

No. 15-21-OR

AN ORDINANCE

An Ordinance of the Council of the County of Allegheny ratifying amendments to Allegheny County Health Department Rules and Regulations pursuant to Section 12011 of the Local Health Administration Law, 16 P.S. § 12001 et seq.

Whereas, Allegheny County, pursuant to the Local Health Administration Law, 16 P.S. § 12001 et seq., created the Allegheny County Health Department, and the Allegheny County Board of Health; and

Whereas, the Local Health Administration Law at Section 12011 provides for the Board of Health to adopt regulations and submit such regulations to Allegheny County for approval or rejection; and

Whereas, on July 14, 2021, during its regularly scheduled public meeting, the Allegheny County Board of Health adopted by affirmative vote the attached amendment to the Allegheny County Health Department Rules and Regulations, Article XXIV, “Paid Sick Leave,” and,

Whereas, it is the desire of Council to ratify the Allegheny County Health Department regulation amendments as approved by the Board of Health.

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

SECTION 1. **Incorporation of Preamble.**

The provisions set forth in the preamble to this Ordinance are incorporated by reference in their entirety herein.

SECTION 2. **Ratification of Regulations.**

Acting pursuant to the Local Health Administration Law and the Allegheny County Home Rule Charter, County Council hereby ratifies the amendment to the Allegheny County Health Department Rules and Regulations, Article XXIV, “Paid Sick Leave,” attached hereto as Exhibit “A.”

SECTION 3. **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 4. **Repealer.** Any Resolution or Ordinance or part thereof conflicting with the provisions of this Ordinance is hereby repealed so far as the same affects this Ordinance.

Enacted in Council, this 14th day of September, 2021.

Council Agenda No. 1988-21.



Patrick Catena
President of Council

Attest: 
Jared Barker
Chief Clerk of Council

Chief Executive Office September 15th, 2021.

Approved: 
Rich Fitzgerald
Chief Executive

Attest: 
Jennifer M. Liptak
Chief of Staff

MEMORANDUM
OFFICE OF THE COUNTY MANAGER

TO: Jared E. Barker
Allegheny County Council

FROM: William D. McKain CPA
County Manager

DATE: August 26, 2021

RE: Proposed Ordinance

Attached is an Ordinance of the Council of the County of Allegheny ratifying amendments to Allegheny County Health Department Rules and Regulations pursuant to Section 12011 of the Local Health Administration Law, 16 P.S. §12001 et seq.

The Allegheny County Law Department has reviewed this legislation prior to submitting it to Council.

I am requesting that this item be placed on the agenda at the next Regular Meeting of Council.

**Proposed additions to Allegheny County Health Department Rules and Regulations,
Article XXIV, Paid Sick Days ---**

LEGISLATIVE SUMMARY

Pursuant to the authority granted to it under the Pennsylvania Local Health Administration Law, Sections 12010(f) and 12011(c), on July 14, 2021 the Allegheny County Board of Health approved a new regulation, Article XXIV, "Paid Sick Days." This approval was preceded by a 30-day public comment period during which the Allegheny County Health Department ("ACHD") received 35 commenters in support of the regulation and 2 commenters in opposition to the regulation.

The Allegheny County Health Department (ACHD) is proposing the addition of an article to its rules and regulations to address the necessity for certain employees performing work within Allegheny County to have access to paid sick days.

The new Article XXIII is made up of ten sections, with a summary of each provided below:

- ***Section 2401: Authority and Purpose.*** A description of the ACHD's authority under state law to adopt the regulation, a description of the purpose of the regulation (the prevention and control of transmission of illnesses and disease among coworkers).
- ***Section 2402: Definitions.*** Several key terms used throughout the regulation are defined by this section.
- ***Section 2403: Accrual of Paid Sick Time.*** Establishes the method of accrual of paid sick time for the covered class of employee and employers and sets forth the requirement that covered classes of employers are to afford employees paid sick days in accordance with the accrual method.
- ***Section 2404: Use of Paid Sick Time.*** Sets forth the conditions for which any accrued sick time may be use.
- ***Section 2405: Exercise of Rights Protected; Retaliation Prohibited.*** Establishes the rights of a covered employee to exercise their right to qualified accrued paid sick time and makes it a violation of covered employers to interfere or retaliate against a covered employee's right to accrued sick time.
- ***Section 2406: Notice.*** Requires employers to give its employees written notice of their right to paid sick time and imposes a civil penalty against employers who willfully violate the notice requirement.
- ***Section 2407: Employer Records.*** Requires employers to maintain records of hours worked by its employees and creates a presumption of a violation to this Article if the employer fails proper records of employees' work-hours or accrued sick time.

