

Received Allegheny County Council
3/26/21 10:17 am

COUNTY OF



ALLEGHENY

RICH FITZGERALD
COUNTY EXECUTIVE

March 16, 2021

Jared Barker, Chief Clerk
Allegheny County Council
119 County Courthouse
436 Grant Street
Pittsburgh, PA 15219

Mr. Barker:

In accordance with Article IV, Section 5 h) of the Allegheny County Home Rule Charter, I hereby return, with my veto, County Council Bill No. 11481-20 (Paid Sick Days Act).

Before outlining my objections to the ordinance, let me start by saying that I fully support paid sick leave. There are many reasons that such a policy makes sense. Quite simply, we don't want people going to work who are contagious. Millions of people in this country, and thousands in our own community, do not have paid sick days to care for their own health. For many, particularly those earning the lowest wage, the decision to stay home or go to work when sick isn't really a decision. In order to pay their bills, they must work – and so they go to work ill, including with contagious illnesses that threaten public health. When you look at how this impacts people of color, the statistics are more staggering. According to the National Paid Sick Days Coalition, more than half (54%) of Latinx workers do not earn a single paid day and 38% of Black workers have no access to paid sick days.

In the alternative, workers with paid sick days are more likely to pursue routine medical appointments and preventive care, because they have the luxury of using paid sick leave to care for themselves. Paid sick time helps workers stay healthy and productive, which benefits everyone.

Establishing a policy of paid sick leave for the county was being explored by my administration prior to the county's first case of COVID. We had dozens of conversations with stakeholders to hear their input. As the coronavirus numbers increased locally, our attention and time had to turn to response. Fortunately, the Families First Coronavirus Response Act (FFCRA), addressed the need in the interim, providing paid sick leave and expanded family and medical leave. The federal measure allowed us to take a pause in our own efforts while we ramped up testing, preventative efforts, and began to look to distribution of vaccine.

OFFICE OF THE COUNTY EXECUTIVE

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Earlier this year, I asked some of those stakeholders to convene to discuss the ordinance which had been proposed by Council. With the onset of the pandemic locally a year ago, we have seen the vast importance of individuals having the ability to remain at home and care for themselves and their families. That working group indicated its support of a paid sick leave proposal and recognized that phased implementation and an appropriate timeline was necessary.

What wasn't addressed, and what has led to my veto of this ordinance, was the appropriate process through which such policy should be established. County Solicitor Andy Szefi conveyed the Law Department's concerns to you with the process being used for passage of this legislation. Rather than the process followed by Council, this regulation should have been put in place following the provisions of the Local Health Administration Law (LHAL).

More specifically, Allegheny County's authority to impose rules and regulations aimed at public health and safety is set forth in Sections 12010 and 12011 of the LHAL, which read in relevant part as follows:

(T)he county department of health... shall make and enforce such rules and regulations, **subject to the approval of the county commissioners** or, in the case of a joint-county department of health the joint-county health commission, and institute such programs not inconsistent with the law as may be necessary for the promotion and preservation of the public health.

The board of health shall exercise the rule-making power conferred upon the county department of health by the formulation of rules and regulations for the prevention of disease, for the prevention and removal of conditions which constitute a menace to health, and for the promotion and preservation of the public health generally. **Rules and regulations formulated by the board of health shall be submitted to the county commissioners... for approval or rejection.** Within thirty (30) days after the receipt of the rules and regulations, the county commissioners... shall give written notice to the secretary of the board of their approval or rejection.

LHAL at Sections 12010(f) and 12011(c) (emphasis added).

This process needs to **follow** the promulgation of rules and regulations by the Allegheny County Health Department via the Board of Health. Should such rules and regulations be promulgated, they then proceed to County Council in the form of an ordinance as the role of "county commissioners" has been replaced by County Council and the County Executive under the home rule form of government.

As you are all aware, this process was not followed. I commend Council for their interest in enacting this policy and taking steps to protect the residents of this county. We have the same goal but are going about reaching it in different ways. This issue is too important to our community, and particularly to those workers who would have protection in the form of paid sick leave, for it to be done the wrong

way. It's simply not fair to give employees in our county false hope that they're protected when the process followed by Council jeopardizes that.

Following Council's vote last week, I spoke directly with Dr. Debra Bogen, Director of the Allegheny County Health Department, to let her know that I would be requesting that the department begin the process to promulgate paid sick leave regulations following the provisions laid out in the LHAL. This morning, I sent a formal letter of request to Dr. Bogen and Dr. Lee Harrison, Chair of the Board of Health, doing exactly that. Even if Council votes to override the veto of the regulated crafted through the wrong process, we will have begun the process to do this the right way.

