

**CITY OF MADISON, WISCONSIN**

A 3RD SUBSTITUTE ORDINANCE \_\_\_\_\_

PRESENTED September 20, 2005

REFERRED Equal Opportunities

Commission; Joint Board of Health

RULES SUSPENSION \_\_\_\_\_

PUBLIC HEARING \_\_\_\_\_

Creating Section 3.57 entitled "Mandatory Minimum Sick Leave" of the Madison General Ordinances to require employers in the City of Madison to provide sick leave benefits to employees

ID 02077

Drafted by: Roger Allen

Date: May 12, 2006

SPONSORS: Ald. King

DRAFTER'S ANALYSIS: This ordinance would require that all private employers with five or more full time equivalencies provide those employees working at least eighteen hours per week with a minimum amount of paid sick leave benefits. A covered employee would earn one hour of compensated sick leave benefit for every 50 hours they work for an employer during the first year of this ordinance (also, during the first year of any businesses operations) and thereafter would earn one hour of compensated sick leave for every 30 hours of work. An employer could offer an employee calling in sick the opportunity to work additional hours or to switch shifts with another employee rather than paying the employee for use of accrued sick leave. An employee may not unreasonably refuse the offer of additional hours in lieu of sick leave payment. An employer could elect to provide more generous benefits than called for under this ordinance, including periodic sick leave buyouts or cash outs so long as any such benefits are memorialized in a written personnel policy. Employers who already provide paid leave in amounts equivalent to or exceeding that required by this ordinance (such as vacation, personal days, paid time off, earned time off, or sick leave) will be in compliance with this ordinance where such other forms of leave may be used to cover absences from the workplace for which sick leave could be used by an employee under the provisions of this ordinance. Additionally, employers and employees could opt out from compliance with this ordinance through explicit language in a collective bargaining agreement. Enforcement of this ordinance would be provided through a complaint process within the Equal Opportunities Division and through forfeiture actions brought by the City Attorney's Office. The enactment of this ordinance may require revisions to the City's Civil Service and related ordinances.

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The Common Council of the City of Madison do hereby ordain as follows:

Section 3.57 entitled "Minimum Mandatory Sick Leave" of the Madison General Ordinances is created to read as follows:

**"3.57 MINIMUM MANDATORY SICK LEAVE.**

(1) Declaration of Policy. The Common Council has determined that Madison workers need occasional, short-term leave from work to attend to their own health care needs or those of their family. Furthermore, such leave promotes a public purpose by advancing the public health, productivity, and well being of the residents and visitors of the City. Such leave provides the necessary rest and/or medical attention that will shorten the duration and impact of illness. Additionally, routine preventive health care helps avoid illnesses and injuries and detects illnesses early on to shorten their duration. Parents, who can take leave to care for their ill children promote their children's more rapid recovery from illness, prevent the development of more serious illnesses and improve their children's overall mental health and well-being. Parents who cannot take such leave have no other option but to send their ill children to childcare or

**Approved as to form:**

school, thus contributing to the spread of infections and illnesses in childcare centers, schools and the general community. The lack of paid sick leave has forced many Madison workers; particularly low-wage earners who are far less likely to have paid leave than higher-paid Madison workers, to make untenable choices between their jobs or caring for their own and/or their family's health. Paid sick leave will give Madison's workers an opportunity to regain their health, return to full productivity at work, and avoid spreading illnesses to their co-workers. Thus, paid sick leave produces broad public benefits and benefits employers by increasing retention of trained employees, reducing absenteeism, increasing productivity, promoting worker commitment, improving customer service and, in the long term, should reduce employers' overall expenses due to employee absenteeism.

