

Chapter 18.10

PAID SICK LEAVE

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18.10.010 Definitions.

In construing the provisions of this chapter, the following definitions shall be applied. Words in the singular number shall include the plural, and the plural shall include the singular.

- A. “Adverse action” means any unfavorable action taken or threatened by an employer against an employee for any reason prohibited by Section 18.10.040.
- B. “Benefit year” means a 12-month period beginning January 1; a 12-month period beginning on the date of hire; the fiscal year; or any other fixed consecutive 12-month period established and used consistently by the employer or collective bargaining agreement in the ordinary course of the employer’s business for the purpose of calculating wages or benefits. Unless otherwise established by the employer, the default definition of “benefit year” is the standard calendar year.
- C. “Business” has the same meanings as in Tacoma Municipal Code (“TMC”) 6A.30.030.
- D. “Charging party” means the person aggrieved by an alleged violation of this chapter, the person making a charge on another person’s behalf, or the Director, when the Director files a charge.
- E. “Citation” means a notice provided in writing, identifying a violation or violations of this chapter, which may direct the respondent to take such corrective action as is necessary to comply with the requirements of TMC Title 18.
- F. “City” means the City of Tacoma.
- G. “Civil penalty” means a fine assessed for a violation of this chapter, payable to the City of Tacoma, except that the Director may choose to allocate some or all of a civil penalty to an employee or employees when financial damages to employees, including job loss, cannot be recovered as part of a Notice of Assessment.
- H. “Dating relationship” means a social relationship of a romantic nature.
- I. “Determination of Compliance” means a notice provided in writing, indicating that an employer’s practices meet the minimum standards set by TMC 18.10 or that the evidence is insufficient to determine whether a violation took place.
- J. “Director” means the Finance Director, or designee.
- K. “Domestic violence” means:
 1. Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members;
 2. Sexual assault of one family or household member by another; or
 3. Stalking, defined as set forth in RCW 9A.46.110, of one family or household member by another family or household member.
- L. “Eating and/or drinking establishment” means a place where food and/or beverages are prepared and sold at retail for immediate consumption, either on- or off-premise.
- M. “Employee” means any individual employed by an employer, and shall include traditional employees, temporary workers, and part-time employees. Employees supplied by an employment or staffing agency shall be deemed an employee of the agency absent a contractual agreement otherwise.
 1. For purposes of this chapter, “employee” does not include independent contractors.

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2. An employee who performs work in Tacoma on an occasional basis is covered by this ordinance only if there is reasonable expectation that the employee will perform more than 80 hours of work in Tacoma within a benefit year. Employees who fall below this threshold shall retain any and all rights to paid sick leave under Washington State law, RCW 49.46, as currently enacted or hereinafter amended.

N. “Employer” means any person who has one or more employees. For purposes of this chapter, “employer” does not include the United States government or any single-person business.

O. “Employment agency” or “staffing agency” means any person undertaking, with or without compensation, to procure opportunities to work or procure, recruit, refer, or place individuals with an employer or employment.

P. “Family member” includes the following:

1. “Child” means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis is a legal guardian, or is a de facto parent, regardless of age or dependency status.

2. “Grandparent” means a parent of a parent of an employee.

3. “Parent” means a biological, adoptive, de facto, stepparent, or foster parent of an employee, or an individual who stood in loco parentis to an employee when the employee was a minor child.

4. “Spouse” means husband, wife, or registered domestic partner. For purposes of this chapter, the terms spouse, marriage, marital, husband, wife, and family shall be interpreted as applying equally to city or state registered domestic partnerships or individuals in city or state registered domestic partnerships, as well as to marital relationships and married persons. Where necessary to implement this chapter, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender-neutral and applicable to individuals in city or state registered domestic partnerships.

5. “Grandchild” means a child of a child of an employee.

6. “Sibling” means one of two or more children related either by sharing a common parent or when a spousal relationship, as defined by TMC 18.10.010.P.4, exists between the children’s parents.

Q. “Household member” means, spouses; domestic partners; former spouses; former domestic partners; persons who have a child in common, regardless of whether they have been married or have lived together at any time; adult persons related by blood or marriage; adult persons who are presently residing together or who have resided together in the past; persons 16 years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship; persons 16 years of age or older with whom a person 16 years of age or older has or has had a dating relationship; and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

R. “Notice of Assessment” means a notice issued when a violation has occurred, that includes the amount of paid sick leave hours an employer must credit to an employee’s bank of accrued paid sick leave and/or pay to one or more employees with interest of one percent per month. The assessment may not include any amount owed more than three years before the date the charge was filed.

