

1 **Ordinance adding Chapter 12W to the Administrative Code to require San Francisco**  
2 **employers to provide paid sick leave to employees.**

3 Note: All sections are new.

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

5 Section 1. **LEGISLATIVE FINDINGS AND PURPOSE.**

6 A large number of workers in the City and County of San Francisco do not have paid  
7 sick leave available to them. This problem is most prevalent among part-time employees but  
8 also is widespread among full-time employees working in many sectors of the local economy.  
9 The problem is greatest among workers toward the lower end of the economic spectrum,  
10 although it is by no means limited to such workers and affects many middle-income workers  
11 as well as higher-income workers. Further, a large number of workers who have paid sick  
12 leave available to them do not have an adequate number of hours of such leave to reasonably  
13 meet their needs or the needs of their children or other family members.

14 The absence or inadequacy of paid sick leave among workers in San Francisco poses  
15 serious problems not only for affected workers but also for their families, their employers, the  
16 health care system, and the community as a whole. Among these problems are the following:

17 1. When workers have no paid sick leave or an inadequate amount available to them,  
18 they are more likely to come to work when they are sick. Working when sick is often  
19 counterproductive from a health standpoint, because it may cause the employee's condition to  
20 worsen or may delay the employee's recovery, thus compounding the hardship to the  
21 employee and his or her family caused by the illness. In addition, the employee's job  
22 productivity is likely to suffer if he or she is working while sick or injured.

23 2. Employees who comes to work when they are sick may expose other employees to  
24 infectious diseases, such as the flu. When that occurs, some of the employees who have  
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1    been exposed will also become ill, which not only creates hardships for those workers and  
2    their families but also increases costs to the health care system and undermines job  
3    productivity.

4           3. In those industries where workers have substantial contact with customers, or with  
5    certain goods that come into contact with customers, such as food, there is a risk that a sick  
6    worker will jeopardize the health of members of the public by exposing them, directly or  
7    indirectly, to germs and disease.

8           4. When workers do not have paid sick leave or an adequate amount of paid sick  
9    leave available to them, they are more likely to come to work notwithstanding the medical  
10   problems facing their children or other family members. When that occurs, ill or injured family  
11   members may not receive the care, attention, and medical assistance necessary to aid their  
12   recovery. Their health problems consequently may intensify or be prolonged, because it often  
13   will take longer for them to recover when responsible adult family members are not able to  
14   care for them at home or take them to medical appointments.

15          5. A worker who has no paid sick leave or an inadequate amount to take time off to  
16   care for a sick child may send the child, even though sick, to school or a child care center,  
17   thereby exposing other children to germs and disease. Inevitably, some children thus  
18   exposed will become ill due to their close proximity to and interactions with the sick child.

19          6. Without adequate paid sick leave, working parents who must stay home when they,  
20   their children, or other family members are ill or injured lose earnings and may risk a loss of  
21   employment, thereby placing the family's economic security in jeopardy and increasing the  
22   likelihood that taxpayer-funded sources will have to be used to provide for the family's needs.

23          7. Without adequate paid sick leave, it is much more difficult for workers to schedule  
24   medical appointments for themselves and their children and other family members. As a  
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1 result, routine medical appointments that can prevent the onset of illness or injury are often  
2 not scheduled; and medical appointments to treat an existing illness or injury are not  
3 scheduled, or are scheduled only after the illness or injury has become acute. When medical  
4 care is sacrificed in the short run, medical costs increase in the long run. Hospitalization of  
5 patients, with its attendant costs, sometimes becomes necessary because preventive health  
6 measures were not taken earlier.

7 8. Without adequate paid sick leave, it is much more difficult for workers to care for  
8 family members on a short-term basis. As a result, it sometimes becomes necessary for  
9 family members to be placed in nursing homes, thereby increasing nursing care costs.

10 The foregoing problems are particularly serious for single-parent and two-parent  
11 households in which the single parent or both parents work, which is often a necessity in San  
12 Francisco. The unavailability or inadequacy of paid sick leave hits women and people of color  
13 in the San Francisco workforce particularly hard, but no demographic or ethnic group is  
14 spared from hardship when sick leave is unavailable or inadequate.