(2) Definitions. As used in this section:

- (a) "Complainant" means any person who has filed a complaint with the Division in which they allege an employer has committed a violation of the provisions of this ordinance.
- (b) "Construction trades" means any tradesperson or crafts person employed by contract or oral agreement and hired for a specific job or project in road construction, building construction, landscaping, plumbing, electrical work, roofing, grading/excavation work, framing, carpentry, heating/ventilation/air conditioning installation, swimming pool installation, siding installation, insulation installation, flooring/carpet installation, house painting, drywall installation, concrete work, window installation or any other similar profession traditionally associated with the construction of dwellings, roads and buildings.
- (c) "Division" means the Department of Civil Rights Equal Opportunities Division.
- (d) "Employer" means and includes every person, firm or corporation, agent, manager, representative, contractor, subcontractor or principal, or other person which maintains a place of business or whose employees perform work or service for the employer within the City, and the employer has control or direction of five (5) or more full-time equivalents (FTE's) in any quarter of the calendar year, who are employed at any labor or are responsible directly or indirectly for the employment of another. The term "Employer" does not include the state, its political subdivisions and any office, department, independent agency, authority, institution, association, society or other body in state or local government, other than the City of Madison, created or authorized to be created by the constitution or any law, including the legislature and the courts.
- (e) "Employee" means any person who may be required or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, or to go to work at any time in any place of employment and who performs compensable work in the City of Madison for an employer. Hours in which an employee serves in an uncompensated "on call" status may not be used to calculate eligibility for sick leave benefits under this ordinance nor may an employee substitute accrued sick leave for such uncompensated "on call" status and hours. Employee does not include any of the following:
  - 1. Any person employed as a contractor in the construction trades;
  - 2. Employees of contractors in the construction trades;
  - 3. Student learners, on-call employees, or employees of sheltered workshops, as those terms are defined in Ch. 104, Wis. Stats.;
  - 4. City Special Workers as defined in Section 3.38(2)(b), Madison General Ordinances;
  - 5. Members of work place cooperatives incorporated under the provisions of Chapter 185, Wis. Stats.;
  - 6. Any person employed in an apprenticeship program licensed by the State of Wisconsin.
  - 7. Any employee who is compensated solely by commissions;
  - 8. Any employee who is an exempt employee under the terms of the Fair Labor Standards Act.
- (f) "Family Member" as used in this section shall be limited to the following relatives of an employee:
  - 1. Parents; to include biological, adoptive, foster, step, parents-in-law, or legal guardians to the employee;

2. Spouse or domestic partner as that term is defined in sec. 3.23(2)(n), M.G.O.;
  3. Minor children to include the biological, foster, adopted, stepchildren, or legal wards, or such children of the domestic partner of the employee;
  4. Children over the age of 18 years who are incapable of self-care because of a permanent or long-term physical or mental disability or such children of the domestic partner of the employee;
  5. Siblings, or;
  6. Grandparents.
- (g) Full Time Equivalency (FTE) - means the standard number of hours worked per week for a particular job classification for a full time employee. Only those positions held by persons who constitute employees under sub. (2)(d), may be used in calculating the employer's total FTE's.
- (h) "Sick leave" means an increment of compensated leave provided by an employer to an employee as a benefit of employment for use by the employee during an absence from employment to be performed within the City and for any of the uses set forth in this ordinance. For any employees whose earnings are calculated using tips, commissions or any form of compensation other than salary or straight hourly wages, compensation for use of such leave shall be provided at no less than the state minimum wage rate for non-tipped employees. Sick leave hours may be accrued but have no cash value should the employment relationship be terminated by either party, unless explicitly provided otherwise in an employer's written personnel policies.
- (i) "Tipped employee" means any employee engaged in an occupation in which they customarily and regularly receive tips or gratuities from patrons or others.
- (j) "Workplace cooperatives" means any business where said business is an association incorporated under Chapter 185 of the Wisconsin Statutes.
- (3) Paid Sick Leave Required. Every employer is required to provide its employees with the following sick leave benefits:
- (a) Earning of Sick Leave. Employees shall earn sick leave in the following manner:
1. Eligibility. An employee shall be eligible to accrue sick leave upon initial employment. An employee must be employed by the employer for an initial minimum of ninety (90) calendar days before the employee is eligible to use sick leave accrued under this ordinance. Having once satisfied this ninety (90) day qualification period, an employee shall not be required to re-qualify, even if there has been a break in the employment. An employee may use accrued sick leave in any pay period subsequent to the pay period in which it has been earned. Any accrued sick leave is forfeited upon termination of the employment. However, any employee who is returning to employment with a former employer who has satisfied the ninety (90) day qualification period, no matter how long the break in employment or the reasons therefore, is immediately eligible to use any accrued sick leave. An employee who is returning to employment with a former employer who has not previously satisfied the ninety (90) day qualification period stated above, may be required to complete ninety (90) calendar days before the employee is eligible to use sick leave accrued under this ordinance.
  2. Accrual. An employee must work an average of at least eighteen (18) hours per week of the employer's pay period within the City limits in order to be eligible to accrue sick leave for that pay period. For each pay period that this threshold has been satisfied, the rate at which an employee shall earn sick leave during the calendar year January 1, 2007 to December 31, 2007 and for any business during the first year of its operations as measured from its date of founding, incorporation, formation, creation or partnership, shall be one hour of compensated sick leave, or proportionate share thereof, for each fifty (50) hours worked. During the calendar year beginning January 1, 2008 and for each calendar year thereafter and for every second and subsequent year that a business is in operation, the rate at which an employee shall earn sick leave shall be one hour of compensated sick leave, or proportionate share thereof, for each thirty (30) hours worked

