

# Health & Human Services and Public Safety Committee Agenda

Tuesday, July 17, 2018, 5:30pm

Council Chambers, City Hall

*Councilor Belinda Ray, District 1, Chair*

*Councilor Brian Batson, District 3*

*Councilor Pious Ali, At-Large*

## 1. Announcements

- July 10 Minutes will be reviewed for approval at the next meeting.

## 2. Discussion Of Proposed Earned Paid Sick Leave Ordinance

Corporation Counsel answers to committee questions and discussion of definitions:

- Employer
- Employee
- Family member.

Documents:

[2018-06-20 MEMO TO HHS AND PS COMMITTEE.PDF](#)  
[DEFINITIONS PSL - FAMILY MEMBER.PDF](#)  
[DEFINITIONS - WHO IS COVERED - EMPLOYER, EMPLOYEE.PDF](#)

NOTE: Since there are no action items on the agenda, there will be no opportunity for public comment at this meeting. Please feel free to send comments to members of the committee on any issue at any time via email. Councilors email addresses are available on the city website: [www.portlandmaine.gov](http://www.portlandmaine.gov)

*The meeting can be watched online via livestream: [www.portlandmaine.gov/livestream](http://www.portlandmaine.gov/livestream)*

*Keep up to date with the new shelter design and planning process at the City's website:*

[www.portlandmaine.gov/shelterplanning](http://www.portlandmaine.gov/shelterplanning)

## MEMORANDUM

**TO:** Health and Human Services and Public Safety Committee  
**CC:** Mayor Strimling  
**FROM:** Anne M. Torregrossa, Associate Corporation Counsel  
**DATE:** June 20, 2018  
**RE:** Paid Sick Time Ordinance Information

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This memo will address two of the questions raised by the HHS Committee at its May 8, 2018 meeting, and subsequently.

### 1. Paid Time Off

A question arose during the May Committee meeting as to whether a paid time off (“PTO”) policy would meet the requirements of the proposed ordinance. At that meeting, I advised that it would, so long as the PTO program provided at least as much leave as the ordinance, allowed the leave to be taken for the same reasons set forth in the ordinance, allowed accrued time to roll over, and met the other requirements of the ordinance.

Since that time, I have reviewed the memo from Maine Medical Center on their concerns regarding how the proposed ordinance might impact their PTO program. In an attempt to clarify the application of this ordinance to a PTO program, I have would suggest a clarification as follows:

(f) Any employer that has a paid leave policy that makes available an amount of paid leave sufficient to meet the accrual requirements of this section, and allows that paid leave to be used for the same purposes and under the same conditions as earned paid sick time under this ordinance, is not required to provide additional paid sick time. This exception applies regardless of how the paid leave is designated, including “sick leave,” “paid time off,” or otherwise. If an employer has a policy that does not distinguish between sick leave and other types of leave, the employer need not track the actual reasons for leave, so long as leave is available for the same purposes and under the same conditions as earned paid sick time under this ordinance.

As for the other concerns in MMC’s memo, including the requirement to roll over time; the exposure to other requirements in the ordinance, including tracking, burden of proof, retaliation, recordkeeping, etc.; and the application to part-time and per diem employees, whether to apply those requirements to an employer with an existing paid leave program is a policy question for the Committee.

### 2. Applicability to Remote Employees

The question was posed whether employees who work remotely from home in the City for entities who do not otherwise have a place of business within the City would be subject to the proposed ordinance. The proposed ordinance incorporates the definitions from Portland’s minimum wage ordinance, which only applies to an employer who “has a place of business within

the City limits.” Absent a permanent place of business physically located within the City, the paid sick leave ordinance would not apply.

### **3. Coverage of Per Diem Employees**

The Committee wrestled with how a per diem employee would be given paid sick days. By way of background, several state and local laws exempt per diem employees from their paid sick leave laws, including Connecticut, Vermont, and New Jersey (limited to the health care field). Other states do include per diem employees, so long as they meet other minimum standards, including District of Columbia, California, Massachusetts, and Arizona.

Massachusetts provides the following guidance on implementing its paid sick leave ordinance with respect to per diem employees:

#### **Q: When can a per diem or on-call employee use earned sick time?**

Per diem or on-call employees can use earned sick time only for hours they have been scheduled to work. Being “scheduled to work” does not include shifts for which an employee has been asked to be available or on call, unless the employee is required to remain on call on the employer’s premises.