Following the LHAL means that it will be several more months before Allegheny County has its own paid sick leave regulations. If we want to protect our residents, families, community and public health, we must do this in the right way to ensure that it withstands any legal challenge. For the aforementioned reasons, I have vetoed County Council Bill No. 11481-20.

Sincerely,


Rich Fitzgerald

cc: Members, County Council

Received Allegheny Conf Council
3/16/21 10:17 am

ALLEGHENY COUNTY EXES
MAR 9 2021 PM 6:40

Bill No. 11481-20
As amended in committee, 3/3/21

NO. _____

ORDINANCE

An Ordinance of the County of Allegheny, Commonwealth of Pennsylvania, amending and supplementing the Allegheny County Code of Ordinances, Division 5: Health and Sanitation, through the creation of a new Chapter 575, entitled "Paid Sick Days Act," in order to improve the public health by granting paid sick time to employees in the County.

WHEREAS, as the County of Allegheny places paramount importance upon the health, safety, and welfare of its residents, it is incumbent upon the County to promote policies that are in the best interest of its citizens; and

WHEREAS, the COVID-19 outbreak has clearly and unambiguously demonstrated the fundamental importance of social distancing and limiting exposure to potential disease carriers as a means of controlling the speed with which an infectious disease spreads; and

WHEREAS, members of the workforce throughout Allegheny County lack access to paid sick days, yet frequently have contact with the general public, posing a high public health risk and increasing the likelihood of transmission of communicable illnesses; and

WHEREAS, research conducted in 2013 by the University of Pittsburgh showed that access to paid sick leave can reduce workplace influenza infections by 6 percent; and

WHEREAS, the introduction of paid sick time would result in benefits to both employees and employers, as studies repeatedly demonstrate that employees who have access to paid sick time are more productive and less likely to come to work ill and unfit to perform their job as effectively and efficiently as possible, while also reducing the likelihood transmitting illnesses to coworkers; and

WHEREAS, paid sick time policies have also been shown to both reduce employee turnover and strengthen employee loyalty; and

WHEREAS, access to paid sick days further benefits children, as it affords parents the time to tend to their sick children without sacrificing a day's pay, thereby helping to prevent delayed medical treatment to children and possible hospitalizations; and

WHEREAS, providing paid sick time for residents of the County and prohibiting employers from interfering with, restraining, or denying an employee's use of paid sick time will improve the public health and protect employees who exercise the rights granted to them through this Ordinance from retaliation.

The Council of the County of Allegheny hereby enacts as follows:

SECTION 1.

The Allegheny County Code of Ordinances, Division 5: Health and Sanitation, is hereby amended as follows:

**Chapter 575
Paid Sick Days Act**

§575-1. Definitions.

The following words, terms and phrases when used in this article shall be defined as follows, unless the context clearly indicates otherwise:

- A. AGENCY. A Department or other County agency designated by the Allegheny County Chief Executive to effectuate the provisions of this Chapter.
- B. CALENDAR YEAR. A regular and consecutive 12-month period, as determined by an employer and communicated to all employees.
- C. CONSTRUCTION UNION. A labor union that represents for purposes of collective bargaining employees involved in the work of construction, reconstruction, demolition, alteration, custom fabrication or repair work and who are enrolled or have graduated from a "registered apprenticeship program."
- D. EMPLOY. Is as defined in the Act of January 17, 1968, P.L. 11, No. 5, 43 P.S. § 333.103(f).
- E. EMPLOYEE. Is as defined in 43 P.S. Section 333.103 (h). For the purposes of this Chapter, "employee" shall not include independent contractors, State and Federal employees, or any member of a construction union covered by a collective bargaining unit, or seasonal employees.
- F. EMPLOYER. A person, partnership, limited partnership, association, or unincorporated or otherwise, corporation, institution, trust, government body or unit or agency, or any other entity situated or doing business within the geographical boundaries of Allegheny County and that employs one (1) or more

persons for a salary, wage, commission or other compensation. For the purposes of this Chapter, "employer" does not include either of the following:

1. The United States Government; and
2. The State of Pennsylvania including any office, department, agency, authority, institution, association or other body of the state, including the legislature and the judiciary.

G. FAMILY MEMBER. Any one of the following:

1. A biological, adopted or foster child, stepchild or legal ward, a child of a domestic partner, or a child to whom the employee stands in *loco parentis*;
2. A biological, foster, adoptive, or step-parent, or legal guardian of an employee or an employee's spouse or domestic partner or a person who stood in *loco parentis* when the employee was a minor child;
3. A person to whom the employee is legally married under the laws of any state;
4. A grandparent or spouse or domestic partner of a grandparent;
5. A grandchild;
6. A biological, foster, or adopted sibling;
7. A domestic partner; or
8. Any individual for whom the employee has received oral permission from the employer to care for at the time of the employee's request to make use of sick time.

