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## DRAFT MODEL LEGISLATION

### Establishing a Permanent Right to Paid Sick and Safe Time

The following model bill, adapted from model paid sick and safe time legislation first developed more than 15 years ago by A Better Balance and the National Partnership for Women & Families, would establish a general right to paid sick time. This model legislation also allows paid sick time to be used for public health emergency purposes, which has become even more important given the lessons of the COVID-19 pandemic.

Please note that drafting a paid sick time law requires state-specific research, analysis of underlying state and/or local law, and consideration of complex policy issues. Please contact us at [jmake@abetterbalance.org](mailto:jmake@abetterbalance.org) or [erodriguezanderson@abetterbalance.org](mailto:erodriguezanderson@abetterbalance.org) for more information on how to adapt or customize this model.

### A Bill to Be Entitled “Healthy Families and Workplaces Act”

**Whereas the [legislative body] finds that:** [Detailed legislative findings regarding paid sick time could be helpful to include if such findings are typical in your jurisdiction and you would like to include them.]

#### The purposes of this Act are:

- (1) To ensure that all workers in [X- State or Local Government Name] can address their own health and safety needs and the health and safety needs of their families by requiring employers to provide a minimum level of paid sick time, including time to care for their family members;
- (2) To diminish public and private health care costs and promote preventive health services in [X] by enabling workers to seek early and routine medical care for themselves and their family members;
- (3) To protect the public’s health in [X] by reducing the risk of contagion, including during a public health emergency, and to ensure that workers in [X] and their families can follow the orders and recommendations of public health officials or health care providers during an emergency that threatens their health and the health of others in the community;
- (4) To promote the economic security and stability of workers and their families [, including during periods of bereavement and unexpected closures or evacuations due to inclement weather and loss of utilities];
- (5) To protect employees in [X] from losing their jobs or facing workplace discipline when they use the paid sick time they earn to care for themselves or their families;
- (6) To assist victims of domestic violence and their family members by providing them job-protected time off from work to receive treatment and to take the necessary steps to ensure their safety;
- (7) To safeguard the public welfare, health, safety and prosperity of the people of [X]; and
- (8) To accomplish the purposes described in paragraphs (1)-(7) in a manner that is feasible for employers.

**Be It Enacted by the [Legislature/Council of X]:**

**Section 1. Definitions**

For Purposes of this Act:

(1) “Absence control policy” means an employment policy, practice, or action, whether verbal or written, in which an employee is assessed a demerit, occurrence, point, or a deduction from an allotted bank of points or time, for use of allotted time off, which subjects or could subject an employee to disciplinary action, including but not limited to a verbal or written warning, discharge, suspension, demotion, failure to receive a promotion, loss of priority in assignment or selection of shifts, or reduction or loss of scheduled hours or pay.

(2) “Agency” means [state, county or city agency responsible for enforcement of labor laws or the agency (with sufficient authority) best suited to enforcing this law, if there is no local labor enforcement agency].

(3) “Domestic partner” is an adult in a committed relationship with another adult, in which they share responsibility for a significant measure of each other’s common welfare. This includes, but is not limited to, any relationship between individuals of the same or different sex that is granted legal recognition by a State, Political Subdivision, or by the District of Columbia as a marriage or analogous relationship (including, but not limited to, a civil union).

[Note: Use of this domestic partner definition may depend on existing definitions under state or local law; this is a model definition if there is no domestic partner definition in state or local law or if one that exists is not sufficiently inclusive.]

(4) “Domestic violence” is as defined in [state statute or local law].

(5) “Employee” is as defined in [state wage and hour law or local law] [but does not include those who work in [X] for fewer than # [typically 80] hours in a calendar year]

[Note: This first portion of the definition should be as broad as possible to ensure that all employees who work in the state or locality are included within the scope of the Act’s protections, including employees who have been historically carved out of employment protections, such as domestic workers and agricultural workers. If there is not a good cross-cite to existing state or local law “employee” definitions, it is possible to draft a new one—we can be available to help with such drafting. The bracketed, possible requirement of working in a particular state or locality for approximately 80 hours is used in many laws to ensure a covered employee is sufficiently connected to that state or local government, and not someone casually passing through the state or local government for a very short period, like a conference or work-related transportation.]

(A) “Employee” includes recipients of public benefits who are engaged in work activity as a condition of receiving public assistance. [May also specifically add: “Employee” does not include an “employee” as defined by 45 U.S.C. 351(d) who is subject to the federal Railroad Unemployment Insurance Act, 45 U.S.C. 351 et seq.]

