

File No. 160034

Committee Item No. 5

Board Item No. 22

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Rules Committee

Date February 11, 2016

Board of Supervisors Meeting

Date February 23, 2016

Cmte Board

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Completed by: Derek Evans Date February 8, 2016

Completed by: Derek Evans Date February 18, 2016

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The complete document can be found in the file.

1 [Initiative Ordinance - Administrative Code - Paid Sick Leave Ordinance Amendments]

2
3 **Motion ordering submitted to the voters an ordinance amending the Administrative**
4 **Code to revise the City's Paid Sick Leave Ordinance (PSLO) to include protections for**
5 **employees under the PSLO that largely parallel recent State law enactments pertaining**
6 **to paid sick leave, primarily the Healthy Workplaces, Healthy Families Act of 2014, as**
7 **amended, at an election to be held on June 7, 2016.**

8
9 **MOVED, That the Board of Supervisors hereby submits the following ordinance to the**
10 **voters of the City and County of San Francisco, at an election to be held on June 7, 2016.**

11
12 **Ordinance amending the Administrative Code to revise the City's Paid Sick Leave**
13 **Ordinance (PSLO) to include protections for employees under the PSLO that largely**
14 **parallel recent State law enactments pertaining to paid sick leave, primarily the Healthy**
15 **Workplaces, Healthy Families Act of 2014, as amended.**

16
17 **NOTE: Unchanged Code text and uncodified text are in plain font.**
18 **Additions to Codes are in *single-underline italics Times New Roman font.***
19 **Deletions to Codes are in strikethrough italics Times New Roman font.**
20 **Asterisks (* * * *) indicate the omission of unchanged Code subsections or**
21 **parts of tables.**

22 **Be it ordained by the People of the City and County of San Francisco:**

23 **Section 1. Background, Findings, and Purpose.**

24 **(a) At the election of November 7, 2006, San Francisco voters adopted Proposition F,**
25 **the Paid Sick Leave Ordinance ("PSLO"), codified at Chapter 12W of the Administrative Code.**
The PSLO, which requires employers to provide paid sick leave to employees for work

1 performed in San Francisco, was the first such law in the United States. The PSLO contained
2 extensive uncodified findings, including the determination that the “absence or inadequacy of
3 paid sick leave among workers in San Francisco poses serious problems not only for affected
4 workers but also for their families, their employers, the health care system, and the community
5 as a whole.” After detailing the problems then associated with the absence or inadequacy of
6 paid sick leave, the findings concluded that “[i]t is in the interest of all San Franciscans to
7 require that employers benefiting from the opportunity to do business here make available to
8 their employees a reasonable amount of paid sick leave.”

9 (b) Eight years after the adoption of the PSLO, the State of California enacted the
10 Healthy Workplaces, Healthy Families Act of 2014 (“Act”) (A.B. 1522; Stats. 2014, Ch. 317,
11 section 3). The Act was amended in 2015 to clarify a number of its provisions. (A.B. 304;
12 Stats. 2015, Ch. 67.) The Act, which is codified at California Labor Code Sections 245-249,
13 requires employers throughout California to provide paid sick leave to employees. In adopting
14 the Act, the Legislature made extensive findings that parallel many of the findings made in
15 support of the PSLO when it was adopted by the voters, including that providing paid sick
16 leave to employees ensures a healthier and more productive workforce; improves public
17 health by lessening recovery time for employees and reducing the likelihood of spreading
18 illness to other members of the workforce or, in the case of public contact positions such as
19 service workers and restaurant workers, to customers; and provides greater job security and
20 retention for employees. The findings in the Act recognize the importance of providing
21 parental care for children, which makes a child’s speedy recovery from illness more likely and
22 the child’s development of more serious illnesses less likely, and improves children’s overall
23 mental and physical health. The findings also recognize that many employees have
24 significant elder care responsibilities involving medical care for loved ones. And, going
25 beyond the PSLO and its findings, the Act also expressly recognizes the devastating effects of

1 domestic violence, sexual assault, and stalking, and the need for victims who are employees
2 to take time off from work for reasons related to those dangerous circumstances. In addition,
3 in 2011, the State of California enacted a measure related to paid sick leave, the Michelle
4 Maykin Memorial Donation Protection Act, codified at California Labor Code Sections 1508-
5 1513, which requires many employers to provide paid time off for employees making a bone
6 marrow or organ donation.

7 (c) In some respects the PSLO and the Act have essentially identical provisions. In
8 some other respects, the PSLO provides greater protections for employees and greater scope
9 of coverage than the Act. These more expansive provisions remain in effect following
10 passage of the Act, which states that the provisions of the Act are in addition to and
11 independent of any other rights, remedies, or procedures available under any other law and
12 do not diminish, alter, or negate any other legal rights, remedies, or procedures available to
13 an aggrieved person. The Act establishes minimum statewide requirements and does not
14 preempt, limit, or otherwise affect the applicability of any other paid sick leave law, including
15 the PSLO.

