

1 [Police Code - Domestic Workers' Access to Paid Sick Leave Through a Portable System]

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3 **Ordinance amending the Police Code to establish a portable Paid Sick Leave (PSL)**
4 **system for domestic workers, and to require hiring entities that do not directly provide**
5 **PSL to provide PSL payments to domestic workers using the portable system.**

6 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
7 **Additions to Codes** are in *single-underline italics Times New Roman font*.
8 **Deletions to Codes** are in ~~*strikethrough italics Times New Roman font*~~.
9 **Board amendment additions** are in double-underlined Arial font.
10 **Board amendment deletions** are in ~~strikethrough Arial font~~.
11 **Asterisks (* * * *)** indicate the omission of unchanged Code
12 subsections or parts of tables.

13
14 Be it ordained by the People of the City and County of San Francisco:

15 Section 1. The Police Code is hereby amended by adding Article 33N, consisting of
16 Sections 3300N.1 through 3300N.12, to read as follows:

17 **ARTICLE 33N: DOMESTIC WORKERS' EQUAL ACCESS TO PAID SICK LEAVE**

18
19 **SEC. 3300N.1. TITLE.**

20 *This Article 33N shall be known as the Domestic Workers' Equal Access to Paid Sick Leave*
21 *Ordinance.*

22
23 **SEC. 3300N.2. FINDINGS AND PURPOSE.**

1 (a) More than two million domestic workers in the United States, and approximately 10,000 in
2 San Francisco, work in the homes of their employers, cooking; cleaning; caring for children, older
3 adults, people with disabilities, and others; and performing other labor.

4 (b) Domestic workers generally are paid low wages, are unlikely to receive health benefits or
5 paid time off from employers, and are at high risk of wage theft and other violations of worker
6 protections. This vulnerability is long-standing and has deep historic, economic, and social roots in
7 racism and sexism. Domestic workers remain uniquely vulnerable, in part because they generally work
8 in isolation, behind the closed doors of private homes.

9 (c) In 2006, the people of the City and County of San Francisco (“City”) enacted the nation’s
10 first Paid Sick Leave Ordinance (PSLO), covering employees working in the City. Paid sick leave
11 (PSL) is an important public health tool for infectious disease control, as workers without it are more
12 likely to place others at risk by going to work sick or sending their children to school or daycare while
13 ill.

14 (d) Despite the PSLO, few domestic workers in the City have access to PSL. Only 17% of
15 domestic workers in San Francisco surveyed by researchers from the Graduate Center at the City
16 University of New York reported that they receive any paid time off as an employment benefit. Only
17 33% of those domestic workers reported that they had had even one paid day off during the previous
18 year, whether for sick leave, vacation, or a paid holiday. See Isaac Jabola-Carolus, “Profile of San
19 Francisco Domestic Workers,” December 2020, on file with the Clerk of the Board of Supervisors in
20 File No. 211132.

21 (e) The COVID-19 pandemic has highlighted the urgency of ensuring that all workers have
22 access to PSL for illness, caregiving responsibilities, and other purposes. This is particularly true for
23 low-wage workers, like domestic workers, who may be unlikely to have adequate resources to take
24 unpaid time off when ill or when caring for an ill family member. The COVID-19 pandemic has further
25 increased both the economic vulnerabilities of domestic workers. Domestic workers have suffered

1 disproportionate job losses due to the COVID-19 pandemic and public health response, peaking as
2 high as 60% in May 2020. See the foregoing “Profile of San Francisco Domestic Workers.” But
3 domestic workers are less likely than other workers to have access to unemployment insurance due to
4 misclassification, informal employment arrangements, and immigration status.

5 (f) Domestic workers are at heightened risk of contracting COVID-19 and other infectious
6 diseases because they typically work indoors, often in close proximity to their employers and those for
7 whom they provide care. Domestic workers frequently work for multiple different individuals or
8 families, increasing their exposure risk. Domestic workers generally are not protected by the federal
9 Occupational Safety and Health Act or its California counterpart, and they are unlikely to be provided
10 with personal protective equipment or other COVID-19 safety measures.

