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IN THE CITY COUNCIL**

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**AMENDMENT TO PORTLAND CITY CODE
CHAPTER 35 RE: EARNED PAID SICK LEAVE**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND, MAINE
IN CITY COUNCIL ASSEMBLED AS FOLLOWS:**

1. *That the Portland City Code is hereby amended by adding a section, to be numbered Chapter 35, Sections 35-1 to 35-14, which said Sections read as follows:*

Chapter 33 EARNED PAID SICK LEAVE

Sec. 35-1. Definitions.

The following definitions shall apply for purposes of this Chapter:

Child shall mean a biological, adopted, or foster child of the employee; stepchild or legal ward of the employee; child of a domestic partner of the employee; or a child for whom the employee stands in loco parentis.

Earned paid sick time shall mean paid sick time accrued and awarded pursuant to section 35-2.

Employee shall have the same meaning as in Sec. 33.2 of this Code. However, for purposes of this Chapter, Employee shall not include the following:

1. Any employee who meets all of the following criteria:
 - a. Is licensed pursuant to Title 32, Chapters 31, 97, or 103;
 - b. Is employed by a health care facility, as defined in 22 M.R.S. § 328(8);
 - c. Is under no obligation to work a regular schedule;

- d. Works only when he or she indicates that he or she is available to work and has no obligation to work when he or she does not indicate availability; and
 - e. Has waived earned sick leave benefits as provided under this Chapter under terms of employment for alternative benefits or consideration.
2. Employees who work less than 120 hours per year for that employer.
 3. Any Federal Work-Study (FWS) student who is enrolled in an educational institution and who is performing work for that institution, provided that such student shall be considered an Employee and shall not be exempt from accruing earned paid sick leave in accordance with this ordinance when working for any employer other than the educational institution in which the student is enrolled.

Employer shall have the same meaning as in Sec. 33.2 of this Code. However, for purposes of this Chapter, Employer shall not include any employer for a period of one year after the employer hires its first employee.

Family member shall mean a child, grandchild, sibling, spouse, domestic partner, parent, or grandparent of an employee; a spouse or domestic partner of a parent or grandparent of the employee; a sibling of a spouse or domestic partner of an employee; or any other person related by blood to the employee or whose close association with the employee is the equivalent of a family relationship.

Health care professional shall have the same meaning as in 26 M.R.S. § 843.

Hours worked shall mean all hours worked where the employee is located at, or based out of, an employer's place of business located in Portland.

Parent shall mean a biological, adoptive, or foster parent of the employee or employee's spouse or domestic partner; a stepparent or legal guardian of the employee or employee's spouse or domestic partner; or a person who stood in loco parentis of the employee or the employee's spouse or domestic partner when that person was a minor child.

Year shall mean a regular and consecutive 12-month period as determined by the employer.

Sec. 35-2. Accrual of Earned Paid Sick Time.

(a) Rates of Accrual. Subject to the limitations in subsection (2), employers must allow employees to accrue earned paid sick time pursuant to one of the following methods, which may be chosen by the employer.

1. Employees will accrue a minimum of one hour of earned paid sick time for every 30 hours worked. Hours worked shall not include vacation, sick, or other time for which an employee is paid but no actual work is performed.
2. Employees will accrue earned paid sick time in the amount of 40 hours in one lump sum at the beginning of each calendar year or the beginning of the employee's anniversary year. Where based on a calendar year, a prorated amount shall be awarded for new employees.
3. Employees will accrue earned paid sick time in the following amounts at the end of each calendar month worked, starting with the first month of the calendar year or the employee's anniversary year. Where based on a calendar year, a prorated amount shall be awarded for new employees.