S. “Paid sick leave” means accrued hours of paid sick leave provided by an employer for use by an employee for an absence from work for any of the reasons specified in this chapter, for which time an employee shall be compensated by the employer at the same hourly rate or the effective minimum wage (as required by Washington State law and/or TMC 18.20), whichever is greater, and with the same benefits, including health care benefits, as the employee would have earned during the time the paid sick leave is used. For purposes of this chapter, “paid leave” does not include compensation for lost tips, and compensation shall only be required for hours that an employee is scheduled to have worked.

T. “Party” includes the person charging or upon whose behalf a charge is made alleging a violation of this chapter, the person alleged or found to have committed a violation of this chapter, and the Director.

U. “Person” means one or more individuals, partnerships, associations, organizations, trade or professional associations, labor unions, corporations, public corporations, cooperatives, legal representatives, trustees, trustees in bankruptcy and receivers, firms, institutions, or any group of persons; it includes any owner, lessee, proprietor, manager, agent, or employee, whether one or more natural persons.

V. “Premium pay program” means a plan offered by an employer pursuant to which an employee receives extra pay in-lieu of paid time off.

W. “Sexual assault” shall be defined as set forth in RCW 49.76.020, as now enacted or as hereafter amended.

(Ord. 28453 Ex. A; passed Sep. 26, 2017; Ord. 28275 Ex. A; passed Jan. 27, 2015)

18.10.020 Accrual of Paid Sick Leave.

A. Employers shall provide employees with a minimum of one hour of paid sick leave for every 40 hours worked within the City, except as otherwise provided herein, unless RCW 49.46.210, as it exists or is hereinafter amended, provides greater protection of benefits to an employee, in which case state law will control.

B. Nothing herein shall be construed as prohibiting or discouraging an employer from the adoption or retention of a paid sick leave policy that exceeds the requirements as stated herein.

C. In the case of employees who are exempt from overtime payment under Section 213(a)(1) of the Fair Labor Standards Act of 1938, approved June 25, 1938 (52 Stat. 1060; 29 U.S.C. § 201 et seq.) (hereinafter referred to as “FLSA-exempt” employees) and under the Washington State Minimum Wage Act, no employer shall be required to accrue leave for such employees for hours worked beyond a 40-hour work week. If an exempt employee’s normal work in a work week is less than 40 hours, paid sick leave accrues based upon the employee’s normal work week.

D. Paid sick leave shall begin to accrue as outlined in this section for existing employees on the effective date of this ordinance, and for all new employees, on the commencement of employment.

E. An employer with a combined or universal paid sick leave policy, such as a paid time off (“PTO”) policy, is not required to provide additional paid sick leave under this chapter, provided that:

1. All available PTO may be used for the same purposes and under the same conditions as set forth in Section 18.10.030;
2. PTO meets the minimum standards of accrual outlined in Section 18.10.020.A-D; and
3. The employer has a written policy, readily available to employees, informing employees that:
 - a. PTO may be used for the same purposes outlined in Section 18.10.030.C; and
 - b. That the employer is using its PTO program to comply with the City of Tacoma Paid Sick Leave Ordinance.

F. An employer with a premium pay program is not required to provide additional paid sick leave under this chapter if the premium pay program is approved by the Director and is consistent with the rules and regulations adopted by the Director, unless RCW 49.46, as it exists or is hereinafter amended, provides greater protection of benefits to an employee, in which case state law will control.

G. When there is a separation from employment and the employee is rehired within 12 months of separation by the same employer, including different business locations of the employer, previously accrued unused paid sick leave shall be reinstated. Further, the previous period of employment shall be counted for purposes of determining the employee's eligibility to use paid sick leave. If the period of time an employee is separated from employment extends into a subsequent benefit year, the employer is not required to reinstate more than 40 hours of accrued but unused time. If there is a separation of more than 12 months, an employer shall not be required to reinstate accrued paid sick leave and, for the purposes of this chapter, the rehired employee shall be considered to have newly commenced employment.

H. Front loading hours. The employer may, but is not required to, provide paid sick leave in advance of accrual, provided that such front-loading hours meets or exceeds the requirements of this chapter for accrual, use, and carryover of paid sick leave.

(Ord. 28453 Ex. A; passed Sep. 26, 2017; Ord. 28275 Ex. A; passed Jan. 27, 2015)

18.10.030 Use of Paid Sick Leave.

A. Employees shall be entitled to use accrued paid sick leave beginning on the 90th calendar day after the commencement of their employment.

