



City of Philadelphia

City Council
Chief Clerk's Office
402 City Hall
Philadelphia, PA 19107

BILL NO. 200303

Introduced May 1, 2020

Councilmembers Brooks, Henon and Gym

**Referred to the
Committee on Public Health and Human Services**

AN ORDINANCE

Amending Chapter 9-4100 of The Philadelphia Code, entitled "Promoting Healthy Families and Workplaces," to establish leave time for public health emergencies, modify existing provisions concerning the paid sick leave, and make technical changes, all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Chapter 9-4100 of The Philadelphia Code is hereby amended to read as follows:

CHAPTER 9-4100. PROMOTING HEALTHY FAMILIES AND WORKPLACES

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§ 9-4104. Accrual of Paid Sick Time.

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(8) The requirements of this Chapter shall not apply to an employer with respect to those employees who are covered by a bona fide collective bargaining [agreement.] *agreement, except to the extent specifically provided.*

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§ 9-4116. *Public Health Emergency Leave*

(1) *Definitions. For the purposes of this Section 9-4116 the following definitions shall apply in place of any definition provided under Section 9-4103:*

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(a) “Employee” means any individual employed by an employer who performs work within the geographic boundaries of the City of Philadelphia for at least 40 hours in a year. There shall be a rebuttable presumption that any individual performing work for an employer is an employee unless the employer can demonstrate 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;

(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.

(b) “Employer” is as defined in the Act of January 17, 1968, P.L. 11, No. 5, § 3 (43 P.S. § 333.103(g) regardless of business size, including employers who employ fewer than ten (10) employees.

(c) “Public health emergency leave” means time that is compensated at the same hourly rate and with the same benefits, including health care benefits, as the employee normally earns from the employer at the time the employee uses the public health emergency leave and is provided by an employer to a employee for the purposes described in § 9-4116 provided that in no case shall the hourly rate be less than the full minimum wage provided under 43 P.S. § 333.104.

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

(2) *Public Health Emergency Leave.* On the date a public health emergency is declared or proclaimed, or at the commencement of employment for employees hired while the public health emergency is in effect, an employer shall provide public health emergency leave to employees in an amount pursuant to subsection (4) of this section. An employee may use public health emergency leave for one or more of the following purposes:

(a) to obtain a medical evaluation or medical care, including preventive care, or to care for a family member that is obtaining a medical evaluation or care, including preventive care, for reasons connected with the public health emergency;

(b) the act of engaging in isolation or quarantine pursuant to the direction of a health care professional, public official, or employer because the employee’s presence on the job or

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in the community would jeopardize the health of others, including but expressly not limited to the following types of circumstances:

(i) the employee's potential contact with a pathogen;

(ii) the employee's travel to specific areas;

(iii) the employee's symptoms of a contagious illness related to the public health emergency, regardless of whether the individual has been diagnosed with the contagious illness; or

(iv) the employee or such employee's family member having a greater risk of harm than the general population, such as those with compromised immune systems.

(c) to care for a family member who is remaining home as the result of:

(i) the act of engaging in isolation or quarantine pursuant to the direction of a health care professional, public official, or employer because the family member's presence in the community would jeopardize the health of others; or

(ii) the closure of a care facility that is related to the public health emergency, such as a school, daycare, adult care facility, or other care facility where care would otherwise have been provided for such family member.

(d) not reporting to work as the result of an order, decree, or official request by a public official that businesses, or a particular type of business, must remain closed;

(e) not reporting to work as the result of the employer's discretionary closure of the business where such employee works due to the public health emergency.

(f) not reporting to work as the result of an order, declaration, or official request by a public official that residents of certain areas of the Commonwealth must remain home or not travel, and such travel would be necessary to report to work;

(g) to care for a family member who is remaining home as the result of an order, declaration, or other official request by a public official that residents of certain areas of the Commonwealth must remain home or not travel, and such travel would be necessary to reach a school, daycare, adult care facility, or other care facility where care would otherwise have been provided for such family member.

