ORDINANCE NO.

AN ORDINANCE ESTABLISHING EARNED SICK TIME STANDARDS IN THE CITY; CREATING A CIVIL PENALTY; AND CREATING AN OFFENSE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. Findings:

(A) The council finds that most workers in the City of Austin will at some time during each year need limited time off from work to care for their own health and safety needs or the health and safety needs of a close family member.

(B) The council further finds that denying earned sick time to employees:

(1) is unjust;

(2) is detrimental to the health, safety, and welfare of the residents of the City; and

(3) contributes to employee turnover and unemployment, and harms the local economy.

The council further finds that it is within the police power and the responsibility of the City to remedy the problems enumerated in parts (A) and (B) of this Section.

PART 2. Title 4 of the City Code is amended by adding a new Chapter 4-19 to read:

CHAPTER 4-19. EARNED SICK TIME.

§4-19-1. DEFINITIONS.

In this Chapter:

(A) EARNED SICK TIME means a period of paid leave from work accrued by an employee in accord with this Chapter.
(B) EEO/FHO means the City of Austin Equal Employment Opportunity/ Fair Housing Office.

(C) EMPLOYEE means an individual who performs at least 80 hours of work for pay within the City of Austin in a calendar year for an employer, including work performed through the services of a temporary or employment agency. “Employee” does not include an individual who is an independent contractor according to 40 Tex. Admin. Code § 821.5. “Employee” does not include unpaid interns.

(D) EMPLOYER means any person, company, corporation, firm, partnership, labor organization, non-profit organization or association that pays an employee to perform work for an employer and exercises control over the employee’s wages, hours and working conditions. The term does not include:

(1) the United States;

(2) a corporation wholly owned by the government of the United States;

(3) the state or a state agency; or

(4) a political subdivision of the state, or other agency that cannot legally be regulated by City ordinance.

(E) FAMILY MEMBER means an employee’s spouse, child, parent, or any other individual related by blood or whose close association with the employee is the equivalent of a family relationship.

(F) MEDIUM OR LARGE EMPLOYER is an employer with more than 15 employees at any time in the preceding 12 months, excluding family members.

(G) PREDECESSOR means an employer that employs at least one individual covered by this Chapter, and for which a controlling interest in such employer or a recognized division of such employer is acquired by a successor.
(H) SMALL EMPLOYER is an employer with no more than 15 employees at any time in the preceding 12 months, excluding family members.

(I) SUCCESSOR means an employer that acquires a controlling interest in a predecessor or a controlling interest in a recognized division of a predecessor.

§4-19-2. EARNED SICK TIME STANDARDS.

(A) An employer shall grant an employee one hour of earned sick time for every 30 hours worked for the employer in the City of Austin. Earned sick time shall accrue only in hour-unit increments. There shall be no accrual of a fraction of an hour of earned sick time.

(B) Earned sick time shall accrue starting at the commencement of employment or the date this Chapter is effective, whichever is later.

(C) Earned sick time shall be available for an employee to use in accord with this Chapter as soon as it is accrued. Provided, that an employer may restrict an employee from using earned sick time during the employee’s first 60 days of employment if the employer establishes that the employee’s term of employment is at least one year.

(D) An employee may request earned sick time from an employer for an absence from the employee’s scheduled work time caused by:

1. the employee’s physical or mental illness or injury, preventative medical or health care, or health condition; or

2. the employee’s need to care for a family member’s physical or mental illness, preventative medical or health care, injury, or health condition; or

3. the employee’s need to seek medical attention, seek relocation, obtain services of a victim services organization, or to participate in legal or court ordered action related to an incident of victimization from domestic
abuse, sexual assault, or stalking involving the employee or employee’s family member.

(E) An employer may adopt reasonable verification procedures to establish that an employee’s request for earned sick time meets the requirements of Subsection (D) for a request to use earned sick time for more than three consecutive work days.

(F) An employer shall provide earned sick time for an employee’s absence from the employee’s scheduled work time if the employee has available earned sick time and makes a timely request for use of earned sick time before their scheduled work time. An employer may not prevent an employee from using earned sick time for an unforeseeable qualified absence as established in Subsection (D).