(B) There shall be a rebuttable presumption that any individual performing work for a hiring entity is an employee under this Act unless the hiring entity can demonstrate that all of the following conditions are satisfied: (i) the individual is free from the control and direction of the hiring entity in connection with the

performance of the labor or services, both under the contract for the performance of the work and in fact; (ii) the individual performs labor or services that are outside the usual course of the hiring entity’s business; and (iii) the individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the labor or services performed.

[Note: We recommend including this rebuttable presumption language, although it is advisable to confirm that there are no legal barriers in your jurisdiction. If included, the definition of employer and employee may need to be adjusted as well to ensure there's no conflict with the test, which we can help to do. This language is recommended since far too many individuals are misclassified as independent contractors, rather than employees, which denies them certain labor protections—like paid sick time—that are typically only available to employees. This language creates a presumption that an individual performing work for a business or hiring entity is an employee unless the business or hiring entity can show that the working individual is an independent contractor who meets the three-part test described here. This test is commonly known as the “ABC” test.]

(6) “Employer” is as defined in [state wage and hour law, local law or federal Fair Labor Standards Act (29 U.S.C. § 203(d)); you should choose the most inclusive, or we can be available to help draft a new definition]. For the purposes of this Act, “employer” does not include any of the following:

(A) The United States Government.

(B) **For local bills only:** The State of [X], including any office, department, agency, authority, institution, association, society or other body of the state, including the legislature and the judiciary.

(C) **For local bills only:** Any county or local government other than [X local government]. [Note: for local laws, research should be done to confirm that the applicable legislative body can determine benefits like paid sick leave for the local government’s own workers.]

(7) “Family member” means:

(A) 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*, regardless of age;

(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;

(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; or

(E) Any other individual related by blood or whose close association with the employee is the equivalent of a family relationship.

[Note: We have detailed information on the importance of covering loved ones who may not be biologically or legally related to the worker as well as the success of this model in a growing

number of local and state laws. We also can help to tailor this language or provide fallback alternatives if necessary.]

(8) “Health care provider” means any person licensed under Federal law, any state law, or the laws of another country wherein the person practices to provide medical or emergency services, including but not limited to doctors, nurses, emergency room personnel, clinical social workers, [licensed/professional] counselors, or [certified/licensed] midwives.

[Note: State law, as well as partners working on behavior/mental health or maternal health issues in your state, should be consulted on proper language for ensuring counselors and midwives are included. Documentation and forms should be available in multiple languages to accommodate non-US/non-English speaking health care providers.]

(9) “Paid sick time” means time that is compensated at the same hourly rate and with the same benefits, including health care benefits, as the employee normally earns during hours worked and is provided by an employer to an employee for the purposes described in Section 3 of this Act, but in no case shall this hourly amount be less than that provided under 29 U.S.C. §206(a)(1) [or your state or local minimum wage law].

(10) “Public health emergency” means a declaration or proclamation related to a public health threat, risk, disaster, or emergency that is made or issued by a federal, state, or local official with the authority to make or issue such a declaration or proclamation.

(11) “Retaliatory personnel action” means denial of any right guaranteed under this Act and any threat, discharge, suspension, demotion, reduction of hours or pay, counting of paid sick time under this Act as an absence subject to an absence control policy, reporting or threatening to report an employee’s suspected citizenship or immigration status, or the suspected citizenship or immigration status of a family member of the employee to a federal, state or local agency, or any other adverse action against an employee for exercising or attempting to exercise any right guaranteed herein including any sanctions against an employee who is the recipient of public benefits for rights guaranteed under this Act. Retaliatory personnel action shall also include interfering with or punishing an individual for in any manner participating in or assisting an investigation, proceeding or hearing under this Act, or willfully preventing or attempting to prevent an individual from securing other employment by word, writing, or any other action for exercising or attempting to exercise any right guaranteed under this Act. A retaliatory personnel action need not result in an ultimate action with respect to employment or in a materially adverse change in the terms and conditions of employment, provided, however, that the action must be reasonably likely to deter a person from exercising their right to paid sick time under this Act.

(12) “Sexual assault” is as defined in [state statute or local law].

(13) “Stalking” is as defined in [state statute or local law].

(14) “Whistleblower” means a current or former employee, contractor, subcontractor or employee of such a contractor or subcontractor of an alleged violator of this Act, regardless of whether that person has received full or partial relief under Section 9.