(3) Timing for Use of Public Health Emergency Leave.

(a) An employee may use all or a portion of the public health emergency leave provided under Section 9-4116 at any time during the public health emergency and for one month following the conclusion of such emergency. Such public health emergency leave shall be

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in addition to, and not in lieu of, any paid or unpaid sick leave otherwise provided under this Chapter 9-4100 and any paid or unpaid leave required by state or federal law, to the extent allowed by state or federal law. Except as provided in subsection (10) "Concurrent Use," an employer may not require a employee to use other paid leave provided by the employer to the employee before the employee uses public health emergency leave, unless state or federal law requires otherwise.

(b) Nothing in this act shall be construed to require an employee to use public health emergency leave if the employee is able to perform work remotely.

(c) An employee who is laid off or whose employment is otherwise terminated as the result of a public health emergency who chooses not to use all or a portion of such employee's public health emergency leave and paid sick time under Section 9-4104 at the time of being laid off or terminated shall be entitled, if rehired by the same employer within two months of separation, to the same amount public health emergency leave when such employee returns to work as such employee was entitled to on the day such employee was laid off or terminated.

(4) Amount of leave. Public Health Emergency Leave shall be provided by an employer to an employee as follows:

(a) For employees who work 40 hours or more per week for a single employer, public health emergency leave will be provided based on the employee's regular rate of pay in the amount of 112 hours, unless the employer chooses to provide more.

(b) For employees working less than 40 hours per week for a single employer, public health emergency leave shall be provided in an amount equal to the amount of time the employee is otherwise scheduled to work or actually works on average in a 14-day period, whichever is greater, unless the employer chooses to provide more. In the case of an employee whose schedule varies from week to week, the employer shall use the following in place of such number to determine the amount of time worked on average in a 14-day period: (1) Subject to clause (2), a number equal to the average number of hours that the employee was scheduled per day over the 6-month period ending on the date the public health emergency was declared, including hours for which the employee took leave of any type; (2) If the employee did not work over such period, the reasonable expectation of the employee at the time of hiring of the average number of hours per day that the employee would normally be scheduled to work.

(c) For employees who have performed work for multiple employers during the time period beginning four months before the date the public health emergency began through the date when public health emergency leave is taken (the "public health work period"), the Agency shall establish a centralized portable benefits system for calculating public health emergency leave time attributed to each employer and collecting and distributing funds from the employers to pay for such public health emergency leave time. For the time period before such a centralized portable benefits system is created, an employee working for multiple employers shall be entitled to public health emergency leave from each employer for whom the employee

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performed work for as an employee during the public health work period according to the following formula:

(i) *The total number of hours the employee worked for the employer divided by the total number of hours the employee worked during the public health emergency for all employers during the public health work period.*

(ii) *The percentage calculated pursuant to subparagraph (iii)(1) multiplied times the applicable number of hours an employee is entitled to pursuant to paragraphs 9-4116(4)(a) or (b), above.*

(5) *Overtime exempted employees. 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 public health emergency leave under this Section 9-4116 unless their normal work week is less than 40 hours, in which case public health emergency leave under this Act is based upon that normal work week.*

(6) *Replenishment of the Public Health Emergency Leave. The one-hundred and twelve (112) hours of public health emergency leave available to an employee under this chapter shall be available each time: (a) a public official declares a new public health emergency based on a different emergency health concern; or (b) a public official declares a second public health emergency for the same emergency health concern more than one month after the first public health emergency has officially ended.*

(7) *Reasonable Documentation. The public statement of a public official shall constitute reasonable documentation for the use of any paid sick time used for a purpose covered by Section 9-4116(1). An employee need not provide their employer documentation from a public official.*

