

Memorandum



CITY OF DALLAS

DATE July 19, 2019

TO Honorable Mayor and Members of the City Council

SUBJECT **The City of Dallas Earned Paid Sick Leave Ordinance**

The City of Dallas' [Earned Paid Sick Time \(Paid Sick Leave\) Ordinance](#) was adopted by City Council on April 24, 2019 and goes into effect on August 1, 2019 for employers with six or more employees. The Paid Sick Leave Ordinance applies to employees who work at least 80 hours within the geographical boundaries of the City of Dallas in a year and allows employees to accrue one hour of paid sick leave for every thirty hours worked up to a maximum of sixty-four hours annually for employers with sixteen or more employees and forty-eight hours annually for employers with fifteen or fewer employees.

In general, the purpose of the Paid Sick Leave Ordinance is to protect the health, safety and welfare of Dallas residents. The Paid Sick Leave Ordinance goes into effect on **August 1, 2019**, for employers with six or more employees. Except for violations of the anti-retaliation provision, the Ordinance will not be enforced until **April 1, 2020**, for employers with six or more employees. No part of the Ordinance goes into effect for employers with five or fewer employees until **August 1, 2021**.

The Office of Fair Housing and Human Rights sent notification of the Paid Sick Leave Ordinance to employers conducting business with the City of Dallas and has held two public information sessions at the J. Erik Jonsson Central Library Auditorium to review the Ordinance with the public and answer questions. The first session, held on July 9, had about seventy-five attendees, representing a balance of employers, human resources professionals, and employees. The second session, held on July 10, had approximately 200 attendees and was almost exclusively employers and human resources professionals. Most questions were regarding whether an employer's existing leave policy meets the requirements of the Ordinance (Section 20-6), understanding accrual of leave (Section 20-4), what conduct would violate the anti-retaliation provision of the Ordinance (Section 20-8), and whether the employer has employees within the City of Dallas (Section 20-2(5)).

Staff and the City Attorney's Office completed the [implementing rules](#), which outline how the Ordinance will be administered. Staff is also preparing responses to questions that were asked in the meetings, by phone, and by email. Additional outreach meetings are being scheduled.

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The Office of Fair Housing and Human Rights will brief the City Council on August 7 to provide an update on implementation and next steps. City staff is currently receiving community input and preparing additional guidance for employers and employees that will be posted at www.dallascityhall.com/paid-sick-leave by Monday, July 22.

The website for the Ordinance is: www.dallascityhall.com/paid-sick-leave, and the email address to submit questions is: paidsickleave@dallascityhall.com.

Please feel to contact me or Beverly Davis, Director of Fair Housing and Human Rights, should you have any questions related to the content of this memorandum or supporting materials provided.



M. Elizabeth (Liz) Cedillo-Pereira
Chief of Equity and Inclusion

c: T.C. Broadnax, City Manager
Chris Caso, City Attorney (Interim)
Mark Swann, City Auditor
Biliera Johnson, City Secretary
Preston Robinson, Administrative Judge
Kimberly Bizer Tolbert, Chief of Staff to the City Manager
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Jon Fortune, Assistant City Manager

Joey Zapata, Assistant City Manager
Nadia Chandler Hardy, Assistant City Manager and Chief Resilience Officer
Michael Mendoza, Chief of Economic Development and Neighborhood Services
M. Elizabeth Reich, Chief Financial Officer
Laila Aleqresh, Chief Innovation Officer
Directors and Assistant Directors

Rules for Administering Chapter 20, “Earned Paid Sick Time,” of the Dallas City Code.

RULE 1. GENERAL PROVISIONS.

(a) In general. Chapter 20, “Earned Paid Sick Time,” of the Dallas City Code applies to all employees who work at least 80 hours within the geographic boundaries of the city in a year. For example, employees who make pick-ups, deliveries, or sales calls within the city are covered by Chapter 20 for the hours that the employees are physically in the city and performing work.

(b) Purpose. These rules govern the practices of the Office of Fair Housing and Human Rights in administering and enforcing Chapter 20 of the Dallas City Code. These rules should be read in conjunction with Chapter 20 of the Dallas City Code.