16 (d) But in some respects, the Act provides greater protections for employees and
17 greater scope of coverage than the PSLO. As a result, the City now finds itself in the ironic
18 position that its pioneering paid sick leave law is in some ways less expansive than State law.
19 Further, employers now find themselves bound by two legal regimes, enforced respectively by
20 two distinct governmental entities, because the Act does not authorize the City to enforce its
21 provisions; rather, the City may only enforce the PSLO. But if the PSLO is amended to
22 include provisions that parallel those provisions in State law that are currently more protective
23 of employees and provide a greater scope of coverage than the PSLO, there will be a greater
24 degree of congruence between the PSLO and the Act, and a less fragmented enforcement
25 process.

1 (e) The general purpose of this ordinance is to include within the PSLO provisions that
2 parallel those provisions in the Act that provide greater protections for employees and greater
3 scope of coverage than the PSLO, and thereby to enhance the City's ability to enforce
4 employee rights regarding paid sick leave. This ordinance is not intended and shall not be
5 construed to narrow, restrict, or otherwise limit in any manner the present or future
6 application, interpretation, implementation, or enforcement of the PSLO. Nevertheless, it is
7 hoped that, without weakening any provision of the PSLO, this ordinance will simplify the
8 efforts of employers to comply with their legal obligations under both the PSLO and the Act.

9 (f) This ordinance also looks to the future, anticipating that at some point there may be
10 enhanced paid sick leave requirements imposed by State or federal law, going beyond what
11 the PSLO, as amended by this ordinance, would provide. This ordinance gives the Board of
12 Supervisors power to amend the PSLO's substantive requirements or scope of coverage for
13 the purpose of adopting provisions parallel to State or federal law if and to the extent State or
14 federal law provides greater or additional protections or broader coverage than the PSLO.
15 This ordinance also gives the Board of Supervisors power to amend the PSLO as to those
16 amendments contained in this ordinance, if the State amends the provisions of State law on
17 which those amendments are based.

18
19 Section 2. The Administrative Code is hereby amended by revising Sections 12W.2,
20 12W.3, 12W.4, 12W.5, 12W.8, 12W.12, 12W.13, and 12W.16, to read as follows:

21 **SEC. 12W.2. DEFINITIONS.**

22 For purposes of this Chapter, the following definitions apply.

23 (a) "Agency" shall mean the Office of Labor Standards Enforcement or any department
24 or office that by ordinance or resolution is designated the successor to the Office of Labor
25 Standards Enforcement.

1 (b) "City" shall mean the City and County of San Francisco.

2 (c) "Employee" shall mean any person who is employed within the geographic
3 boundaries of the City by an employer, including part-time and temporary employees.
4 "Employee" includes a participant in a Welfare-to-Work Program when the participant is
5 engaged in work activity that would be considered "employment" under the federal Fair Labor
6 Standards Act, 29 U.S.C. §201 et seq., and any applicable U.S. Department of Labor
7 Guidelines. "Welfare-to-Work Program" shall include any public assistance program
8 administered by the Human Services Agency, including but not limited to CalWORKS and the
9 County Adult Assistance Program (CAAP), and any successor programs that are substantially
10 similar to them, that require a public assistance applicant or recipient to work in exchange for
11 their grant.

12 (d) "Employer" shall mean any person, as defined in Section 18 of the California Labor
13 Code, including corporate officers or executives, who directly or indirectly or through an agent
14 or any other person, including through the services of a temporary services or staffing agency
15 or similar entity, employs or exercises control over the wages, hours, or working conditions of
16 an employee.

17 (e) "Paid sick leave" shall mean paid "sick leave" as defined in California Labor Code §
18 233(b)(4), except that the definition extends beyond the employee's own illness, injury,
19 medical condition, need for medical diagnosis, care including preventive care, or treatment, or
20 other medical reason, to also encompass time taken off work by an employee for the purpose
21 of providing care or assistance to other persons, as specified further in Section 12W.4(a), with
22 an illness, injury, medical condition, need for medical diagnosis, care including preventive care,
23 or treatment, or other medical reason. "Paid sick leave" shall also include time taken off work for
24 purposes related to domestic violence, sexual assault, or stalking, suffered by an employee, as specified
25

1 in Section 12W.4(b), and for purposes related to bone marrow donation or organ donation, as specified
2 in Section 12W.4(c).

3 (f) "Small business" shall mean an employer for which fewer than ten persons work for
4 compensation during a given week. In determining the number of persons performing work for
5 an employer during a given week, all persons performing work for compensation on a full-
6 time, part-time, or temporary basis shall be counted, including persons made available to work
7 through the services of a temporary services or staffing agency or similar entity.