- **Section 2408: Enforcement.** Affords employees with the right to complain to the appropriate county agency about suspected violations of this Article and authorizes that agency to enforce and levy penalties for violation of the provisions of Article XXIV.
- **Section 2409: Confidentiality and Nondisclosure.** Prohibits employers from requiring disclosure of employees' medical conditions as a pre-requisite to obtaining or accruing paid sick time and requires employers to treat as confidential, the medical condition of its employees.
- **Section 2410: Effect on Other Law, Policy, Regulation or Contract.** Ensures that Article XXVI is not construed to discourage or prohibit employers from adopting more generous paid sick time policies, or diminish employers' responsibilities under agreements or plans that are more generous, or diminishing the rights of public employees provided under state law.
- **Section 2411: Effect of Article; Minimum Standards; Applicability.** Establishes the ability of municipalities within Allegheny County to provide more stringent requirements than Article XXIV, establishes that Article XXIV is the minimum requirement for paid sick time and permits the appropriate county agency to enforce Article XXIV if the local municipality is unwilling or unable.
- **Section 2412: Public Education/Outreach.** Provides that the appropriate county agency will develop multilingual documents and notices intended to inform employers and employees about the availability of paid sick time.
- **Section 2413: Effective Date.** Establishes an effective date for the regulation to immediately following final approval.

EXHIBIT "A"

**ALLEGHENY COUNTY
HEALTH DEPARTMENT**

RULES AND REGULATIONS

ARTICLE XXIV. PAID SICK DAYS

Section 2401. AUTHORITY AND PURPOSE.

Pursuant to the authority granted to the Allegheny County Health Department under the Pennsylvania Local Health Administration Law, 16 P.S. §§ 12010(f) and 12011(c), this regulation has been promulgated to promote and preserve the health of the residents of Allegheny County. Providing paid sick time to employees will help prevent and control the transmission of illnesses and disease among coworkers and allow employees and their families with the time to recover from the illness and thereby reduce the likelihood of more severe illness, hospitalizations, and loss of work.

Section 2402. DEFINITIONS.

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

Agency. A Department or other County agency designated by the Allegheny County Manager to effectuate the provisions of this Article.

Calendar Year. A regular and consecutive 12-month period, as determined by an employer and communicated to all employees.

Employ. Is as defined in the Act of January 17, 1968, P.L. 11, No. 5, 43 P.S. § 333.103(f).

Employee. Is as defined in 43 P.S. Section 333.103 (h). For the purposes of this Article, “employee” shall not include independent contractors, State and Federal employees or seasonal employees.

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 Article, “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.

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 permission from the employer to care for at the time of the employee's request to make use of paid sick time.

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.

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 paid 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.

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.

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.

Section 2403. ACCRUAL OF PAID SICK TIME.

- A. All employees shall be entitled to accrue paid sick time, as provided under the terms of this Article.
- 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 paid sick time accrual, unless their normal workweek is less than 40 hours, in which case paid sick time accrues based upon that employee's normal workweek.
- D. The accrual of paid sick time, as provided in this Article, shall begin on the effective date as provided in Section 2413, 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 paid sick time beginning on the 90th calendar day following the commencement of their employment.
- F. Accrued paid 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. If such employer provides less than 40 hours of paid sick time at the beginning of each calendar year, then the employee may carry over accrued paid sick time so long as the total paid sick time available does not exceed 40 hours.
- 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 paid 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 paid sick time accrued at the prior division, entity or location and is entitled to use all paid 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. 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 paid sick time accrued when employed by the original employer and are entitled to use all paid sick time previously accrued.
- K. Any employer with a paid leave policy, such as a paid time off policy, who makes available an amount of paid sick leave sufficient to meet the accrual requirements of this Section that may be used for the same purposes and under the same conditions as paid sick time under this Article is not required to provide additional paid sick time.
- L. Any employer with a collective bargaining agreement that makes available a sufficient amount of paid sick leave to meet the accrual requirements of this Section that may be used for the same purposes and under the same conditions as paid sick time under this Article is not required to provide additional paid sick time.

