

DEPARTMENT OF ADMINISTRATIVE SERVICES
OFFICE OF LABOR STANDARDS ENFORCEMENT
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San Francisco Paid Sick Leave Ordinance
Administrative Code Chapter 12W

Frequently Asked Questions
First Posted 1/29/07
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Effective Date

1. Q: When does the Ordinance take effect?

A: The Paid Sick Leave Ordinance takes effect on February 5, 2007.

Scope of Ordinance

2. Q: If an employer is based outside of San Francisco but has employees who perform work in the city, do the employees accrue paid sick leave for hours worked in San Francisco?

A: Yes. All employees who perform work in San Francisco, 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 San Francisco solely to attend or present at a convention or conference are not covered by the Ordinance if they participate in San Francisco conventions or conferences for fewer than 56 hours within a calendar year; and,
- Employees who perform work in San Francisco on an occasional basis are covered by the Ordinance only if they perform 56 or more hours of work in San Francisco within a calendar year.

For specific rules governing limited and alternative San Francisco work schedules, see [Rule Number 6](#).

3. Q: Do employees accrue paid sick leave for hours worked outside of the city?

A: No. Under the Ordinance, employees accrue paid sick leave only for those hours worked within San Francisco.

4. Q: In determining whether or not an employer qualifies as a Small Business under the Ordinance, are all of its employees counted, including those who work outside of San Francisco?

A: Yes. For the purpose of calculating employer size, all persons performing work for the employer during a given week are counted, whether or not the persons work in San Francisco.

5. Q: If an employer operates three stores, each with seven employees, is it considered a Small Business under the Ordinance?

A: No. For the purpose of calculating employer size, employees performing work in different locations operated by the same employer are all counted as employees of the employer. The seven employees at each of the three stores would be considered together, totaling 21 employees for this employer. The employer would not be considered as a Small Business under the Ordinance.

6. Q: How does an employer determine whether it qualifies as a Small Business if its number of employees changes during the year?

A: A Small Business is an employer for which fewer than 10 persons, including part-time and temporary employees, work for compensation during a given week. 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, OLSE will calculate business size for the current calendar year based upon the average number of persons who worked for compensation per week during the preceding calendar year.

For example, for a business that operated the entire preceding year, the calculation would be as follows: (a) For each of the 52 weeks during the year, determine the total number of persons who worked for compensation; (b) Add these numbers together; (c) Divide by 52. If this number is below 10, then the employer would qualify as a Small Business for the current calendar year.

For new employers, OLSE 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 employee(s) began work.

For specific rules governing Small Business definition and fluctuating business size, see [Rule Number 7](#).

7. Q: Does the Ordinance cover undocumented employees?

A: Yes. All employees who work in San Francisco – whether or not they are legally authorized to work in the United States – are covered by the law. OLSE will process an employee's claim without regard to his or her immigration status. Employees filing a claim with OLSE will not be questioned about their immigration status.

8. Q: Does the Ordinance require employers to provide paid sick leave to independent

contractors?

A: No. The Ordinance applies to employees. However, merely labeling someone as an “independent contractor” does not make it so. Consistent with California law, whether a person is an employee or independent contractor is a fact-specific inquiry that is determined by a variety of factors.

For more information on how the State of California reviews issues relating to independent contractor status in wage and hour cases, see the California Division of Labor Standards Enforcement webpage [Independent Contractor versus Employee](#).

9. Q: Are household employees, such as caregivers, cooks, and house cleaners, covered by the Ordinance?

A: Yes. Household employees who perform work in San Francisco are covered by the Ordinance. Note that household workers who are properly classified as independent contractors are not covered by the Ordinance.

10. Q: If a business contracts with a temporary staffing agency to have the agency provide temporary employees to the business, who is responsible under the Ordinance to meet the obligations to the employees?

A: Both the business and the temporary staffing agency may be considered an Employer under the Ordinance and have an obligation to ensure that the requirements are met. The business 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.

11. Q: Assume an employee has worked for various businesses through a temporary staffing agency and has accrued 32 hours of paid sick leave. However, the employee has only worked for one week at his or her current assignment. Is the employee entitled to use paid sick leave?