B. Employers shall allow employees to carry over any accrued and unused hours, up to 40 hours, to the following benefit year, unless RCW 49.46.210, as it exists or is hereinafter amended, provides greater protection of benefits to an employee, in which case state law will control.

C. Employees shall be entitled to use paid sick leave provided by the employer for the following reasons, unless RCW 49.46.210, as it exists or is hereinafter amended, provides greater protection of benefits to an employee, in which case state law will control:

1. An absence resulting from an employee’s mental or physical illness, injury, or health condition; to accommodate medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or preventive medical care;
2. To allow the employee to care for a family member with a mental or physical illness, injury, or health condition; care for a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or care for a family member who needs preventive medical care.

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3. When the employee's place of business has been closed by order of a public official for any health-related reason.
4. To allow the employee to care for a child whose school or place of care has been closed by order of a public official.
5. To enable the employee to seek legal or law enforcement assistance or remedies to ensure the health and safety of the employee or the employee's family members, including, but not limited to, preparing for or participating in any civil or criminal legal proceeding related to or derived from domestic violence, sexual assault, or stalking.
6. To enable the employee to obtain, or assist a family member in obtaining, services from a domestic violence shelter, rape crisis center, or other social services program for relief from domestic violence, sexual assault, or stalking.
7. To enable the employee to participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members from future domestic violence, sexual assault, or stalking.
8. To enable the employee to take leave for bereavement for the death a family member.

D. Paid sick leave shall be provided upon the request of an employee, and the request shall include the expected duration of the absence when possible. An employer may require an employee to comply with the employer's usual and customary notice and procedural requirements for absences and/or requesting leave, provided that such requirements do not interfere with the purposes for which the leave is needed.

1. If the paid sick leave is foreseeable, a written request shall be provided at least ten days, or as early as possible, in advance of the paid sick leave, unless the employer's normal notice policy requires less advance notice.
2. If the paid sick leave is unforeseeable, the employee must provide notice as soon as it is practicable and must generally comply with an employer's reasonable normal notification policies and/or call-in procedures.
3. Verification of Authorized Use. For absences exceeding three days, an employer may require verification that an employee's use of paid sick leave is for an authorized purpose. If an employer requires verification, verification must be provided to the employer within a reasonable time period during or after the leave. An employer's requirements for verification may not result in an unreasonable burden or expense on the employee and may not exceed privacy or verification requirements otherwise established by law. If an employer requires employees to give reasonable notice of an absence from work for the use of paid sick leave for an authorized purpose under the Domestic Violence Leave Act, any such reasonable notice requirements must comply with the provisions outlined in WAC 296-135-060.

E. Employers may establish a minimum increment of use of accrued paid sick leave time according to the terms established by the State of Washington in WAC 296-128 as currently enacted or hereinafter amended, subject to the FLSA, provided that the employer shall not require employees covered by the overtime requirements of the FLSA to use accrued paid sick leave time in increments greater than one hour unless necessary due to a reasonable business need. For FLSA-exempt employees, the employer may make deductions of paid sick leave in accordance with the FLSA or in accordance with a pay system established by statute, ordinance, or regulation.

F. When the need for use of accrued time is foreseeable, the employee shall make a reasonable effort to schedule the use of paid sick leave in a manner that does not unduly disrupt the operations of the employer.

G. Upon mutual consent by the employee and the employer, an employee may work additional hours or shifts during the same or next pay period without using available paid sick leave for the original missed hours or shifts. However, the employer may not require the employee to work such additional hours or shifts. Should the employee work additional shifts, the employer shall comply with any applicable federal, state, or local laws concerning overtime pay.

H. Nothing in this chapter shall be construed to prohibit an employer from establishing a policy whereby employees may voluntarily exchange assigned hours or "trade shifts."

I. When paid leave is requested by an employee who works in an eating and/or drinking establishment, the employer may offer the employee substitute hours or shifts unless prohibited by RCW 49.46, as it exists or is hereinafter amended, in which case state law will control. If the employee accepts the offer and works these substitute hours or shifts, the amount of time worked during the substitute period or the amount of time requested for paid leave, whichever is smaller, may, at the discretion of the employer, be deducted from the employee's accrued leave time. However, no employer is required to offer such substitute hours or shifts, and no employee is required to accept such hours or shifts if they are offered.

J. An employer may not require, as a condition of an employee taking paid sick leave, that the employee search for or find a replacement worker to cover the hours during which the employee is on paid sick leave.