Family Member: Definitions from various EPSL laws/ordinances

<p><b>As currently proposed</b></p>	<p>(A) Regardless of age, a biological, adopted or foster child, stepchild or legal ward, a child of a domestic partner, a child to whom the employee stands in loco parentis, or an individual to whom the employee stood in loco parentis when the individual was a minor; (B) A biological, foster, stepparent or adoptive parent or legal guardian of an employee or an employee’s spouse or domestic partner or a person who stood in loco parentis when the employee or employee’s spouse or domestic partner was a minor child; (C) A person to whom the employee is legally married under the laws of any state, or a domestic partner of an employee as registered under the laws of any state or political subdivision; (D) A grandparent, grandchild or sibling (whether of a biological, foster, adoptive or step relationship) of the employee or the employee’s spouse or domestic partner; (E) A person for whom the employee is responsible for providing or arranging care, including but not limited to helping that individual obtain diagnostic, preventive, routine or therapeutic health treatment; or (F) Any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.</p>
<p><b>NJ State Law</b></p>	<p>Family member means a child, grandchild, sibling, spouse, domestic partner, civil union partner, parent, or grandparent of an employee, or a spouse, domestic partner, or civil union partner of a parent or grandparent of the employee, or a sibling of a spouse, domestic partner, or civil union partner of the employee, or any other individual related by blood to the employee or whose close association with the employee is the equivalent of a family relationship. <i>(Child is defined separately as: "a biological, adopted, or foster child, stepchild or legal ward of an employee, child of a domestic partner or civil union partner of the employee; Parent is defined separately as: "a biological, adoptive, or foster parent, stepparent, or legal guardian of an employee or of the employee’s spouse, domestic partner, or civil union partner, or a person who stood in loco parentis of the employee or the employee’s spouse, domestic partner, or civil union partner when the employee, spouse or partner was a minor child")</i></p>
<p><b>Berkeley, CA</b></p>	<p>Child, parent, legal guardian or ward, sibling, grandparent, grandchild, and spouse, registered domestic partner under any state or local law, or designated person. "Child" includes a child of a domestic partner and a child of a person standing in loco parentis. The aforementioned child, parent, sibling, grandparent, and grandchild relationships include not only biological relationships but also relationships resulting from adoption; step-relationships; and foster care relationships. If the employee has no spouse or registered domestic partner, the employee may designate one person as to whom the employee may use paid sick leave to aid or care for the person. The opportunity to make such a designation shall be extended to the employee no later than the date on which the employee has worked 30 hours after paid sick leave begins to accrue pursuant to Section 13.100.040.A.2. There shall be a window of 10 work days for the employee to make this designation. Thereafter, the opportunity to make such a designation, including the opportunity to change such a designation previously made, shall be extended to the employee on an annual basis, with a window of 10 work days for the employee to make the designation.</p>
<p><b>Pittsburgh, PA</b></p>	<p>(1) A biological, adopted or foster child, stepchild or legal ward, a child of a domestic partner, or a child to whom the employee stands in loco parentis; (2) A biological, foster, adoptive, or stepparent, or legal guardian of an employee or an employee’s spouse or domestic partner or a person who stood in loco parentis when the employee was a minor child; (3) A person to whom the employee is legally married under the laws of any state; (4) A grandparent or spouse or domestic partner of a grandparent; (5) A grandchild; (6) A biological, foster, or adopted sibling (7) A domestic partner. (8) Any individual for whom the employee has received oral permission from the employer to care for at the time of the employee’s request to make use of sick time.</p>
<p><b>CT State Law</b></p>	<p>Defines "child" <i>(a biological, adopted or foster child, stepchild, legal ward of a service worker, or a child of a service worker standing in loco parentis, who is (A) under eighteen years of age; or (B) eighteen years of age or older and incapable of self-care because of a mental or physical disability )</i> and "spouse" <i>(a husband or wife, as the case may be )</i> and then says leave can be taken to care for self, child, or spouse due to injury, illness, preventative care, victim services, etc.</p>