(c) Practices. If in administering Chapter 20, a matter is not covered by Chapter 20 of the Dallas City Code or these rules, the director shall, in the exercise of the director’s discretion, specify the practices to be followed.

(d) Construction of rules. These rules shall be liberally construed to allow the Office of Fair Housing and Human Rights to accomplish its administrative duties in implementing Chapter 20 of the Dallas City Code, including providing technical assistance, investigating complaints, seeking voluntary compliance, and assessing penalties and remedies.

(e) Severability. The terms and provisions of these rules are severable. If any phrase, clause, sentence, paragraph, or section of these rules are declared invalid by the valid judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of these rules.

(f) Conflict with ordinance. If there is a conflict between Chapter 20 of the Dallas City Code and these rules, Chapter 20 of the Dallas City Code prevails.

RULE 2. DEFINITIONS.

(a) Unless otherwise stated, the definitions and interpretations in Chapter 20 of the Dallas City Code apply to these rules. In these rules:

(1) **COMMENCEMENT OF EMPLOYMENT** means no later than the beginning of the first day on which the employee performs compensable work for the employer on the employer’s premises or at a prescribed workplace.

(2) **EMPLOYEE** means employee as defined in Chapter 20 of the Dallas City Code. An employee includes paid apprentices, paid interns, and employees of independent contractors and government contractors working within the geographic boundaries of the city.

(3) **FAMILY MEMBER** means family member as defined in Chapter 20 of the Dallas City Code. Family members include step-parents, step-siblings, step-children, step-grandparents, step-grandchildren, anyone who can be claimed as a dependent, and anyone who can claim someone as a dependent.

(4) **HOURS WORKED** means all hours during which the employee performs compensable work for the employer on the employer’s premises or at a prescribed work place.

(b) Unless otherwise stated, all references to articles or sections in these rules are to articles and sections in Chapter 20 of the Dallas City Code.

RULE 3. EMPLOYMENT.

An employee who is based outside of the city and performs work within the geographic boundaries of the city is covered by Chapter 20 of the Dallas City Code once the employee performs at least 80 hours of work within the geographic boundaries of the city in a year.

RULE 4. ACCRUAL.

(a) Accrual rates. An employer shall provide each employee at least one hour of paid sick time for every 30 hours worked for the employer within the geographic boundaries of the city. Earned paid sick time is accrued in one-hour increments, unless an employer's written policies establish the accrual of paid sick time to be in fraction of an hour increments. An employer must make this information readily available to all employees in a language the employee understands.

(b) Making paid sick time available at the beginning of the year. An employer may, but is not required to, make the yearly cap of earned paid sick time available to employees at the beginning of the year.

(1) Accrual, use, and carryover requirements. If an employer makes any or all of the yearly cap of earned paid sick time available to employees at the beginning of the year, the employer shall ensure that the requirements for accrual, use, and carryover of paid sick time in Chapter 20 of the Dallas City Code and these rules are met.

(2) Reasonable calculation. For employers who make a portion of the yearly cap of earned paid sick time available to employees at the beginning of the year, the employer shall use a reasonable calculation, consistent with the accrual requirement set forth in Chapter 20 of the Dallas City Code, to ensure that the accrual meets or exceeds the amount of paid sick time the employee would have otherwise accrued.

(3) Carryover. If the employer does not make the entire yearly cap of earned paid sick time available at the beginning of the year, the employer must allow employees to carryover any unused earned paid sick time up to the applicable maximum as stated in Section 20-4(c).

RULE 5. USE OF EARNED PAID SICK TIME.

(a) Authorized use. An employee is entitled to use earned paid sick time for an absence from work for any use authorized by Chapter 20 of the Dallas City Code.

(b) Waiting period. Earned paid sick time is generally available for an employee to use as soon as it is accrued after an employee has worked for an employer for at least 80 hours within the geographic boundaries of the city in a year. However, an employer may restrict an employee from using earned paid sick time during the employee's first 60 days of employment if the employer establishes that the employee's term of employment is at least one year.

(c) Transfer to work site outside city. An employer shall continue to allow an employee to use earned paid sick time accrued under Chapter 20 of the Dallas City Code after an employee transfers to a work site outside the city.