H. HEALTH CARE PROFESSIONAL. Any person licensed under Federal or Pennsylvania law to provide medical or emergency services, including but not limited to doctors, nurses, and emergency room personnel.

I. PAID SICK TIME. Time that is compensated at the same base rate of pay, and with the same benefits, including health care benefits, as an employee would have earned at the time of their use of the paid sick time. In no case shall the hourly wage with which an employee making use of paid sick time is compensated be less than that provided under 43 P.S. § 333.104(a). Employees making use of sick time shall not be entitled to compensation for lost tips or commissions, and compensation shall only be required for hours that an employee was scheduled to have worked.

- J. REGISTERED APPRENTICESHIP PROGRAM. An apprenticeship program that is registered with and approved by the United States Department of Labor and which meets not less than two of the following requirements: (A) has active, employed, registered apprentices; (B) has graduated apprentices to journey worker status during a majority of the years that the program has been in operation; or (C) has graduated apprentices to journey worker status during three of the immediately preceding five years, provides each trainee with combined classroom and on-the-job training under the direct and close supervision of a highly skilled worker in an occupation recognized as an apprenticeable trade and meets the program performance standards of enrollment and graduation under 29 C.F.R. Part 29, section 29.63.1.
- K. SEASONAL EMPLOYEE. A person who has been hired for a temporary period of not more than sixteen weeks during a calendar year and has been notified in writing at the time of hire that the individual's employment is limited to the beginning and ending dates of the employer's seasonal period, as determined by the employer.
- L. SICK TIME. Refers to both paid and unpaid sick time, unless otherwise specified.
- M. UNPAID SICK TIME. Time that an employee may use for the reasons enumerated in §575-3 that is not compensated at the same hourly rate, including health care benefits, as an employee typically earns from their employment at the time of their use of the unpaid sick time.

§575-2. Accrual of Sick Time.

- A. All employees shall have the right to sick time, as provided under the terms of this Chapter.
- B. All employees of employers with twenty-six (26) or more employees shall accrue a minimum of one (1) hour of paid sick time for every 35 hours worked within the geographical boundaries of Allegheny County unless the employer provides a faster accrual rate, and shall be permitted to accrue no more than 40 hours of paid sick time in a calendar year, unless the employer designates a higher amount. At no point shall an employee of an employer with 26 or more employees be permitted to have access to more than 40 hours of paid sick time, unless the employer designates a higher amount.
- C. Employees who are exempt from overtime requirements under 29 U.S.C. § 213(a)(1) of the Federal Fair Labor Standards Act will be assumed to work 40 hours in each workweek for purposes of sick time accrual, unless their normal workweek is less than 40 hours, in which case sick time accrues based upon that normal workweek.

- D. The accrual of sick time, as provided in this Chapter, shall begin on the effective date as provided in §575-12, as to an employee who is employed as of such effective date. All employees who become employed after such effective date shall begin to accrue paid sick time at the commencement of their employment.
- E. All employees shall be entitled to use accrued sick time beginning on the 90th calendar day following the commencement of their employment.
- F. Accrued sick time shall be carried over to the following calendar year, except when an employer that employs twenty-six (26) or more employees provides at least 40 hours of paid sick time at the beginning of each calendar year.
- G. An employer shall not be obligated to provide financial or other reimbursement to an employee upon the employee's termination, resignation, retirement, or other separation from employment for unused sick time that has been accrued.
- H. 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 sick time accrued at the prior division, entity or location and is entitled to use all sick time as provided in this Section.
- I. When there is a separation from employment and the employee is rehired within 6 months of separation by the same employer, previously accrued paid sick time that had not been used shall be reinstated. The employee shall be entitled to use accrued paid sick time and accrue additional paid sick time at the re-commencement of employment.
- J. At its discretion, the employer may loan sick time to the employee in advance of accrual by such employee.
- K. 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.
- L. Any employer with a paid leave policy, such as a paid time off policy, who makes available an amount of paid leave sufficient to meet the accrual requirements of this Section that may be used for the same purposes and under the same conditions as sick time under this Chapter is not required to provide additional sick time.
- M. Any employer with a collective bargaining agreement that makes available a sufficient amount of paid leave to meet the accrual requirements of this Section that may be used for the same purposes and under the same conditions as sick time under this Chapter is not required to provide additional sick time.

§575-3. Use of Sick Time.