8 **SEC. 12W.3. ACCRUAL OF PAID SICK LEAVE.**

9 (a) For employees working for an employer on or before the operative date of this
10 Chapter, paid sick leave shall begin to accrue as of the operative date of this Chapter. For
11 employees hired by an employer after the operative date of this Chapter; but before January 1,
12 2017, paid sick leave shall begin to accrue 90 days after the commencement of employment
13 with the employer, or on January 1, 2017, whichever date is earlier. For employees hired on or after
14 January 1, 2017, paid sick leave shall begin to accrue on commencement of employment with the
15 employer.

16 (b) For every 30 hours worked after paid sick leave begins to accrue for an employee,
17 the employee shall accrue one hour of paid sick leave. Paid sick leave shall accrue only in
18 hour-unit increments; there shall be no accrual of a fraction of an hour of paid sick leave.

19 (c) An employer may, in the employer's discretion, make available to an employee a lump sum
20 of paid sick leave at the beginning of each year of employment, calendar year, or other 12-month
21 period (an "upfront allocation"). In such cases, the Agency shall treat the upfront allocation as an
22 advance on paid sick leave to be accrued under this Section 12W.3; that is, accrual of paid sick leave
23 under this Section would temporarily halt and the employee would not continue to accrue paid sick
24 leave until after the employee has worked the number of hours necessary to have accrued the upfront
25 allocation amount, at which point the employee would then resume accruing paid sick leave under this

1 Section. This subsection (c) shall not be construed to prevent an employer, in the employer's
2 discretion, from advancing paid sick leave to an employee at other times, and shall not be construed to
3 limit the amount of paid sick leave that may be advanced to an employee. Any advance of paid sick
4 leave shall affect the employee's accrual of paid sick leave under this Section 12W.3 as described in
5 this subsection (c). Any advance of paid sick leave shall occur pursuant to an employer's written
6 policy or, absent an applicable written policy, shall be documented in writing to the affected employee.

7 (ed) For employees of small businesses, there shall be a cap of 40 hours of accrued
8 paid sick leave. For employees of other employers, there shall be a cap of 72 hours of
9 accrued paid sick leave. Accrued paid sick leave for employees carries over from year to year
10 (whether calendar year or fiscal year), but is limited to the aforementioned caps.

11 (de) If an employer has a paid leave policy, such as a paid time off policy, that makes
12 available to employees an amount of paid leave that may be used for the same purposes as
13 paid sick leave under this Chapter and that is sufficient to meet the requirements for accrued
14 paid sick leave as stated in subsections (a)-(c), the employer is not required to provide
15 additional paid sick leave.

16 (f) On the same written notice that an employer is required to provide under Section 246(h) of
17 the California Labor Code, an employer shall set forth the amount of paid sick leave that is available to
18 the employee under this Section 12W.3, or paid time off an employer provides in lieu of sick leave. If
19 an employer provides unlimited paid sick leave or unlimited paid time off to an employee, the employer
20 may satisfy this subsection by indicating on the notice or the employee's itemized wage statement
21 "unlimited." This subsection (f) shall apply only to employers that are required by state law to provide
22 such notice to employees regarding paid sick leave available under state law.

23 (eg) An employer is not required to provide financial or other reimbursement to an
24 employee upon the employee's termination, resignation, retirement, or other separation from
25 employment, for accrued paid sick leave that the employee has not used. But if an employee

1 separates from an employer for any reason and is rehired by the employer within one year from the
2 date of separation, previously accrued and unused paid sick leave shall be reinstated. The employee
3 shall be entitled to use the previously accrued and unused paid sick leave and to accrue additional paid
4 sick leave upon rehiring. This subsection (g) shall not apply if and to the extent that, upon the
5 employee's separation from employment, the employee received cash compensation for previously
6 accrued and unused paid sick leave.

7 (h) For the purposes of this Chapter, an employer shall calculate paid sick leave using any of
8 the following calculations:

9 (1) Paid sick leave for nonexempt employees shall be calculated in the same manner as
10 the regular rate of pay for the workweek in which the employee uses paid sick leave, whether or not the
11 employee actually works overtime in that workweek.

12 (2) Paid sick leave for nonexempt employees shall be calculated by dividing the
13 employee's total wages, not including overtime premium pay, by the employee's total hours worked in
14 the full pay periods of the prior 90 days of employment.

15 (3) Paid sick leave for exempt employees shall be calculated in the same manner as the
16 employer calculates wages for other forms of paid leave time.

17 (4) In no circumstance may paid sick leave be provided at less than the minimum wage
18 rate required by the Minimum Wage Ordinance, Administrative Code Chapter 12R.

