee and employing at least one person for compensation 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; or
  4. Any business owned and operated by one person (or one person and his or her spouse) and having zero employees.
- L. "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.
- M. "Person" has the same meaning as stated in SMC 01.02.100 and includes 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.
- N. "Paid Time Off" ("PTO") means paid leave which accrues at a regular rate and which can be used by an employee for any purpose, provided it can also be used for all purposes stated in SMC 09.01.040(A).
- O. "Retaliation" means an adverse action taken by an employer against an employee because of an employee's status as a charging party or by an employee's exercise of rights established by this chapter.
- P. "Seasonal Worker" means a worker with a term of employment expected to last less than one year and which is intermittent or recurs annually.

- Q. “Separation” means an involuntary discharge of employment, not for cause, including, without limitation, a business-related or seasonal layoff.
- R. “Staffing Agency” means any person who undertakes, with or without compensation, to recruit, refer or place individuals for employment, or to procure opportunities for work, or to with an employer.
- S. “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).

### **Section 09.01.020 Applicability**

- A. This chapter applies to all Employers in the City of Spokane who employ employees who physically perform more than two hundred forty (240) hours of work within the City of Spokane.
- B. This chapter does not apply to Work-Study Students, Independent Contractors or seasonal workers, or those employed by a firm(s) engaged in “construction work” as defined in WAC 296-155-012.
- C. This chapter does not apply to newly licensed businesses for one (1) year following the issuance of the first City of Spokane business license.

### **Section 09.01.030 Accrual Rates, Annual Cap, and Carry-Over**

- A. All Employees shall, beginning with their first day of employment, accrue leave at the rate of at least one (1) hour of leave for every thirty (30) hours worked; provided that nothing in this chapter prohibits an Employer from providing earned sick and safe leave in advance of accrual such as by “front-loading” leave hours at the beginning of each year.
- B. Employees of businesses:
  - 1. having fewer than ten (10) employees may use up to twenty-four (24) hours of leave accrued under this chapter in any year. For purposes of this section, immediate family members of the business owners are not included in the employee count.
  - 2. with ten (10) or more employees may use up to forty (40) hours of leave accrued under this chapter in any year.
- C. An Employee may carry over into the next year up to twenty-four (24) hours of earned sick and safe leave which were not used in the prior year.
- D. Nothing in this chapter requires Employers to allow employees returning from separation to reinstate the earned sick and safe leave balance 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.

## **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.
- B. No less frequently than once per quarter, and upon request by any Employee, 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 fiscal year.
- 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 procedures for the enforcement of the rights, duties, and obligations created by this Chapter shall be jointly determined by the City Council and the Administration and shall be in effect no later than October 1, 2016.
- B. 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.

A. Penalties for violation

1. A violation of this chapter is a class 1 civil infraction, as shown in SMC 1.05.170(B).
2. The Agency or court (in the case of complaints which are resolved in a contested case hearing) is authorized to triple the applicable penalty in cases where the Employer has been found to have retaliated against an Employee within the meaning of this chapter.
3. For each subsequent violation of this chapter after the first, the Agency or court (in the case of complaints which are resolved in a contested case hearing) is authorized to double the penalty stated in SMC 09.01.080(C)(1).

**Section 09.01.090 No Waiver**

Nothing in this chapter is or shall be construed to be a waiver, limitation, or preemption of any other rights, whether arising under state, federal, or local law or regulation, or by the existence of any bona fide collective bargaining agreement entered into pursuant to chapters 41.56 or 41.80 RCW, or RCW 74.39A.270, by the City or by any other person.

**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” Paid Time Off (“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**

- i. Beginning on the effective date specified in section 09.01.080, 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 2. That section 01.05.170 of the Spokane Municipal Code is amended to read as follows:

**Section 01.05.170 Penalty Schedule – Business Regulations**

A. For each subsequent violation by a person, the classification of infraction advances by one class. For each subsequent class 1 violation of the same prohibited activity after the first violation, the code enforcement officer and court (in the case of contested case hearings) are authorized to double the penalty imposed.