- A. The sick time accrued by an employee may be used for:
1. 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;
 2. 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. Closure of the employee's place of business by order of a public official due to a public health emergency or 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 care for a family member when it has been determined by the health authorities having jurisdiction or by a health care provider that the family member's presence in the community would jeopardize the health of others because of the family member's exposure to a communicable disease, whether or not the family member has actually contracted the communicable disease.
- B. An oral request shall be provided to the employer by the employee upon the use of sick time. The request shall include the anticipated duration of the absence when possible. An employer shall be permitted to maintain its own notification policy that shall dictate how soon before an employee's shift the employee must make their oral request to make use of sick time, provided:
1. The employer's notification policy shall be reasonable and shall not obstruct an employee's use of sick time.
 2. If an employer does not maintain its own notification policy, an employee shall provide their oral request for the use of sick time to the employer at least one (1) hour prior to the start of their shift.
 3. In the event such need for sick time is not foreseeable by the employee, the employee shall make a good faith effort to notify the employer as soon as possible.
- C. In the event that the need for the use of sick time is known to the employee in advance, such as a scheduled appointment with a health care provider, the employer may require reasonable advance notice of the intention to use such sick

time not to exceed seven days prior to the date such sick time is to begin. The employee shall make a reasonable effort to schedule the use of sick time in a manner that does not unduly disrupt the operations of the employer. In the event of such need for sick time is not foreseeable by the employee, or should an employee be unable to meet the seven-day requirement contained herein, an employee shall make a good faith effort to notify the employer as soon as possible of the need to use sick time in such a situation.

- D. An employee may use their sick time 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. For the use of sick time that lasts three (3) or more full consecutive days, an employer may require the employee to present reasonable documentation that the sick time has been used for a purpose covered and protected by the terms of this Chapter. For the purposes of this Section, documentation signed by a health care professional indicating that sick time is necessary shall be considered reasonable documentation. An employer may not require that the documentation explain the precise nature of the illness.
- F. An employer may not require that an employee making use of accrued sick time search for or find a replacement worker to cover the hours during which the employee is on using sick on time as a condition for providing sick time.

§575-4. 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 the terms of this Chapter.
- B. An employer shall not retaliate or discriminate against an employee because the employee has exercised rights protected under the terms of this Chapter. Such rights include but are not limited to the right to use sick time pursuant to this Chapter; the right to file a complaint with the Agency or a court; the right to inform any person about any employer's alleged violations of this Chapter; and the right to inform any person of his or her potential rights under this Section.
- C. It shall be a violation of this Chapter for any employer's absence control policy to count sick time taken under this Chapter as an absence that may lead to or result in discipline, discharge, demotion, suspension, or any other adverse action. unless the Employee does not follow the applicable notification and documentation procedures in §575-3.
- D. The protections afforded pursuant to the terms of this Section shall apply to any person who mistakenly but in good faith alleges violations of this Section.

- E. There shall be a rebuttable presumption of unlawful retaliation under this Section whenever an employer takes adverse action against a person within 90 days of when that person:
1. Files a complaint with the Agency or a court alleging violation of any provision of this Section;
 2. Informs any person about an employer's alleged violation of this Section;
 3. Cooperates with the Agency or other persons in the investigation or prosecution of any alleged violation of this Section;
 4. Opposes any policy, practice, or act that is unlawful under this Section; or
 5. Informs any person of his or her rights under this Section.

§575-5. Notice.

- A. Employers shall give written notice that employees are entitled to sick time, the amount of sick time, and the terms of its use guaranteed under this Chapter, that retaliation against employees who request or use sick time is prohibited and that each employee has the right to file a complaint with the Agency if sick time as required by this Section is denied by the employer or the employee is retaliated against for requesting or taking sick time.
- B. The Agency shall have the power to determine the mechanism by which employers comply with this Section, and shall make this determination before the effective date of this Chapter.
- C. The Agency shall promulgate all material relevant to this Section and necessary for an employer to comply with the requirements of this Section, making said material available through the County website.
- D. All County Departments shall allow the Agency, with appropriate notice and at a mutually agreeable time, to access the records necessary to enforce compliance under this Section.
- E. An employer who willfully violates the notice requirements of this Section shall be subject to a civil fine in an amount not to exceed \$100 for each separate offense.

§575-6. Employer Records.

- A. Employers shall retain records documenting hours worked by employees and sick time taken by employees, for a period of two years, and shall allow the Agency access to such records, with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of the Chapter.
- B. When an issue arises as to an employee's entitlement to sick time under this section, if the employer does not maintain or retain adequate records documenting hours worked by the employee and sick time taken by the employee, or does not allow the Agency reasonable access to such records, it shall be presumed that the employer has violated the Chapter, absent clear and convincing evidence otherwise.