A: Based on the limited facts presented here, yes. The temporary staffing agency has the responsibility for providing paid sick leave since the employee has worked for it for more than 90 days and accrued paid sick leave. The business has no obligation to pay the employee sick leave because the employee has not worked for it for at least 90 days and accrued paid sick leave in that assignment.

12. Q: Can an employer require employees to use paid sick leave while on family medical leave under state or federal law?

A: This question involves the interpretation of the Family Medical Leave Act (FMLA) and the California Family Rights Act (CFRA). OLSE has no jurisdiction over enforcement of either the FMLA or the CFRA. OLSE recommends that employers and employees consult

with the [Federal Department of Labor](#) regarding FMLA issues and with the California [Department of Fair Employment and Housing](#) regarding CFRA issues. In addition, employers and employees may wish to review administrative regulations implementing the FMLA (29 Code of Federal Regulations, Section 825.207) and CFRA (California Administrative Code, Title 2, Section 7297.5)

13. Q: Can an employee who is receiving paid sick leave also get State Disability Insurance (SDI) or Workers' Compensation (WC) benefits?

A: It is possible for an employee who is receiving paid sick leave to be eligible for SDI and WC benefits at the same time; in fact, such employees may find it helpful to integrate these benefits with paid sick leave in order to receive their full (or regular) pay during periods of temporary disability. However, whether an employee is eligible for SDI or WC benefits is governed by the California Unemployment Insurance and Labor Codes, which also provide guidance about the integration of paid sick leave and other benefits. For more information about SDI benefits, consult the [Employment Development Department](#). For more information about Workers' Compensation benefits, consult the [Division of Compensation](#).

14. Q: Are employees of private sector employers at the San Francisco International Airport covered by the Ordinance?

A: No. The Ordinance covers employees who are employed within the geographic boundaries of San Francisco, which does not include the San Francisco International Airport (SFO).

Note that many private sector employers at SFO are covered by the City's Minimum Compensation Ordinance which provides for paid time off that may be used for sick leave, vacation, or personal necessity. For more information on the [Minimum Compensation Ordinance](#), call (415) 554-6237 or email MCO@sfgov.org.

Accrual of Paid Sick Leave

15. Q: When do employees begin to accrue paid sick leave?

A: For employees working for an employer on or before February 5, 2007, paid sick leave begins to accrue on that date. For employees hired by an employer after February 5, 2007, paid sick leave begins to accrue 90 calendar days after the employee's first day of work.

For specific rules governing breaks-in-service, see [Rule Number 4](#).

16. Q: Does an employee need to work his or her 90 calendar day eligibility period in San Francisco?

A: No. Employees begin to accrue paid sick leave on work performed in San Francisco 90 calendar days after their first day of work for an employer, irrespective of where the employees worked for the employer during their eligibility period.

17. Q: At what rate do employees accrue paid sick leave?

A: For every 30 hours worked, an employee accrues one hour of paid sick leave.

18. Q: What constitutes “hours worked” under the Ordinance?¹

A: OLSE defines “hours worked” in a manner consistent with the California Division of Labor Standards Enforcement’s [*Enforcement Policies and Interpretations Manual Section 46*](#). Topics include travel time, meal periods, and reporting time.

Note that while Reporting Time is not considered "hours worked" for purposes of calculating overtime, it is compensable time and, thus, must be included in calculating sick leave accrual.

19. Q: Does paid sick leave accrue on overtime hours worked?

A: It depends on the employee's status under the federal Fair Labor Standards Act (FLSA) and California labor law. For employees who are not exempt from the overtime provisions of the FLSA and California labor law, paid sick leave accrues on all hours worked, including overtime hours worked.

For employees who are exempt from the overtime provisions of the FLSA and California labor law (an Exempt Employee), paid sick leave accrues based upon a 40-hour work week absent evidence that the Exempt Employee’s regular work week is less than 40 hours. In instances where there is evidence that the Exempt Employee's regular work week is less than 40 hours, paid sick leave accrues based upon that regular work week.