(d) Foreseeable circumstances. If the need for paid sick time is foreseeable, the employer may require a timely request from the employee, including requiring the employee to comply with an employer's standard notification policies and call-in procedures.

(e) Unforeseeable circumstances. If the need for paid sick time is unforeseeable, the employer must allow the employee to use earned paid sick time for a qualified absence. The

employee must comply with an employer's standard notification policies and call-in procedures, unless it is not practicable to do so.

RULE 6. VERIFICATION PROCEDURES.

(a) In general. An employer may adopt reasonable verification procedures to verify that an employee's use of paid sick time for more than three consecutive work days is for a purpose authorized under Chapter 20 of the Dallas City Code.

(b) Employee privacy. An employer shall not require an employee to explain the nature of the domestic abuse, sexual assault, stalking, illness, injury, health condition, or other health need necessitating the use of paid sick time, and should take steps to protect the confidentiality of any information provided by the employee.

RULE 7. RATE OF PAY FOR USE OF PAID SICK TIME.

(a) Rate of pay. An employer shall pay an employee an amount for paid sick time equal to what the employee would have earned if the employee had worked the scheduled work time. Rate of pay is exclusive of any overtime premium, tips, commissions, service charges, holiday pay, but no less than the state minimum wage.

(b) Reasonable calculation of normal hourly compensation. An employer shall calculate an employee's normal hourly compensation using a reasonable calculation based on the hourly rate than an employee would have earned for the time the employee used paid sick time. Examples of reasonable calculations include, but are not limited to:

(1) Piece rate. For an employee paid partially or wholly on a piece rate basis, dividing the total earning by the total hours worked in the most recent work week in which the employee performed identical or substantially similar work to the work the employee would have performed had the employee not used paid sick time.

(2) Salaried employees. For a salaried employee, dividing the gross annual salary by 52 to determine the employee's weekly salary, and then dividing the weekly salary by the number of hours in the employee's normal work week, even if the employee actually works more or fewer hours in a particular work week.

(3) Fluctuating pay. For an employee whose hourly rate of pay fluctuates:

(A) Where the employer can identify the hourly rates of pay for which the employee was scheduled to have worked, a calculation equal to the scheduled hourly rates of pay the employee would have earned during the period in which paid sick time is used.

(B) Where the employer cannot identify the hourly rates of pay which the employee would have earned if the employee worked, a calculation based on the employee's average hourly rate of pay in the current and preceding 30 days, whichever yields the higher hourly rate.

(4) Shift of indeterminate length. For an employee scheduled to work a shift of indeterminate length (e.g., a shift that is defined by business needs rather than a specific number of hours), the rate of pay may be calculated by multiplying the employee's normal hourly compensation by the total hours worked by a replacement employee in the same shift, or similarly situated employees who worked that same or a similar shift.

RULE 8. PAYMENT OF PAID SICK TIME.

(a) Employer not requiring verification. Unless an employer requires verification for use of paid sick time of more than three consecutive work days, an employer shall pay sick time to an employee no later than the payday for the pay period in which the paid sick time was used by the employee.

(b) Employer requiring verification. If an employer requires verification of the use of paid sick time of more than three consecutive days under Rule 6, an employer shall pay sick time to an employee no later than the payday for the pay period during which verification is provided to the employer.

RULE 9. BREAKS IN SERVICE.

(a) General. Except as provided in this rule, an employee who is rehired by the same employer, whether at the same or a different location, within six months following separation from employment with that employer may use any unused paid sick time available to the employee at the time of separation.

(b) Pay out of unused paid sick time. An employer may choose, but is not required, to pay an employee for any portion of the employee's unused earned paid sick time at the time the employee separates from employment. However, if an employee is rehired by the same employer within six months after having received a payout of earned paid sick time, the employer is not required to reinstate the earned paid sick time that was paid out to the employee at the time of separation.

RULE 10. EMPLOYER NOTIFICATION OF PAID SICK TIME.

