

ORDINANCE _____

**RELATING TO PUBLIC WELFARE AND EMPLOYEE BENEFITS;
AMENDING CHAPTER 17, ADDING ARTICLE IV EARNED SICK TIME.**

WHEREAS, under Arizona Revised Statutes Section 23-364(I) the City has authority to prescribe employee benefits related to earned sick time within the boundaries of Tucson; and

WHEREAS, approximately 50% of private sector workers in Tucson—including 56% of Hispanic workers, 72% of service workers, and 82% of workers employed less than 35 hours a week in the city—currently have no access to paid sick time for personal or family health needs; and

WHEREAS, earned sick leave enables workers to seek early and routine medical care for themselves and their family members, reduces public and private health care costs, promotes preventive health services, protects the public’s health in Tucson by reducing the risk of contagion, and promotes the economic stability of workers and their families; and

WHEREAS, employees in Tucson should not lose their jobs or face workplace discipline while they use earned sick time to care for themselves or their families.

**NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND
COUNCIL OF THE CITY OF TUCSON, ARIZONA, AS FOLLOWS:**

Section 17-20. Title

This Article may be cited and shall be known as “earned sick time”.

Section 17-21. Purpose.

The purpose of this Article is to assist all workers in Tucson in addressing their own health and safety needs and the health and safety needs of their families by requiring employers to provide a minimum amount of earned sick time, including time for the care of family members.

Section 17-22. Definitions.

(a) As used in this Chapter:

(1) “Earned sick time” means time that is compensated at the same hourly rate and with the same benefits, including health care benefits, as the employee normally earns during hours worked and is provided by an employer to an employee for the purposes described in Section 17-21 of this Article, but in no case shall the hourly rate be less than that provided under Arizona’s Minimum Wage, Arizona Revised Statutes Section 23-363.

(2) “Employ” means to suffer or permit to work.

(3) “Employee” includes any individual employed by an employer within Tucson for more than 100 hours in a year, except that “Employee” does not include an

individual employed by: (a) the United States government, (b) the state of Arizona, including any office, department, division, agency, authority, bureau, board, council or other unit of state government, including the legislature and the judiciary, (c) the city of Tucson, (d) any employees covered by Arizona Revised Statutes Section 15-502(A), or (e) any local government, county or municipality.

(4) "Employer" includes any corporation, proprietorship, partnership, joint venture, limited liability company, trust, association, individual or other entity acting directly or indirectly in the interest of any employer in relation to an employee. "Employer" does not include: (a) the United States government, (b) the state of Arizona, including any office, department, division, agency, authority, bureau, board, council or other unit of state government, including the legislature and the judiciary, (c) the city of Tucson, or (d) any local government, county or municipality.

(5) "Family member" means:

(A) a biological, adopted or foster child, a stepchild or legal ward, or a child to whom the employee stands *in loco parentis*;

(B) a biological, foster, stepparent or adoptive parent or legal guardian of an employee or an employee's spouse or civil union partner, or a person who stood *in loco parentis* when the employee was a minor child;

(C) a person to whom the employee is legally married under the laws of any state;

(D) a civil union partner registered pursuant to Section 17-71;

(E) a grandparent or spouse or civil union partner of a grandparent;

(F) a grandchild;

(G) a biological, foster, or adopted sibling, or the spouse or civil union partner of a biological, foster or adopted sibling; or

(6) "Health Care Professional" means any person licensed under federal or Arizona law to provide health care services, including, but not limited to, nurses, doctors and emergency room personnel.

(7) "Retaliation" means denial of any right guaranteed under this Article and any threat, discharge, suspension, demotion, reduction of hours, application of absence control policies that count an employee's use of earned sick time as an absence that may lead to adverse action, or any other adverse action against employees for the exercise of any right guaranteed herein, including any sanctions against an employee who is a recipient of benefits or rights under this Article. (

Section 17-23. Use and accrual.

- (a) Employees of an employer with fewer than 10 employees shall accrue a minimum of one hour of earned sick time for every 30 hours worked. Employees shall not be entitled to use more than 40 hours of earned sick time per year, unless the employer selects a higher limit.
- (b) Employees of an employer with 10 or more employees shall accrue a minimum of one hour of earned sick time for every 30 hours worked. Employees shall not be

entitled to use more than 56 hours of earned sick time per year, unless the employer selects a higher limit.