[Note: Whistleblower protections are included as an enforcement option under Section 9(4) of this model bill; this definition should only be included if those protections are added.]

(15) “Year” means a regular and consecutive 12-month period as determined by the employer; except that for the purposes of Sections 7 and 9 of this Act, “year” shall mean a calendar year.

## Section 2. Accrual of Paid Sick Time

(1) All employees shall accrue a minimum of one hour of paid sick time for every 30 hours worked. Employees shall not be entitled under this section to use more than **[X]** hours of paid sick time in a year, unless the employer selects a higher limit.

[Note: Laws vary on the amount of paid sick time that can be used per year. The most generous local laws entitle workers to earn up to 72 hours if employed by a larger business and fewer hours, such as 56 or 40, if employed by a small business. The most generous statewide paid sick time law in terms of hours is New Mexico, which entitles workers to earn up to 64 hours of paid sick time a year (while Colorado provides up to 48 hours, which is supplemented to 80 hours during a public health emergency). We recommend providing as many hours as possible in part because the experience of COVID-19 shows that limiting the number of hours of paid sick time can be particularly problematic for addressing health and caregiving needs during a public health emergency; another model to consider is providing a *separate* amount of *additional* paid sick time during a declared public health emergency. Also, note that it is possible to limit accrual as well as use of paid sick time: “Employees shall not be entitled under this section to use or accrue more than # hours of paid sick time in a year, unless the employer selects a higher limit.”]

(2) Employees who are exempt from overtime requirements under 29 U.S.C. § 213(a)(1) of the Federal Fair Labor Standards Act will be assumed to work 40 hours in each work week for purposes of paid sick time accrual unless their normal work week is less than 40 hours, in which case paid sick time accrues based upon that normal work week.

(3) Paid sick time as provided in this section shall begin to accrue at the commencement of employment or on the date this law goes into effect, whichever is later. An employee shall be entitled to use paid sick time as it is accrued. An employer may provide all paid sick time that an employee is expected to accrue in a year at the beginning of the year; provided, however, that an employer that provides all paid sick time at the beginning of the year must still provide at least the amount of paid sick time that the employee would have been entitled to earn during that year, pursuant to this section.

[Note: The most recent paid sick time laws—including statewide laws in Colorado, Minnesota, and New Mexico—have eliminated any waiting period on use of accrued paid sick time, which is highly recommended. Also, the temporary federal Families First Coronavirus Response Act in 2020 did not include a waiting period on use of emergency sick time. Such limits on use can harm workers, who cannot plan when an illness or medical emergency happens, and also harm low-wage workers and temporary workers who are more likely to have job instability and/or change jobs more frequently; moreover, the effect is limited through this model law’s accrual approach, since a full-time worker generally won’t earn 8 hours of paid sick time—one day—until they’ve worked for 6 weeks.]

(4) Paid sick time shall be carried over to the following year, but this Act does not require an employer to permit an employee to use more than **[X number of hours decided upon in subsection (1) above]** hours of paid sick time per year. Alternatively, in lieu of carryover of unused paid sick time provided pursuant to this section from one year to the next, an employer may provide the employee with an amount of paid sick time

that meets or exceeds the requirements of this section that is available for the employee's immediate use at the beginning of the subsequent year [Note: some laws also require pay out of unused paid sick time (plus providing the full amount up-front in the subsequent year) in lieu of carryover].

(5) Any employer with a paid leave policy, such as a paid time off policy, who makes available an amount of paid leave sufficient to meet the requirements of this Act that may be used for the same purposes and under the same conditions as paid sick time under this Act, including but not limited to this Act's protections against retaliatory personnel actions, is not required to provide additional paid sick time under this Act.

(6) If an employee is transferred to a separate division, entity or location, but remains employed by the same employer, the employee is entitled to all paid sick time accrued at the prior division, entity, or location and is entitled to use all paid sick time as provided in this Act. When there is a separation from employment and the employee is rehired within # months of separation [Note: we recommend 12 months] by the same employer, previously accrued paid sick time that had not been used shall be reinstated. Further, the employee shall be entitled to use accrued paid sick time and accrue additional paid sick time at the re-commencement of employment.

(7) When a different employer succeeds or takes the place of an existing employer, all employees of the original employer who remain employed by the successor employer are entitled to all paid sick time they accrued or received under this Act when employed by the original employer, and are entitled to use paid sick time previously accrued or received under this Act.

(8) At its discretion, an employer may loan paid sick time to an employee in advance of accrual by such employee.