15 To safeguard the public welfare, health, safety, and prosperity of San Francisco, it is  
16 essential that all persons working in our community be able to receive paid sick leave that is  
17 adequate to ensure a decent and healthy life for them and their families. Ensuring the  
18 adequacy of paid sick leave for employees in San Francisco will ensure a more stable  
19 workforce in our community and thereby benefit not only workers and their families but  
20 employers and the community as a whole. It is in the interest of all San Franciscans to  
21 require that employers benefiting from the opportunity to do business here make available to  
22 their employees a reasonable amount of paid sick leave. Implementation of this policy serves  
23 the public interest and constitutes a significant public benefit.

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1 Section 2. The San Francisco Administrative Code is hereby amended by adding  
2 Chapter 12W, consisting of Sections 12W.1 through 12W.16, to read as follows:

3 **CHAPTER 12W**  
4 **SICK LEAVE**

- 5 Sec. 12W.1. Title
- 6 Sec. 12W.2. Definitions
- 7 Sec. 12W.3. Accrual of Paid Sick Leave
- 8 Sec. 12W.4. Use of Paid Sick Leave
- 9 Sec. 12W.5. Notice and Posting
- 10 Sec. 12W.6. Employer Records
- 11 Sec. 12W.7. Exercise of Rights Protected; Retaliation Prohibited
- 12 Sec. 12W.8. Implementation and Enforcement
- 13 Sec. 12W.9. Waiver Through Collective Bargaining
- 14 Sec. 12W.10. Other Legal Requirements
- 15 Sec. 12W.11. More Generous Employer Leave Policies
- 16 Sec. 12W.12. Operative Date
- 17 Sec. 12W.13. Preemption
- 18 Sec. 12W.14. City Undertaking Limited to Promotion of the General Welfare
- 19 Sec. 12W.15. Severability
- 20 Sec. 12W.16. Amendment by the Board of Supervisors

21 **SEC. 12W.1. TITLE.**

22 This Chapter shall be known as the "Sick Leave Ordinance."

23 **SEC. 12W.2. DEFINITIONS.**

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

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

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

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

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

20 (e) "Paid sick leave" shall mean paid "sick leave" as defined in California Labor Code  
21 §233(b)(4), except that the definition extends beyond the employee's own illness, injury,  
22 medical condition, need for medical diagnosis or treatment, or medical reason, to also  
23 encompass time taken off work by an employee for the purpose of providing care or  
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1 assistance to other persons, as specified further in Section 12W.4(a), with an illness, injury,  
2 medical condition, need for medical diagnosis or treatment, or other medical reason.

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  
5 for 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, paid sick leave shall  
12 begin to accrue 90 days after the commencement of employment with the employer.

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

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

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

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1 (e) An employer is not required to provide financial or other reimbursement to an  
2 employee upon the employee's termination, resignation, retirement, or other separation from  
3 employment, for accrued paid sick leave that the employee has not used.

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

5 (a) An employee may use paid sick leave not only when he or she is ill or injured or for  
6 the purpose of the employee's receiving medical care, treatment, or diagnosis, as specified  
7 more fully in California Labor Code §233(b)(4), but also to aid or care for the following persons  
8 when they are ill or injured or receiving medical care, treatment, or diagnosis: Child; parent;  
9 legal guardian or ward; sibling; grandparent; grandchild; and spouse, registered domestic  
10 partner under any state or local law, or designated person. The employee may use all or any  
11 percentage of his or her paid sick leave to aid or care for the aforementioned persons. The  
12 aforementioned child, parent, sibling, grandparent, and grandchild relationships include not  
13 only biological relationships but also relationships resulting from adoption; step-relationships;  
14 and foster care relationships. "Child" includes a child of a domestic partner and a child of a  
15 person standing in loco parentis.

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

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

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

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

8 **SEC. 12W.5. NOTICE AND POSTING.**

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

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

20 **SEC. 12W.6. EMPLOYER RECORDS.**

21 Employers shall retain records documenting hours worked by employees and paid sick  
22 leave taken by employees, for a period of four years, and shall allow the Agency access to  
23 such records, with appropriate notice and at a mutually agreeable time, to monitor compliance  
24 with the requirements of this Chapter. When an issue arises as to an employee's entitlement  
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1 to paid sick leave under this Chapter, if the employer does not maintain or retain adequate  
2 records documenting hours worked by the employee and paid sick leave taken by the  
3 employee, or does not allow the Agency reasonable access to such records, it shall be  
4 presumed that the employer has violated this Chapter, absent clear and convincing evidence  
5 otherwise.