- (c) In determining the number of employees performing work for an employer for compensation during a given week, all employees performing work for compensation on a full-time, part-time or temporary basis shall be counted. In situations in which the number of employees who work for an employer for compensation per week fluctuates above and below 10 employees per week over the course of the year, an employer is required to provide earned sick time pursuant to subsection (b) of this Section if it maintained 10 or more employees on the payroll for some portion of a day in each of 20 different calendar weeks, whether or not the weeks were consecutive, in either the current or the preceding year (irrespective of whether the same individuals were in employment in each day).
- (d) All employees shall accrue earned sick time as follows:
 - (1) Earned sick time as provided in this Section shall begin to accrue on July 1, 2016, or upon commencement of the employee's employment, whichever is later.
 - (2) Employees shall be entitled to use accrued earned sick time beginning on the 90th calendar day following commencement of their employment or July 1, 2016, whichever is later. After the 90th calendar day of employment, employees may use earned sick time as it is accrued.
 - (3) Employees who are exempt from overtime requirements under 29 U.S.C. Section 213(a)(1) of the federal Fair Labor Standards Act will be assumed to work 40 hours in each work week for the purposes of earned sick time accrual unless their normal work week is less than 40 hours, in which case earned sick time accrues based on that normal work week.
 - (4) Accrued unused earned sick time shall carry over from year to year but an employer is not required to permit an employee to use more than the maximum time provided for in subsections (a) and (b) of this Section in a year.
 - (5) Nothing in this Section 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 sick time that has not been used.
 - (6) 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 sick time accrued at the prior division, entity or location and is entitled to use all earned sick time as provided in this section.
 - (7) 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 sick time accrued when employed by the original employer and are entitled to use all earned sick time previously accrued.
- (e) Employees may use earned sick time:
 - (1) For an employee's mental or physical illness, injury or health condition; an employee's need for medical diagnosis, care, or treatment of a mental or physical illness, injury or health condition; an employee's need for preventive medical care; or
 - (2) For care of a family member with a mental or physical illness, injury or health condition; care of a family member who needs medical diagnosis, care, or

- treatment of a mental or physical illness, injury or health condition; care of a family member who needs preventive medical care; or
- (3) For meetings at a child's school or place of care related to the child's health or disability; or
 - (4) For closure of the employee's place of business by order of a public official due to a public health emergency; for an employee's need to care for a child whose school or place of care has been closed by order of a public official due to a public health emergency; or when it has been determined by the health authorities having jurisdiction or by a health care provider that the employee's or employee's family member's presence in the community would jeopardize the health of others because of the employee's or family member's exposure to a communicable disease, whether or not the employee or family member has actually contracted the communicable disease; or
 - (6) Earned sick time shall be provided upon the oral or written request of an employee. When possible, the request shall include the expected duration of the absence.
 - (7) When the use of earned sick time is foreseeable, the employee shall make a good faith effort to provide oral or written notice of the need for such time to the employer in advance of the use of the earned sick time and shall make a reasonable effort to schedule the use of earned sick time in a manner that does not unduly disrupt the operations of the employer. When the use of earned sick time is not foreseeable, the employee shall notify the employer orally or in writing as soon as practicable.
 - (8) An employer may not require, as a condition of an employee's taking earned sick time, that the employee search for or find a replacement worker to cover the hours during which the employee is using earned sick time.
 - (9) Earned 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.

Section 17-24. More generous earned sick time policy.

Any employer with an earned sick time policy, such as a paid time off policy, who makes available an amount of earned sick time sufficient to meet the accrual requirements of this Article that may be used for the same purposes and under the same conditions as earned sick time under this Article is not required to provide additional earned sick time.

Section 17-25. Documentation.

- (a) For use of earned sick time of more than 3 consecutive workdays, an employer may require reasonable documentation that the earned sick time has been used for a purpose covered by Section 17-23.
- (b) If an employer chooses to require documentation of the purpose for the use of earned sick time, the employer shall pay the cost of any verification by the health care provider that is not covered by insurance or another benefit plan.
- (c) An employee must provide documentation upon request to the employer in a timely manner. The employer shall not delay the commencement of earned sick time on the basis that the employer has not yet received documentation.