### Section 3. Covered Purposes for Paid Sick Time

(1) An employee shall be entitled to use paid sick time under this Act for:

(A) An employee's mental or physical illness, injury, or health condition; an employee's need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or an employee's need for preventive medical care, including but not limited to immunizations;

(B) Care of a family member with a mental or physical illness, injury, or health condition; care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; care of a family member who needs preventive medical care, including but not limited to immunizations; or in the case of a child, to attend a school meeting or a meeting at a place where the child is receiving care necessitated by the child's health condition or disability, domestic violence, sexual assault, or stalking; or

(C) Absence necessary due to domestic violence, sexual assault, or stalking, provided the leave is to protect the employee or the employee's family member by: (i) seeking an order for protection pursuant to [state law]; (ii) seeking medical care, mental health counseling, or both for the employee or the employee's family member to address physical or psychological injuries resulting from the act of domestic violence, stalking, or sexual assault; (iii) making the employee's or the employee's family member's home secure from the perpetrator of the act of domestic violence, stalking, or sexual assault, or seeking new housing or

shelter to escape said perpetrator; (iv) seeking legal assistance to address issues arising from the act of domestic violence, stalking, or sexual assault, or attending and preparing for court-related proceedings arising from said act or crime; (v) seeking services from a victim services organization; or (vi) taking other steps necessary to protect or restore the employee's or the employee's family member's physical, mental, emotional, and economic health or well-being while recovering from domestic violence, stalking, or sexual assault.

[(D) Care of a family member whose school or place of care has been closed due to inclement weather, loss of power, loss of heating, loss of water, or another unexpected occurrence or event that results in the closure of the family member's school or place of care;

(E) Evacuation of the employee's place of residence due to inclement weather, loss of power, loss of heating, loss of water, or another unexpected occurrence or event that results in the need to evacuate the employee's residence; or

(F) Need to grieve, attend funeral services or a memorial, or address financial and legal matters that arise after the death of a family member.]

[Note: An increasing number of paid sick time policies and bills have included closures due to: inclement weather or loss of utilities; home evacuations; and/or bereavement leave. Two states (Colorado and Minnesota) and two local laws cover weather-related closures, while one state (Colorado) and two local laws cover closures due to loss of utilities. One state, Colorado, covers home evacuations. And two states (Colorado and Oregon) cover bereavement leave, along with one local law. We are available to discuss if there are any barriers to doing so under the laws of a particular state or local government or other considerations that may impact inclusion of these needs in a paid sick time bill.]

(2) An employee shall also be entitled to use paid sick time under this Act when the employee is unable to perform the functions of the position of such employee due to a public health emergency, including but not limited to:

(A) An employee's need to comply with an order or determination to self-isolate, on the basis that the employee's physical presence on the job or in the community could jeopardize the employee's health, the health of other employees, or the health of an individual in the employee's household, regardless of whether the employee has been diagnosed with a specific illness related to the public health emergency;

(B) An employee's need to take care of a family member who is self-isolating due to an order or determination as described in paragraph (A) of this subsection;

(C) An employee's inability to work because the employee is: (i) prohibited from working by the employer due to health concerns; (ii) seeking or awaiting the results of a diagnostic test for, or a medical diagnosis of, a communicable illness and such employee has been exposed to the communicable illness or the employee's employer has requested such test or diagnosis; or (iii) subject to an individual or general local, state, or federal quarantine or isolation order, including a shelter-in-place or stay-at-home order.

[Note: It is advisable to check on terminology in your jurisdiction for isolation/quarantine/shelter-in-place/stay-at-home orders to ensure use of applicable language.]

(D) An employee’s need to take care of a child or other family member when the care provider of such individual is unavailable due to the public health emergency, or if the child’s or family member’s school or place of care has been closed by a local, state or federal public official or at the discretion of the school or place of care, including if a school or place of care: (i) is physically closed but providing virtual learning instruction; (ii) requires or makes optional virtual learning instruction; or (iii) requires or makes available a hybrid of in-person and virtual learning instruction models; or

(E) An employee’s inability to work because the employee has a health condition that may increase susceptibility to or risk of a communicable illness related to the public health emergency including, but not limited to: age, heart disease, asthma, lung disease, diabetes, kidney disease, or a weakened immune system.

[Note: While this model would allow use of 72 hours of paid sick time a year for all covered purposes (including public health emergencies) an alternative model to consider is providing *separate, additional* paid sick time during a declared public health emergency.]

