

**City of Milwaukee**



**RULES IMPLEMENTING  
THE MILWAUKEE PAID SICK LEAVE ORDINANCE**

**MILWAUKEE EQUAL RIGHTS COMMISSION**

**April 1, 2009**

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**PAID SICK LEAVE ORDINANCE ADMINISTRATIVE RULES**  
**City of Milwaukee**

**PURPOSE AND SCOPE**

The Milwaukee Equal Rights Commission (“ERC” or “Commission”) adopts these rules pursuant to Section 109-5-4-j of the Milwaukee Code of Ordinances (“MCO”).

These administrative rules have been developed to establish the standards and procedures for the implementation and enforcement of Milwaukee’s Paid Sick Leave Ordinance. In developing these rules, the ERC has been guided by its understanding of the importance of fulfilling the goals of the Ordinance and the need to:

- provide direction and guidance to employers on how to comply with the provisions of the Ordinance;
- and,
- inform and educate employees about their rights and responsibilities.

In adopting these administrative rules the ERC has exercised its authority and responsibility under provisions of Chapters 109 and 112 of the Milwaukee Code of Ordinances. The rules have been developed giving weight to considerations of equity and practicality for employees and employers alike.

**DEFINITIONS**

City – as defined in Chapter 1 of the City Charter.

Domestic Abuse - as defined in s. 968.075 (1)(a), Wis. Stats. It means any of the following engaged in by an adult person against his or her spouse or former spouse, against an adult with whom the person resides or formerly resided or against an adult with whom the person has a child in common:

- (a) Intentional infliction of physical pain, physical injury or illness;
- (b) Intentional impairment of physical condition;
- (c) Sexual assault as defined in s 940.225 (1),(2) or (3);
- (d) A physical act that may cause the other person reasonably to fear imminent engagement in the conduct described under (a), (b) or (c).

Employee - Any person who is employed within the geographic boundaries of the City by an employer, including part-time and temporary employees. Individuals who are appropriately classified as independent contractors under IRS criteria are not considered employees under this definition and are therefore not covered by the Ordinance. In general, independent contractors are individuals who are hired to undertake a specific project but who are left free to perform the work and to choose the method for accomplishing it.

Employer - as defined in s. 104.01(3)(a), Wis. Stats. Every person, firm or corporation, agent, manager, representative, contractor, subcontractor or principal, or other person having control or direction of any person employed at any labor or responsible directly or indirectly for the wages of another. However, for purposes of the Paid Sick Leave Ordinance, “employer” does not include any of the following:

- The United States government;

- The state of Wisconsin, including any office, department, agency, authority, institution, association, society or other body of the state, including the legislature and the judiciary;
- Any county and local government.

Implementation Date – the date that the City can legally begin implementing the Ordinance.

Family Member –

- (a) A child as defined in s. 103.10(1)(a), (g) Wis. Stats.
- (b) A parent as defined in s 103.10(1)(f), Wis. Stats.
- (c) A person to whom the employee is legally married under the laws of Wisconsin.
- (d) A grandparent defined as the parent of a parent or spouse of a grandparent.
- (e) A grandchild defined as the child of a child.
- (f) A biological, foster or adopted sibling or spouse of a biological, foster or adopted sibling.
- (g) A domestic partner as defined in s. 111-3, Milwaukee Code of Ordinances.
- (h) Any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship. An individual related by affinity for the purpose of the Ordinance shall be a family member of the employee’s spouse or domestic partner under Chapter 112-1-5 of the Milwaukee Code of Ordinances.

Retaliatory Personnel Action – the discharge, suspension, demotion or any other adverse employment action imposed upon an employee by an employer for using paid sick leave as allowed and in accordance with the Ordinance.

Sexual Assault - as defined in s. 940.225, Wis. Stats.