11 (g) Employers of domestic workers that wish to provide the workers with PSL often lack access
12 to systems to facilitate accrual and tracking of benefits. For domestic workers who work for multiple
13 employers for varying lengths of time, PSL that does not allow for aggregation across employers may
14 not provide workers meaningful access to PSL. Misclassification of employees as independent
15 contractors and informal employment arrangements further reduce domestic workers’ access to PSL.

16 (h) This Article 33N establishes a portable PSL system, which will allow Domestic Workers to
17 earn and consolidate PSL benefits from several employers and to keep and access that paid leave as
18 they move between jobs. The system would allow Hiring Entities to track PSL accruals, which would
19 be transferred from the Hiring Entity to the Domestic Worker when the Domestic Worker needs to take
20 PSL. PSL would not necessarily be used with the same Hiring Entity or Hiring Entities from which the
21 funds are drawn.

22 (i) The purpose of this Article 33N is to provide Domestic Workers in the City access to the
23 essential benefit of PSL, administered through the portable PSL system. By expanding access to PSL,
24 this Article is intended to mitigate the economic harm Domestic Workers are suffering due to the
25 pandemic, support the City’s pandemic response, and improve public health more broadly.

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SEC. 3300N.3. DEFINITIONS.

For purposes of this Article 33N, the following definitions apply.

“Agency” means the Office of Labor Standards Enforcement.

“City” means the City and County of San Francisco.

“Domestic Worker” means an individual who is employed by or contracts with a Hiring Entity to provide labor or services in a residence caring for a child; serving as a companion or providing other non-medical care or services for a sick, convalescing, disabled, or senior person; cleaning, cooking, providing food or butler service, gardening, personal organizing, or performing other in-home personal or domestic service. Domestic Worker includes an individual who as part of the individual’s employment or other work contract resides in the personal residence of the Hiring Entity.

Notwithstanding the foregoing definition, Domestic Worker does not include:

(a) An individual providing labor or services for a family member, meaning a spouse, child, parent, sibling, aunt, uncle, niece, nephew, first cousin, grandparent, grandchild, parent-in-law, child-in-law, stepparent, stepchild, stepsibling, or half-sibling, whether the individual is related by blood, marriage, or adoption;

(b) An individual primarily engaged in house sitting, pet sitting, or dog walking;

(c) An individual working at a business operated primarily out of the person’s own residence, such as a home day-care business;

(d) An individual whose primary work involves household repair or maintenance, such as a roofer, plumber, mason, painter, or other similar contractor;

(e) A home health care worker for work that is paid through public funds, such as a home health care worker while paid through Medicaid or Medicare;

(f) An individual under 18 years of age; or

1 (g) An individual who does not regularly perform work for the Hiring Entity. An
2 individual who performs an average of five hours or more per month shall be presumed to be a
3 Domestic Worker.

4 “Hiring Entity” means any person, as defined in Section 18 of the California Labor Code,
5 including corporate officers or executives, who directly or indirectly or through an agent or any other
6 person, including through the services of a temporary services or staffing agency or similar entity,
7 employs, contracts with, or hires a Domestic Worker.

8 “OEWD” means the Office of Economic and Workforce Development.

9 “Operative Date” means six months after the effective date of the ordinance in Board File No.
10 211132 establishing this Article 33N. Notwithstanding the impact of the Operative Date on other
11 provisions of this Article, OEWD and the Agency shall fulfill within the time frames specified in Section
12 3300N.6 those responsibilities assigned to them to be completed before the Operative Date.

13 “PSL” means paid sick leave.

14
15 **SEC. 3300N.4. ESTABLISHMENT OF PORTABLE PAID SICK LEAVE SYSTEM.**

16 (a) By the Operative Date, OEWD shall develop and implement the portable PSL system.
17 Subject to the budgetary and civil service provisions of the Charter, OEWD may delegate or assign
18 functions of the development and implementation of the portable PSL system to a third-party
19 administrator.

20 (b) The portable PSL system shall perform the following functions:

21 (1) Tracking each Domestic Worker’s hours worked for a Hiring Entity and net pay
22 rates, and calculating the accrued right to PSL funds from such information;

23 (2) When PSL funds are requested, coordinating the transfer of funds to a Domestic
24 Worker who has accrued the right to PSL contributions from one or more Hiring Entities from which
25 the right to PSL funds have accrued, in the order the right to PSL funds accrued.