6 **SEC. 12W.7. EXERCISE OF RIGHTS PROTECTED; RETALIATION PROHIBITED.**

7 It shall be unlawful for an employer or any other person to interfere with, restrain, or  
8 deny the exercise of, or the attempt to exercise, any right protected under this Chapter.

9 It shall be unlawful for an employer or any other person to discharge, threaten to  
10 discharge, demote, suspend, or in any manner discriminate or take adverse action against  
11 any person in retaliation for exercising rights protected under this Chapter. Such rights  
12 include but are not limited to the right to use paid sick leave pursuant to this Chapter; the right  
13 to file a complaint or inform any person about any employer's alleged violation of this Chapter;  
14 the right to cooperate with the Agency in its investigations of alleged violations of this Chapter;  
15 and the right to inform any person of his or her potential rights under this Chapter.

16 It shall be unlawful for an employer absence control policy to count paid sick leave  
17 taken under this Chapter as an absence that may lead to or result in discipline, discharge,  
18 demotion, suspension, or any other adverse action.

19 Protections of this Chapter shall apply to any person who mistakenly but in good faith  
20 alleges violations of this Chapter.

21 Taking adverse action against a person within 90 days of the person's filing a complaint  
22 with the Agency or a court alleging a violation of any provision of this Chapter; informing any  
23 person about an employer's alleged violation of this Chapter; cooperating with the Agency or  
24 other persons in the investigation or prosecution of any alleged violation of this Chapter;

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1 opposing any policy, practice, or act that is unlawful under this Chapter; or informing any  
2 person of his or her rights under this Chapter shall raise a rebuttable presumption that such  
3 adverse action was taken in retaliation for the exercise of one or more of the aforementioned  
4 rights.

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

6 (a) *Implementation.* The Agency shall be authorized to coordinate implementation and  
7 enforcement of this Chapter and may promulgate appropriate guidelines or rules for such  
8 purposes. Any guidelines or rules promulgated by the Agency shall have the force and effect  
9 of law and may be relied on by employers, employees, and other persons to determine their  
10 rights and responsibilities under this Chapter. Any guidelines or rules may establish  
11 procedures for ensuring fair, efficient, and cost-effective implementation of this Chapter,  
12 including supplementary procedures for helping to inform employees of their rights under this  
13 Chapter, for monitoring employer compliance with this Chapter, and for providing  
14 administrative hearings to determine whether an employer or other person has violated the  
15 requirements of this Chapter.

16 (b) *Administrative Enforcement.* The Agency is authorized to take appropriate steps to  
17 enforce this Chapter. The Agency may investigate any possible violations of this Chapter by  
18 an employer or other person. Where the Agency has reason to believe that a violation has  
19 occurred, it may order any appropriate temporary or interim relief to mitigate the violation or  
20 maintain the status quo pending completion of a full investigation or hearing.

21 Where the Agency, after a hearing that affords a suspected violator due process,  
22 determines that a violation has occurred, it may order any appropriate relief including, but not  
23 limited to, reinstatement, back pay, the payment of any sick leave unlawfully withheld, and the  
24 payment of an additional sum as an administrative penalty to each employee or person whose  
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1 rights under this Chapter were violated. If any paid sick leave was unlawfully withheld, the  
2 dollar amount of paid sick leave withheld from the employee multiplied by three, or \$250,  
3 whichever amount is greater, shall be included in the administrative penalty paid to the  
4 employee. In addition, if a violation of this Chapter resulted in other harm to the employee or  
5 any other person, such as discharge from employment, or otherwise violated the rights of  
6 employees or other persons, such as a failure to post the notice required by Section  
7 12W.5(b), or an act of retaliation prohibited by Section 12W.7, this administrative penalty shall  
8 also include \$50 to each employee or person whose rights under this Chapter were violated  
9 for each day or portion thereof that the violation occurred or continued.

10 Where prompt compliance is not forthcoming, the Agency may take any appropriate  
11 enforcement action to secure compliance, including initiating a civil action pursuant to Section  
12 12W.8(c) and/or, except where prohibited by state or federal law, requesting that City  
13 agencies or departments revoke or suspend any registration certificates, permits or licenses  
14 held or requested by the employer or person until such time as the violation is remedied. In  
15 order to compensate the City for the costs of investigating and remedying the violation, the  
16 Agency may also order the violating employer or person to pay to the City a sum of not more  
17 than \$50 for each day or portion thereof and for each employee or person as to whom the  
18 violation occurred or continued. Such funds shall be allocated to the agency and used to  
19 offset the costs of implementing and enforcing this Chapter.