Small Business- includes any private individual, firm, partnership, institution, corporation or association for which fewer than 10 persons work for compensation during a given week. Under this definition, all persons performing work for compensation on a full-time, part-time, or temporary basis shall be counted, including persons made available to work through the services of a temporary services or staffing agency or similar entity.

Stalking – engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or suffer substantial emotional distress.

**RULE # 1: NOTICE AND POSTING**

- 1.1 Employers must give notice to employees about their eligibility for paid sick leave, the amount of paid sick leave, and the terms of its use guaranteed under the Ordinance.
- 1.2 The notice must indicate that retaliation against employees who request or use paid sick leave is prohibited.
- 1.3 Employers may comply with this requirement by supplying each of their employees with a notice in English, Hmong and Spanish or by displaying a poster in a conspicuous and accessible place in each establishment where such employees are employed.

## **RULE # 2: ACCRUAL OF PAID SICK LEAVE**

- 2.1 Paid sick leave begins to accrue at the commencement of employment on or after the implementation date of this Ordinance.
- 2.2 Paid sick leave accrues at the rate of 1 hour for every 30 hours worked by an employee.
- 2.3 Paid sick leave accrues in one-hour increments, not in fractions of an hour, unless an employer's paid time off policy allows time to accrue in smaller increments, in which case an employer may track accrual of paid sick leave under the Ordinance in increments consistent with how those increments are tracked under the employer's policy.
- 2.4 Employers are not required to provide more than 72 hours of sick leave for an employee in a calendar year. Small businesses are not required to provide more than 40 hours of sick leave for an employee in a calendar year. An employee's use of sick leave provided in each calendar year shall therefore not exceed 40 hours for employees of small businesses and 72 hours for employees of all other employers.
- 2.5 Paid sick leave accrues on all hours worked, including overtime hours worked. Paid sick leave does not accrue when employees are not working, such as when they are out on vacation or sick or paid holidays in which the employee is not scheduled to work.
- 2.6 Employees who are exempt from the overtime provisions of the Fair Labor Standards Act (for example, administrative, executive, professional, and certain computer and outside sales employees; see 49 C.F.R. Part 451), and employees who would qualify as exempt under that Act but for the fact their employer does not meet the size, interstate commerce, or other requirements necessary for an employer to be covered under that Act, will be assumed to work 40 hours in each work week for purposes of paid sick leave accrual unless their bona fide and regular work week is clearly a fixed number of hours that is less than or more than 40 hours, in which case paid sick leave accrues based upon that number of hours.

## **RULE # 3: ACCESS TO PAID LEAVE**

- 3.1 Beginning on the 90<sup>th</sup> calendar day following the implementation date of the Ordinance, eligible employees are entitled to use accrued paid sick leave. After the 90<sup>th</sup> calendar day of employment, employees may use sick leave as it is accrued.
- 3.2 Paid sick leave can be used in fractions of hours and rounded up or down to the next ¼ hour.
- 3.3 An employee may use paid sick leave hours for all hours the employee is regularly scheduled to work.
- 3.4 Employers are not allowed to require employees to use more hours of paid leave than is needed or requested.
- 3.5 Employers may require employees to use accrued leave for any absences covered under the Ordinance.

#### **RULE #4: CARRY-OVER OF EARNED HOURS NOT USED**

- 4.1 Unused hours of paid sick leave do not expire at the end of the year. Those hours shall be carried over to the following calendar year. **An employer is not required to carry over more than 40 hours of paid sick leave for employees of small businesses and 72 hours for employees of all other employers annually.**