1 (c) The portable PSL system shall be designed and administered to minimize administrative
2 burdens for the Hiring Entity and Domestic Worker.

3 (d) The portable PSL system administrator may seek relevant background information from the
4 Domestic Worker and the Hiring Entity for the purpose of coordinating the transfer of funds from a
5 Hiring Entity to a Domestic Worker. All information provided to or retained in the portable PSL
6 system shall be confidential to the extent permitted by law, provided however, that such information
7 may be shared with 1) a financial institution facilitating payments by the PSL system to the extent
8 legally required and 2) the Agency to the extent needed to implement, administer, and enforce this
9 Article 33N. Such financial institutions and the Agency shall maintain the confidentiality of such
10 information to the extent permitted by law.

11
12 **SEC. 3300N.5. DOMESTIC WORKERS' ACCESS TO PAID SICK LEAVE.**

13 (a) Except as provided in subsection (e) or in any exception created by rule under Section
14 3300N.8, and without regard to the employment classification of the Domestic Worker, a Hiring Entity
15 shall provide PSL funds to a Domestic Worker. The right to PSL funds shall be accounted for in the
16 portable PSL system established under Section 3300N.4, and the PSL system shall coordinate the
17 transfer of funds from a Hiring Entity to a Domestic Worker when a Domestic Worker requests accrued
18 PSL funds.

19 (b) A Domestic Worker shall accrue a right to PSL funds under subsection (a) equal to not less
20 than one hour of net pay, at the Domestic Worker's regular rate of pay, for every 30 hours of work for
21 the Hiring Entity performed on or after the Operative Date. The Hiring Entity shall report the number
22 of hours of work and net pay rate of a Domestic Worker to the PSL system. The Domestic Worker shall
23 report the number of hours of work, net pay rate, and relevant contact information of the Hiring Entity.
24 The information provided by the Hiring Entity and Domestic Worker to the portable PSL system
25 administrator shall be retained, used to calculate a Domestic Worker's right to PSL funds from a

1 Hiring Entity, and used to coordinate the transfer of such PSL funds from the Hiring Entity to the
2 Domestic Worker.

3 (c) The right to PSL funds shall accrue in hour-unit increments, but the funds shall not be
4 transferred from the Hiring Entity to the Domestic Worker until the Domestic Worker requests the PSL
5 funds. A Hiring Entity is responsible for fulfilling any tax withholding and tax reporting obligations for
6 such contributions at the time PSL funds are transferred.

7 (d) A Hiring Entity may cap accrual of the right to PSL contributions for a Domestic Worker at
8 40 hours of PSL, provided however that a Hiring Entity that is an Employer under Administrative Code
9 Section 12W.2(d) and not a “Small business” under Administrative Code Section 12W.2(f) may cap
10 accrual of the right to PSL contributions for a Domestic Worker at 72 hours of PSL. The right to PSL
11 contributions carries over from year to year (whether calendar year or fiscal year).

12 (e) A Domestic Worker may use the portable PSL system established under Section 3300N.4 to
13 request accrued PSL funds for use for any purpose for which paid sick leave may be used under
14 Administrative Code 12W.4.

15 (f) If a Hiring Entity directly provides a Domestic Worker PSL, including but not limited to PSL
16 under Administrative Code Chapter 12W, the Hiring Entity may offset that paid leave from the PSL
17 funds it must provide a Domestic Worker under subsections (a) and (b). A Hiring Entity that provides
18 at least one hour of PSL for every 30 hours of work shall be exempt from all provisions of this Article
19 33N, except for the requirements of Section 3300N.8(d).

20 (g) If a Hiring Entity that is an “Employer” under Administrative Code Section 12W.2(d)
21 complies with this Article 33N, the Employer shall be deemed to comply with Administrative Code
22 Chapter 12W.