For specific rules governing the accrual of paid sick leave for exempt employees, see [Rule Number 8](#).

20. Q: Does paid sick leave accrue when employees are on vacation or out sick?

A: No. Paid sick leave does not accrue when employees are not working, such as when they are out on vacation or out sick.

21. Q: Do employees accrue 1 1/3 hours of paid sick leave for a 40-hour work week?

A: No. Paid sick leave accrues only in hour-unit increments, not in fractions of an hour.

¹ Added 9/28/2007

Assuming a 40-hour work week, for their first week of work after employees begin to accrue paid sick leave, they accrue one hour of paid sick leave, and have worked 10 of the 30 hours needed to accrue their second hour of paid sick leave. After employees work 20 additional hours (for 60 total hours worked since beginning to accrue paid sick leave), they will have accrued two hours of paid sick leave.

22. Q: Do employees lose accrued paid sick leave hours at the end of the year?

A: No. Unused hours of paid sick leave that employees have accrued do not expire at the end of the year.

23. Q: Is there a cap on how much paid sick leave an employee can accrue?

A: Yes. For employees of Small Businesses (ones for which fewer than 10 persons, including part-time and temporary employees, work for compensation during a given week), there is a cap of 40 hours of accrued paid sick leave. For employees of other employers, there is a cap of 72 hours of accrued paid sick leave.

24. Q: Is the cap on paid sick leave an annual cap?

A: No. The Ordinance sets a cap on how many hours of paid sick leave an employee may have “in the bank” at any given time. It does not limit how many hours of paid sick leave an employee may accrue or use in a year.

For example, John works for a Small Business. From January through July, John accrues 40 hours of paid sick leave. As an employee of a Small Business, that is his cap. In August, John falls ill and uses all 40 hours of paid sick leave that he has “in the bank”. When John comes back to work, he begins to accrue new hours of paid sick leave. Over his next three months of work, John accrues 16 new hours of paid sick leave. In November, he falls ill again and uses those 16 hours of paid sick leave that he now has “in the bank”. In all, John accrued and used 56 hours of paid sick leave so far that year.

25. Q: Once employees hit their cap of paid sick leave, do they get credit for additional hours worked?

A: No. Once employees hit their cap of paid sick leave, they no longer accrue paid sick leave until they use some of the hours they have “in the bank”.

For example, Jane works for a Small Business. From January through July, Jane accrues 40 hours of paid sick leave. As an employee of a Small Business, that is her cap. She continues to work, without using any of the paid sick leave that she has accrued, for the next two years. At that point, she still has only 40 hours of paid sick leave “in the bank”. Jane then falls ill and uses 8 hours of her paid sick leave. She now has 32 hours of paid sick leave left. When she returns to work, she will begin to accrue new hours of paid sick leave back up to her cap.

26. Q: Does the Ordinance require employers to provide 72 hours of paid sick leave per year (40 hours of paid sick leave per year for Small Businesses)?

A: No. Under the Ordinance, employees accrue one hour of paid sick leave for every 30 hours worked. The number of hours of paid sick leave that an employee earns is based upon how many hours the employee works.

27. Q: If a large employer offers its employees 72 hours of paid sick leave per year, is this policy sufficient to meet the requirements of the Ordinance?

A: Not necessarily. It depends on the facts of the situation. While the law caps at 72 hours the amount of paid sick leave an employee of a large employer may accrue, accrued paid sick leave hours do not expire at the end of the year – and there is no cap on the number of hours of paid sick leave that an employee may use in a given year.

As an example, David accrues 72 hours of paid sick leave in year 1. In January of year 2, he falls ill and uses all of those hours at that time. David comes back to work and over the next nine months accrues 48 new hours of paid sick leave. Then, in November, he falls ill again and uses those 48 hours of paid sick leave. In total, under this scenario, David has used 120 hours of paid sick leave in year 2. Under this scenario, a policy that only permits employees to use 72 hours of paid sick leave per year would be insufficient to meet the requirements of the law.