#### **RULE #5: EMPLOYER NOTIFICATION REQUIREMENTS**

- 5.1 An employer may not impose unreasonable barriers to use of paid sick leave or require unreasonable notification of illness when an employee takes sick leave. This provision is qualified by the rules that follow.
- 5.2 Generally, employers may require employees to give reasonable notification **(as soon as practicable)** of an absence from work for which paid sick leave is or will be used. However, an employer's policy or practice should not be so onerous that it deters employees from legitimate use of paid sick leave.
- 5.3 Foreseeable Absences - Policies or practices that require advance notification of a pre-scheduled or foreseeable absence from work for which paid sick leave will be used, such as a doctor's appointment or **care for an** ongoing injury or illness, are in principle reasonable and thus presumptively in compliance with the Ordinance. However, there may be circumstances when advance notification requirements may be **presumed** unreasonable because the time required for the advance notification is excessive or the method required for providing advance notification is unnecessarily burdensome. **Employees should make reasonable efforts not to unduly disrupt the employer's operations when scheduling appointments.**
- 5.4 Unforeseeable Absences - Policies and practices that require notification as soon as practicable for an unforeseeable absence from work for which paid sick leave will be used are in principle reasonable and thus presumptively in compliance with the Ordinance. Employers may define "as soon as practicable" as two hours, or a time period less than two hours, prior to the start of the employee's work shift, recognizing that there are instances such as accidents and sudden illnesses for which such a requirement is unreasonable.
- 5.5 An advance notification requirement of greater than two hours for an unforeseeable absence is presumptively unreasonable unless the employer can demonstrate by **a preponderance of the evidence** that there is a compelling business justification for the longer advance notification requirement.
- 5.6 For employee notification requirements, the employer must establish a procedure for employees to communicate absences to the employer. The employer must be able to demonstrate that the procedure ensures an effective means for the employee to provide notice in a way that can be verified. Employees must notify their employers that the absence is for a reason and for a person covered by the Ordinance.
- 5.7 These rules do not supersede applicable federal or state laws that provide requirements for notice to an employer for leave taken, including but not limited to the Federal and Wisconsin Family and Medical Leave Acts, the American with Disabilities Act and the Wisconsin Fair Employment Act.

## **RULE # 6: USES OF PAID LEAVE**

- 6.1 Paid sick leave shall be provided to an employee by an employer for absences related to the 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.
- 6.2 Paid sick leave shall also be provided for an absence related to an employee's need to care for a family member with a mental or physical illness, injury or health condition who needs medical diagnosis, care or treatment of a mental or physical illness, injury or health condition or who needs preventive medical care.
- 6.3 Absences related to reasons or conditions that are not deemed necessary for medical/health related reasons such as cosmetic surgery shall not be covered by the Ordinance. However, absences related to medical diagnosis or treatment for complications from such procedures shall be covered by the Ordinance.
- 6.4 An eligible employee may use paid leave for an absence necessary due to domestic abuse, sexual assault, or stalking provided the leave is for the purposes of:
- (a) Seeking medical attention for the employee or the employee's family member to recover from physical or psychological injury or disability caused by domestic or sexual violence;
  - (b) Obtaining services from a victim services organization;
  - (c) Obtaining psychological or other counseling;
  - (d) Seeking relocation due to the domestic or sexual violence or stalking;
  - (e) Taking legal action, including preparing for or participating in any civil or criminal proceeding related to or resulting from the domestic or sexual violence.
- 6.5 Employees have a right to elect whether or not to use paid sick leave accrued under the Ordinance for absences that would otherwise entitle an employee to disability benefits under the Wisconsin Worker's Compensation Act.

## **RULE # 7: VERIFICATION OF ABSENCE**

- 7.1 An employer may not impose unreasonable barriers to use of paid sick leave or require unreasonable documentation of illness when an employee takes sick leave. This provision is qualified by the rules that follow.
- 7.2 When the employee requests use of paid sick leave, the employer may verify that the employee's use of paid sick leave was for a reason and for a person specified under Section 112-5 of the Milwaukee Code of Ordinances. In confirming that an employee's use of paid sick leave was consistent with the Ordinance, employers must abide by all Federal, State, and local medical privacy laws and State and Federal FMLA.