23
24 **SEC. 3300N.6. NOTICE TO DOMESTIC WORKERS.**

1 (a) The Agency shall, within 90 days of the effective date of the ordinance in Board File
2 No. 211132 establishing this Article 33N, publish and make available on its website and through
3 electronic communication an initial notice of the Domestic Workers' Equal Access to Paid Sick Leave
4 Ordinance.

5 (b) The Agency shall conduct outreach and education about this Article 33N in the community
6 to inform Domestic Workers and Hiring Entities.

7 (c) OEWD, in collaboration with the Agency, shall, not later than 21 days prior to the Operative
8 Date, publish and make available on its website notice regarding the portable PSL system and how to
9 access it. The Agency shall promptly publish and make available on its website and through electronic
10 communication the same notice.

11 (d) The Agency shall, not later than 21 days prior to the Operative Date of this Article 33N,
12 publish and make available on its website and through electronic communication a notice suitable for
13 Hiring Entities to inform Domestic Workers of their rights under this Article 33N, in English, Spanish,
14 Chinese, Filipino, and any language spoken by at least 5% of City residents. A Hiring Entity shall,
15 within seven days after the Operative Date, provide the notice to Domestic Workers in a manner
16 calculated to reach each Domestic Worker by printing and providing the notice on paper and/or
17 sending it to the Domestic Worker via electronic mail or text message. Such notice shall be provided in
18 the Domestic Worker's native language if the notice is available in that language.

19
20 **SEC. 3300N.7. EXERCISE OF RIGHTS PROTECTED; RETALIATION PROHIBITED.**

21 (a) It shall be unlawful for a Hiring Entity or any other person to interfere with, restrain, or
22 deny the exercise of, or the attempt to exercise, any right protected under this Article 33N.

23 (b) It shall be unlawful for a Hiring Entity to take any adverse action against any Domestic
24 Worker in retaliation for exercising rights protected under this Article 33N, including the right to file a
25 complaint or inform any person about any Hiring Entity's alleged violation of this Article; the right to

1 cooperate with the Agency in its investigations of alleged violations of this Article; and the right to
2 inform any person of their possible rights under this Article.

3 (c) Protections of this Article 33N shall apply to any person who mistakenly but in good faith
4 alleges violations of this Article.

5 (d) Taking adverse action against a person within 90 days of the person's filing a complaint
6 with the Agency or a court alleging a violation of any provision of this Article 33N; of informing any
7 person about a Hiring Entity's alleged violation of this Article; of cooperating with the Agency or other
8 persons in the investigation or prosecution of any alleged violation of this Article; of opposing any
9 policy, practice, or act that is unlawful under this Article; or of informing any person of their rights
10 under this Article, shall raise a rebuttable presumption that such adverse action was taken in
11 retaliation for the exercise of one or more of the aforementioned rights. Unless the Hiring Entity rebuts
12 the presumption with clear and convincing evidence that the adverse action was solely for a reason
13 other than retaliation, the Hiring Entity shall be deemed to have violated this Section 3300N.7.

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15 **SEC. 3300N.8. IMPLEMENTATION AND ENFORCEMENT.**

16 (a) OEWD is authorized to implement Section 3300N.4 and, in consultation with the Agency
17 and after seeking input and recommendations from Domestic Workers, Hiring Entities, and other
18 community partners, may promulgate guidelines or rules for such purposes. Such guidelines or rules
19 shall address the establishment and implementation of the portable PSL system, including platform
20 design, onboarding, and usability for Domestic Workers and Hiring Entities; transfer of funds from
21 Hiring Entities to Domestic Workers; and administration and cost management of the PSL system.

22 (b) The Agency is authorized to implement and enforce the remaining provisions of this Article
23 33N and may promulgate guidelines or rules for such purposes. Such guidelines or rules may address,
24 among other things, outreach to Hiring Entities and Domestic Workers and enforcement of this Article.

1 (c) A Domestic Worker or any other person who has reason to believe that a violation of this
2 Article 33N has occurred may report the suspected violation to the Agency. The Agency shall
3 encourage reporting pursuant to this subsection (c) by keeping confidential, to the maximum extent
4 permitted by law, the name and other identifying information of the person reporting the violation;
5 provided, however, that with the authorization of said person, the Agency may disclose their name and
6 identifying information as necessary to enforce this Article or for other appropriate purposes.

