

**CITY OF PHILADELPHIA  
DEPARTMENT OF LABOR  
OFFICE OF WORKER PROTECTIONS**

**REGULATIONS REGARDING CHAPTER 9-4100 OF THE PHILADELPHIA CODE:  
PROMOTING HEALTHY FAMILIES AND WORKPLACES**

The following regulations regarding Chapter 9-4100 of The Philadelphia Code (hereinafter "Sick Leave Regulations") are hereby adopted:

**1. Scope.**

**1.1 Authority.** The City of Philadelphia Department of Labor promulgates these Sick Leave Regulations pursuant to its authority under Philadelphia Home Rule Charter §§ 4-2300 and 8-407 and Philadelphia Code § 9-4109.

**1.2 Existing Regulations.** These Sick Leave Regulations shall supersede all previously issued regulations regarding Chapter 9-4100.

**2. Definitions.**

As used herein, the following terms shall have the meanings indicated. Other terms not specifically defined in these Sick Leave Regulations shall have the meanings provided in Chapter 9-4100.

**2.1 Calendar Year.** The 12-month period that an employer uses to account for employee sick time accrual and usage.

**2.2 Chapter 9-4100.** Chapter 9-4100 of The Philadelphia Code.

**2.3 City.** The city of Philadelphia.

**2.4 Commission Paid Employee.** An employee whose earnings from employment are calculated, in whole or in part, by reference to performance measurements, such as the number or dollar amount of sales.

**2.5 Non-Probationary Employees Covered by a Bona Fide Collective Bargaining Agreement.** Non-probationary employees who are covered by a collective bargaining agreement at the time of the alleged violation that is either in effect or expired and subject to negotiation.

**2.6 Office.** The Office of Worker Protections, within the Department of Labor.

**3. Applicability.**

**3.1 Minimum Standard.** The provisions of Chapter 9-4100 and these Sick Leave Regulations establish the minimum standard an employer must satisfy in providing sick time to its employees. These provisions do not diminish or otherwise alter any employer policies that provide more generous sick leave to employees than City law requires.

**3.3 Other Applicable Laws.** The provisions of Chapter 9-4100 and these Sick Leave Regulations do not diminish or otherwise alter the requirements related to employee paid sick time set forth in the federal Family and Medical Leave Act (“FMLA”) and other applicable laws.

**4. Accrual of Sick Time.**

**4.1** Employers that employ ten or more Employees who work at least forty weeks in a Calendar Year within the City shall provide paid sick time to their Employees in accordance with the provisions of Chapter 9-4100 and these Sick Leave Regulations.

**4.2** All Employers not covered by Regulation 4.1 must provide unpaid sick time in accordance with the provisions of Chapter 9-4100 and these Sick Leave Regulations, except that Section 5.3 shall not apply.

**4.3** If an Employee performs work for the Employer both within and outside the boundaries of the City, only the work performed within the City is required to be included in the computation of accrued sick time.

**4.3.1** The within-City portion of regular travel time into and out of the City, such as within-City travel performed by truck drivers or delivery services, may be calculated by reference to the average travel time for the particular route.

**4.4** An Employee who performs work on a temporary basis pursuant to a placement by a Temporary Employment Agency shall be eligible to accrue sick time from the entity by which the individual is employed. Such employment status shall be determined by consideration of the following factors:

**4.4.1** The employment of the person who signs the Employee's paycheck;

**4.4.2** The entity that issues the Employee's W-2 form;

**4.4.3** The entity that issues other tax forms to the Employee, such as a 1099 form;

**4.4.4** The entity that directs the day-to-day work of the Employee;

**4.4.5** The terms of any written contract between the Employee and the temporary employment agency or the Employee and the entity at which the work is performed; and

**4.4.6** The terms of any written contract between the Temporary Employment Agency and the placement Employer.

**4.5** The Temporary Employment Agency and the placement Employer shall be jointly responsible for ensuring that the Employee may use accrued sick leave in accordance with Chapter 9-4100 and these Sick Leave Regulations.

**4.6** An Employee of a Temporary Employment Agency, who works on a temporary

basis by assignment to different placement Employers, shall accrue sick time for all the time worked for Employers within Philadelphia, regardless of the length of each individual assignment.

**4.7** An Employer who hires a worker for a term of less than six months and subsequently extends their employment for a longer term shall credit such Employee with the sick time accrued during the entire period of employment, including the original temporary period. An Employer must permit an Employee to accrue sick time during any initial probationary period, but may prohibit an Employee from using accrued sick time during the first 90 days of employment.