- 7.3 Policies or practices that require a doctor's note or other documentation for the use of paid sick leave for three or fewer consecutive days shall be **presumed** unreasonable. Policies and practices that require a doctor's note or other documentation for the use of paid sick leave of more than three consecutive work days (whether full or partial days) shall be **presumed** reasonable.
- 7.4 Policies or practices that require a doctor's note or other documentation of a general nature for instances in which the employee has taken time off to attend a medical **or other appointment eligible under the Ordinance are presumed reasonable**, even if the use of paid sick leave is for three consecutive work days or **fewer**.
- 7.5 A reasonable certification may include one of the following (the choice of the type of documentation shall be at the discretion of the employee):
- (a) A signed document from a health care provider affirming the general nature of the illness, injury or health condition for which leave is being requested, **the date(s) of the absence and expected recovery time; and a statement indicating that the employee is unable to work; or**
  - (b) A police report indicating that the eligible employee or the eligible employee's family member was the victim of stalking, domestic violence, or sexual abuse; or
  - (c) A court order indicating that the eligible employee or eligible employee's family member was the victim of stalking, domestic violence, or sexual abuse; or
  - (d) A signed written statement from a victim/witness advocate, or a domestic violence counselor affirming that the eligible employee is involved in legal action or proceedings related to stalking, domestic violence, or sexual abuse. **However, an employer may not require disclosure of information relating to domestic abuse, sexual assault or stalking or the details of an employee's medical condition as a condition of providing paid sick leave.**
- 7.6 Employers may establish reasonable policies indicating when the verification documentation is to be provided. **An employer is not obligated to provide paid sick leave until the employee has complied with verification requirements.**
- 7.7 These rules do not supersede applicable federal or state laws that provide for employer verification for leave taken, including but not limited to the Federal and Wisconsin Family and Medical Leave Acts, the American with Disabilities Act and the Wisconsin Fair Employment Act.
- 7.8 **These rules, limiting information employers may reasonably require for the use of paid sick leave under the Ordinance, do not limit health-related information an employer may reasonably require under a uniformly applied policy as a condition of an employee's safe return to work.**

**RULE # 8: MONITORING AND MANAGING ABUSE OF PAID SICK LEAVE BENEFIT**

8.1 Employers may require verification of absence from an employee if there is evidence of abuse of paid leave.

Factors evidencing abuse may include but are not limited to:

- (a) Repeated instances of taking paid leave with little or no advance notice;
- (b) A pattern of taking leave on days for which vacation or other requested leave have been denied;
- (c) A pattern of taking paid leave on days where the employee is scheduled to work a shift or perform duties perceived as undesirable, including high customer volume times; or
- (d) A pattern of taking paid leave on Mondays, Fridays, or the day immediately preceding or following holidays or other scheduled days off.

8.2 Evidence of abuse may result in denial of paid leave and/or disciplinary action, up to and including termination consistent with an employer's disciplinary policy and other applicable work rules and employment policies.

**RULE # 9: SICK LEAVE RATE OF PAY AND PAYMENT**

9.1 Paid sick leave is to be compensated as follows:

- (a) For employees (usually paid on a "salary basis") who are exempt from the overtime provisions of the federal Fair Labor Standards Act (for example, administrative, executive, professional, and certain computer and outside sales employees; *see* 49 C.F.R. Part 451), and for employees who would qualify as exempt under that Act but for the fact their employer does not meet the size, interstate commerce, or other requirements necessary for an employer to be covered under that Act, paid sick leave taken under these rules shall be paid at the employee's average "hourly wage." Such an employee's average "hourly wage" shall be determined by dividing the employee's normal earnings in a week by 40 hours, unless the employee's bona fide and regular work week is clearly a fixed number of hours that is less than or more than 40 hours, in which case the employee's "hourly wage" can be determined by dividing the employee's salary by this different number of hours. If an employee's earnings vary from week to week, the employee's "hourly wage" shall be determined by applying the above methodology to the employee's earnings over the previous four work weeks during which the employee performed work and received compensation. Notwithstanding the above, for employees who are covered by a collective bargaining agreement, a sick leave rate of pay specified in the bargaining agreement shall be deemed lawful and reasonable.