B. Infraction/Violation Class.

SMC PENALTY SCHEDULE – BUSINESS REGULATIONS		1.05.170
Infraction		Violation Class
<b>General</b>		
SMC 4.04.020	Engaging in licensed activity without license	2
SMC 4.04.060	Failure to display license or insigne	3
SMC 8.01.070 SMC 10.40.020	Engaging in business without registration or itinerant vendor license or permit	1
SMC 8.12.020	No amusement device license, no amusement device operators or owners license	3
SMC 8.12.060	No current list of amusement device locations	3
SMC 10.23A.030(G)	Entertainment facility establishment operator/owner	1
SMC 10.25.010	Pruning, planting, or removing a public tree without a license	1
SMC 10.29.010(A)	Conducting an improper blasting operation	1
SMC 10.29.030	Heating mechanic	1



SMC 10.29.060(A)	Providing fire equipment service without Spokane Fire Department registration	1
SMC 10.34.020	Own, operate for-hire vehicle	2
SMC 10.34.110(D)	Owner of for-hire vehicle, allowing a non-licensed for-hire driver to operate his or her vehicle	1
SMC 10.49.040	Owning, operating or maintaining a medical cannabis collective garden	1
SMC 10.41A.040	Special police officer	2
SMC 10.45.040	Deal in used goods	2
SMC 10.48.050	Failure to register alarm system	2
SMC 10.48.170	Unlawful use of a security alarm system	3
SMC 13.02.0204	Solid waste collection or disposal	2
SMC 17G.010.100(C)(3)	Sewer installation	1
Chapter 09.01 SMC	Violation of the earned sick and safe leave ordinance	1
<b>Fireworks</b>		
SMC 10.33A.020(A)(2)	Conducting public display without a permit	Up to \$1,000
SMC 10.41A.040	Employ non-commissioned special police officer	3
SMC 10.41A.090	Violation of code by special police officer	1
<b>Fire Code</b>		
IFC Chapter 33 Chapter 10.33A SMC 17F.080.060	105.6.14 IFC SMC Manufacture, storage, use, sale, handling of blasting agents, explosives without proper permit	1
IFC IFC SMC 17F.080.060	105.6 105.7 Conducting regulated code activities, operations, functions without permit	2
IFC 105.6.41	Conducting spraying or dipping application of flammable or combustible finishes (liquids or powders) for floor finishing or surfacing operations without a permit	2
IFC 2703.3	Unauthorized release, discharge of flammable, combustible liquids, petroleum waste products	1
SMC 15.01.500	Fail to comply with notice and order under Commute Trip Reduction Program	2
SMC 15.03.030	Fail to comply with requirement of posting restaurant's smoking designation	2

Section 3. That section 04.04.050 of the Spokane Municipal Code is amended to read as follows:

**Section 04.04.050 Refusal to issue, revocation of, or refusal to renew business license.**

- A. The license officer endeavors to issue or determine not to issue a license within fifteen days of application.

B. The license officer has the power and authority to refuse to issue, revoke or refuse to renew any business license issued under the provisions of this chapter. The license officer shall notify such applicant or licensee of the refusal to issue, revocation of, or refusal to renew, in the same manner as orders to comply are served under SMC 4.04.080, and include on the notice what grounds such a decision was based. The license officer may refuse to issue, revoke or refuse to renew any license issued under this chapter on one or more of the following grounds:

1. The applicant or licensee has not made good tender of the license fee.
2. The applicant or licensee has not furnished sufficient and accurate information.
3. The applicant or licensee is not otherwise eligible.
4. The applicant or licensee has failed to comply with any provisions of this chapter.
5. The property at which the business is located has been determined by a court to be a chronic nuisance property as provided in chapter 10.08A RCW.
6. The applicant or licensee has been convicted of wage theft under SMC 10.05.107 within the last ten years.
7. The applicant or licensee is a person subject within the last ten years to a court order entering final judgment for violations of chapters 49.46, 49.48 or 49.52 RCW, and the judgment was not satisfied within 30 days of the later of either:
  - a. the expiration of the time for filing an appeal from the final judgment order under the court rules in effect at the time of the final judgment order, or
  - b. if a timely appeal is made, the date of the final resolution of that appeal and any subsequent appeals resulting in final judicial affirmation of the findings of violations of chapters 49.46, 49.48 or 49.52 RCW.
8. The applicant or licensee is a person subject within the last ten years to a final and binding citation and notice of assessment from the Washington State Department of Labor and Industries for violations of chapters 49.46, 49.48 or 49.52 RCW, and the citation amount and penalties assessed therewith were not satisfied within 30 days of the date the citation became final and binding.
9. The applicant has violated the City's earned sick and safe leave ordinance, chapter 09.01 SMC, 5 times within the past 10 years.

PASSED by the City Council on \_\_\_\_\_.

Council President

Attest:

Approved as to form:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Assistant City Attorney

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Effective Date