28. Q: If an employer offers Paid Time Off (PTO) or vacation days that may be used for any purpose, including sick leave, beyond the minimum accrual requirements in the Ordinance, does the employer need to offer additional paid sick leave?

A: No. If an employer has a paid leave policy, such as a PTO or vacation policy, that makes available to employees paid leave that may be used for the same purposes specified in the Ordinance (or for any purpose) and that is sufficient to meet the Ordinance's requirements for paid sick leave accrual, then it is not required to provide additional paid sick leave.

OLSE recommends that employers who implement a policy that requires employees to use PTO or vacation time when they are sick inform their employees of that requirement prior to the employees' requested use of paid leave.

29. Q: Assume that when the Ordinance becomes effective on February 5, 2007, a Small Business would like to credit its full-time employees with 40 hours of Paid Time Off, which may be used for any purpose including sick leave. If one of its employees uses 40 hours for a vacation in March, and then falls ill in September, does the employer need to provide additional hours of paid sick leave?

A: Not necessarily. The employee would be entitled to additional paid leave only at the

point at which the employee has worked enough hours to accrue new paid sick leave beyond what was credited by the employer as PTO.

In this example, the employee would have to work 1,200 hours from February 5 to September before he or she would have accrued the 40 hours of paid leave (40 x 30) that had already been used in March for the vacation. Only after working those 1,200 hours would the employee begin to accrue more paid sick leave hours.

30. Q: Is it acceptable for employers to establish payroll systems under which employees accrue paid sick leave in less than one-hour increments?

A: Yes. The Ordinance establishes a minimum standard for computing accrual of paid sick leave – one-hour increments. The Ordinance does not bar an employer from having a system or policy that accrues paid sick leave in smaller amounts, so long as the system or policy does not fall below the standard set by the Ordinance.

31. Q: Are employers required to pay employees for unused paid sick leave when the employees quit, retire, or are fired?

A: No. The Ordinance does not require an employer to pay employees for accrued unused paid sick leave upon the employee’s termination, resignation, retirement, or other separation from employment. However, if an employer is using a Paid Time Off (PTO) or vacation policy to comply with the Ordinance, employers need to comply with other applicable laws, such as California law, which would require the payout of PTO or vacation upon separation of an employee.

For specific rules governing breaks-in-service, see [Rule Number 4](#).

32. Q: What constitutes a “separation from employment” under the Ordinance and *Rules Implementing the Paid Sick Leave Ordinance*?²

A: In determining whether or not there has been a “separation from employment” under the Ordinance and *Rules*, OLSE will consider all relevant circumstances including, but not limited to, whether an employer has demonstrated compliance with provisions of the [California Labor Code](#) and [California Unemployment Insurance Code](#) that require, respectively, immediate payment of final wages and written notice as to change in employment relationship.

Use of Paid Sick Leave

33. Q: For what purposes can employees use paid sick leave?

² Added 9/28/2007

A: Employee may use paid sick leave not only when they are ill, injured, or for the purpose of receiving medical care, treatment, or diagnosis, but also to aid or care for a Family Member or Designated Person when those persons are ill, injured, or receiving medical care, treatment, or diagnosis.

34. Q: Does the Ordinance require employers to permit employees to use paid sick leave when they are working or scheduled to work outside of San Francisco?

A: No. The Ordinance requires employers to allow employees to use paid sick leave when they are working or scheduled to work in San Francisco. However, an employer may choose to permit employees to use paid sick leave when the employees are working or scheduled to work outside of San Francisco.

35. Q: If an employee is transferred to work outside of San Francisco, what happens to the employee's accrued paid sick leave hours?

A: Employers may allow employees to use paid sick leave hours outside of San Francisco. However, if the employer does not allow the use of paid sick leave hours outside of San Francisco, those hours remain "in the bank" for four years from the employee's last day of work in San Francisco, available for use should the employee work or be scheduled to work in San Francisco during that time.

36. Q: Who qualifies as a Family Member under the Ordinance?

A: Family Member under the Ordinance is defined as a: child; parent; legal guardian or ward; sibling; grandparent; grandchild; and spouse or registered domestic partner under any state or local law. These relationships include not only biological relationships but also relationships resulting from adoption, step-relationships, and foster care relationships.