<u>Employee's average hours/week</u>	<u>Earned paid sick time accrued</u>
<u>46 or more</u>	<u>8 hrs/month</u>
<u>36-45</u>	<u>6 hrs/month</u>
<u>29-35</u>	<u>5 hrs/month</u>
<u>22-28</u>	<u>4 hrs/month</u>
<u>15-21</u>	<u>3 hrs/month</u>
<u>8-14</u>	<u>2 hrs/month</u>
<u>Up to 7</u>	<u>1 hr/month</u>

(b) Limitations on Accruals. An employer is not required to allow an employee to accrue earned paid sick time in excess of 72 hours.

(c) Conditions of Accrual. The accrual of earned paid sick time shall be subject to the following conditions.

1. Employees who are exempt from overtime requirements under the Fair Labor Standards Act will be deemed 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.

2. Employees shall begin to accrue earned paid sick time at the commencement of employment or on the date this law goes into effect, whichever is later.
3. Employees accruing earned paid sick time may roll over any unused earned paid sick time, up to a maximum of 72 hours, at the end of a benefit year.
4. 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 one year 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.
5. 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 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.

(d) Employers are not required to allow employees to take earned paid sick time in the employee's first 70 days of employment. However, employees who return to the same employer within one year of termination shall not have to complete an additional 70-day period to be eligible to take earned paid sick time.

(e) Nothing in this Chapter 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.

(f) At its discretion, an employer may loan earned paid sick time to an employee in advance of accrual by such employee.

(g) An Employer may substitute its own paid leave policy (e.g. paid time off ("PTO"), vacation leave, sick leave, etc.)

that meets or exceeds the requirements of this ordinance, including but not limited to:

1. Accrue at the rate of at least one hour of paid time off for every 30 hours worked;
2. May use up to 40 hours per year of earned or awarded paid time off;
3. Are paid for their paid time off at least the amount that would be required for earned paid sick leave under this ordinance;
4. Can use paid time off for all the purposes and under all the conditions described in sections 35-3 and 35-4 of this Chapter;
5. Receive a notice of their rights under the law; and
6. Receive the same job protections afforded by this ordinance.

(h) If an Employer provides paid time off to employees under a PTO, vacation or other policy that complies with this Earned Paid Sick Leave ordinance, the Employer is not required to track and keep a separate record of accrual and use of earned sick time.

Sec. 35-3. Use of Earned Paid Sick Time.

(a) Employees may use earned paid sick time for any of the following:

1. Job protected leave provided pursuant to the Maine Employment Leave for Victims of Violence statute;
2. Time needed for diagnosis, care, or treatment of, or recovery from, an employee's mental or physical illness, injury or other adverse health condition, or for preventive medical care for the employee;
3. Time needed for the employee to aid or care for a family member of the employee during diagnosis, care, or treatment of, or recovery from, the family member's mental or physical illness, injury or other adverse health condition, or during preventive medical care for the family member; or
4. Leave to attend a school meeting necessitated by the family member's health condition or disability.

(b) An employee may take earned paid sick time for any hours worked.

(c) An employee may only take earned paid sick time for hours the employee has been scheduled to work.

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

(e) If an employee uses earned paid sick time for an entire day or shift, earned paid sick time must be paid for the hours the employee was otherwise scheduled to work.

(f) Employees may not use more than 40 hours of earned paid sick time in a year, unless the employer selects a higher limit.

(g) Earned paid sick time shall be paid out at the employee's base hourly rate, not including bonuses, commissions, etc.

(h) Earned paid sick time for tipped workers shall be paid out at the higher of the employee's regular base hourly rate or the highest applicable minimum wage for non-tipped employees.

Sec. 35-4. Procedures for Taking Earned Paid Sick Time.

(a) Earned paid sick time shall be provided upon the request of an employee.

1. An employer may not require more than seven days' notice for an employee to use earned paid sick time, when the need is foreseeable.
2. When the need for use of earned paid sick time is not foreseeable, an employee must provide notice to the employer as soon as practicable under the facts and circumstances of the particular case
3. An employer that requires notice of the need to use earned paid sick time shall provide a written policy that contains procedures for the employee to provide notice. An employer that has not provided to the employee a copy of its written policy for providing such notice shall not deny earned paid sick time to the employee based on non-compliance with such a policy.
4. When the use of earned paid sick time is foreseeable, the employee shall make a good faith effort to provide

notice of the need for such time to the employer in advance of the use of the earned paid sick time and shall make a reasonable effort to schedule the use of earned paid sick time in a manner that does not unduly disrupt the operations of the employer.