19 **SEC. 12W.4. USE OF PAID SICK LEAVE.**

20 (a) An employee may use paid sick leave not only when he or she is ill or injured or for
21 the purpose of the employee's receiving medical care, treatment, or diagnosis, as specified
22 more fully in California Labor Code §Section 233(b)(4) and Section 12W.2(e) of this Code, but also
23 to aid or care for the following persons when they are likewise ill or injured or receiving medical
24 care, treatment, or diagnosis: Child; parent; legal guardian or ward; sibling; grandparent;
25 grandchild; and spouse, registered domestic partner under any state or local law, or

1 designated person. The employee may use all or any percentage of his or her paid sick leave
2 to aid or care for the aforementioned persons.

3 (1) "Child," "parent," "sibling," "grandparent," "grandchild." The
4 aforementioned child, parent, sibling, grandparent, and grandchild relationships include not
5 only biological relationships but also relationships resulting from adoption; step-relationships;
6 and foster care relationships.

7 (2) "Child" also includes a child of a domestic partner and a child of a person
8 standing in loco parentis.

9 (3) "Parent" also includes a person who stood in loco parentis when the employee was
10 a minor child, and a person who is a biological, adoptive, or foster parent, stepparent, or guardian of
11 the employee's spouse or registered domestic partner.

12 (4) "Designated person." If the employee has no spouse or registered domestic
13 partner, the employee may designate one person as to whom the employee may use paid
14 sick leave to aid or care for the person. The opportunity to make such a designation shall be
15 extended to the employee no later than the date on which the employee has worked 30 hours
16 after paid sick leave begins to accrue pursuant to Section 12W.3(a). There shall be a window
17 of 10 work days for the employee to make this designation. Thereafter, the opportunity to
18 make such a designation, including the opportunity to change such a designation previously
19 made, shall be extended to the employee on an annual basis, with a window of 10 work days
20 for the employee to make the designation.

21 (b) In addition to the purposes for which an employee may use paid sick leave under subsection
22 (a), an employee who is a victim of domestic violence, sexual assault, or stalking may use paid sick
23 leave for the purposes described in Sections 230(c) and 231.1(a) of the California Labor Code.

24 (c) An employee may use paid sick leave for purposes related to donating the employee's bone
25 marrow or an organ of the employee to another person. Further, an employee may use paid sick leave

1 to care for or assist a person, as specified in Section 12W.4(a), for purposes related to that person's
2 donating bone marrow or an organ to another person.

3 (d) An employee shall be entitled to use accrued paid sick leave beginning on the 90th day of
4 employment, after which day the employee may use paid sick leave as it is accrued.

5 (be) An employer may not require, as a condition of an employee's taking paid sick
6 leave, that the employee search for or find a replacement worker to cover the hours during
7 which the employee is on paid sick leave.

8 (f) An employer may not require, as a condition of an employee's taking paid sick leave, that
9 the employee take paid sick leave in increments of more than one hour, unless the Agency, by rule or
10 regulation, authorizes a larger increment in particular circumstances provided that the increment is no
11 larger than the employer may require under state law.

12 (eg) An employer may require employees to give reasonable notification of an absence
13 from work for which paid sick leave is or will be used.

14 (eh) An employer may only take reasonable measures to verify or document that an
15 employee's use of paid sick leave is lawful.

16 (i) An employer shall provide payment for sick leave taken by an employee no later than the
17 payday for the next regular payroll period after the sick leave was taken.

18 **SEC. 12W.5. NOTICE AND POSTING OF RIGHTS.**

19 (a) The Agency shall, by the operative date of this Chapter, publish and make
20 available to employers, in all languages spoken by more than 5% of the San Francisco
21 workforce, a notice suitable for posting by employers in the workplace informing employees of
22 their rights under this Chapter. The Agency shall update this notice on December 1 of any
23 year in which there is a change in the languages spoken by more than 5% of the San
24 Francisco workforce. In its discretion, the Agency may combine the notice required herein with
25 the notice required by Section 12R.5(a) of the Administrative Code. In addition, the Agency

1 shall combine into one document the notice required by this subsection (a) with the poster required by
2 California Labor Code Section 247, provided that such a combined notice fulfills all the requirements
3 of this subsection and that the Agency has received written assurance from the appropriate State
4 authority that the combined notice satisfies the requirements of California Labor Code Section 247.

5 (b) Every employer shall post in a conspicuous place at any workplace or job site
6 where any employee works the notice required by subsection (a). Every employer shall post
7 this notice in English, Spanish, Chinese, and any language spoken by at least 5% of the
8 employees at the workplace or job site.