(a) Notice at least monthly. On no less than a monthly basis, an employer shall provide electronically or in writing to each employee a statement showing the name of the employee, the name of the employer, the statement's date, the statement period, the number of hours worked within the geographic boundaries of the city during the statement period, the amount of paid sick time accrued during the statement period, the amount of paid sick time used during the statement period, and the amount of the employee's available earned paid sick time.

(b) System. Employers may choose a reasonable system for providing notification of earned paid sick time, including listing updated amounts of paid sick time available on pay stubs (e.g., regular payroll statements) or in an online system where employees can access the information.

(c) Records retention. Employers shall retain records required under this rule for at least three years.

RULE 11. NOTICE AND POSTING.

An employer shall display a sign, created by the Office of Fair Housing and Human Rights, that provides notice of employee rights to paid sick time under Chapter 20 of the Dallas City Code. Employers must display the sign, in a conspicuous and accessible location where any of their employees work, in English, Spanish, and any other primary languages of the employees at the particular workplace. If display of a sign is not feasible, including a situation where the employee works remotely or does not have a regular workplace, employers may provide the sign on an

individual basis in the employee's primary language in a physical or electronic format that is reasonably conspicuous and accessible.

(1) Size of sign. Each sign displayed in accordance with this rule must be at least 8.5 inches by 11 inches in area.

(2) Display or provision of sign. Employers shall display the sign, or provide the sign on an individual basis if display of the sign is not feasible, no later than the employee's commencement of employment, or within 14 days of coverage if the employee becomes covered by Chapter 20 of the Dallas City Code during the course of ongoing employment.

RULE 12. RETALIATION PROHIBITED.

(a) An employer may not transfer, demote, discharge, suspend, reduce hours, or directly threaten such actions against an employee that requests or uses earned paid sick time, reports or attempts to report a violation of these rules or Chapter 20 of the Dallas City Code, participates or attempts to participate in an investigation or proceeding under these rules or Chapter 20 of the Dallas City Code, or otherwise exercises any rights afforded by these rules or Chapter 20 of the Dallas City Code. Retaliation may include the following: considering use of paid sick time in performance reviews or setting wages, disciplining or terminating employees for using accrued paid sick time, reporting or threatening to report an employee or employee's family member to law enforcement in connection with the use of paid sick time, or discouraging or denying employees from using their accrued paid sick time. For example, an employer may not establish a point system in which employees receive points for using their paid sick time, and after receiving a specific number of points, the employee is terminated.

(b) The prohibition against retaliation does not prevent an employer from taking reasonable action (e.g., discipline) when an employee's use of paid sick time is not for a qualified use enumerated in Section 20-5(c) of the Dallas City Code.

RULE 13. ENCOURAGEMENT OF MORE GENEROUS POLICIES.

(a) More generous policies. Nothing in these rules or Chapter 20 of the Dallas City Code shall be construed to discourage or prohibit an employer from adopting or retaining a paid sick time policy that is more generous than the policy established under these rules or Chapter 20 of the Dallas City Code.

(b) Additional purposes. Employers are not prevented from permitting use of paid sick time for additional purposes.

RULE 14. ADMINISTRATION

(a) Voluntary compliance. During the period beginning with the filing of a complaint and ending with the issuance of a citation under Chapter 20, the director shall attempt to resolve any alleged violations or failures to comply through voluntary compliance. In resolving a complaint through voluntary compliance, the director will seek a just resolution and obtain assurances that the respondent has satisfactorily remedied any violations and will take action to assure present and future compliance.

(b) Filing of complaints.

(1) Complaint must be timely filed. The director will not investigate an alleged violation of Chapter 20 of the Dallas City Code unless the allegation is the subject of a complaint filed by, or on behalf of, an aggrieved employee within two years from the date of the alleged violation in accordance with Chapter 20 and these rules.

(2) Jurisdiction. Upon receiving a complaint, the director shall determine if the complaint falls under the scope of Chapter 20 of the Dallas City Code.

(A) If the director determines the complaint falls under the scope of Chapter 20 of the Dallas City Code, the director shall assign the complaint to an investigator.