Earnings, as used in this subsection, do not include: discretionary bonuses; gifts; profit-sharing, stock, thrift, benefit, and savings plan contributions made by the employer; reimbursement for expenses; premium pay for hours worked in excess of normal hours; and similar payments as described in

federal regulations under the Fair Labor Standards Act at 49 C.F.R. Part 778, Subpart C. Earnings do include other forms of compensation such as nondiscretionary bonuses and commissions. If such other forms of compensation cannot be determined at the time paid sick leave is taken, the effect of such payments upon an employee's "hourly wage" shall be determined as soon as practicable when the amount of such payments becomes known and the employee's paid sick leave compensation rate shall be retroactively adjusted to reflect the new, higher "hourly rate." Payment for leave taken under these rules at a higher rate than required here will satisfy these rules.

- (b) For employees (frequently paid an hourly wage) who are not exempt from the overtime provisions of the federal Fair Labor Standards Act, or who would be non-exempt from the overtime provisions of that Act but for the fact that their employer does not meet the size, interstate commerce, or other requirements necessary for an employer to be covered under that Act, such leave shall be paid at the employee's "regular rate" as determined under the principles for determining an employee's "regular rate" set forth in regulations to the Fair Labor Standards Act codified at 29 C.F.R. Part 778. For tipped employees, such leave shall be paid at the minimum (base) rate of pay, unless the employer pays a base rate that is higher than this minimum, in which case the rate used by the employer shall apply. Payment for leave taken under these rules at a higher rate than required here will satisfy these rules. Notwithstanding the above, for employees who are covered by a collective bargaining agreement, a sick leave rate of pay specified in the bargaining agreement shall be deemed lawful and reasonable.

#### **RULE # 10: DOCUMENTATION OF HOURS WORKED AND SICK LEAVE TAKEN**

- 10.1 Employers shall retain records documenting hours worked by employees and paid sick leave taken by employees for a period of 5 years from creation of the record.
- 10.2 Employers with paid leave policies (see Rule #20) who make available an amount of paid leave sufficient to meet or exceed the accrual requirements of the Ordinance that may be used for the same purpose and under the same conditions are not required to track hours for the purpose of determining paid leave accruals as long as the employer retains records of hours worked and paid leave taken under its paid leave policy.

#### **RULE # 11: EMPLOYER CONFIDENTIALITY REQUIREMENTS**

- 11.1 Employers may not require disclosure of information relating to domestic abuse, sexual assault or stalking or the details of an employee's medical condition as a condition of providing sick leave.
- 11.2 If an employer possesses health information or information pertaining to domestic abuse, sexual assault or stalking about an employee or the employee's child, parent, spouse, extended family member or other individual described under section 112-1-5 of the Milwaukee Code of Ordinances, such information shall be treated as confidential and not disclosed except to the affected employee or with the permission of the affected employee.

**RULE # 12: EXERCISE OF EMPLOYEE RIGHTS**

- 12.1 An employer or any other person shall not interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under the provisions of the Ordinance.
- 12.2 An employer shall not take retaliatory personnel action or discriminate against an employee because the employee has exercised his/her rights under this Ordinance.
- 12.3 Such rights include but are not limited to the right to:
- (a) use paid sick leave;
  - (b) file a complaint or inform any person about any employer’s alleged violation;
  - (c) inform any person of his or her potential rights under the Ordinance.

**RULE # 13: REPLACEMENT WORKERS**

- 13.1 An employer may request but may not require that the employee search for or find a replacement worker to cover the hours during which the employee is on paid sick leave.