9 **SEC. 12W.8. IMPLEMENTATION AND ENFORCEMENT.**

10 (a) **Implementation.** The Agency shall be authorized to coordinate implementation
11 and enforcement of this Chapter and may promulgate appropriate guidelines or rules for such
12 purposes. Any guidelines or rules promulgated by the Agency shall have the force and effect
13 of law and may be relied on by employers, employees, and other persons to determine their
14 rights and responsibilities under this Chapter. Any guidelines or rules may establish
15 procedures for ensuring fair, efficient, and cost-effective implementation of this Chapter,
16 including supplementary procedures for helping to inform employees of their rights under this
17 Chapter, for monitoring employer compliance with this Chapter, and for providing
18 administrative hearings to determine whether an employer or other person has violated the
19 requirements of this Chapter. As of January 1, 2017, in promulgating guidelines and rules pursuant
20 to this subsection (a), the Agency shall consider any relevant guidelines, rules, or interpretations issued
21 by the California Department of Labor Standards Enforcement pertaining to the Healthy Workplaces,
22 Healthy Families Act of 2014, as amended, California Labor Code Sections 245-249, but shall not be
23 bound by such guidelines, rules, or interpretations.

24 * * * *

25 **SEC. 12W.12. OPERATIVE DATE.**

1 (a) This Chapter shall become operative 90 days after its adoption by the voters at the
2 November 7, 2006 election. This Chapter shall have prospective effect only.

3 **(b) Amendments to this Chapter adopted by the voters at the June 7, 2016 election shall**
4 **become operative on January 1, 2017. These amendments shall have prospective effect only.**

5 **SEC. 12W.13. PREEMPTION.**

6 Nothing in this Chapter shall be interpreted or applied so as to create any power or
7 duty in conflict with federal or state law. The term "conflict," as used in this Section 12W.13,
8 means a conflict that is preemptive under federal or state law. For purposes of this Section, consistent
9 with California Labor Code Section 249(d), a difference between this Chapter and the provisions of the
10 Healthy Workplaces, Healthy Families Act of 2014, as amended, California Labor Code Sections 245-
11 249, is not a preemptive conflict under state law.

12 **SEC. 12W.16. AMENDMENT BY THE BOARD OF SUPERVISORS.**

13 (a) The Board of Supervisors may amend this Chapter with respect to matters relating
14 to its implementation and enforcement (including but not limited to those matters addressed in
15 section 12W.8) and matters relating to employer requirements for verification or
16 documentation of an employee's use of sick leave, but not with respect to this Chapter's
17 substantive requirements or scope of coverage, except as stated in subsections (b) and (c);
18 provided, however, that, in the event any provision in this Chapter is held legally invalid, the
19 Board retains the power to adopt legislation concerning the subject matter that was covered in
20 the invalid provision.

21 **(b) The Board of Supervisors may amend this Chapter's substantive requirements or scope of**
22 **coverage for the purpose of adopting provisions parallel to state or federal law, if and to the extent**
23 **state or federal law provides greater or additional substantive requirements, or broader coverage, than**
24 **this Chapter.**

1 (c) Notwithstanding subsection (b), the Board of Supervisors may amend this Chapter's
2 substantive requirements or scope of coverage as to the amendments adopted by the voters at the June
3 7, 2016 election, for the purpose of adopting provisions that parallel any changes in State law
4 regarding those provisions of State law on which those amendments are based. This subsection (c)
5 shall not be construed to authorize any other amendment of this Chapter or to reduce the substantive
6 requirements or scope of coverage of this Chapter below that which existed before the amendments
7 adopted at the June 7, 2016 election.

8
9 Section 3. Scope of Ordinance. In enacting this ordinance, the People of the City and
10 County of San Francisco intend to amend only those words, phrases, paragraphs,
11 subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other
12 constituent parts of the Administrative Code that are explicitly shown in this ordinance as
13 additions or deletions, in accordance with the "Note" that appears under the official title of the
14 ordinance.

15 APPROVED AS TO FORM:

16 DENNIS J. HERRERA, City Attorney

17
18 By:


19 FRANCESCA GESSNER
Deputy City Attorney

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LEGISLATIVE DIGEST

[Initiative Ordinance - Administrative Code - Paid Sick Leave Ordinance Amendments]

Ordinance amending the Administrative Code to revise the City's Paid Sick Leave Ordinance (PSLO) to include protections for employees under the PSLO that largely parallel recent State law enactments pertaining to paid sick leave, primarily the Healthy Workplaces, Healthy Families Act of 2014, as amended.

Existing Law

The Paid Sick Leave Ordinance ("PSLO"), Administrative Code Chapter 12W, requires employers to provide paid sick leave to employees for work performed in San Francisco. New employees begin accruing sick leave 90 days after commencement of employment, at the rate of one hour per 30 hours worked, with an accrual cap of 40 hours for small businesses and 72 hours for other businesses. An employee may use paid sick leave for certain enumerated purposes and on behalf of the employee and certain other persons.

The Healthy Workplaces, Healthy Families Act of 2014, as amended ("State Law"), California Labor Code Sections 245-249, requires employers in California to provide paid sick leave to employees. It does not preempt or limit the application or enforcement of the PSLO. In some respects, the State Law provides greater protections for employees and greater scope of coverage than the PSLO. The City has no authority to enforce the State Law.