7 (d) Hiring Entities shall retain records pertaining to their compliance with this Article 33N for
8 a period of four years and shall allow the Agency access to such records upon reasonable notice.
9 Failure to maintain records or to allow the Agency reasonable access to such records shall result in a
10 presumption that the Hiring Entity has violated this Article, absent clear and convincing evidence
11 otherwise.

12 (e) The Agency may investigate possible violations of this Article 33N. Where the Agency has
13 reason to believe that a violation has occurred, it may order any appropriate temporary or interim
14 relief to mitigate the violation or maintain the status quo pending completion of a full investigation dor
15 hearing.

16 (f) Where the Agency determines that a violation has occurred following an investigation that
17 affords due process, including notice of the alleged violation and the right to respond, the Agency may
18 issue a determination of violation and order any appropriate relief, including but not limited to the
19 reinstatement of a Domestic Worker, back pay, and the payment of an additional sum as an
20 administrative penalty to each employee or person whose rights under this Article 33N were violated.
21 If any PSL contributions were unlawfully withheld, the dollar amount of such contributions multiplied
22 by three, or \$250, whichever amount is greater, shall be included in the administrative penalty paid to
23 a Domestic Worker. Further, the Agency may order the payment of an additional sum as an
24 administrative penalty that does not exceed \$1,000 for the Hiring Entity's first violation, \$5,000 for the
25 second violation, and \$10,000 for the third and subsequent violations. For the purpose of this

1 calculation, if multiple Domestic Workers are impacted by the same violation at the same time, the
2 Agency shall treat the violation as a single violation rather than multiple violations. To compensate the
3 City for the costs of investigating and remedying the violation, the Agency may also order the violating
4 Hiring Entity to pay to the City an amount that does not exceed the Agency's enforcement costs. Subject
5 to the budgetary and fiscal provisions of the Charter, such funds shall be allocated to the Agency and
6 used to offset the costs of implementing and enforcing this Article and other ordinances the Agency
7 enforces.

8 (g) The Agency may not issue a determination of violation under this Article 33N for the same
9 conduct by the same Hiring Entity subject to a determination of violation under Administrative Code
10 Chapter 12W.

11 (h) The determination of violation shall provide notice to the Hiring Entity of the right to appeal
12 the determination to the Controller and that failure to do so within 15 days shall result in the
13 determination becoming a final administrative decision enforceable as a judgment by the Superior
14 Court. When prompt compliance with a final administrative decision is not forthcoming, the Agency
15 may take any appropriate enforcement action to secure compliance, including requesting the City
16 Attorney seek enforcement of the decision in Superior Court and, except where prohibited by State or
17 Federal law, requesting that City agencies or departments revoke or suspend any registration
18 certificates, permits, or licenses held or requested by the Hiring Entity or person until such time as the
19 violation is remedied.

20 (i) The determination of violation shall specify a reasonable time period for payment of any
21 relief ordered. The Agency may award interest on all amounts due and unpaid at the expiration of such
22 time period at the rate of interest specified in subdivision (b) of Section 3289 of the California Civil
23 Code, as may be amended from time to time.

24 (j) The remedies and penalties provided under this Article 33N are cumulative.

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1 (k) The Agency may require that remedies and penalties due and owing to Domestic Workers be
2 paid directly to the City for disbursement to the Domestic Workers. The Controller shall hold these
3 funds in escrow for the Domestic Workers. The Agency shall make best efforts to distribute such funds
4 to Domestic Workers. In the event such funds are unclaimed for a period of three years, the Controller
5 may undertake administrative procedures for escheat of unclaimed funds under California Government
6 Code Sections 50050 et seq., as may be amended from time to time. Subject to the budgetary and fiscal
7 provisions of the Charter, such escheated funds shall be dedicated to the enforcement of this Article
8 33N or other laws the Agency enforces.