20 An employee or other person may report to the agency any suspected violation of this  
21 Chapter. The Agency shall encourage reporting pursuant to this subsection by keeping  
22 confidential, to the maximum extent permitted by applicable laws, the name and other  
23 identifying information of the employee or person reporting the violation. Provided, however,  
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1 that with the authorization of such person, the Agency may disclose his or her name and  
2 identifying information as necessary to enforce this Chapter or for other appropriate purposes.

3 (c) *Civil Enforcement.* The Agency, the City Attorney, any person aggrieved by a  
4 violation of this Chapter, any entity a member of which is aggrieved by a violation of this  
5 Chapter, or any other person or entity acting on behalf of the public as provided for under  
6 applicable state law, may bring a civil action in a court of competent jurisdiction against the  
7 employer or other person violating this Chapter and, upon prevailing, shall be entitled to such  
8 legal or equitable relief as may be appropriate to remedy the violation including, but not limited  
9 to, reinstatement, back pay, the payment of any sick leave unlawfully withheld, the payment of  
10 an additional sum as liquidated damages in the amount of \$50 to each employee or person  
11 whose rights under this Chapter were violated for each hour or portion thereof that the  
12 violation occurred or continued, plus, where the employer has unlawfully withheld paid sick  
13 leave to an employee, the dollar amount of paid sick leave withheld from the employee  
14 multiplied by three; or \$250, whichever amount is greater; and reinstatement in employment  
15 and/or injunctive relief; and, further, shall be awarded reasonable attorneys' fees and costs.  
16 Provided, however, that any person or entity enforcing this Chapter on behalf of the public as  
17 provided for under applicable state law shall, upon prevailing, be entitled only to equitable,  
18 injunctive or restitutionary relief, and reasonable attorneys' fees and costs.

19 (d) *Interest.* In any administrative or civil action brought under this Chapter, the  
20 Agency or court, as the case may be, shall award interest on all amounts due and unpaid at  
21 the rate of interest specified in subdivision (b) of Section 3289 of the California Civil Code.

22 (e) *Remedies Cumulative.* The remedies, penalties, and procedures provided under  
23 this Chapter are cumulative.

24 **SEC. 12W.9. WAIVER THROUGH COLLECTIVE BARGAINING.**

1 All or any portion of the applicable requirements of this Chapter shall not apply to  
2 employees covered by a bona fide collective bargaining agreement to the extent that such  
3 requirements are expressly waived in the collective bargaining agreement in clear and  
4 unambiguous terms.

5 **SEC. 12W.10. OTHER LEGAL REQUIREMENTS.**

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

11 **SEC. 12W.11. MORE GENEROUS EMPLOYER LEAVE POLICIES.**

12 This Chapter provides minimum requirements pertaining to paid sick leave and shall  
13 not be construed to prevent employers from adopting or retaining leave policies that are more  
14 generous than policies that comply with this Chapter. Employers are encouraged to provide  
15 more generous leave policies than required by this Chapter.

16 **SEC. 12W.12. OPERATIVE DATE.**

17 This Chapter shall become operative 90 days after its adoption by the voters at the  
18 November 7, 2006 election. This Chapter shall have prospective effect only.

19 **SEC. 12W.13. PREEMPTION.**

20 Nothing in this Chapter shall be interpreted or applied so as to create any power or  
21 duty in conflict with federal or state law.

22 **SEC. 12W.14. CITY UNDERTAKING LIMITED TO PROMOTION OF GENERAL**  
23 **WELFARE.**

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

6           **SEC 12W.15. SEVERABILITY.**

7           If any part or provision of this Chapter, or the application of this Chapter to any person  
8 or circumstance, is held invalid, the remainder of this Chapter, including the application of  
9 such part or provision to other persons or circumstances, shall not be affected by such a  
10 holding and shall continue in full force and effect. To this end, the provisions of this Chapter  
11 are severable.

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

13           The Board of Supervisors may amend this Chapter with respect to matters relating to  
14 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; provided, however, that, in the event any  
18 provision in this Chapter is held legally invalid, the Board retains the power to adopt legislation  
19 concerning the subject matter that was covered in the invalid provision.

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