The PSLO, which was adopted by the voters, permits the Board of Supervisors to amend it regarding implementation and enforcement and employer requirements for verification or documentation of use of paid sick leave, but does not permit amendments regarding substantive requirements or scope of coverage.

Amendments to Current Law

The proposed initiative ordinance, which would become operative on January 1, 2017, includes these revisions to the PSLO that parallel or accommodate State Law, or clarify existing provisions of the PSLO:

- **Uses of paid sick leave:** Permissible uses of paid sick leave include (1) purposes defined by State Law related to domestic violence, sexual assault, or stalking suffered by the employee, and (2) purposes related to bone marrow donation or organ donation.
- **Persons for whom paid sick leave may be used:** A "parent" for whom paid sick leave may be used includes a person who (1) stood in loco parentis when the

employee was a minor child, or (2) is a biological, adoptive, or foster parent, stepparent, or guardian of the employee's spouse or registered domestic partner.

- **Start date for accrual and use of paid sick leave:** Employees (1) begin to accrue paid sick leave on the first day of employment rather than 90 days thereafter, and (2) may start using accrued paid sick leave on the 90th day of employment.
- **Upfront allocation or "advance" of paid sick leave:** If an employer provides an employee with an upfront allocation of paid sick leave, the City will treat such allocation as an "advance" on paid sick leave to be accrued under the PSLO.
- **Separation and re-hire within one year:** If a separated employee is rehired within one year, the employer must reinstate the employee's unused paid sick leave.
- **Notice on wage statement:** Employers must provide written notice of the amount of sick leave accrued under the PSLO that is available to the employee on the same wage statement or written notice that is required of them by State Law.
- **Calculation of paid sick leave wage rate:** Employers must calculate the rate of pay for paid sick leave using the formulas provided by State Law, except the rate cannot be less than the minimum wage rate required by the Minimum Wage Ordinance.
- **Increments for use of paid sick leave:** Employers may not require employees to use paid sick leave in increments of more than one hour, unless in particular circumstances the City authorizes a larger increment that does not violate State Law.
- **Timing for payment of paid sick leave:** Employers must provide payment for sick leave no later than the next pay check after the leave was taken.
- **Workplace notice:** The City must combine into one document the workplace notice required by the PSLO with the workplace poster required by State Law, if the combined workplace notice is approved by the State.

The proposed initiative ordinance would also permit the Board of Supervisors to amend the PSLO's substantive requirements or scope of coverage for the purpose of adopting provisions parallel to State or federal law to the extent State or federal law provides greater or additional protections or broader coverage than the PSLO. Further, the Board of Supervisors could amend the PSLO as to the amendments contained in this ordinance, if the State amends the provisions of State law on which those amendments are based.

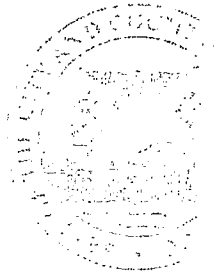
Background Information

With the recent adoption of the State Law, most employers in San Francisco are subject to two sets of rules regarding paid sick leave, and two enforcement agencies (the Office of Labor Standards Enforcement for the PSLO, and a parallel State agency for the State Law). The general purpose of this initiative ordinance is to amend the PSLO to include certain provisions that parallel or accommodate State Law, so that, by complying with the PSLO, the employer will also be complying with the State Law. The revisions accomplish this purpose without reducing existing protections for employees under the PSLO.

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Office of Labor Standards Enforcement

Initiative Ordinance on Paid Sick Leave
Donna Levitt, Program Director
Board of Supervisors' Rules Committee
February 11, 2016



Agenda

1. Background
2. Goals
3. Summary of Proposed Changes to SF Paid Sick Leave Ordinance (PSLO)
4. Questions & Answers

1. Background

- In 2006, San Francisco voters enacted the PSLO through initiative ordinance, becoming the first City in the nation to do so.
- In 2014, California passed the Healthy Families, Healthy Workplaces Act, effective 7/1/15.
- Similar purposes, but different provisions lead to confusion for employees and employers.
- CA law can only be enforced by CA Labor Commissioner.
- San Francisco law can only be amended by voters.

2. Goals

- Incorporate the stronger provisions of each law into the PSLO to ensure workers have access to paid sick leave.
- Streamline legal requirements to make it easier for small businesses and all employers to comply.
- Provide the Board the opportunity to address potential changes in state or federal law.

Comparisons and Changes: Accrual

- SF PSLO accrual starts on the 91st day
- SF PSLO uses a “floating” cap of 72 hrs /40 hrs (large/small businesses).
- State law accrual starts on the 1st day of employment
- State law provides an “up-front” option to provide 3 days or 24 hours.
- Proposed changes would require accrual under SF PSLO begin on the 1st day. An employer using the 3 day or 24 hour requirement would have this counted as an “advance” against the SF PSLO accrual obligation.