37. Q: What is a Designated Person?

A: All employees may use paid sick leave when they or a member of their family are ill or injured or for the purpose of receiving medical care, treatment, or diagnosis. In addition, if an employee has no spouse or registered domestic partner, the employee may designate one person for whom s/he may use paid sick leave to provide aid or care. This designation must be on file with the employer before the employee may use paid sick leave for this purpose, unless the employer has failed to take affirmative steps to offer the employee an opportunity to list a Designated Person.

38. Q: Do employers have the obligation to take affirmative steps to offer employees without a spouse or registered domestic partner an opportunity to list a Designated Person?

A: Yes. If an employer fails to provide an employee without a spouse or domestic partner

the opportunity to list a Designated Person and the employee requests use of paid sick leave to care for a non-Family Member, the employer must permit the employee to select a Designated Person and to take paid sick leave for that person at that time. That Designated Person will remain on file until the next opportunity for the employee to change his or her designation.

39. Q: When do employers need to offer employees without a spouse or domestic partner the opportunity to list a Designated Person?

A: Employers must offer the opportunity to make a designation no later than 30 work hours after the date paid sick leave begins to accrue. As noted above, for employees working for an employer on or before February 5, 2007, paid sick leave begins to accrue on that date. Therefore, employers must offer the opportunity for those employees to make a designation within 30 San Francisco work hours of February 5, 2007.

For employees hired by an employer after February 5, 2007, paid sick leave begins to accrue 90 calendar days after their first day of work. Employers must offer to these employees the opportunity to make a designation no later than 30 San Francisco work hours after 90 calendar days have elapsed from the first day of work.

40. Q: Is it acceptable for employers to offer the annual opportunity to list a Designated Person to employees without a spouse or registered domestic partner at the same time, for example during the employer's annual open designation period?

A: Yes. However, as noted in the preceding Q and A, there are strict time deadlines for the requirement of initially offering employees an opportunity to list a Designated Person.

41. Q: Is it reasonable to require employees to provide advance notification for every use of paid sick leave?

A: What is reasonable depends on the specific situation. An employer's policies or practices should not be so onerous that they deter employees from legitimate use of paid sick leave.

For specific rules governing employee notification of paid sick leave use, see [Rule Number 1](#).

42. Q: Is it reasonable to require employees to provide a doctor's note for every use of paid sick leave?

A: What is reasonable depends on the specific situation. In general, an employer's policy should not be so onerous that it deters employees from legitimate use of paid sick leave.

For specific rules governing employer verification of paid sick leave use, see [Rule Number 2](#).

43. Q: In situations of a pattern or clear instance of paid sick leave abuse, is it reasonable to require a doctor's note or other verification for that employee's use of paid sick leave on those days?

A: Based on the limited facts presented regarding a pattern of paid sick leave abuse, the requirement appears reasonable. In the case of suspected sick leave abuse, an employer may review sick leave use with heightened scrutiny. Examples of suspected sick leave abuse include but are not limited to: (a) taking paid sick leave on days when an employee's request for vacation leave has been denied; (b) a pattern of taking paid sick leave on days when the employee is scheduled to work a shift that may be perceived as undesirable; and, (c) a pattern of taking paid sick leave on Mondays or Fridays or immediately following a holiday.

For specific rules governing employer verification of paid sick leave use, see [Rule Number 2](#).

44. Q: Are there medical privacy laws that employers must follow when verifying that an employee's use of paid sick leave is consistent with the Ordinance?

A: Yes. In confirming that an employee's use of paid sick leave is consistent with the Ordinance, employers must abide by all federal, state, and local medical privacy laws. For more information regarding privacy of medical issues in the workplace, contact the [Department of Labor](#), the [Department of Health & Human Services](#), and the [Equal Employment Opportunity Commission](#) regarding federal law and the [Fair Employment & Housing Commission](#) regarding state law.