(3) An order or determination pursuant to subsections (2)(A) or (2)(B) of this section shall be made by a local, state, or federal public official, a health authority having jurisdiction, a health care provider, or the employer of the employee or employee’s family member. Such order or determination need not be specific to such employee or family member.

#### **Section 4. Use of Paid Sick Time**

(1) Paid sick time under this Act shall be provided upon the oral or written request of an employee. When possible, the request shall include the expected duration of the absence.

(2) When the use of paid sick time under this Act is foreseeable, the employee shall make a good faith effort to provide notice of the need for such time to the employer in advance of the use of the paid sick time and shall make a reasonable effort to schedule the use of paid sick time in a manner that does not unduly disrupt the operations of the employer, subject where applicable to the scheduling recommendation of a health care provider.

(3) An employer that requires notice of the need to use paid sick time in accordance with this section shall provide a written policy that contains reasonable procedures for employees to provide notice. An employer that has not provided to the employee a copy of its written policy for providing such notice at the commencement of employment or by the effective date of this Act shall not deny paid sick time to the employee based on non-compliance with such a policy.

(4) An employer may not require an employee to use other paid leave provided by the employer to the employee before the employee uses the paid sick time provided under this Act.

(5) An employer may not require, as a condition of an employee’s taking paid sick time, that the employee search for or find a replacement worker to cover the hours during which the employee is using paid sick time.

(6) Paid sick time may be used in the smaller of hourly increments or the smallest increment that the employer’s payroll system uses to account for absences or use of other time.



(7) Except as provided in subsection (8) of this section, for paid sick time of more than three consecutive work days, an employer may require reasonable documentation that the paid sick time has been used for a purpose covered by Section 3.

(A) Documentation signed by a health care provider indicating that paid sick time is or was necessary shall be considered reasonable documentation. However, if the employee or employee's family member did not receive services from a health care provider, or if documentation cannot be obtained from a health care provider in reasonable time or without added expense, the employee can provide a written statement indicating that the employee is taking or took paid sick time for a qualifying purpose covered by Section 3. Such employee writing may be written in the employee's primary language and need not be notarized or in any particular format.

(B) In cases of domestic violence, sexual assault, or stalking, any of the following types of documentation selected by the employee shall be considered reasonable documentation: (i) a police report indicating that the employee or the employee's family member was a victim of domestic violence, sexual assault, or stalking; (ii) a written statement from a witness advocate affirming that the employee or employee's family member is or was receiving services from a victim services organization; (iii) a court document indicating that the employee or employee's family member is or was involved in legal action related to domestic violence, sexual assault, or stalking; or (iv) a written statement from the employee affirming that the employee or employee's family member is taking or took paid sick time for a qualifying purpose of Section 3. A written statement pursuant to this subsection may be written in the employee's primary language and need not be notarized or in any particular format.

[(C) In cases of paid sick time under paragraphs (D), (E), and (F) of Section 3(1), the employee can provide a written statement indicating that the employee is taking or took paid sick time for a qualifying purpose covered by this Act. Such employee statement may be written in the employee's primary language and need not be notarized or in any particular format.] [Note: this should be included if there are additional purposes added for inclement weather or loss of utility closures, home evacuations, and/or bereavement leave.]

(D) An employer may not require that the documentation explain the nature of the illness, details of the underlying health needs, or the details of domestic violence, sexual assault, or stalking. If the employee does have health insurance, the employer is responsible for paying any costs charged to the employee by the health care provider for providing the specific documentation required by the employer. The employer is responsible for paying any costs charged to the employee for documentation of domestic violence, sexual assault, or stalking required by the employer.

(8) Documentation shall not be required for paid sick time related to a public health emergency under Section 3(2) of this Act.

## **Section 5. Exercise of Rights Protected; Retaliation Prohibited**

(1) It shall be unlawful for an employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this Act. An employee need not explicitly refer to this Act or the rights enumerated herein to be protected from retaliatory personnel actions.



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(2) An employer shall not take retaliatory personnel action or discriminate against an employee or former employee because the person has exercised or attempted to exercise rights protected under this Act. Such rights include but are not limited to the right to request or use paid sick time pursuant to this Act; the right to file a complaint with the Agency or courts or inform any person about any employer's alleged violation of this Act; the right to participate in an investigation, hearing or proceeding or cooperate with or assist the Agency in its investigations of alleged violations of this Act; the right to inform any person of their potential rights under this Act; or the right to disclose or intend to disclose a violation of this Act through a good faith written or oral communication to an employer, an employer's agent, other employee, a government agency, an attorney or legal aid organization, a community or labor organization, or to the public such as through print, online, social, or any other media.