Comparisons and Changes: Employer Notices

- Local and state law each require postings.
- State law requires leave balances be provided on wage statements. Local law does not.
- Proposed changes would require OLSE to provide one posting, upon certification by the state that the poster accurately contains all requirements.
- Proposed changes would require that employers include SF PSLO accrual balance on the wage statement.

Comparisons and Changes: Miscellaneous

- State law requires leave to be reinstated if an employee is rehired within one year. Local law does not.
- Proposed changes would require leave to be reinstated if an employee is rehired within one year.
- State law includes permissible uses, such as when an employee is the victim of domestic violence, sexual assault and/or stalking. This covers medical and nonmedical time.
- Proposed changes would incorporate these additional uses into the PSLO.

Operative Date and Amendments

- If enacted by voters, this measure would become operative on January 1, 2017. It's intended to have prospective effect only.
- Allow BOS to amend PSLO when state or federal laws expands coverage.

More Information/Questions and Answers

- For more information on San Francisco's Paid Sick Leave Ordinance, please contact the Office of Labor Standards Enforcement (OLSE)
- <http://sfgov.org/olse/paid-sick-leave-ordinance-pslo>
- For more information on the Healthy Family Healthy Workplace Act, please contact the CA Department of Industrial Relations
- http://www.dir.ca.gov/dlse/Paid_Sick_Leave.htm

Paid Sick Days Initiative Ordinance

Rules Committee Hearing: February 11, 2016

Background

In November 2006, San Francisco voters enacted the Paid Sick Leave Ordinance (PSLO), making our City the first locality in the nation to ensure all employees could earn paid sick days. The PSLO is a model of improving worker and family health without negative employer consequences. A 2011 study by the Institute for Women's Policy Research found that parents with paid sick days were more than 20% less likely to send a child with a contagious disease to school than parents who did not have paid sick days, that employer profitability did not suffer for the vast majority of employers, and that two-third of employers support the PSLO. Four states and 19 cities and counties have followed San Francisco's lead and passed sick leave laws.

In 2014, the California Legislature passed and the Governor signed the Healthy Family, Healthy Workplace Act of 2014 (AB 1522) to ensure all Californians would receive paid sick days. In many important respects San Francisco's PSLO remains stronger than state law, but the Legislature included some improvements to the 2006 law. San Francisco can only amend its law to address implementation and enforcement and cannot change substantive provisions without voter approval.

Proposal

Mayor Edwin M. Lee and all eleven members of the Board of Supervisors have proposed an initiative ordinance for consideration by the voters to address this conflict. The measure has three key goals:

1. Adopt the stronger provisions of each law to ensure workers have access to paid sick days.
2. Streamline legal requirements to make it easier for small businesses to comply.
3. Address potential changes in state or federal law.

Selected Provisions

Start earning sick leave from the first day on the job and count up-front hours as an advance.

State law requires accrual beginning the first day of employment, while local law begins at the 91st day. This ordinance would align these requirements so employees could begin accruing sick days on their first day of employment. If employers elect to use "up-front" method of state law, those hours are counted as an advance on the hours an employee accrues.

Simplify employer posting requirements and employee notification.

This proposal requires the City to provide employers with a single poster, combining the notice requirements of state and local laws, pending approval by the state. It also provides notice to employees of their sick leave balances on the same wage statement required by state law.

Expand uses of sick leave to include domestic violence, sexual assault and stalking.

State law expands situations in which sick leave could be used to include medical and nonmedical circumstances related to domestic violence, sexual assault and/or stalking. This ordinance ensures local law also includes these circumstances.

Ensure timely payment of sick leave.

This proposal requires employers pay employees for any usage of sick days no later than the next paycheck after the leave was taken.

Allow Board of Supervisors to amend PSLO when state or federal law expands coverage.



CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF THE CONTROLLER

Ben Rosenfield
Controller

Monique Zmuda
Deputy Controller

February 10, 2016

Ms. Angela Calvillo
Clerk of the Board of Supervisors
1 Dr. Carlton B. Goodlett Place Room 244
San Francisco, CA 94102-4689

RE: File 160034 – Ordinance regarding paid sick leave employer requirements

Dear Ms. Calvillo,

Should the proposed ordinance be approved by the voters, in my opinion, it would not affect the cost of government.

The proposed ordinance seeks to align the City's paid sick leave ordinance passed by the voters in November 2006 with current California Labor Code requirements. Existing protections and benefits for employees provided under the City's ordinance are not affected. Since 2015 the City's Office of Labor Standards Enforcement has provided guidance and materials for San Francisco employers to assist with compliance with both the local and state requirements.