Section 2404. USE OF PAID SICK TIME.

- A. The paid 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. A request shall be provided to the employer by the employee upon the use of paid 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 paid sick time, provided:
 - 1. The employer's notification policy shall be reasonable and shall not obstruct an employee's use of paid sick time.

2. If an employer does not maintain its own notification policy, an employee shall provide their request for the use of paid sick time to the employer at least one (1) hour prior to the start of their shift.
 3. In the event such need for paid 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 paid 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 paid sick time not to exceed seven days prior to the date such paid sick time is to begin. The employee shall make a reasonable effort to schedule the use of paid sick time in a manner that does not unduly disrupt the operations of the employer. In the event of such need for paid 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 paid sick time in such a situation.
- D. An employee may use their paid 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 paid sick time that lasts three (3) or more full consecutive days, an employer may require the employee to present reasonable documentation that the paid sick time has been used for a purpose covered and protected by the terms of this Article. For the purposes of this Section, documentation signed by a health care professional indicating that paid 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 paid sick time search for or find a replacement worker to cover the hours during which the employee is on using paid sick time as a condition for providing paid sick time.

Section 2405. 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 Article.
- B. An employer shall not retaliate or discriminate against an employee because the employee has exercised rights protected under the terms of this Article. Such rights include but are not limited to the right to use paid sick time pursuant to this Article; 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 Article; and the right to inform any person of his or her potential rights under this Section.

- C. It shall be a violation of this Article for any employer's absence control policy to count paid sick time taken under this Article 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 Section 2404.
- 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.

Section 2406. NOTICE.

- A. Employers shall give written notice that employees are entitled to paid sick time, the amount of paid sick time, and the terms of its use guaranteed under this Article, that retaliation against employees who request or use paid sick time is prohibited and that each employee has the right to file a complaint with the Agency if paid sick time as required by this Section is denied by the employer or the employee is retaliated against for requesting or taking paid 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 Article.
- 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.

Section 2407. EMPLOYER RECORDS.

- A. Employers shall retain records documenting hours worked by employees and paid 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 Article.
- B. When an issue arises as to an employee's entitlement to paid sick time under this section, if the employer does not maintain or retain adequate records documenting hours worked by the employee and paid 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 Article, absent clear and convincing evidence otherwise.

Section 2408. ENFORCEMENT.

- A. An employer, employee, or authorized representative may report to the Agency any suspected violation of this Article. The complaint shall be filed within six months of the date the complainant knew or should have known of the alleged violation.
- B. The Agency shall have the authority to enforce this Article and may adopt appropriate policies or guidelines relating to the confidentiality of the complainant and to implement and enforce this Article.
- C. An employer who willfully violates the rules of this Article shall be subject to a fine or penalty in an amount not to exceed \$100 for each separate offense, provided, however, that no fines or penalties shall be levied by the Agency against any employer within one calendar year of the effective date of this Article.

Section 2409. 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 Article.
- 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.

Section 2410. EFFECT ON OTHER LAW, POLICY, REGULATION OR CONTRACT.

- A. Nothing in this Article 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 Article 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 paid sick time to an employee than required herein.

- C. Nothing in this Article shall be construed as diminishing the rights of public employees regarding paid sick time or use of paid sick time as provided in the laws of Pennsylvania.

Section 2411. EFFECT OF ARTICLE; MINIMUM STANDARDS; APPLICABILITY.

- A. This Article 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, ordinance, regulation, requirement, policy or standard that provides for greater accrual or use by employees of paid sick time or that extends other protections to employees.
- B. Except as provided in Subsection C, this Article shall not apply to any municipality within Allegheny County that has enacted an ordinance on paid sick time so long as such ordinance is not less stringent than the requirements under this Article.
- C. The Agency shall have the authority to enforce this Article in a municipality within Allegheny County that has enacted an ordinance on paid sick time if the Agency determines that the municipality is unwilling or unable to enforce its ordinance.

Section 2412. PUBLIC EDUCATION/OUTREACH.

The Agency shall develop multilingual informational materials to inform employers and employees about the availability of paid sick time under this Article. 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 Article when expressed in written English.

Section 2413. EFFECTIVE DATE.

The provisions of Section 2406 shall become effective immediately upon final approval. The remaining provisions of this Article shall take effect on the 90th calendar day following the posting of the notice information for employers by the Agency, pursuant to the terms of Section 2406.

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End of Regulation Changes