3. Pay Period Defined. The term pay period shall mean the employer's ordinary pay period (e.g., weekly, bi-weekly, monthly) but in no event less frequently than monthly. Where an employer's ordinary pay period is greater than at monthly intervals, the employer shall calculate and award sick leave as though the ordinary pay period for that employer is on a monthly basis.
4. Effect of Other Forms of Leave. The amount of time an employer provides in any form of paid leave that is used for multiple purposes including use as sick leave, such as paid time off or earned time off, shall satisfy the requirements of this ordinance, so long as the rate of accrual of such leave satisfies the requirements of this ordinance for the accrual of sick leave. That such leave balances may be reduced by an employee utilizing such leave for other purposes, such as a vacation, shall have no effect under this ordinance.
- (b) Maximum Accrual of Sick Leave and Increment of Use. An employee may accumulate up to a maximum of seventy-two (72) hours of paid sick leave. An employee's balance of sick leave is reduced on an hour for hour basis for each hour or portion thereof that an employee has an authorized absence under this ordinance.
- (c) Employee To Provide Notice of Intent To Use Sick Leave. Employees shall make reasonable efforts to schedule sick leave where possible with the employer in a manner that does not unduly disrupt the employer's operations. Whenever such scheduling is impossible or impracticable, employees shall provide their employers with reasonable written or verbal advance notice of their need to use sick leave. Such requests shall:
  1. Include a reason for the absence involved and the expected duration of the leave;
  2. Where the leave is foreseeable, the employee must provide such notice at least seven (7) days in advance of such leave or as soon as practicable after the employee becomes aware of the need for such leave;
  3. Where leave is unforeseeable, the employee must provide such notice as soon as practicable after the employee is aware of the need to take such leave.
- (d) Appropriate Use of Sick Leave. Employees may use sick leave for any of the following purposes or reasons:
  1. The employee or an employee's family member is suffering from a physical or mental illness, injury, or medical condition to include dental health care;
  2. For obtaining professional medical, mental health or dental diagnosis or care, or preventative medical, mental health or dental care, for the employee or employee's family member.
  3. For participating in any civil or criminal legal proceeding related to or resulting from the employee or employee's family member being the victim of domestic or sexual violence.
- (e) Employer May Require Documentation. An employer may require that a request for leave that is either anticipated to last more than 3 (three) consecutive days or which actually lasts for more than 3 (three) consecutive days be supported by documentation issued by a health care professional certifying that the employee or the employee's family member qualified for the use of sick leave pursuant to Subsection (3)(d), above or appropriate court records establishing the employee's eligibility for use of leave pursuant to sub. (3)(d)3., above. The employee shall provide such documentation to the employer in a timely manner, not later than 30 (thirty) days after the first day of the leave. The employer shall not delay the commencement of the leave or pay for such leave period on the basis that the employer has not yet received such documentation. If an employer requires such documentation and the employee is not covered by a policy of health care insurance that would cover the full medical and direct ancillary costs associated with obtaining such documentation, the employer shall reimburse such employee for any out of pocket expenses incurred in obtaining such documentation. An employer may require an employee to provide proof and/or documentation of such unreimbursed medical and direct ancillary costs before reimbursing the employee for such items.
- (f) Employer May Offer Rescheduled Work Hours in Lieu of Paid Sick Leave.