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10 **SEC. 3300N.9. APPEAL PROCEDURE.**

11 (a) A Hiring Entity may file an appeal from a determination of violation (“Appeal”) in
12 accordance with the following procedures:

13 (1) The Hiring Entity shall file the Appeal with the Controller and serve a copy on the
14 Agency. The Appeal shall be filed in writing within 15 days of the date of service of the determination
15 of violation, and shall specify the basis for the Appeal and shall request that the Controller appoint a
16 hearing officer to hear and decide the Appeal. Failure to submit a timely, written Appeal shall
17 constitute concession to the violation, and the determination of violation shall be deemed the final
18 administrative decision upon expiration of the 15-day period. Further, failure to submit a timely,
19 written Appeal shall constitute a failure to exhaust administrative remedies, which shall serve as a
20 complete defense to any petition or claim brought against the City regarding the determination of
21 violation.

22 (2) Following the filing of the Appeal and service of a copy on the Agency, the Agency
23 shall promptly afford the Hiring Entity an opportunity to meet and confer in good faith regarding
24 possible resolution of the determination of violation.

1 (3) Within 30 days of receiving an Appeal, the Controller shall appoint an impartial
2 hearing officer who is not part of the Agency and immediately notify the Agency and Hiring Entity of
3 the appointment.

4 (4) The hearing officer shall promptly set a date for a hearing. The hearing shall
5 commence within 45 days of the date of the Controller’s notice of appointment of the hearing officer
6 and conclude within 75 days of such notice, provided, however, that the hearing officer may extend
7 these time limits for good cause.

8 (5) The hearing officer shall conduct a fair and impartial evidentiary hearing. The
9 Hiring Entity shall have the burden of proving by a preponderance of the evidence that the Agency
10 erred in its determination of violation, and/or the relief ordered therein.

11 (6) Within 30 days of the conclusion of the hearing, the hearing officer shall issue a
12 written decision affirming, modifying, or dismissing the determination of violation. The hearing
13 officer’s decision shall be the final administrative decision. The decision shall consist of findings, a
14 determination, any relief ordered, a reasonable time period for payment of any relief ordered, and
15 notice to the Hiring Entity of the right to appeal by filing a petition for a writ of mandate as described
16 in subsection (a)(7), and that failure to file a timely appeal shall result in the final administrative
17 decision becoming enforceable as a judgment by the Superior Court.

18 (7) The Hiring Entity may appeal the final administrative decision only by filing in San
19 Francisco Superior Court a petition for a writ of mandate under California Code of Civil Procedure,
20 Section 1094.5 et seq., as applicable, and as may be amended from time to time.

21 (b) The final administrative decision is enforceable as a judgment in Superior Court. Where a
22 Hiring Entity fails to comply with a final administrative decision within the time period required
23 therein, the Agency may take any appropriate enforcement action to secure compliance, including
24 referring the action to the City Attorney to enforce the final administrative decision as a judgment and,
25 except where prohibited by State or Federal law, requesting that City agencies or departments revoke

1 or suspend any registration certificates, permits, or licenses held or requested by the Hiring Entity until
2 such time as the violation is remedied.

3
4 **SEC. 3300N.10. PREEMPTION.**

5 Nothing in this Article 33N shall be interpreted or applied so as to create any right,
6 requirement, power, or duty in conflict with Federal or State law. The term “conflict,” as used in this
7 Section 3300N.10 means a conflict that is preemptive under Federal or State law.

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9 **SEC. 3300N.11. UNDERTAKING FOR THE GENERAL WELFARE.**

10 In undertaking the adoption and enforcement of this Article 33N, the City is undertaking only to
11 promote the general welfare. The City is not assuming, nor is it imposing on its officers and employees,
12 an obligation for breach of which it is liable in money damages to any person who claims that such
13 breach proximately caused injury. This Article does not create a legally enforceable right by any
14 member of the public against the City.

15
16 **SEC. 3300N.12. SEVERABILITY.**

17 If any section, subsection, sentence, clause, phrase, or word of this Article 33N, or any
18 application thereof to any person or circumstance, is held to be invalid or unconstitutional by a
19 decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining
20 portions or applications of this Article. The Board of Supervisors hereby declares that it would have
21 passed this Article and every section, subsection, sentence, clause, phrase, and word not declared
22 invalid and unconstitutional without regard to whether any other portion of this Article or application
23 thereof would be subsequently declared invalid or unconstitutional.