§575-7. Regulations.

The Agency shall be authorized to coordinate implementation and enforcement of this Chapter and shall promulgate appropriate guidelines and/or regulations for such purposes.

§575-8. Enforcement.

- A. An employer, employee, or authorized representative may report to the Agency any suspected violation of this Chapter.
- B. The Agency shall be authorized to take such steps as deemed appropriate to resolve complaints and enforce this Chapter, including, but not limited to, establishing a system to receive complaints regarding noncompliance with this Chapter, investigating alleged violations in a timely manner, and resolving complaints through mediation.
- C. An employer, employee, or authorized representative alleging a violation of this Chapter shall file a complaint with the Agency within six months of the date they knew or should have known of the alleged violation. The Agency shall maintain confidential the identity of any complainant unless disclosure of such complainant's identity is necessary for resolution of any investigation by the Agency, or otherwise required by law. The Agency shall, to the extent practicable, notify such complainant that the Agency will be disclosing his or her identity prior to such disclosure.
- D. Upon receiving a complaint alleging a violation of this Chapter, the Agency shall investigate such complaint and, if appropriate, attempt to resolve it through mediation. The Agency shall keep complainants and respondents reasonably notified regarding the status of complaints to which they are parties and any

resulting investigation and shall notify complainants and respondents of the final decision of the Agency with respect to the complaint.

- E. The Agency shall have the power to impose penalties and fines for violation of this Chapter and provide all appropriate relief, including but not limited to full restitution to the employee for all lost wages and benefits and reinstatement, as well as permitting an employer to take disciplinary action, as per the employer's policies. An employer who willfully violates the rules of this Chapter shall be subject to a fine in an amount not to exceed \$100 for each separate offense, provided, however, that no fines shall be levied by the Agency against any employer within one calendar year of the effective date of this Chapter.

§575-9. Confidentiality and Nondisclosure.

- A. An employer may not require disclosure of details relating to an employee's or an employee's family member's medical condition as a condition of providing paid sick time under this Chapter.
- B. If an employer possesses health information about an employee or an employee's family member, such information shall be treated as confidential and not disclosed, except to the affected employee or with the written permission of the affected employee in accordance with applicable Federal and State medical privacy provisions.

§575-10. Effect on Other Law, Policy, Regulation or Contract.

- A. Nothing in this Chapter shall be construed to discourage or prohibit an employer from the adoption or retention of a paid sick time policy more generous than the one required herein.
- B. Nothing in this Chapter shall be construed as diminishing the obligation of an employer to comply with any contract, collective bargaining agreement, employee benefit plan or other agreement providing more generous sick time to an employee than required herein.
- C. Nothing in this Chapter shall be construed as diminishing the rights of public employees regarding sick time or use of sick time as provided in the laws of Pennsylvania.

§575-11. Effect of Chapter; Minimum Standards.

This Chapter provides minimum requirements pertaining to paid sick time and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy or standard that provides for greater accrual or use by employees of sick time or that extends other protections to employees.

§575-12. Public Education/Outreach.

The Agency shall develop multilingual informational materials to inform employers and employees about the availability of sick time under this Chapter. This program shall include the development of notices and other written materials in English and in other languages and outreach to employers and employees for whom English is not a first language and/or who may otherwise have difficulty interpreting or understanding the provisions of this Chapter when expressed in written English.

§575-13. Effective Date.

The provisions of §575-5 shall become effective immediately upon final approval. The remaining provisions of this Chapter shall take effect on the 90th calendar day following the posting of the regulations and notice information for employers by the Agency, pursuant to the terms of §575-5.

SECTION 2. Severability. If any provision of this Ordinance shall be determined to be unlawful, invalid, void or unenforceable, then that provision shall be considered severable from the remaining provisions of this Ordinance which shall be in full force and effect.

SECTION 3. Repealer. Any Resolution or Ordinance or part thereof conflicting with the provisions of this Ordinance is hereby repealed so far as the same affects this Ordinance.

PRIMARY SPONSOR: PRESIDENT CATENA


***CO-SPONSORS: COUNCIL MEMBERS PRIZIO, HALLAM, BENNETT, DUERR
and KLEIN***

Enacted in Council, this 9th day of March, 2021,

Council Agenda No. 11489-20



Patrick Catena
President of Council

Attest: _____
Jared E. Barker, Chief Clerk
Allegheny County Council

Chief Executive Office _____, 2021

Approved: _____
Rich Fitzgerald
Chief Executive

Attest: _____
Sonya Dietz
Executive's Secretary