1. Offer of Substitution. If an employee notifies their employer of intent to use accrued sick leave, that employer, at its option, may offer that employee the opportunity to reschedule the work hours for which the employee sought to use accrued sick leave. The employer must make such rescheduled work hours available within the greater of the time periods of the same pay period or within two weeks of the hours for which the employee sought to substitute accrued sick leave. An employee may not unreasonably refuse such an offer of rescheduled work hours and an employee who unreasonably refuses such an offer of rescheduled work hours is not eligible to use accrued sick leave for those hours he or she originally notified their employer that they were requesting to use accrued sick leave.

2. Employee's Limited Right to Refuse Substitute Hours. In determining whether an employee unreasonably refused an offer of rescheduled hours, the Division shall consider the nature of the employment, whether the employer made a good faith offer of the proposed rescheduled hours, whether the employee made a good faith effort to accommodate the employer's request that the employee work the rescheduled hours and whether the rescheduled hours would have been an undue hardship upon the employee. A refusal to work is not unreasonable if working the hours offered by the employer would cause an undue hardship for the employee.

3. Standard of Undue Hardship. An undue hardship includes but is not limited to any situation where the proposed rescheduled hours would cause the employee to work more than forty (40) hours per week, conflict with other previously scheduled employment, scheduled psychological, medical or dental appointments of the employee or the employee's family members, conflict with educational classes, conflict with court proceedings or appointments with legal counsel, conflict with any court ordered program, process or event, present a hardship because of the employee's disability or medical condition, or where such proposed work hours would result in childcare coverage problems.

4. Mandatory Overtime. Nothing in this ordinance shall be construed as having any effect on an employer's ability to require its employees to perform mandatory overtime.

- (4) Posting Requirements. Each employer shall post and keep posted, in a conspicuous place in each employer's work site a poster notice prepared by the Division and shall include in all employee handbooks, manuals or orientation materials, the contents of such poster notice. Such poster notice shall set forth:
- (a) Information describing leave available to employees under this ordinance;
  - (b) Information pertaining to the filing of an action under this ordinance;
  - (c) The documentation requirements for foreseeable and unforeseeable leave under Subsection 3(d);
  - (d) The protections that an employee has for exercising rights under this ordinance.
- (5) Education and Outreach. The Division shall prepare a poster described in subsection (4) and the Division shall develop a plan for community outreach and education by no later than November 1, 2006. Such outreach plan shall be submitted to the Common Council for its approval. The goal of this outreach and education program shall be to reasonably inform community employers and employees of their rights and responsibilities under this ordinance.
- (6) Ability of Employers To Provide Other Benefits. Nothing contained in this ordinance prohibits an employer from providing more generous benefits to an employee than are required by this ordinance. Nothing in this ordinance shall be construed to diminish the obligation of an employer to comply with any contract, collective bargaining agreement, employee benefit program or plan. An employer may not eliminate or reduce leave in existence on the date this ordinance is adopted, regardless of the type of such leave, in order to comply with this ordinance. Except as may be otherwise provided herein or in subsection (10) of this ordinance, the rights of employees established by this ordinance shall not be diminished, reduced or otherwise altered by any contract, employment benefit program or plan. An employer may provide for sick leave pay outs,

buy outs, cash value for accrued sick leave and other sick leave related benefits so long as such benefits are explicitly stated in the employer's written personnel policies.