(G) This Chapter does not require an employer to provide more than a yearly cap of earned sick time to an employee in a calendar year. This Chapter does not require an employer to allow an employee to accrue more than the yearly cap of earned sick time. All available earned sick time up to the yearly cap of earned sick time shall be carried over to the following year. An employer may inform an employee that leave requested in excess of the employee’s available earned sick time will not be paid.

(1) For a medium or large employer the yearly cap of earned sick time is 64 hours of earned sick time.

(2) For a small employer the yearly cap of earned sick time is 48 hours of earned sick time.

(H) All available earned sick time up to the yearly cap of earned sick time shall be carried over to the following year. Provided, that an employer that makes at least the yearly cap of earned sick time available to an employee at the beginning of the year under the purpose and usage requirements of this Chapter shall not be required to carry over earned sick time under this Chapter for that year.

(I) This Chapter does not require any employer to allow an employee to utilize earned sick time on more than 8 calendar days in a given calendar year.
(J) An employer shall provide an employee with earned sick time that meets the requirements under this Section in an amount up to the employee’s available earned sick time. The employer shall pay earned sick time in an amount equal to what the employee would have earned if the employee had worked the scheduled work time, exclusive of any overtime premium, tips, or commissions, but no less than the state minimum wage.

(K) On no less than a monthly basis, an employer shall provide electronically or in writing to each employee a statement showing the amount of the employee’s available earned sick time. For the period required for maintenance of records under Title 29, Section 516(a), Code of Federal Regulations, an employer shall maintain records establishing the amount of earned sick time accrued and used by each covered employee. This section does not create a new requirement for certified payroll.

(L) An employer that provides an employee handbook to its employees must include in the handbook notice of employee rights and remedies under this chapter.

(M) An employer may not require an employee to find a replacement to cover the hours of earned sick time as a condition of using earned sick time.

(N) Neither the amount of earned sick time nor the right to use earned sick time shall be affected by an employee’s transfer to a different facility, location, division, or job position with the same employer.

(O) An employee who is rehired by an employer within 6 months following separation of employment from that employer may use any earned sick leave available to the employee at the time of separation.

(P) A written contract between an employer and a labor organization made pursuant to 29 U.S.C. Section 158d may modify the yearly cap of earned sick time for the employees covered by the contract if the yearly cap is explicitly modified in the contract.

(Q) A successor must provide to an employee who was employed by a predecessor at the time of an acquisition and hired by the successor at the time of the acquisition all earned sick time available to the employee immediately before the acquisition.
§4-19-3. No Change To More Generous Earned Sick Time Policies

(A) An employer may provide paid leave benefits that exceed the requirements of this Chapter. This Chapter does not require an employer who makes paid time off available to an employee under conditions that meet the accrual, purpose, and usage requirements of this Chapter to provide additional earned sick time to the employee.

(B) This Chapter does not require an employer to provide additional earned sick time to an employee if the employee has used paid time off that meets the requirements of this chapter for a purpose not specified in Part (D) of this Section.

(C) This Chapter does not prohibit an employer from granting earned sick time to an employee prior to accrual by the employee.

(D) This Chapter does not prohibit an employer from permitting an employee to donate unused accrued earned sick time to another employee.

(E) This Chapter does not prohibit an employer from establishing a policy whereby employees may voluntarily exchange hours or trade shifts, a policy whereby employees may donate unused accrued earned sick time to another employee, or an incentive program whereby employees are incentivized to exchange hours or trade shifts.

§4-19-4. SIGNAGE REQUIRED.

(A) An employer shall display a sign describing the requirements of this Chapter in at least English and Spanish in a conspicuous place or places where notices to employees are customarily posted. An employer is not required to post such signage until the City of Austin makes such signage available publicly on its website.
(B) EEO/FHO shall prescribe by rule the size, content, and location of signs required under Subsection (A) of this Section.

§4-19-5. RETALIATION PROHIBITED. An employer may not transfer, demote, discharge, suspend, reduce hours, or directly threaten these actions against an employee for requesting or using earned sick time, or for reporting a violation or participating in an administrative proceeding under this Chapter.