K. Nothing in this chapter shall be construed to prohibit an employer from establishing a policy whereby employees may donate unused paid sick leave to another employee.

L. Not less than once per month, employers shall provide, either electronically or in writing, information stating the updated amount of paid sick leave available to each employee. Employers shall choose a reasonable system for providing this notification, including, but not limited to, listing remaining available paid time on each pay stub or developing an online system where employees can access their own paid sick leave information.

M. When an employee uses paid sick leave for a shift of indeterminate length (e.g., a shift that is defined by business needs rather than a specific number of hours), the employer may base the number of hours of paid sick leave used and payment on the hours worked by a replacement employee in the same shift or a similarly situated employee who worked that same or similar shift in the past.

N. Nothing in this section 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 employment, for accrued paid sick leave that has not been used.

(Ord. 28453 Ex. A; passed Sep. 26, 2017; Ord. 28275 Ex. A; passed Jan. 27, 2015)

18.10.040 Exercise of Rights Protected; Retaliation Prohibited.

A. It shall be a violation 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 chapter.

B. It shall be a violation for an employer to take adverse action against an employee because the employee has exercised in good faith the rights protected under this chapter.

C. The protections afforded under this subsection shall apply to any person who mistakenly, but in good faith, alleges violations of this chapter.

(Ord. 28275 Ex. A; passed Jan. 27, 2015)

18.10.050 Notice and Posting.

A. Employers shall give notice that employees are entitled to paid sick leave; the amount of paid sick leave and the terms of its use guaranteed under this chapter; that adverse action against employees who exercise any right under this chapter is prohibited; and that each employee has the right to file a complaint if the employee is denied paid sick leave, experiences retaliation for exercising any right granted by TMC 18.10, or otherwise suspects a violation of this chapter.

B. The Director shall create and make available to employers a model notice, hereinafter referred to as the "Notice," which contains the information required under paragraph A of this subsection for their use in complying with this subsection. The Notice shall be printed in English and Spanish and any other languages that the Director determines are needed to notify employees of their rights under this chapter.

C. Employers may comply with this section by posting the Notice in a conspicuous and accessible place in each establishment where employees are employed.

D. Employers may also comply with this section by including the Notice in employee handbooks or other written guidance to employees concerning employee benefits or leave rights, or by distributing a copy of the Notice to each new employee upon hiring. In either case, distribution may be accomplished electronically.

(Ord. 28453 Ex. A; passed Sep. 26, 2017; Ord. 28275 Ex. A; passed Jan. 27, 2015)

18.10.060 Employer Responsibilities.

A. Employers shall certify compliance with this chapter upon application for and renewal of their City of Tacoma business license.

B. Employers shall retain records documenting hours worked by employees in the City of Tacoma, accrued paid sick leave, and paid sick leave used by employees. Employers shall retain such records for a period of three years, and shall allow the Director access to such records, as well as a complete roster of employee names and contact information when requested, with at least five business days' notice and at a mutually agreeable time, to investigate potential violations and to audit compliance with the requirements of this chapter. Employers shall make copies of these records available to employees upon request and within a reasonable period of time.

C. Records and documents relating to medical certifications, recertifications, or medical histories of employees or employees' family members created for purposes of this chapter are required to be maintained as confidential medical records in separate files and/or records from the usual personnel files. If the Americans with Disabilities Act ("ADA") applies, then these records must comply with ADA confidentiality requirements.

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D. Unused paid sick leave shall be retained by the employee if the employer sells, transfers, or otherwise assigns the business to another employer and the employee continues to work in the City.

(Ord. 28453 Ex. A; passed Sep. 26, 2017; Ord. 28275 Ex. A; passed Jan. 27, 2015)

18.10.070 Enforcement.

A. Powers and duties of Director.

1. The Director is authorized to enforce this chapter, and may promulgate rules and regulations consistent with this chapter, provided that the Director shall hold one or more public hearings prior to adoption of rules and regulations.
2. The Director shall attempt to conciliate and settle by agreement, any alleged violation or failures to comply with the provisions of this chapter prior to filing a charge when there is reason to believe that the employers' failure to comply was due to reasonable cause and not willful neglect.
3. The Director may investigate and gather data regarding the paid sick leave, wages, hours, and other conditions and practices of employment, and may enter and inspect such places and such records (and make such transcriptions thereof), question such employees, and investigate such facts, conditions, practices, or matters deemed necessary or appropriate to determine whether any person has violated any provision of this chapter, or which may aid in the enforcement of the provisions of this chapter.