(B) Unless a complaint is filed anonymously, if the director determines the complaint does not fall under the scope of Chapter 20 of the Dallas City Code, the director shall send written notice to the employee or the employee's representative giving a clear and concise explanation of the reasons why the complaint does not fall under the scope of Chapter 20 of the Dallas City Code. The director shall not take any further actions under the complaint.

(3) Forms and procedures. The director may prescribe forms and additional administrative procedures for filing complaints.

(4) Holidays. If the last day for filing a complaint falls on a city, state, or federal holiday, a complaint received on the next regular city business day following the holiday will be deemed filed on the last day for filing the complaint.

(5) Mailed complaints. A complaint received by United States mail will be deemed filed on the date the complaint is postmarked or the postage meter date if there is no postmark.

(c) Investigation of complaints.

(1) Fairness, impartiality, and objectivity. The director shall perform investigations in a fair, impartial, and objective manner, according to the procedures in this rule.

(2) Forms and procedures. The director may prescribe forms and additional administrative procedures for the investigation of complaints.

(3) Presentation and collection of evidence.

(A) The investigator shall allow the complainant and the respondent a full opportunity to present witness statements, documents, or other information relevant to the allegations in the complaint and shall take, or cause to be taken, the following actions within 10 business days of being assigned a complaint:

(i) Make all reasonable efforts to schedule an initial interview with the complainant.

(ii) Serve the respondent with a copy of the complaint and a request for responsive information, along with a notice that the respondent has 21 days to provide information in response to the request. If the respondent responds to the complaint by acknowledging the violation and recommending steps to come into compliance voluntarily, then the investigator may stop investigating and the director may dismiss the complaint upon compliance.

(B) The director may issue a subpoena to the respondent in accordance with Section 20-10 to compel the production of documents if information is not provided within 21 days of the investigator's request.

(C) The complainant and the respondent may submit witness statements and documents during the investigation that prove or disprove the allegations in the complaint. The investigator may request additional witnesses or documents from either party during the investigation.

(4) Rules of evidence. Investigations are not governed by the formal rules of evidence. The director and investigator may consider information that tends to prove or disprove the allegations in the complaint, regardless of whether the information would be admissible in a court of law.

(d) Final determinations on complaints.

(1) Investigator's determination. The investigator shall submit a recommended determination to the director on each complaint assigned to the investigator. The recommendation must state whether the evidence is sufficient or insufficient to establish a violation of Chapter 20 of the Dallas City Code based on a preponderance of the evidence submitted during the investigation.

(2) Time for delivering investigator's determination to director. The investigator's recommended determination shall be delivered to the director within 75 days of assignment of the complaint to the investigator. The investigator shall provide the complainant, respondent, and director a written justification concerning any complaint for which a recommended determination is not made within 75 days of the date the complaint is assigned. If the investigator cannot meet the 75-days deadline, the investigator may notify the director, the complainant, and the respondent and provide an estimated date of completion.

(3) Director's review. The director shall administratively review the complaint and the evidence gathered during the investigation, and shall consider the investigator's recommended determination. Within 15 business days of receiving the investigator's recommendation, the director shall take one of the following actions:

(A) Return the complaint to the investigator for additional analysis or to gather and analyze additional evidence, and the investigator shall perform the tasks assigned by the director. The investigator shall prepare a new recommended determination for the director's evaluation under this rule.

(B) Issue a written notice of dismissal of the complaint to the complainant and the respondent if the director concludes that a preponderance of the evidence does not establish a violation of Chapter 20 of the Dallas City Code.

(C) Issue a written notice of violation and that a civil penalty will be assessed through a citation unless the respondent establishes voluntary compliance to the satisfaction of the director within 10 business days of the respondent's receipt of the notice. Notice must be sent to the respondent, with a copy to the complainant, if the director concludes that a preponderance of the evidence establishes a violation of Chapter 20 of the Dallas City Code.

(i) For purposes of this rule, written notice is deemed to be received by the respondent three days after the date the written notice is placed in the United States mail with proper postage and properly addressed to the respondent.

(ii) The fact that the notice is returned undelivered or that the return receipt is not signed by the addressee does not affect the validity of the notice.