**Example for Section 4.7:** A worker is hired for a project expected to last less than six months. The project is extended and ultimately lasts for a year. When the worker reaches the six-month point, they become eligible for sick time under Chapter 9-4100 and these Sick Leave Regulations. The amount of leave accrued is calculated based on the employee's initial date of hire at the commencement of the project and is immediately available for use by the employee prospectively after working for six months.

**4.8** Accrued unused sick time shall be carried over from one Calendar Year to the next. An Employee may not accrue, or use, more than 40 hours of sick time in a Calendar Year, unless the Employer sets a higher limit pursuant to its own policies. If the Employer's sick leave policy provides for at least 40 hours of paid sick time to be available as of the beginning of the Calendar Year, the Employer is not required to carry over the Employee's unused accrued sick time from the previous Calendar Year.

**4.9** An Employer who provides a paid leave or "paid time off" policy to Employees that may be used for multiple purposes, such as vacation, personal leave, and sick time, is not required under Chapter 9-4100 and these Sick Leave Regulations to provide additional hours of paid leave designated only for sick time. Such policy shall provide for at least 40 hours per year of paid sick time, if accrued, and permit Employees to use such paid leave under all of the conditions set forth in Chapter 9-4100, including, but not limited to, use for the care of a "family member" as defined in Code § 9-4105(8) and on short notice, as necessary.

**4.10** An Employer may not impose discipline or any adverse consequences (including "points" or other measures that may lead to eventual discipline) on an Employee who uses paid sick time in accordance with Chapter 9-4100 and these Sick Leave Regulations.

**4.11** When there is a separation from employment and the Employee is rehired within six months of separation by the same Employer, previously accrued, unused sick time shall be reinstated and the Employee shall be entitled to use such accrued sick time at any time after such reinstatement.

## **5. Use of Sick Time.**

**5.1** Accrued sick time shall be provided by an Employer to an Employee for any of the purposes set forth in Code § 9-4105(1), upon the oral or written request of the Employee.

**5.2** An Employee shall provide notice to his or her Employer of the need to use accrued sick leave as promptly as possible after learning of the need to take such leave. When sick leave was not planned in advance of the need to take the leave, the Employee shall notify the employer of the need for sick leave before the start of the Employee's scheduled work hours, or as soon as practicable after the need arises.

**5.3** Paid sick time provided by an Employer for the purposes described in Code § 9-4105 shall be compensated at the same hourly rate and with the same benefits, including health care benefits, as the Employee normally earns from employment at the Employer. Payments for any sick time used shall be as follows:

**5.3.1** Hourly-Wage Employees shall be paid their regular hourly rate for all hours worked, including for hours would have earned pay at an overtime rate if sick time had not been used.

**5.3.2** Tipped Employees shall be paid at an hourly rate of pay that is the numerical average of the following rates, as published for Philadelphia County by the Pennsylvania Department of Labor and Industry: (1) the hourly wage for Standard Occupational Classification (“SOC”) Code 35-3011 “Bartenders;” (2) the hourly wage for SOC 35-3031 “Waiters and Waitresses;” and (3) the hourly wage for SOC 35-9011 “Dining Room and Cafeteria Attendants & Bartender Helpers.”

**5.3.3** Per-Diem Employees shall be paid, at a minimum, an average hourly rate based on past time worked.

**5.3.4** Full Commission Employees shall be paid at least the state minimum wage.

**5.3.5** Employees who earn a Base Pay plus Commission shall be paid the hourly or daily rate of their base salary. Such hourly rate shall be no less than the state minimum wage.

**5.3.6** Salaried Employees shall be paid the hourly or daily rate of their current salary.

**5.4** Employers shall allow Employees to use accrued sick time in hourly units, or, if the Employer's payroll system uses smaller units, such as 0.25 hours, to account for leave time, Employees may use the same unit for sick time.

**5.5** When an employee's absence is covered by Chapter 9-4100 and may also be covered by the FMLA, an Employer does not violate Code § 9-4105(5) by seeking medical certification required by the FMLA for that absence, regardless of its length.

## **6. Administration and Enforcement.**

**6.1** The administration and enforcement of these Sick Leave Regulations shall be

governed by Code § 9-4110, Chapter 9-6600 of The Philadelphia Code and the Office's Enforcement Regulations.