(3) It shall be unlawful for an employer to maintain or apply an absence control policy that counts or relies on an employee's use of paid sick time under this Act as time off that could lead to or result in disciplinary action.

(4) Protections of this section shall apply to any person who mistakenly but in good faith alleges violations of this Act.

(5) There shall be a rebuttable presumption of unlawful retaliatory personnel action under this section whenever an employer takes adverse action against a person within 90 days of when that person: (a) files a complaint with the Agency or a court alleging a violation of any provision of this Act; (b) informs any person about an employer's alleged violation of this Act; (c) cooperates with the Agency or other persons in the investigation or prosecution of any alleged violation of this Act; (d) opposes any policy, practice, or act that is unlawful under this Act; or (e) informs any person or persons of their rights under this Act.

## **Section 6. Notice and Posting**

(1) Employers shall give employees written notice of the following at the commencement of employment or by the effective date of this Act, whichever is later, and annually thereafter: employees are entitled to paid sick time and the amount of paid sick time, the terms of its use guaranteed under this Act, that retaliatory personnel action against employees who request or use paid sick time is prohibited, that each employee has the right to [file a complaint or bring a civil action, depending on what enforcement measures are included] if paid sick time as required by this Act is denied by the employer or the employee is subjected to retaliatory personnel action for requesting or taking paid sick time, and the contact information for the Agency where questions about rights and responsibilities under this Act can be answered.

(2) The notices required in subsection (1) shall be in English, [X, X,] and any language that is the primary language spoken by at least [X%] of the employer's workforce, provided that such notice has been provided by the Agency.

(3) The amount of paid sick time available to the employee, the amount of paid sick time taken by the employee to date in the year, and the amount of pay the employee has received as paid sick time shall be recorded in, or on an attachment to, the employee's regular paycheck.

(4) Employers shall display a poster that contains the information required in subsection (1) in a conspicuous and accessible place in each establishment where such employees are employed; provided, however, that in cases where the employer does not maintain a physical workplace, or an employee

teleworks or performs work through a web-based or app-based platform, notification shall be sent via electronic communication or a conspicuous posting in the web-based or app-based platform. The poster displayed shall be in English, [X, X,] and any language that is the primary language spoken by at least [X%] of the employer's workforce, provided that such poster has been provided by the Agency.

(5) The Agency shall create and make available to employers, in all languages spoken by more than [X%] of the [State's/County's/City's] workforce and any language deemed appropriate by the Agency, model notices and posters that contain the information required under subsection (1) for employers' use in complying with subsections (1) and (4).

(6) An employer who willfully violates the notice and posting requirements of this section shall be subject to a civil fine in an amount not to exceed \$100 for each separate offense. Each day that a violation occurs or is not corrected shall constitute a separate offense.

### **Section 7. Employer Records**

Employers shall retain records documenting compliance with the applicable requirements of this Act, including hours worked by employees and paid sick time taken by employees, for a period of [three] years, and shall allow the Agency access to such records and other information, in accordance with applicable law and with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of this Act or in furtherance of an investigation conducted pursuant to this Act. When an issue arises as to an employee's entitlement to paid sick time under this Act, if the employer does not maintain or retain adequate records documenting hours worked by the employee and paid sick time taken by the employee or other information required to be maintained by this Act, or does not allow the Agency reasonable access to such records, it shall be presumed [in an administrative or civil action, depending upon the enforcement mechanisms in the bill] that the employer has violated the Act, absent clear and convincing evidence otherwise.

### **Section 8. Regulations**

The Agency shall be authorized to coordinate implementation and enforcement of this Act and shall promulgate appropriate guidelines or regulations for such purposes.

### **Section 9. Enforcement**

**NOTE:** There are several different ways to enforce a paid sick time law, and a bill can contain a combination of them as long as the jurisdiction permits the types of enforcement selected. The model language includes all options. We are available to help streamline/adapt this language.

#### *(1) Administrative Enforcement*

(A) The Agency shall enforce the provisions of this Act. In effectuating such enforcement, the Agency shall establish a system utilizing multiple means of communication to receive complaints regarding non-compliance with this Act and investigate complaints received by the Agency in a timely manner. The Agency shall have the authority on its own initiative to investigate, inspect workplaces, and to subpoena records and witnesses. Where an employer does not comply with any of the requirements of this Act, the Agency shall order relief as authorized in this section.