(8) *Shift Replacement. An employer may not require, as a condition of providing public health emergency leave for an employee that the individual search for or find a replacement to cover the hours during which the employee is using public health emergency leave.*

(9) *Retroactivity. An individual who was (a) employed by an employer on the date a public health emergency was declared but separated from employment between the time such public health emergency was declared and the date this Section 9-4116 became law; and (b) is not otherwise eligible for unemployment compensation or other financial relief related to the public health emergency under federal or state law, shall be considered an employee of such employer on the date this this Section 9-4116 becomes law for the purposes of this Section. The obligations imposed by this Section 9-4116 shall apply retroactive to such employer and such employee.*

(10) *Concurrent Use. To the extent that federal or state laws require employers to provide paid leave or paid sick time related to a public health emergency, employers may require the public health emergency leave under this ordinance run concurrently with leave*

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provided by such federal or state law unless such federal or state law prohibits the concurrent use of paid leave. Employers shall be required to provide additional public health emergency leave under this Chapter to the extent that the requirements of this Chapter exceed the requirements of those laws and to the extent permitted under the federal or state law.

(11) Minimum Requirements and Other Obligations. This Chapter provides minimum requirements pertaining to public health emergency leave 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 or use of public health emergency leave or that extends other leave protections. Nothing in this Chapter 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 public health emergency leave or paid leave to an employee than required herein. Nothing in this Chapter shall be construed as diminishing the rights of public employees regarding paid leave or use of paid leave as provided under Pennsylvania law.

(12) Right to Return. Any employee who takes public health emergency leave pursuant to this Section 9-4116 shall be entitled, on return from such leave, to be restored by the employer to the position held when the leave commenced.

(13) Retaliation Prohibited. The provisions of Section 9-4106 of the Philadelphia Code applicable to retaliatory personnel actions shall apply to this Chapter.

(14) Notification of Use of Leave. For the purposes of this Section 9-4116 notice requirements are modified as follows:

(a) Notice to Employees. The provisions of Section 9-4-107 of the Philadelphia Code applicable to notice and posting shall apply to this Chapter; 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 platform, the required notification of rights under this Chapter shall be sent via electronic communication or a conspicuous posting in the web-based platform. All employers shall provide employees with a notice of rights as required under paragraph 1 of subdivision a of this section within (15) days after the ordinance adding this Section 9-4116 to the Code becomes law.

(b) Notice to Employers. Employees shall provide notice to their employer of the need for public health emergency leave as practicable and as soon as feasible, but only when the need for public health emergency leave is foreseeable.

(15) Employer Records. The provisions of Section 9-4-108 of the Philadelphia Code applicable to employer records shall apply to this Chapter.

(16) Enforcement. The provisions of Section 9-4110 of the Philadelphia Code applicable to enforcement shall apply to this Chapter. However, after a public health emergency is declared or proclaimed, an employee shall have the right to file a civil action in a court of competent

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jurisdiction against an employer alleging a violation of this Section 9-4116 without first filing an administrative complaint.

(17) All of the provisions of this Section, or any part thereof, may be waived in a bona fide collective bargaining agreement, but only if: (a) the waiver is explicitly set forth in such agreement in clear and unmistakable terms; (b) the agreement provides a comparable paid leave benefit; and (c) the agreement is in effect contractually. Unilateral implementation of terms and conditions of employment by either party to a collective bargaining relationship shall not constitute, or be permitted, as a waiver of all or any part of the provisions of this Chapter.

(18) Except as provided in paragraph (2)(c) and subsection (9) of this Section 9-4116, nothing in this Section shall be construed as requiring financial or other reimbursement to a employee from an employer upon the employee's termination, resignation, retirement or other separation from employment for public health emergency leave that has not been used.

(19) Public health emergency leave may be used in the same increments as provided under Section 9-4105(4).

[§ 9-4116.] § 9-4117. Severability.

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

Explanation:

[Brackets] indicate matter deleted.
Italics indicate new matter added.

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