**RULE # 14: ADVERSE EMPLOYMENT ACTIONS AND ANTI-RETALIATION PROVISIONS**

- 14.1 An employer may not penalize an employee for use of sick leave by reducing any benefits of employment otherwise due to the employee. Changes to an employment/benefit policy implemented by an employer to comply with the Ordinance will not be construed as a reduction in benefit under this provision.
- 14.2 No employer may treat sick leave taken under the Ordinance as an absence that may lead to or result in discipline, discharge, demotion or suspension or any other adverse action, **except as provided in Rule 8.**
- 14.3 No employer may treat the use of paid sick leave guaranteed under the Ordinance as a negative factor in hiring, evaluation or promotion, **except as provided in Rule 8.**
- 14.4 Protections provided by Ordinance provisions apply to any person who mistakenly but in good faith alleges violations of the Ordinance.

**RULE # 15: ALTERNATIVE AND LIMITED MILWAUKEE WORK SCHEDULES**

- 15.1 All employees who perform work in the City of Milwaukee, including on a part-time or temporary basis, accrue paid sick leave for those hours worked in the City, regardless of where their employer is located. However:
- Employees in Milwaukee solely to attend or present at a convention or conference are not covered by the Ordinance if they participate in Milwaukee conventions or conferences for fewer than **120** hours within a calendar year; and,
  - Employees who perform work in Milwaukee on an occasional basis are covered by the Ordinance only if they perform **120** or more hours of work in Milwaukee within a calendar year.

- 15.2 Employees who live in Milwaukee and perform work for an employer from home, including telecommuting, are covered by the Ordinance for all hours that they perform work from home. This rule applies only if the employee performs 120 or more hours of work in Milwaukee within a calendar year.
- 15.3 Employees who work outside of Milwaukee and who travel through Milwaukee, but do not stop in the city as a purpose of their work, are not covered by the Ordinance. Employees who travel through Milwaukee, and stop in Milwaukee as a purpose of their work (for example, to make pickups or deliveries), are covered by the Ordinance for all hours worked in the City, including travel within the city to and from the work site. However, this rule applies only if the employee performs 120 or more hours of work in Milwaukee within a calendar year.

**RULE # 16: REINSTATEMENT OF SICK LEAVE HOURS**

- 16.1 On or after the implementation date of this Ordinance, employees who are rehired within one year after separation will have their previously accrued but not used or paid out sick leave reinstated. The employee shall be entitled to use accrued leave upon reinstatement assuming that he/she had been employed for 90 calendar days prior to the separation.
- 16.2 Employees who separate prior to completing 90 calendar days will be entitled to access accrued paid sick leave upon completion of the balance of their 90 calendar day period, if rehired within one year after the separation.

**RULE # 17: SMALL BUSINESSES AND FLUCTUATING BUSINESS SIZE**

- 17.1 For purposes of determining whether an employer is a “Small Business” under the provisions of Chapter 112 of the Milwaukee Code of Ordinances, all persons performing work for compensation on a full-time, part-time, or temporary basis shall be counted, including persons made available to work through the services of a temporary services or staffing agency or similar entity under the Small Business definition.
- 17.2 In situations in which the number of persons who work for compensation per week fluctuates above and below 10 or more per week over the course of a year, business size will be determined for the current calendar year based upon the average number of persons who worked for compensation per week during the preceding calendar year.
- 17.3 For new employers, the ERC will calculate business size for the current calendar year based upon the average number of persons per week who worked for compensation for the first ninety days after its first employees began work.
- 17.4 For purposes of calculating employer size, employees performing work in different locations whether or not within the geographic boundaries of the City shall be counted.

**RULE # 18: STAFFING AGENCIES AND PROFESSIONAL EMPLOYER ORGANIZATIONS**

- 18.1 Staffing agencies are considered “employers” for the purpose of this Ordinance. They have an obligation to ensure that the requirements of the Ordinance are met. The business client and the temporary staffing agency may agree between themselves who will monitor compliance with the Ordinance, but any such assignment of responsibility cannot limit or deny the rights of temporary employees under the Ordinance.
- 18.2 Professional Employer Organizations (PEO) are considered “staffing agencies” for purposes of the Ordinance. The number of employees in the PEO, not the client business, will determine the size of the business for purposes of determining rate of sick leave accrual.