§4-19-6. ADMINISTRATION.

(A) The EEO/FHO shall:

1. educate employers and employees about this Chapter;
2. receive and investigate complaints, including anonymous complaints, alleging a violation of this Chapter;
3. enforce this Chapter;
4. seek voluntary compliance with this Chapter before collecting a civil penalty; and
5. adopt rules necessary to implement this Chapter.

(B) A complaint alleging a violation of this Chapter must be filed with the EEO/FHO by or on behalf of an aggrieved employee within two years from the date of the violation.

(C) If the EEO/FHO finds after investigation of a timely complaint that a violation of this Chapter has occurred:

1. the EEO/FHO shall assess a civil penalty up to $500 against the employer for each violation of this Chapter, and shall provide written notice of the assessment to the employer; and
(2) the EEO/FHO shall seek voluntary compliance from the employer to remedy any violation of this Chapter. If voluntary compliance is not achieved within 10 business days following the employer’s receipt of the written civil penalty assessment, the employer shall be liable to the City for the amount of the assessed civil penalty.

(D) This Section does not create a criminal offense.

§4-19-7. INVESTIGATION OF COMPLAINTS.

(A) The director of the EEO/FHO may subpoena information relevant during the investigation of a complaint under this Chapter. Relevant information includes, and is limited to, only the information necessary to determine whether a violation of the Earned Sick Time ordinance has occurred. This section is not creating a new requirement for certified payroll. A subpoena shall:

(1) be directed to a person with knowledge or information relevant to a complaint under this Chapter, or to a custodian of records relevant to a complaint under this Chapter;

(2) be in writing and signed by the director of the EEO/FHO;

(3) identify the records or testimony to be produced under the subpoena;

(4) direct the person to whom it is issued to produce the records or provide the testimony identified in the subpoena at a specific place and time, which shall be not earlier than 10 business days from the date of service of the subpoena;

(5) identify the individual complaint made under this Chapter to which the subpoena relates;

(6) state that the subpoena is issued under the authority of this Chapter for purposes of investigating a complaint under this Chapter;

(7) state that failure to comply with the subpoena is an offense and punishable as a Class C misdemeanor under this Code; and
(8) be served on the person to whom it is directed by certified mail or personal delivery.

(B) A person commits an offense if the person fails to comply with a subpoena issued and served on the person as provided in Part (A). The offense is punishable as a Class C misdemeanor as provided in Section 1-1-99 of this Code. A culpable mental state is not a necessary element of the offense.

(C) The EEO/FHO may inform employees at a worksite of any investigation of a complaint at that worksite alleging a violation of this Chapter.

§4-19-8. ANNUAL REPORT.

(A) Beginning in 2019, and each year thereafter, the EEO/FHO shall provide by October 1st a written report to the City Council regarding this chapter. The report shall include, but not be limited to, a discussion of the implementation and enforcement of this Chapter, including the number and nature of violations, specific violations, industries and occupations with high rates of violations, penalties assessed in the prior year, and the impact on businesses and employees. The report shall also include recommendations for possible improvements to this chapter.

PART 3. For a violation of Chapter 4-19 that occurs after the effective date of this ordinance, but before May 1, 2019, the EEO/FHO shall issue a notice to the employer that a civil penalty may be assessed for a violation that occurs at any time after October 1, 2018, except that a civil penalty under 4-19-5 (Retaliation) may be assessed for a violation at any time after the effective date.

PART 4. The council directs the city manager to design and provide a multilingual public education campaign to inform employers and residents of the requirements of Chapter 4-19, such as a website with best practices for employers, and an educational outreach strategy for informing employees and residents of the earned sick time ordinance.
PART 5. For an employer with no more than 5 employees at any time in the preceding 12 months, excluding family members, this ordinance is not effective until October 1, 2020.

PART 6. Except as provided in Part 3, Part 4, and Part 5 this ordinance takes effect on October 1, 2018.

PASSED AND APPROVED

___________________________, 2018

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Steve Adler
Mayor

APPROVED: ____________________________
Anne L. Morgan
City Attorney

ATTEST: _____________________________
Jannette S. Goodall
City Clerk