

ORDINANCE NUMBER O- 20487 (NEW SERIES)

DATE OF FINAL PASSAGE MAY 28 2015

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 3, DIVISION 11 OF THE SAN DIEGO MUNICIPAL CODE BY ADDING SECTION 23.1112, RELATED TO AMENDING CIVIL SERVICE RULE X TO ADD HOURLY SICK LEAVE (ASSEMBLY BILL 1522).

WHEREAS, on September 10, 2014, California's Governor signed Assembly Bill 1522 (A.B. 1522), which enacted the Healthy Workplaces, Healthy Families Act of 2014 to provide that an employee, who, on or after July 1, 2015, works in California for 30 or more days within a year from the commencement of employment is entitled to paid sick leave for prescribed purposes, to be accrued at a rate of no less than one hour for every 30 hours worked; and

WHEREAS, under A.B. 1522, which is codified in the California Labor Code, including, in part, sections 245 through 249, an employee is entitled to use accrued sick leave beginning on the 90th day of employment, and an employer may limit an employee's use of paid sick leave to 24 hours in each year of employment; and

WHEREAS, the City of San Diego (City) provides its benefitted employees with paid annual leave, which can be used for sick leave and which satisfies the requirements of A.B. 1522, but the City also employs hourly workers without any paid leave; and

WHEREAS, the San Diego City Council (City Council) intends to provide a paid sick leave benefit consistent with the benefit created by A.B. 1522 to its hourly employees who do not earn paid annual leave; and

WHEREAS, the City has met and conferred and reached agreement with its recognized employee organizations on implementation of a benefit, to be referred to as Hourly Sick Leave (A.B. 1522), for eligible employees; and

WHEREAS, implementation of Hourly Sick Leave (A.B. 1522) requires amendments to San Diego Civil Service Rule X, codified at San Diego Municipal Code, Chapter 2, Article 3, Division 11, "Leaves of Absence"; and

WHEREAS, California Labor Code section 249(d), which was added by A.B. 1522, establishes the minimum requirements pertaining to paid sick leave, and does not limit an employer from providing a more generous benefit; and

WHEREAS, the proposed ordinance to implement A.B. 1522 mirrors the state law, with one exception; and

WHEREAS, California Labor Code section 246(k) states that accrued sick leave is to be paid at the employee's hourly wage at the time the leave is used, unless, if the employee in the 90 days of employment before using accrued sick leave had a different hourly pay rate, then the pay rate for the leave is calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment; and

WHEREAS, this formula is inconsistent with the City's current payroll system programming, and staff is recommending that the sick leave be paid at the employee's highest pay rate over the prior 90 days worked, if the employee has had a change in pay rates, rather than following the formula; and

WHEREAS, the Civil Service Commission has reviewed this recommendation and concurs with it; and

WHEREAS, on April 2, 2015, in accordance with San Diego Charter section 118, the Civil Service Commission reviewed proposed modifications to Rule X to implement Hourly Sick Leave (A.B. 1522) and recommends adoption of the proposed amendment, set forth in this ordinance; and

WHEREAS, the City Council desires to accept the recommendation of the Civil Service Commission and adopt the proposed amendment to Rule X; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 2, Article 3, Division 11 of the San Diego Municipal Code is amended by adding section 23.1112, to read as follows:

Article 3: Civil Service

Division 11: Leaves of Absence

§23.1112 Hourly Sick Leave (A.B. 1522)

- (a) Eligibility: Hourly employees, regardless of classification, who receive no paid Annual Leave or other paid leave under this Rule, are entitled to a paid sick leave benefit, consistent with that provided by State of California Assembly Bill 1522 (A.B. 1522), which enacted the Healthy Workplaces, Healthy Families Act of 2014, set forth at California Labor Code, Division 2, Part 1, Chapter 1, Article 1.5, sections 245 through 249. These employees are referred to as Eligible Employees in this Section. The benefit they receive is referred to as Hourly Sick Leave (A.B. 1522), under the conditions set forth in this Section. Hourly Sick Leave (A.B. 1522) is a different benefit, subject to different conditions, than Sick Leave, which accrued prior to September 4, 1981, and Annual Leave.
- (b) Accrual: Effective July 1, 2015, Eligible Employees will accrue Hourly Sick Leave (A.B. 1522) at a rate of one hour for every 30 hours worked, up to a maximum accrual of 48 hours. Eligible Employees begin accruing Hourly Sick Leave (A.B. 1522) at the commencement of employment, but may not use the accrued leave until the 90th day of employment, which is

measured by 90 actual days worked. Any amount of time spent working on a day counts as one day toward the 90-day employment period. Any unused, accrued Hourly Sick Leave (A.B. 1522) will carry over to the following fiscal year, up to a maximum accrual of 48 hours. After an Eligible Employee has worked 90 actual days, he or she may use accrued Hourly Sick Leave (A.B. 1522) up to the maximum accrual.

(c) Permitted Use: Eligible Employees may use up to 24 hours of Hourly Sick Leave (A.B. 1522) in any fiscal year for:

- (1) Diagnosis, care, or treatment of an existing health condition of, or preventative care for, the Eligible Employee or family member; or
- (2) If the Eligible Employee is a victim of domestic violence, sexual assault, or stalking, to take time off from work to appear in court to comply with a subpoena or other court order as a witness in any judicial proceeding; obtain or attempt to obtain any relief, including a temporary restraining order, restraining order, or other injunctive relief to help ensure the health, safety, or welfare of the employee or his or her child; seek medical attention for injuries caused by domestic violence, sexual assault, or stalking; obtain services from a domestic violence shelter, program, or rape crisis center as a result of domestic violence, sexual assault, or stalking; obtain psychological counseling services related to an experience of domestic violence, sexual assault, or stalking; or participate in

safety planning and take other actions to increase safety from future domestic violence, sexual assault, or stalking, including temporary or permanent relocation.