(7) Investigation and Administrative Adjudication of Violations

(a) Enforcement by Division. The Division shall have the following authority:

1. Any person who believes that their rights under this ordinance have been denied or interfered with may file a complaint with the Division alleging a violation of this ordinance and the Division shall investigate the matter and take all proceedings necessary to enforce the provisions of this ordinance. The Division shall have the authority to investigate, adjudicate and dispose of any complaint filed alleging a violation of this ordinance. If the Division finds that the Respondent has violated this ordinance, it shall make written findings and order such action by the Respondent as will redress the injury done to the Complainant, bring the Respondent into compliance with the ordinance and generally effectuate the purpose of this ordinance. The Division shall not accept any complaint filed more than three hundred (300) days after the date of the alleged violation of this ordinance.
2. Whenever the Division determines that an employer has committed a violation of this ordinance, in addition to the penalty provisions provided herein, the Division may award to the complainant the amount of wages, salary, employment benefits, or other compensation denied or lost to such employee by reason of the violation and/or award such equitable relief as may be appropriate, including re-employment, reinstatement, and promotion. The Division may award such equitable relief as it determines necessary to make whole all employees of an employer who has been determined to have committed violation(s) of this ordinance, irrespective of whether said employees were the complainants before the Division.
3. The Division may adopt such rules and regulations as may be necessary to carry out the purpose and provisions of this ordinance.
4. The Division may, upon determining that a violation of this ordinance has occurred, refer such violation to the City Attorney. The City Attorney, at his/her discretion, may thereafter pursue an action in the Madison Municipal Court to recover a forfeiture for such violation.

(b) Definition of a Violation. Each day or portion thereof, for which an employee was entitled to use compensated sick leave, but for which time period the employee was denied such leave or discriminated against, discharged or in any other manner retaliated against for exercising or attempting to exercise rights under this ordinance shall constitute a separate and distinct violation of this ordinance. Each day that an employer fails to comply with any other duty imposed upon such employer under this ordinance shall constitute a separate and distinct violation of this ordinance.

(8) Penalties.

(a) Posting Violation. Any employer who willfully violates the posting requirement set forth in Subsection (4) of this ordinance shall be subject to a forfeiture in an amount not to exceed \$100 for each separate offense.

(b) Employee Rights. No employer may discharge or threaten to discharge, or in any way discriminate, or threaten to discriminate against any employee because the employee has filed a complaint alleging a violation of this ordinance, has otherwise asserted his or her rights under this ordinance, has informed any other employee of his or her rights under this ordinance, has testified or is about to testify, or because the employer believes that the employee may testify, in any investigation or proceeding relative to the enforcement of this ordinance. Any employer who engages in such prohibited activity is guilty of a violation of this ordinance, and upon conviction thereof shall be subjected to a forfeiture of not less than \$25 nor more than \$2,500 for each offense.

(9) Record Keeping Requirements and Availability of Employer Records. Each employer shall maintain sufficient records to establish their compliance with this ordinance. Such records shall be made available for inspection and copying by any authorized employee of the Division or Office of the City Attorney, during the regular business hours of the employer and upon ten (10)

days written request of either the Division or of the Office of the City Attorney to inspect and copy such records.

- (10) Collective Bargaining Agreements. This ordinance may be superseded and made inapplicable, in whole or in part, by an expressed declaration to such effect in any signed collective bargaining agreement between an employer and an employee's collective bargaining unit/labor organization. Such expressed declaration must state with specificity that the parties are knowledgeable of the requirements of this ordinance and by explicit reference to the ordinance sections herein, the agreement must state which provisions of this ordinance the parties intend that their agreement will supersede and render inapplicable. Any collective bargaining agreement that is in effect on the date that this ordinance becomes effective shall be presumed to comply with the requirements of this subsection and shall therefore supersede and make inapplicable the applications of this ordinance for the remainder of the term of said collective bargaining agreement.
- (11) Severability. In the event that any term, section or application of this ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such term, section or application shall be deemed a separate, distinct and independent term, section or application and the balance of this ordinance shall be deemed modified to that extent and to the extent that the remainder of this ordinance can be given effect without the invalid or unconstitutional provisions or applications. It is hereby declared the intent of the Common Council that this section would have been adopted had any invalid or unconstitutional provision or applications not been included herein.
- (12) Effective Date. This ordinance shall become effective on January 1, 2007."