45. Q: Can an employer require its employees to use paid sick leave in one hour increments?

A: Yes. However, an employer may choose to permit its employees to use paid sick leave in less than one hour increments if the employer wishes to do so.

For specific rules governing other employer requirements pertaining to amount of paid sick leave taken, see [Rule Number 3](#).

46. Q: Can an employer require its employees to take off the full day to use paid sick leave?

A: What is a reasonable requirement depends on the specific situation. Under the Ordinance, employees may use paid sick leave to receive medical care, treatment, or diagnosis, which may only require limited leave. In most employment situations, a requirement that an employee take off more hours than requested would not be considered reasonable.

For specific rules governing other employer requirements pertaining to amount of

paid sick leave taken, see [Rule Number 3](#).

47. Q: How many hours of paid sick leave may an employee use on days when the employee is scheduled to work more than 8 hours (i.e. when the employee is scheduled to work overtime hours)?³

A: An employee may use paid sick leave hours for all hours the employee is scheduled to work, including regular and overtime hours. However, all hours would be paid to the employee at the regular sick leave rate of pay.

48. Q: When can an on-call employee use paid sick leave under the Ordinance?

A: An on-call employee may use paid sick leave as permitted under the Ordinance when s/he is at work or scheduled to work. If an employer decides to allow the use of paid sick leave in other circumstances, the employer may do so.

49. Q: Is paid sick leave to be available to employees as soon as they accrue it, or can an employer make it available at the end of the pay period or some other future point in time?

A: Paid sick leave is to be available to employees as soon as they accrue it

Payment of Sick Leave

NOTES: In no case may employees be paid sick leave at a rate of pay that is less than the San Francisco minimum wage.

For specific rules governing rate of pay for piece rate and commissioned employees, see [Rule Number 5](#).

50. Q: What is the sick leave rate of pay for employees who are paid an hourly wage?

A: The sick leave rate of pay for employees who are paid an hourly wage is the employee's hourly wage.

51. Q: If an employer provides benefits on an hourly basis, is the employer required to provide the same benefits when its employees are using paid sick leave hours?

A: Yes.

52. Q: What is the sick leave rate of pay for employees who are paid an annual salary?

³ Added 9/28/2007

A: The sick leave rate of pay for employees who are paid an annual salary is determined as follows:

- Divide the annual salary by 52 to get the weekly salary;
- Divide the weekly salary by the number of hours the employee is regularly scheduled to work.
 - For employees who are **not exempt** from the overtime provisions of the Fair Labor Standards Act (FLSA) and California law, the weekly salary must be divided by 40 or fewer hours, even if the non-exempt employee regularly works more than 40 hours per week.
 - For employees who are **exempt** from the overtime provisions of the FLSA and California law (an Exempt Employee), the weekly salary should be divided by 40 hours, unless there is evidence that the Exempt Employee's regular work week is less than 40 hours. In such instances, the weekly salary should be divided by the number of hours worked during a regular work week;

53. Q: What is the sick leave rate of pay for an employee who has two jobs at different pay rates for the same employer (or an employee whose rate of pay fluctuates for the same job)?

A: For an employee who has two jobs at different pay rates for the same employer, or for an employee whose rate of pay fluctuates for the same job, the employer shall reimburse the employee at a rate of pay equal to the scheduled rate(s) of pay for the job during which sick leave is taken.

54. Q: Are tips included when calculating the sick leave rate of pay for tipped employees?

A: No. The sick leave rate of pay is based only upon compensation paid by the employer.

55. Q: When must employees be paid for sick leave?

A: Sick leave must be paid no later than the payday for the next regular payroll period after the sick leave was taken by the employee. However, if the employer has a reasonable verification requirement, the employer is not obligated to pay sick leave until the employee has complied with the verification requirement.

56. Q: Can employers, including employers covered by the Minimum Compensation Ordinance, raise employee wages in lieu of providing paid sick leave?

A: No. The accrual of paid sick leave under the Ordinance may not be waived unless, per Section 12W.9 of the Ordinance, it is expressly waived through a bona fide collective bargaining agreement in clear and unambiguous terms.