**RULE # 19: EMPLOYERS WITH MULTIPLE LOCATIONS**

- 19.1 For employers with multiple locations within and outside the City of Milwaukee, hours worked in Milwaukee must be tracked for purposes of the Ordinance and access to paid sick leave must conform with the intent of the Ordinance.
- 19.2 The employer may but is not required to, allow employees to use paid sick leave hours outside of Milwaukee. However, if the employer does not allow the use of paid sick leave hours outside of Milwaukee, those hours remain in a bank for 5 years from the employee’s last day of work in Milwaukee, available for use should the employee be scheduled to work in Milwaukee during that time.

**RULE # 20: OTHER PAID LEAVE POLICIES**

- 20.1 Employers with other paid leave policies who make available an amount of paid leave sufficient to meet the accrual requirements of the ordinance that may be used for the same purpose and under the same conditions are not required to provide additional sick leave.
- 20.2 Employers who implement a policy that requires employees to use PTO (paid time off) for absences covered by the Ordinance should inform their employees of that requirement prior to the employees’ requested use of paid leave.
- 20.3 Employers are also allowed to adopt or retain leave policies that are more generous than the Ordinance.
- 20.4 Policies that allow employees to receive pay in lieu of use at the end of each calendar year will satisfy the requirements of the Ordinance as long as:
- (1) the decision to receive pay in lieu of carry-over is at the employee’s discretion; and,
  - (2) pay in lieu of use is provided for hours in excess of carryover cap of 40 or 72; and
  - (3) PTO hours are made available to employees at the beginning of the calendar year (as opposed to having to earn them during the year).

**RULE # 21: OTHER LEGAL REQUIREMENTS**

- 21.1 The Ordinance shall not be construed to preempt, limit or otherwise affect the applicability of any other law, regulation, policy or standard that provides for greater accrual or use by employees of sick leave, whether paid or unpaid, or that extends other protections to employees.

21.2 The Ordinance shall not be construed to diminish the obligations of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous leave to an employee than required by the Ordinance.

**RULE # 22: INTERPLAY WITH FAMILY AND MEDICAL LEAVE LAWS**

22.1 These rules do not supersede applicable provisions of federal and Wisconsin Family and Medical Leave Acts with respect to the ability of an employer to designate and count paid sick leave against an employee's entitlement to leave under those acts as provided in Wis. Admin. Code Ch. DWD 225.01 and/or 29 C.F.R. section 825.300.

**RULE # 23: COMPLAINT RESOLUTION PROCEDURE**

23.1 An aggrieved person may, no later than 300 days after an alleged violation of Chapter 112 has occurred, file a written complaint with the Commission alleging such violation. The Commission shall only investigate complaints that are in writing and verified by the complainant.

23.2 Within 30 days after receipt of a complaint, the Commission shall serve notice upon the aggrieved person acknowledging the filing and advising the aggrieved person of the time limits.

23.3 Within 10 days after the filing of the complaint, the Commission shall serve on the respondent a notice identifying the alleged violation and advising the respondent of the procedural rights and obligations of respondents under the Ordinance, together with a copy of the original complaint.

23.4 No later than 10 days after receipt of notice from the Commission, a respondent may file an answer to the complaint.

23.5 The Commission shall initiate and complete a probable cause investigation within 100 days after receipt of the complaint unless the circumstances render it impracticable, in which case, the Commission shall notify the complainant and respondent in writing of the reason for not doing so.

23.6 The Department of Employee Relations may employ such investigators and administrative law judges as it deems necessary to hear and decide complaints and to assist in the administration of the Ordinance. An administrative law judge may propose findings of fact and make recommendations to the Commission for resolution of a complaint.