In addition the proposed ordinance would allow the Board of Supervisors to amend the City's law to conform to future changes in State law.

Sincerely,

Ben Rosenfield
Controller

Note: This analysis reflects our understanding of the proposal as of the date shown. At times further information is provided to us which may result in revisions being made to this analysis before the final Controller's statement appears in the Voter Information Pamphlet.

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

January 22, 2016

File No. 160034

Sarah Jones
Environmental Review Officer
Planning Department
1650 Mission Street, 4th Floor
San Francisco, CA 94103

Dear Ms. Jones:

On January 12, 2016, the Mayor introduced the following proposed Initiative Ordinance for the June 7, 2016, Election:

File No. 160034 Initiative Ordinance - Administrative Code - Paid Sick Leave Ordinance Amendments

Motion ordering submitted to the voters an Ordinance amending the Administrative Code to revise the City's Paid Sick Leave Ordinance (PSLO) to include protections for employees under the PSLO that largely parallel recent State law enactments pertaining to paid sick leave, primarily the Healthy Workplaces, Healthy Families Act of 2014, as amended, at an election to be held on June 7, 2016.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

A handwritten signature in black ink, appearing to be "Derek Evans".

By: Derek Evans, Committee Clerk
Rules Committee

Attachment

c: Joy Navarrete, Environmental Planner
Jeanie Poling, Environmental Planner

Not considered a project under CEQA Sections 15378 and 15060(c)(2) because it does not result in a physical change in the environment.

Joy
Navarrete

Digitally signed by Joy Navarrete
DN: cn=Joy Navarrete, o=Planning,
ou=Environmental Planning,
email=joy.navarrete@sfgov.org, c=US
Date: 2016.02.09 13:51:32 -0800

BOARD of SUPERVISORS



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MEMORANDUM

TO: Ben Rosenfield, City Controller

FROM: Derek Evans, Assistant Clerk, Rules Committee
Board of Supervisors

DATE: January 19, 2016

SUBJECT: INITIATIVE ORDINANCE INTRODUCED
June 7, 2016, Election

The Board of Supervisors Rules Committee has received the following Initiative Ordinance for the June 7, 2016, Election, introduced by Supervisor Kim on January 12, 2016. This matter is being referred to you in accordance with Elections Code, Section 305(B)(2), and Rules of Order 2.22.3.

File No. 160034 Initiative Ordinance - Administrative Code - Paid Sick Leave Ordinance Amendments

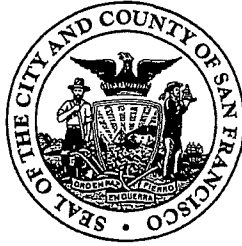
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Please review and prepare a financial analysis of the proposed measure prior to the first Rules Committee hearing.

If you have any questions or concerns please call me at (415) 554-7702 or email derek.evans@sfgov.org. To submit documentation, please forward to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c: Todd Rydstrom, Office of the City Controller

BOARD of SUPERVISORS



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MEMORANDUM

TO: John Arntz, Director, Department of Elections
Jon Givner, Office of the City Attorney
Nicole Elliot, Mayor's Office

FROM: Derek Evans, Assistant Clerk, Rules Committee
Board of Supervisors

DATE: January 19, 2016

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Please review and submit any reports or comments you wish to be included with the legislative file.

If you have any questions or concerns please call me at (415) 554-7702 or email derek.evans@sfgov.org. To submit documentation, please forward to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

BOARD of SUPERVISORS



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January 22, 2016

File No. 160034

Sarah Jones
Environmental Review Officer
Planning Department
1650 Mission Street, 4th Floor
San Francisco, CA 94103

Dear Ms. Jones:

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This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

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By: Derek Evans, Committee Clerk
Rules Committee

Attachment

c: Joy Navarrete, Environmental Planner
Jeanie Poling, Environmental Planner

OFFICE OF THE MAYOR
SAN FRANCISCO



EDWIN M. LEE

TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: *Edwin M. Lee* Mayor Edwin M. Lee *EE*
RE: Initiative Ordinance - Administrative Code - Paid Sick Leave Ordinance
Amendments
DATE: January 12, 2016

Attached for introduction to the Board of Supervisors is an ordinance amending the Administrative Code to revise the City's Paid Sick Leave Ordinance (PSLO) to include protections for employees under the PSLO that largely parallel recent State law enactments pertaining to paid sick leave, primarily the Healthy Workplaces, Healthy Families Act of 2014, as amended.

Please note that this item is co-sponsored by Supervisors Breed, Mar, Farrell, Peskin, Tang, Kim, Yee, Wiener, Campos, Cohen and Avalos.

I respectfully request that this item be calendared in Rules Committee no later than February 11, 2016.

Should you have any questions, please contact Nicole Elliott (415) 554-7940.

EE
RECEIVED
CITY CLERK
JAN 13 2016