(B) Any person alleging a violation of this Act shall have the right to file a complaint with the Agency within [X months/years] of the date the person knew or should have known of the alleged violation. The Agency shall encourage reporting pursuant to this subsection by keeping confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the employee or person reporting the violation, provided, however, that with the authorization of such person, the Agency may disclose their name and identifying information as necessary to enforce this Act or for other appropriate purposes.

(C) Upon receiving a complaint alleging a violation of this Act, the Agency shall investigate such complaint and attempt to resolve it through mediation between the complainant and the subject of the complaint, or other means. The Agency shall keep complainants notified regarding the status of their complaint and any resultant investigation. If the Agency believes that a violation has occurred, it shall issue to the offending person or entity a notice of violation and the relief required of the offending person or entity. The Agency shall prescribe the form and wording of such notices of violation, including any method of appealing the decision of the Agency.

(D) The Agency shall have the power to impose penalties provided for in this Act and to grant an employee or former employee all appropriate relief. Such relief shall include but not be limited to: (i) for each instance of paid sick time taken by an employee but unlawfully not compensated by the employer: three times the wages that should have been paid under this Act or [\$X], whichever is greater; (ii) for each instance of paid sick time requested by an employee but unlawfully denied by the employer and not taken by the employee or unlawfully conditioned upon searching for or finding a replacement worker: [\$X]; (iii) for each instance of a retaliatory personnel action not including discharge from employment: the greater of [\$X] or three times the actual damages including but not limited to unpaid wages and benefits, plus punitive damages, and equitable relief as appropriate; and (iv) for each instance of unlawful discharge from employment: full compensation including wages and benefits lost, [\$X] and equitable relief, including reinstatement, as appropriate, of the individual to the same position held before any retaliatory personnel action, or to an equivalent position, and reinstatement of full fringe benefits and seniority rights.

(E) Any entity or person found to be in violation of the provisions of this Act shall be liable for: (i) payment to the [State/County/City] of reasonable costs and attorney's fees; and (ii) a civil penalty payable to [State/County/City] not to exceed [\$X] for the first violation and, for subsequent violations that occur within two years of any previous violation, not to exceed [\$X] for the second violation and not to exceed [\$X] for each successive violation. Each day that a violation occurs or is not corrected shall constitute a separate violation for purposes of this paragraph. The Agency shall also have the power to issue an order to comply with the requirements of this Act and to restrain continued violations, including through a stop-work order or business closure.

(F) The Agency shall annually report on its website the number and nature of the complaints received pursuant to this Act, the results of investigations undertaken pursuant to this Act, including the number of complaints not substantiated and the number of notices of violations issued, the number and nature of adjudications pursuant to this Act, and the average time for a complaint to be resolved pursuant to this Act.

## (2) *Civil Enforcement*

(A) The Agency, the Attorney General [or City/County Attorney], any person aggrieved by a violation of this Act, or any entity a member of which is aggrieved by a violation of this Act may bring a

civil action in a court of competent jurisdiction against an employer violating this Act. Such action may be brought without first filing an administrative complaint.

(B) Upon prevailing in an action brought pursuant to this section, aggrieved persons shall recover the full amount of any unpaid sick time plus any actual damages suffered as the result of the employer's violation of this Act plus an equal amount of liquidated damages. Aggrieved persons shall also be entitled to reasonable attorney's fees and costs.

(C) Upon prevailing in an action brought pursuant to this section, aggrieved persons shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation, including, without limitation, reinstatement to employment, back pay, punitive damages, compensatory damages payable to the aggrieved person equal to three times the actual damages, and/or injunctive relief.

(D) Any person aggrieved by a violation of this Act may file a complaint with the Attorney General [or City/County Attorney]. The filing of a complaint with the Attorney General [or City/County Attorney] will not preclude the filing of a civil action.

(E) The Attorney General [or City/County Attorney] may bring a civil action to enforce this Act. The Attorney General [or City/County Attorney] may seek injunctive relief. In addition to injunctive relief, or in lieu thereof, for any employer or other person found to have willfully violated this Act, the Attorney General [or City/County Attorney] may seek to impose a fine of [\$X - example: \$1,000] per violation, payable to the [City/County/State].

(F) The statute of limitations for a civil action brought pursuant to this section shall be for a period of [#] years from the date the alleged violation occurred or the date the employee knew or should have known of the violation.