23.7 If an investigator finds probable cause to believe that a violation has occurred, the Commission shall endeavor to eliminate the practice by conference, conciliation or persuasion. Upon completion of an investigation, the investigator shall prepare a final investigative report containing the elements required under sections 109-51-7-a through 7-e of the Milwaukee Code of Ordinances.

23.8 If agreement is reached, a written conciliation agreement shall be approved by the Commission and signed by the complainant, the respondent and the representative of the Commission. The signed conciliation

agreement shall have the effect of a Commission order. Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the Commission determines that disclosure is not required to further the purpose of the Ordinance.

- 23.9 In case of failure to eliminate the violation, the Commission shall issue and serve a written notice of hearing before an administrative law judge specifying the nature of the violation which appears to have been committed, and requiring the respondent to answer the complaint in writing within 10 days after receipt of the notice of hearing and to appear at the hearing on the appointed date. The notice shall specify a time of hearing not less than 10 days after service of the notice of hearing.
- 23.10 In accordance with the requirements of s. 68.11, Wis. Stats., each party at the hearing may be represented by counsel and may present evidence and call and examine witnesses and cross-examine witnesses of the other party. Witnesses shall be sworn by the person conducting the hearing. The administrative law judge may issue subpoenas. The administrative law judge may take notes of the testimony and shall mark and preserve all exhibits. The testimony at the hearing shall be recorded.
- 23.11 If after the hearing, the administrative law judge finds by a preponderance of the evidence that the respondent has engaged in a violation of the Ordinance, the administrative law judge shall make proposed written findings and order such action by the respondent as will redress the injury done to the complainant in violation of the Ordinance, bring respondent into compliance with its provisions and generally effectuate the purpose of the Ordinance. The Commission shall serve a certified copy of the administrative law judge's proposed findings and order on the respondent and complainant.
- 23.12 If the administrative law judge finds that the respondent has not engaged in a violation as alleged in the complaint, the Commission shall serve a certified copy of the administrative law judge's proposed findings on the complainant and the respondent together with an order dismissing the complaint.
- 23.13 Upon finding that a violation has taken place, the administrative law judge may award back pay. Back pay liability may not accrue from a date more than 2 years prior to the filing of a complaint with the Commission.
- 23.14 Any party aggrieved by an investigator's failure to find probable cause or the administrative law judge granting or denying in whole or in part the relief sought shall be entitled to a review of the decision in accordance with section 109-53-1-a through 1-e of the Milwaukee Code of Ordinances.
- 23.15 Any party to a proceeding resulting in a final determination may seek judicial review by certiorari within 30 days of the receipt of the final determination, pursuant to ch.68, Wis. Stats.

#### **RULE # 24: FORFEITURE AND ENFORCEMENT**

- 24.1 Any person who willfully violates the Ordinance or any lawful order of the Commission shall, for the first violation, forfeit not less than \$500 nor more than \$5,000.

- 24.2 For each successive violation within 5 years of having been adjudged to be in violation, such person shall forfeit not less than \$1,000 nor more than \$10,000.
- 24.3 Each day or fraction thereof on which such person willfully violates this Ordinance or a lawful order of the Commission shall be deemed a separate offense.
- 24.4 Whenever in the judgment of the Commission, the enforcement of a forfeiture imposed for a violation of the Ordinance or of an order under the Ordinance is necessary, the Commission shall refer the matter in writing to the City Attorney for enforcement in the name of the City or the Commission. Upon referral, the City Attorney may seek enforcement of the Ordinance in a court of competent jurisdiction and as provided in ss.66.0114 and 66.1011(2), Wis. Stats., or otherwise.
- 24.5 At any time after a complaint is filed, the Commission may request the City Attorney to file a petition in Circuit Court, seeking appropriate temporary relief against the respondent, pending final determination of proceedings under the Ordinance, including an order or decree restraining the respondent from performing an act tending to render ineffectual an order the Commission may enter with respect to the complaint.

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