(b) An employer may not require, as a condition of an employee's taking earned paid sick time, that the employee search for or find a replacement worker to cover the hours during which the employee is using earned paid sick time.

(c) An employer may require certification when earned paid sick time is used subject to the following restrictions.

1. An employer may require an employee to personally verify in writing that the employee has used earned paid sick time only for allowable purposes under this Chapter using the form provided by the City.
2. Where the need for earned paid sick time covers more than 24 consecutively scheduled work hours, an employer may require reasonable documentation signed by a health care provider, where applicable, indicating the need for the earned paid sick time taken.

Employees who do not have healthcare coverage, or Employees with healthcare coverage that does not cover office visits without first meeting a deductible, or Employees with healthcare coverage that requires a co-pay for office visits that exceeds an amount equal to four hours of that employee's base hourly pay, or Employees using EPSL where the need for leave is not health related, may instead provide a signed, written statement evidencing the need for the use of earned sick time using the form provided by the City.

3. An employer may not require that any documentation explain the nature of the illness or the details of the domestic violence.
4. The employer shall not delay the taking of earned sick time or delay pay for the period in which earned sick time was taken on the basis that the employer has not yet received the certification. However, where an employee requests to take earned sick time in his/her last two weeks of employment, the employer may require the employee to submit documentation prior to approving and/or paying for the earned sick time.
5. Certifications under this subsection shall be kept

confidential, except as required by business necessity.

Sec. 35-5. Exercise of Rights Protected; Retaliation Prohibited.

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

(b) It shall be unlawful for an employer or any other person to retaliate against an employee for exercising his or her rights under this Chapter, including requesting or using earned paid sick time; filing a complaint or otherwise complaining about an employer's alleged violation of this Chapter; participating in an investigation or other proceeding under this Chapter; or informing others of their rights under this Chapter.

(c) It shall be unlawful for an employer's absence control policy to count earned paid sick time taken under this Act as an absence that may lead to or result in discipline, discharge, demotion, suspension, or any other adverse action.

(d) Nothing in this Chapter shall be construed to prohibit an employer from taking disciplinary action against an employee who uses earned paid sick time for purposes other than those described in this Chapter.

(e) Protections of this section shall apply to any person who mistakenly but reasonably alleges a violation of this Chapter.

Sec. 35-6. Notice of Rights.

(a) Employers shall both display a poster notifying employees of their rights under this Chapter, and give employees written notice at the commencement of employment or the effective date of this ordinance, whichever is later. The poster and notice shall be consistent with this section.

(b) The notice and poster shall contain the following information: that employees are entitled to earned paid sick time and the amount of earned paid sick time; the terms of its use guaranteed under this Act; that retaliation is prohibited; that each employee has the right to file a complaint or bring a civil action if earned paid sick time as required by this Act is denied by the employer or the employee is subjected to retaliatory personnel action for requesting or taking earned paid sick time, and the contact information for the City of Portland where questions about rights and responsibilities under this Act can be answered.

(c) The notice and poster shall be provided in any language that is the first language spoken by any member of the employer's workforce, provided that such notice has been created by the City of Portland. Where the City of Portland has not created the notice in any language readily understood by an employee, the employer must ensure that the contents of the notice are read and/or explained to the employee in a language the employee can readily understand.

(d) The City of Portland shall create and make available to employers, in the five most prevalent languages spoken by the City's workforce and any language deemed appropriate by the City of Portland, model notices and posters meeting the requirements of this section. This requirement may be satisfied by posting the model notices and posters on the City's website and making them available for download.