(4) Time to close complaint. The director shall endeavor to close the investigation and determination of all complaints no later than the 120th day after the complaint is assigned to an investigator. If the director is unable to close the investigation within the 120-day period, the director shall notify the complainant and respondent in writing of the reasons for the delay.

(5) Appeal. A final determination of the director may be appealed following the procedure in Rule 15.

(e) Closure of complaints. The director shall close the investigation of a complaint at the earliest to occur of the following:

- (1) The complaint is withdrawn by the complainant.
- (2) The director determines the complaint does not fall under the scope of Chapter 20 of the Dallas City Code.
- (3) The director determines that the complainant has failed to reasonably cooperate in the investigation of the complaint or has abandoned the complaint.
- (4) The director determines that the preponderance of the evidence does not establish a violation of Chapter 20 of the Dallas City Code.
- (5) The respondent establishes to the satisfaction of the director at any point in the process that a violation has been remedied and that the respondent has voluntarily complied with Chapter 20 of the Dallas City Code.
- (6) The respondent pays the civil penalty.
- (7) On appeal, the municipal judge reverses the director's final determination that a civil penalty was inappropriate or a violation occurred.

(f) Forms and procedures. The director may prescribe forms and additional administrative procedures for the closure of complaint investigations.

(g) Citations.

(1) Issuance of citation if the respondent does not voluntarily comply. If the respondent does not establish to the satisfaction of the director that a violation has been remedied and that the respondent has voluntarily complied with Chapter 20 of the Dallas City Code within 10 business days of receipt of the notice of violation, the director will issue a citation for a violation of Chapter 20 of the Dallas City Code.

(2) Requirements of citation. A citation issued under Chapter 20 of the Dallas City code must:

- (A) include the nature, date, and location of the violation;
- (B) notify the person found liable for violating Chapter 20 of the Dallas City Code that they may appeal the civil penalty to the municipal court and present evidence;
- (C) provide information about how to file a notice of appeal and the cost of appeal; and
- (D) notify the person charged with violating Chapter 20 of the Dallas City Code of the potential penalties if the person is held liable.

(3) Answering citation. An answer to a citation may be made in either of the following ways:

(A) By returning the citation, on or before the 31st day from the date the citation was issued, with the applicable civil penalty.

(B) By filing a notice of appeal with the municipal court clerk.

(4) Failure to answer citation. A person who fails to answer a citation issued under Chapter 20 of the Dallas City Code and these rules is considered to have admitted liability for the violation charged. Upon proof of service by the city, the municipal judge shall issue, in writing, an order of liability and assess against the person charged with the violation an appropriate amount of administrative penalties.

RULE 15. APPEAL.

(a) Hearing before municipal judge. Hearings under this rule must be held before a municipal judge. The respondent must personally appear, with or without counsel, before the municipal judge on the hearing date. The person charged in the citation must be present at the hearing and cannot be represented by anyone other than an attorney who has a license to practice law in Texas, which is in good standing.

(b) Pleading. At the hearing, the person found liable can plead not liable or plead liable and that the civil penalty is inappropriate and have a hearing before the municipal judge. If the person is found not liable, the charge will be dismissed. If the person is found liable but that the civil penalty is inappropriate, the judge may modify the civil penalty. If the person charged is found liable and the civil penalty is appropriate, the civil penalty assessed by the director is affirmed.

(c) Rules of evidence. The formal rules of evidence do not apply to the hearing, and any relevant evidence will be admitted if it is competent and reliable. The municipal judge shall decide if the defendant has committed an offense under Chapter 20 of the Dallas City Code, after giving due weight to all proof and defenses established by these rules or other applicable law.

(d) Rights of parties at hearing. Each party has the right to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses on any matter relevant to the issues, and to rebut evidence.

(e) Civil penalty.

(1) A person found liable is only responsible for a civil penalty of no more than \$500. The municipal judge may modify the civil penalty assessed by the director.

(2) If the civil penalty is not timely paid, the civil penalty may be referred to a collection agency and the cost to the city for the collection services will be assessed as costs, at the rate agreed to between the city and the collection agency, and added to the judgment.

(3) The city may enforce the municipal judge's order by filing a civil suit for collection of the civil penalty and any associated fees and costs.