(G) Actions brought pursuant to this section may be brought as a class action pursuant to the laws of [State].

(3) [City/County/State] officials are hereby authorized to consider, to the maximum extent permitted by law, an employer's record of noncompliance with this Act in making decisions on [City/County/State] contracts, land use approvals and other entitlements to expand or operate within the [City/County/State]. The [City/County/State] is authorized to either deny approval or to condition approval on the employer's future compliance.

(4) [Note: Whistleblower protection provision flagged in the definitions section:] The penalties specified in subsection (1)(E), and injunctive and declaratory relief, may be recovered through a civil action brought on behalf of the Agency in a court of competent jurisdiction by a whistleblower or by a representative nonprofit or labor organization designated by said person, pursuant to the following procedures:

(A) The whistleblower shall give written notice to the Agency of the specific provisions of this Act alleged to have been violated. The whistleblower or representative organization may commence a civil action under this subsection if no enforcement action is taken by the Agency within 30 days.

(B) Civil penalties recovered pursuant to this subsection shall be distributed as follows: 60 percent to the Agency for enforcement of this Act, with 25 percent of that amount reserved for grants to community organizations for outreach and education about employee rights under this Act; and 40 percent to the whistleblower or representative organization to be distributed to the employees affected by the violation. Any person that prevails in an action under this subsection, whether or not the Agency has intervened in that action, shall be entitled to an award of reasonable attorney's fees, expert fees, and other costs.

(C) The right to bring an action under this section shall not be impaired by any private contract. A public enforcement action shall be tried promptly, without regard to concurrent adjudication of private claims.

### **Section 10. Confidentiality and Nondisclosure**

(1) Unless otherwise required by law, an employer may not require disclosure of details relating to domestic violence, sexual assault, or stalking or the details of an employee's or an employee's family member's health information as a condition of providing paid sick time under this Act.

(2) Unless otherwise required by law, any health or safety information possessed by an employer regarding an employee or employee's family member must:

(A) be maintained on a separate form and in a separate file from other personnel information;

(B) be treated as confidential medical records; and

(C) not be disclosed except to the affected employee or with the express permission of the affected employee.

### **Section 11. Encouragement of More Generous Paid Sick Time Policies; No Effect on More Generous Policies or Laws**

(1) Nothing in this Act shall be construed to discourage or prohibit an employer from the adoption or retention of a paid sick time policy more generous than the one required herein.

(2) Nothing in this Act shall be construed as diminishing the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous paid sick time to an employee than required herein. Nothing in this Act shall be construed as diminishing the rights of public employees regarding paid sick time or use of paid sick time as provided in [laws of the State pertaining to public employees].

(3) [For State laws] Nothing in this Act shall be construed to preempt or supersede any provision of any local law that provides greater rights to paid sick time than the rights established under this Act.

(4) The rights and remedies under this Act may not be waived by any agreement, policy, form, or condition of employment. [Note: This language may need to be adjusted depending on any additional language that is preferred regarding collective bargaining agreements (CBAs), beyond subsection (2) above, such as the ability of a CBA to waive any provisions of the law through clear, explicit language in the CBA; we can provide information on related models.]

### **Section 12. Other Legal Requirements**

(1) This Act provides minimum requirements pertaining to paid sick time and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for a greater amount, accrual, or use by employees of paid sick time or that extends other protections to employees.

(2) Nothing in this Act shall be construed as requiring financial or other reimbursement to an employee from an employer upon the employee's termination, resignation, retirement, or other separation from



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employment for paid sick time under this Act that has not been used, unless such financial or other reimbursement is required under another law.

### **Section 13. Public Education and Outreach**

The Agency [or another relevant official, administrative agency] shall develop and implement a multilingual outreach program to inform employees, parents, caregivers, and persons who are under the care of a health care provider about the availability of paid sick time under this Act. This program shall include the distribution of notices and other written materials in English, [X, X], and any language that is the primary language spoken by at least [X%] of the [State's/County's/City's] population to child care and elder care providers, domestic violence shelters, schools, hospitals, community health centers and other health care providers.

### **Section 14. Severability**

If any provision of this Act or application thereof to any person or circumstance is judged invalid, the invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared severable.

### **Section 15. Effective Date**

This Act will take effect [#] days following enactment. [The effective date should be as soon as possible according to the local government's or state's laws, with at least several months for employers to prepare and the relevant implementing Agency to provide guidance and any regulations.]

**Please note that this document does not constitute legal advice.**

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