- (3) For purposes of this subsection, family member means:
 - (A) the Eligible Employee's biological, adopted, or foster child, stepchild, legal ward, or a child to whom the Eligible Employee stands in loco parentis regardless of age or dependency status of the child;
 - (B) the Eligible Employee's biological, adoptive, or foster parent, stepparent, or legal guardian of an Eligible Employee or the Eligible Employee's spouse or registered domestic partner, or a person who stood in loco parentis when the Eligible Employee was a minor child;
 - (C) the Eligible Employee's spouse;
 - (D) the Eligible Employee's registered domestic partner;
 - (E) the Eligible Employee's grandparent;
 - (F) the Eligible Employee's grandchild; or
 - (G) the Eligible Employee's sibling.
- (4) The City may require Eligible Employees to provide documentation substantiating the facts justifying the use of Hourly Sick Leave (A.B. 1522), to the extent permitted by California law. This requirement does not limit or affect any laws guaranteeing the privacy of health information or information related to domestic violence, sexual assault, or stalking, regarding an Eligible

Employee or an Eligible Employee's family member. That information will be treated as confidential and not disclosed to any person except to the affected Eligible Employee, or as required by law.

- (d) Pay Rate: Eligible Employees will be compensated for use of Hourly Sick Leave (A.B. 1522) at the Eligible Employee's current hourly pay rate for regular work hours. If an Eligible Employee, in the 90 days of employment before using accrued Hourly Sick Leave (A.B. 1522), had different hourly pay rates, then the Eligible Employee will be compensated at the highest hourly pay rate, not including overtime premium pay, earned during the prior 90 actual days of employment.
- (e) Notice: If the need for Hourly Sick Leave (A.B. 1522) is foreseeable, Eligible Employees must provide reasonable advance notice to their supervisors, in writing or verbally. If the need for Hourly Sick Leave (A.B. 1522) is unforeseeable, Eligible Employees must provide notice of the need for Hourly Sick Leave (A.B. 1522) as soon as practicable.
- (f) No Cash Value: Eligible Employees may not cash out Hourly Sick Leave (A.B. 1522) while employed or upon termination, resignation, retirement, or other separation from City employment. However, if an Eligible Employee separates from City employment and is rehired within one year from the date of separation, the City will reinstate previously accrued and unused Hourly Sick Leave (A.B. 1522). Eligible Employees may immediately use any previously accrued and unused Hourly Sick Leave (A.B. 1522), and accrue additional Hourly Sick Leave (A.B. 1522) upon

rehire, up to the maximum accrual of 48 hours. If an Eligible Employee does not return to City service within one year from the date of separation, all accrued and unused Hourly Sick Leave (A.B. 1522) will be forfeited.

- (g) Change of Employment Status: If an Eligible Employee moves into a position or status, which entitles him or her to paid Annual Leave, then the employee will no longer be an Eligible Employee under this section, and any accrued, unused Hourly Sick Leave (A.B. 1522) will be held during employment, but not available for use, unless the employee returns to a position or status in which the employee is no longer eligible for paid Annual Leave.
- (h) Records: The City will maintain records for three years documenting the hours worked and Hourly Sick Leave (A.B. 1522) accrued and used by an Eligible Employee, and will make these records available to an Eligible Employee or the State of California Labor Commission as required or permitted by California law.
- (i) Enforcement: Retaliation or discrimination against an Eligible Employee for requesting or using Hourly Sick Leave (A.B. 1522), consistent with this Section, is prohibited. An Eligible Employee has the right to enforce the provisions of this Section, in a manner consistent with California law.
- (j) The Hourly Sick Leave (A.B. 1522) benefit under this Section accrues concurrently with any additional sick leave benefit authorized by the City or approved by voters in the future, meaning the accumulated leave

amounts under this Section and any future ordinance will not be added together to create a more generous benefit, unless a future ordinance specifies otherwise.

Section 2. That a full reading of this ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 3. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: JAN I. GOLDSMITH, City Attorney

By Joan F. Dawson
Joan F. Dawson
Deputy City Attorney

JFD:ccm
March 2, 2015
Or.Dept: Human Resources
Doc. No.: 990452

I certify that this Ordinance was passed by the Council of the City of San Diego, at this meeting of MAY 12 2015

ELIZABETH S. MALAND
City Clerk

By Elizabeth S. Maland
Deputy City Clerk

Approved: 3/28/15
(date)

Kevin L. Faulconer
KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~Struck Out~~
NEW LANGUAGE: Double Underline

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(2) If the Eligible Employee is a victim of domestic violence, sexual assault, or stalking, to take time off from work to appear in court to comply with a subpoena or other court order as a witness in any judicial proceeding; obtain or attempt to obtain any relief, including a temporary restraining order, restraining order, or other injunctive relief to help ensure the health, safety, or welfare of the employee or his or her child; seek medical attention for injuries caused by domestic violence, sexual assault, or stalking; obtain

services from a domestic violence shelter, program, or rape crisis center as a result of domestic violence, sexual assault, or stalking; obtain psychological counseling services related to an experience of domestic violence, sexual assault, or stalking; or participate in safety planning and take other actions to increase safety from future domestic violence, sexual assault, or stalking, including temporary or permanent relocation.

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- (C) the Eligible Employee's spouse;
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JFD:ccm
April 7, 2015
Or.Dept: Human Resources
Doc. No.: 990488

Passed by the Council of The City of San Diego on MAY 12 2015, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage MAY 28 2015

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.
By [Signature], Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

APR 27 2015, and on MAY 28 2015

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.
By [Signature], Deputy

Office of the City Clerk, San Diego, California
Ordinance Number O- 20487