57. Q: Can employers offer their employees the option of "cashing out" unused paid sick leave at the end of the year?

A: No. Employees may not “cash out” accrued paid sick leave hours unless, per Section 12W.9 of the Ordinance, it is expressly provided for through a bona fide collective bargaining agreement in clear and unambiguous terms.

Notice and Posting

58. Q: Are employers required to post a notice informing employees of their rights under the Ordinance?

A: Yes. Employers must post a notice informing employees of their rights in a location where employees can read it easily. The notice, published in six languages, will be mailed to employers in January 2007 with the City’s business registration mailing. Employers may also download the notice from OLSE’s website: www.sfgov.org/olse/pslo.

Employer Records

59. Q: What records do employers need to retain to be in compliance with the Ordinance?

A: Employers must retain records documenting hours worked by employees and paid sick leave taken by employees for a period of four years and must allow OLSE access to such records. In the case of Exempt Employees, employers must maintain records of work schedules and days worked, but do not need to maintain records of actual hours worked.

Employers must retain employee records for a period of four years even if the employee ceases to perform work in San Francisco or if there is a separation of employment.

Exercise of Rights Protected; Retaliation Prohibited

60. Q: If an employer has an absence control policy that may lead to discipline, discharge, demotion, suspension, or any other adverse action, can an employee’s use of paid sick leave count against him or her?

A: No. It is unlawful for an employer absence control policy to count paid sick leave taken under the Ordinance as an absence that may lead to or result in discipline, discharge, demotion, suspension, or any other adverse action.

61. Q: Can an employer retaliate against an employee for using paid sick leave?

A: No. It is unlawful for an employer or any other person to discharge, threaten to discharge, demote, suspend, or in any manner discriminate or take adverse action against any person

in retaliation for exercising rights protected under the Ordinance. If an employee believes that s/he has been subjected to retaliation, the employee can either file a claim with OLSE or file a lawsuit in court against the employer.

62. Q: Can employees covered by a collective bargaining agreement file a claim with OLSE?

A: Yes. All employees, including those covered by a collective bargaining agreement, may file a claim with OLSE.

Waiver through Collective Bargaining

63. Q: Does the Ordinance apply to employees covered by a collective bargaining agreement?

A: Yes. The Ordinance applies to all persons who perform work in San Francisco, including those employees covered by a bona fide collective bargaining agreement in effect as of February 5, 2007. A bona fide collective bargaining agreement is a written contract concerning wages, hours, and working conditions that is collectively bargained by an employer and a recognized union that represents the employees.

64. Q: May a collective bargaining agreement waive some or all of the provisions of the Ordinance?

A: Yes. The Ordinance permits waiver of some or all of its provisions through a collective bargaining agreement. The waiver must be in a bona fide collective bargaining agreement, must be express, and must be in clear and unambiguous terms. The parties to a collective bargaining agreement may negotiate any language they desire to effectuate a waiver, provided that the language meets the “clear and unambiguous” standard of the Ordinance. OLSE will not interfere with or participate in the negotiation of such language.

There may be different ways to accomplish an effective waiver in a collective bargaining agreement. One approach that OLSE would recognize for purposes of enforcement is as follows: “Waiver of San Francisco Paid Sick Leave Ordinance: To the fullest extent permitted, this agreement shall operate to waive any provisions of the San Francisco Paid Sick Leave Ordinance, San Francisco Administrative Code Section 12W, and shall supersede and be considered to have fulfilled all requirements of said Ordinance as presently written, and or amended during the life of this agreement.”

Business Assistance Resources

65. Q: Where can employers get business assistance resources to help them comply with the

Ordinance?

A: The [Mayor's Office of Economic and Workforce Development](#) is prepared to provide business assistance resources to aid employers in complying with the Ordinance. The office can be reached at (415) 554-6969 or www.sfgov.org/moed.

This document is intended to provide general guidance to employers and employees about the Paid Sick Leave Ordinance. Application of the Ordinance in particular circumstances may depend on the specific facts presented.

Please email further questions to PSL@sfgov.org

Or call (415) 554-6271

www.sfgov.org/olse/pslo