(d) An employer may not require that the documentation explain the nature of the employee or employee's family member's illness or the domestic violence, sexual violence, abuse, or stalking. Any health or safety information possessed by an employer regarding an employee or employee's family member must:

- (1) be maintained on a separate form and in a separate file from other personnel information;
- (2) be treated as confidential medical records; and
- (3) not be disclosed except to the affected employee or with the express permission of the affected employee.

Section 17-26. Notice and Posting Requirements

(a) An employer shall give written notice to an employee at the commencement of employment or by July 1, 2016, whichever is later, of such employee's right to earned sick time, the amount of earned sick time, the terms of its use guaranteed under this Article, that retaliation against employees is prohibited and each employee has the right to file a complaint with the City Manager, or his or her designee, if earned sick time as required by this section is denied by the employer or the employee is retaliated against as defined in Section 17-22(a)(7), and any other means of enforcing earned sick time violations.

(b) Such notice shall be in English, Spanish, and any language that is the first language spoken by at least 10% of the employer's workforce that contains the information required in subsection (a) of this Section, as long as the City Manager has translated the notice into such language.

(c) Employers shall also display a poster in a conspicuous and accessible place in each establishment where employees are employed. The poster displayed should be in English, Spanish, and any language that is the first language spoken by at least 10% of the employer's workforce that contains the information required in subsection (a) of this Section, as long as the City Manager has translated the poster into such language.

(d) The City Manager or his or her designee shall create and make available to employers notices and posters in English, Spanish, and any other languages deemed appropriate by the City Manager, that contain the information required under subsection (a) of this Section for employers' use in complying with this Section.

Section 17-27. Employer shall retain documentation.

Employers shall retain records documenting hours worked by employees and earned sick time taken by employees, for a period of 3 years.

Section 17-28. Enforcement and penalties.

(a) Any person claiming to be aggrieved by an alleged violation of this article may file a complaint with the Office of Equal Opportunity Programs as set forth in Tucson Code Section 17-15.

(b) It is a civil infraction for an employer to not allow an employee to use or accrue earned sick time to which the employee is entitled under this Article, or to engage in retaliation against an employee as defined in Section 17-22(a)(7) of this Article.

- (1) The following penalties shall be imposed for civil infractions under this subsection:

(A) An employer found responsible for a civil infraction for the first time shall be fined not less than three hundred dollars (\$300.00) nor more than twenty-five hundred dollars (\$2,500.00) per civil infraction per employee whose rights have been violated. An employer found responsible for the same civil infraction for a second time shall be fined not less than six hundred dollars (\$600.00) nor more than twenty-five hundred dollars (\$2,500.00). An employer found responsible for the same civil infraction for a third or subsequent time shall be fined not less than nine hundred dollars (\$900.00) nor more than twenty-five hundred dollars (\$2,500.00). The imposition of a fine for a civil infraction under this section shall not be suspended.

(B) Failure of a respondent to comply with any order contained in a judgment for a civil infraction shall result in an additional fine of not less than three hundred dollars (\$300.00) nor more than twenty-five hundred dollars (\$2,500.00) for each day the respondent fails to comply. A respondent's second failure to comply with any order contained in a judgment for a civil infraction shall result in an additional fine of not less than six hundred dollars (\$600.00) nor more than twenty-five hundred dollars (\$2,500.00) for each day after the first determination of the respondent's failure to comply. A respondent's third and subsequent failure to comply with any order contained in a judgment for a civil infraction shall result in an additional fine of not less than nine hundred dollars (\$900.00) nor more than twenty-five hundred dollars (\$2,500.00) for each day after the second determination of respondent's failure to comply.

(e) It is a civil infraction for an employer to willfully violate the notice and posting requirements of Section 17-26 of this Article. An employer found responsible for a civil infraction under this subsection shall be fined not less than one hundred dollars (\$100.00) nor more than two hundred dollars (\$200.00) for each separate offense.

(f) With the consent of the employee the City Manager or his or her designee may attempt to eliminate a violation through conference, conciliation and persuasion and settle any claim through a conciliation agreement.

(g) The City Manager shall develop and implement an outreach and education program to inform employees of their rights under this Article. The City Manager or his or her designee shall distribute notices and other written materials to organizations including but not limited to childcare and elder care providers, domestic violence shelters, schools, hospitals, community health centers, and other health care providers within Tucson.

Section 17-29. Severability.

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

Section 17-30. Effective Date.

Pursuant to Section 8 of Chapter IX of the Charter of the City of Tucson, this Article shall take effect and become operative 30 days after its passage.