<b>Vermont<sup>4</sup></b>	<b>Arizona</b>	<b>Washington State<sup>5</sup></b>	<b>Rhode Island<sup>6</sup></b>
<p>Workers employed by an employer in Vermont for an average of no less than 18 hours per week during a year are covered. The following individuals are exempted: workers under 18 years of age; workers employed for 20 or fewer weeks in a year in a job scheduled to last 20 or fewer weeks; certain State workers excluded from the State classified service; certain employees who work on a per diem or intermittent basis at a health care or long-term care facility; certain per diem or intermittent workers who only work when indicating availability, have no obligation to accept the work, and have no expectation of continued employment; certain substitute educators for a school district or supervisory district/union if under no obligation to work a regular schedule or period of long-term (30 or more consecutive school days) substitute coverage; and certain sole proprietors/partner owners of an unincorporated business.</p>	<p>Workers employed by an employer in Arizona are covered. State government workers, but not local government workers, are exempted. Individuals employed by a parent or a sibling and individuals performing babysitting services in the employer's home on a casual basis are also exempted.</p>	<p>Workers employed by an employer in Washington are covered. Workers exempt from the state minimum wage law are also exempt from the paid sick time law. See <a href="http://www.lni.wa.gov/workplacerrights/files/policies/esal.pdf">http://www.lni.wa.gov/workplacerrights/files/policies/esal.pdf</a> for a detailed list of exemptions.</p>	<p>Workers employed in Rhode Island are covered. Independent contractors, subcontractors, work study participants, apprenticeships and interns; certain employees licensed to practice nursing, and state and municipal workers are exempted. Workers exempt from the state minimum wage law are also exempt from the paid sick time law. See <a href="http://webserver.rilin.state.ri.us/Statutes/TITLE28/28-12/28-12-2.HTM">http://webserver.rilin.state.ri.us/Statutes/TITLE28/28-12/28-12-2.HTM</a> for a detailed list of exemptions.</p>

<b>Connecticut</b>	<b>California<sup>2</sup></b>	<b>Massachusetts</b>	<b>Oregon<sup>3</sup></b>	<b>Washington D.C.</b>
<p>Hourly workers in certain “service” occupations in Connecticut are covered, if they work for a business with 50 or more workers. For the full list of which professions are covered “service” occupations, go to <a href="http://www.ctdol.state.ct.us/wgwkstnd/SickLeaveLaw.htm">www.ctdol.state.ct.us/wgwkstnd/SickLeaveLaw.htm</a> and look at the definition of “service worker” (Sec. 31-57r(7)). Certain manufacturers and non-profit organizations are exempted, as are temporary and day laborers.</p>	<p>Workers employed in California for 30 or more days a year after commencement of employment are covered. Flight deck/cabin crews subject to Railway Labor Act with comparable paid time off are exempted. Workers who provide in-home supportive care are exempted until July 1, 2018, at which point they will be able to accrue paid sick time (subject to specific usage and carryover provisions).<sup>2</sup></p>	<p>Workers employed in Massachusetts are covered. Workers employed by cities and towns are only covered if the law is accepted by vote or appropriation as provided in the State Constitution.</p>	<p>Workers employed in Oregon are covered. Independent contractors, certain work study students, certain railroad workers, and individuals employed by their parent, spouse, or child are exempted.</p>	<p>Workers employed by an employer within Washington, D.C are covered. The following individuals are exempted: independent contractors; students; health care workers choosing to participate in a premium pay program; unpaid volunteers engaged in the activities of an educational, charitable, religious, or nonprofit organization; and casual babysitters.</p>

<b>Santa Monica</b>	<b>San Diego<sup>7</sup></b>	<b>Los Angeles</b>
<p>Workers who, in a calendar week, perform at least 2 hours of work within the geographic boundaries of Santa Monica and who are entitled to minimum wage under California law are covered. Government and school district employees are exempted.</p>	<p>Workers who, in at least one calendar week of the year, perform at least 2 hours of work within San Diego are covered. Independent contractors, certain workers authorized under State law to be paid less than the minimum wage, certain providers of in-home supportive services under State law, workers employed under a publicly subsidized summer or short-term youth employment program, or any student employee, camp or program counselor of an organized camp under State law are exempted.</p>	<p>Workers who, in a particular week, perform at least 2 hours of work within the geographic boundaries of Los Angeles and who are entitled to minimum wage under California law are covered. To be entitled to paid sick time, workers must also work in Los Angeles—on or after July 1, 2016—for the same employer for 30 days or more within a year from the commencement of employment.</p>