B. Charge filing.

1. A charge alleging a violation of this chapter shall be in writing, on a form or in a format determined by the Director and signed by or on behalf of a charging party, and shall describe the violation complained of and shall include a statement of the dates, places, and circumstances and the persons responsible for the alleged violation.
2. A charge alleging a violation of this chapter may also be filed by the Director whenever the Director has reason to believe that any person has been engaged or is engaging in a violation of this chapter.

C. Citations, Notices of Assessment, Determinations of Compliance, and Civil Penalties.

1. The Director shall issue either (a) a citation with, if applicable, a notice of assessment or (b) a determination of compliance no later than 60 calendar days after the filing of a charge, unless the Director extends the response date. Notice of the extended date will be provided by the Director to the parties in writing.
2. The citation and any applicable notice of assessment or determination of compliance shall be delivered in writing to all parties by personal delivery or first-class mail.
3. If the Director finds any violation of this chapter, the Director may issue a civil penalty in the amount of \$250, provided the Director may waive or reduce the civil penalty if the employer comes into compliance within ten calendar days of the notice or shows that its failure to comply was due to reasonable cause and not willful neglect.

If the Director finds a willful violation of this chapter which results in a citation and notice of assessment, the Director may issue a civil penalty that shall not be less than \$250 or an amount equal to two times the total value of unpaid sick leave the employer failed to credit or pay the employee, whichever is greater, provided the Director may waive or reduce the civil penalty if the employer has not previously been found by the Director to have willfully violated this chapter, and the employer provides payment and/or credits to the employee for all paid sick leave owed, and interest due when applicable, all as determined in the citation and notice of assessment, within ten business days of receipt of the citation and notice of assessment.

4. Payment, or credit, by the employer of all paid sick leave and interest and compliance with any and all terms outlined in the citation and notice of assessment, shall constitute full and complete satisfaction by the employer of all requirements in the citation and any associated notice of assessment.

5. Nothing in this chapter shall be construed as creating a private cause of action for employees to file suit against an employer.

D. Administrative Review by Director.

1. General.

A party or a person to whom a Citation and, if applicable, a Notice of Assessment or a Determination of Compliance (hereinafter Determination) or civil penalty (hereinafter Penalty) is assessed may request an administrative review of the Citation, Notice of Assessment, Determination, or Penalty.

2. How to request administrative review.

A party may request an administrative review of the Citation, Notice of Assessment, Determination, or Penalty by filing a written request with the Director within ten calendar days from the date of the Citation, Notice of Assessment, Determination, or Penalty. The request shall state, in writing, the reasons the Director should review the Citation, Notice of Assessment, Determination, or Penalty. Failure to state the basis for the review in writing shall be cause for dismissal of the review.

Upon receipt of the request for administrative review, the Director shall review the information provided.

3. Decision of Director.

After considering all of the information provided, the Director shall determine whether a violation has occurred and shall affirm, vacate, suspend, or modify the Citation, Notice of Assessment, Determination, or Penalty.

The Director's decision shall be delivered, in writing, to all parties by first-class mail.

E. Appeals to the Hearing Examiner of Director's Decision.

Appeal of the Director's decision shall be made within ten calendar days from the date of the Director's decision by filing a written notice of appeal, clearly stating the grounds that the appeal is based upon, with the Hearing Examiner, which appeal shall be governed by TMC 1.23. The Hearing Examiner shall notify all parties, by mail, of the time and place of hearing.

(Ord. 28453 Ex. A; passed Sep. 26, 2017; Ord. 28275 Ex. A; passed Jan. 27, 2015)

18.10.080 Effective Date. *Repealed by Ord. 28453.*

(Repealed by Ord. 28453 Ex. A; passed Sep. 26, 2017; Ord. 28275 Ex. A; passed Jan. 27, 2015)

18.10.090 Waiver.

The provisions of this chapter shall not apply to any employees covered by a bona fide collective bargaining agreement to the extent that the requirements of this ordinance are expressly waived in the collective bargaining agreement in clear and unambiguous terms, except when prohibited by RCW 49.46 and/or WAC 296-128, as currently enacted or hereinafter amended, in which case state law will control.

(Ord. 28453 Ex. A; passed Sep. 26, 2017; Ord. 28275 Ex. A; passed Jan. 27, 2015)

18.10.100 Severability.

If any provision or section of this chapter shall be held to be void or unconstitutional, all other parts, provisions, and sections of this chapter not expressly so held to be void or unconstitutional shall continue in full force and effect.

(Ord. 28275 Ex. A; passed Jan. 27, 2015)