(e) The amount of earned paid sick time available to the employee, the amount of earned paid sick time taken by the employee to date in the year and the amount of pay the employee has received as earned paid sick time shall be provided to the employee in writing at least once per month, and upon request of the employee.

(f) An employer who willfully violates this section shall be subject to a civil fine in an amount not to exceed \$100 for each separate offense. Each day that an employer allows a violation of this section to continue shall be a separate offense.

Sec. 35-7. Recordkeeping Requirements.

(a) Employers shall retain records documenting hours worked by employees and earned paid sick time earned and taken by employees for a period of three (3) years. Separate records of earned paid sick time need not be kept if earned paid sick time is not tracked separately by the employer.

(b) Employers shall allow the City of Portland access to the records required by this section, with appropriate notice and at a mutually agreeable time.

Sec. 35-8. Enforcement.

(a) Enforcement.

1. This Chapter may be enforced by the City Manager or his or her designee.

2. A violation of this Chapter is a civil violation subject to the general penalty provisions of section 1-15 of this Code.

(b) Complaint Process.

1. Any Employee, alleging a violation of this ordinance may file a written complaint with the City Manager's office.

2. The City Manager or his or her designee shall contact the Employer and review the rules of the ordinance and the Employer's obligations under the ordinance. The City Manager or his or her designee may investigate and/or attempt to mediate a mutually agreeable resolution between the employer and employee.

3. After reviewing the rules of the ordinance with the Employer, the City Manager or his or her designee shall issue a letter to both parties summarizing the conversation and stating his or her determination with respect to whether this Chapter has been violated.

(c) Private Cause of Action.

1. Any employee aggrieved by a violation of this Chapter may bring an action in a Court of competent jurisdiction against the employer for any and all violations of this ordinance, including, but not limited to, wages owed under this ordinance. Such action may be brought by a person aggrieved by a violation of this Chapter without first filing a complaint with the City Manager. Actions brought pursuant to this section may be brought as a class action pursuant to the laws of Maine.

2. Upon a judgment being rendered in favor of any employee(s), in any action brought pursuant to this ordinance, such judgment shall include, in addition to the wages adjudged to be due and any penalties assessed, any and all costs of suit including, but not limited to, reasonable attorney's fees.

3. Where applicable, remedies shall also include equitable relief, including reinstatement and back pay, and injunctive relief.

4. The City of Portland shall annually report on the City of Portland website the number and nature of the complaints received pursuant to this ordinance, the results of investigations undertaken pursuant to this

ordinance, including the number of complaints not substantiated and the number of notices of violations issued, the number and nature of adjudications pursuant to this ordinance, and the average time for a complaint to be resolved pursuant to this chapter.

Sec. 35-9. Confidentiality and Nondisclosure.

If an employer possesses health information or information pertaining to domestic violence, sexual assault, harassment or stalking about an employee or employee's family member, such information shall be treated as confidential and not disclosed except to the affected employee, with the permission of the affected employee, as required for the administration of the leave, or as otherwise required by law.

Sec. 35-10. Encouragement of More Generous Earned Paid Sick Time Policies; No Effect on More Generous Policies or Laws.

(a) Nothing in this Act shall be construed to discourage or prohibit an employer from the adoption or retention of an earned paid sick time policy more generous than the one required herein.

(b) Nothing in this Act shall be construed as diminishing the obligation of an employer to comply with any law, regulation, contract, collective bargaining agreement, employment benefit plan, or other agreement providing more generous paid sick time to an employee than required herein.

Sec. 35-11. Public Education and Outreach.

The City of Portland shall develop and implement a multilingual outreach program to inform employees and employers about the availability of earned paid sick time under this ordinance.

Sec. 35-12. Regulations.

The City Manager, or his or her designee, shall be authorized to coordinate implementation and enforcement of this Chapter and shall promulgate appropriate guidelines or regulations for such purposes.

Sec. 35-13. Severability.

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

Sec. 35-14. Effective Date.

This Chapter will be applicable 180 days after passage.