Seattle, WA	New York City, NY <sup>10</sup>	Newark, Passaic, East Orange, Paterson, Irvington, Trenton, Montclair, Bloomfield, Jersey City, Elizabeth, Plainfield <i>and</i> Morristown, NJ <sup>11</sup>	Tacoma, WA <sup>12</sup>	Spokane, WA <sup>13</sup>
<p>Workers employed by a business with more than 4 workers, if they perform more than 240 hours of work in Seattle within a calendar year, are covered. Work-study students are exempted.</p>	<p>Workers who have worked within NYC for more than 80 hours in a calendar year are covered. Domestic workers will receive some paid sick time. Work-study students, certain hourly speech/physical/occupational therapists, independent contractors, and government employees are exempted.</p>	<p>Workers employed in the relevant city (Newark, Passaic, East Orange, Paterson, Irvington, Trenton, Montclair, Bloomfield, Jersey City, Elizabeth, Plainfield, or Morristown) for at least 80 hours in a year are covered. Workers employed by any government or a New Jersey School District or Board of Education are exempted. In Newark and Jersey City, workers employed by Rutgers and its subdivisions are exempted.</p>	<p>Workers employed in Tacoma are covered, as long as there is a reasonable expectation that they will perform work in Tacoma for more than 80 hours within a benefit year. Independent contractors, single-person businesses, and Federal government workers are exempted.</p>	<p>Workers employed in Spokane for more than 240 hours a year are covered. Work-study students (under a state/federal program), those employed by certain firms engaged in construction work, seasonal workers (expected employment of less than 1 year and which is intermittent/recurring annually), independent contractors, domestic workers (those individuals employed as a domestic servant in a private home by an employer with less than 2 employees regularly employed 40 or more hours per week; or a person employed to do gardening, maintenance, or repair at the employer’s private home), and government workers are exempted.</p>

Philadelphia, PA	Pittsburgh, PA <sup>14</sup>	Minneapolis, MN
<p>Workers employed in Philadelphia for at least 40 hours in a calendar year are covered. The following workers are exempted: independent contractors; seasonal workers (hired for a temporary period of not more than 16 weeks a year); adjunct professors; interns (students working for the institution where enrolled); workers hired for a term of less than 6 months; and health care professionals who only work when indicating they are available and have no obligation to work when they do not indicate availability.</p>	<p>Workers employed in Pittsburgh are covered. Independent contractors and seasonal workers (those hired for a temporary period of not more than 16 weeks and given written notification at time of hire that employment is limited to beginning/end of seasonal dates as determined by employer) are exempted.</p>	<p>Workers who perform work for an employer within Minneapolis for at least 80 hours in a year for that employer are covered. Independent contractors are exempted.</p>

Information in the charts on this page and the preceding three pages is excerpted from:

<https://www.abetterbalance.org/wp-content/uploads/2018/05/Chart-and-Overview-of-Paid-Sick-Time-Laws-in-the-US-May-2018.pdf>

**Exemptions featured in one or more of these laws/ordinances:**

- Workers under age 18
- Independent contractors
- Seasonal (hired for fewer than 16 weeks with beginning and end dates; hired for less than one-year)
- Workers hired for a term of less than 6 months
- Health care workers who only work when indicating they are available and have no obligation to work when they do not indicate availability
- Workers who work less than 40, 80, or 240 hours in a calendar year
- Workers who work fewer than 2 hours per week (regularly, or in one calendar week per year)
- Workers in certain manufacturing jobs (wood, metal, food, beverage, textile, tobacco, apparel, footwear, leather)
- Construction workers in firms with
- Workers with collective bargaining units
- Temporary or day laborers
- Work-study students & Adjunct professors
- Workers employed by a parent or sibling
- Babysitters
- State, Federal, or Municipal government workers
- Workers at non-profit 501(c)3 agencies or any organization that provides recreation, child care, and education
- Workers at businesses with fewer than 4, 10, or 50 employees

**Other Considerations:**

- Massachusetts addresses both paid and unpaid sick leave: businesses with 11+ employees must provide up to 40 hours earned **paid** sick time; businesses with fewer than 11 employees must provide up to 40 hours of **unpaid** sick leave annually; both at the 1 hour for every 30 hours worked accrual rate
- Similarly, Oregon requires employers with 6+ employees to offer the earned leave as paid, while employers with fewer than 6 may offer it as unpaid leave; 1:30 accrual rate, up to 40 hours annually
- Arizona requires businesses with 15 or more employees to provide 40 hours earned paid sick time annually, and businesses with fewer than 15 employees 24 hours annually; both at the 1 hour for every 30 hours worked accrual rate
- Washington D.C. has different accrual rates and totals for differently sized businesses: businesses with 24 or fewer employees must provide up to 24 hours annually at an accrual rate of 1 hour for every 87 hours worked; businesses with 25-99 employees (and restaurants/bars with 1-99 employees) must provide up to 40 hours annually at an accrual rate of 1 hour for every 43 hours worked; businesses with 100+ employees must provide up to 56 hours annually at an accrual rate of 1 hour for every 37 hours worked.