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MINNEAPOLIS DEPARTMENT OF CIVIL RIGHTS

RULES IMPLEMENTING THE MINNEAPOLIS SICK AND SAFE TIME ORDINANCE

Revised: Proposed Changes Published May 7, 2019 ~~**[NOTE: In a lawsuit brought against the City of Minneapolis in the case of Minnesota Chamber of Commerce et al v. City of Minneapolis, Court File No. 27-cv-16-15051,, the Hennepin County District Court issued an injunction prohibiting the City of Minneapolis from enforcing the Sick and Safe Time Ordinance against any "employer resident outside the geographic boundaries of the City." This case is currently on appeal to the Minnesota Court of Appeals. This injunction will be applied pending a decision by the Court of Appeals.]**~~

Rule 1. Definitions.

1.1 *Ordinance* means the Minneapolis Code of Ordinances, Title 2, Chapter 40.

1.2 *SST* means Safe and Sick Time as defined in the Ordinance, section 40.40.

1.3 Unless defined above, the capitalized words used in these rules are defined in the Ordinance, section 40.40.

Rule 2. Covered Employees and Hours Worked.

~~**[NOTE: Due to the above referenced litigation, this section of the rules will not be enforced against any employer resident outside the geographic boundaries of the City until a final resolution is received from the courts. Once a final order has been issued through the court process, the City may amend these rules to provide additional guidance.]**~~

2.1 An individual is considered an Employee for purposes of the Ordinance if the individual performs work for an Employer for more than 80 hours in a Calendar Year while the individual is physically located in Minneapolis, regardless of the location of the Employer. Employers are not required to track progress towards this threshold for each and every Employee, especially where employees clearly exceed the 80 hour threshold. However, if an Employee could reasonably dispute a lack of coverage under this threshold, based on occasional work in Minneapolis, an Employer holds a burden to show otherwise in those cases. Hours worked by an individual while physically located outside of Minneapolis do not count toward coverage under the Ordinance.

2.2 Once an Employee performs work in Minneapolis at least 80 hours in a Calendar Year, the Employee is entitled to accrue SST for all hours during which the Employee performs work for that Employer during the remainder of that Calendar Year while the Employee is physically located in Minneapolis. SST credited time includes the 80 hours worked towards the coverage threshold under the Ordinance. Employers are not required to offer SST accrual for hours worked by an Employee while physically located outside of Minneapolis.

Examples:

i. Hours spent by an individual while travelling through the City do not count toward either the 80-hour requirement for coverage under the Ordinance or for the accrual of SST if the employee make no stops for work purposes, or makes only incidental stops not considered to be duties or functions of the job (e.g. purchasing gas, eating a meal, or changing a flat tire).

ii. An individual who travels through the City, and stops in the City as a purpose of their work (e.g. to make pickups or deliveries or perform other job duties), is covered by the Ordinance for all hours worked in the City. However, the Ordinance and this rule apply only if the individual performs more than 80 hours of work in the City within a Calendar Year.

iii. An individual who attends a convention, conference, training, educational class, or similar in the City, but performs no other work in the City for an Employer, is not covered by the Ordinance.

2.3 An Employer may make a reasonable estimate of an Employee's time spent working in the City for purposes of SST coverage, accrual and use. Documentation of how the reasonable estimate was derived may include, but is not limited to, dispatch logs, employee logs, delivery addresses and estimated travel times, or historical averages.

2.4 An Employee, who is otherwise covered by the Ordinance, is covered regardless of immigration status.

2.5 Employers who provide their employees SST under a paid time off policy or other paid leave policy meeting the accrual requirements for SST and available for use by the employee for the same purposes and under the same conditions as SST are not required to provide additional SST.

Rule 3: Enforcement by the Department.

3.1 Any employee or person may report an alleged violation of the Ordinance, using the Department's "Report of Violation" form, to the Minneapolis Department of Civil Rights Labor Standards Enforcement Division in person, online, by U.S. Mail or by email.

3.2 The Department may investigate an anonymous report of a suspected violation pursuant to the requirements of Rule 4.1.

3.3 The Department shall provide a simple form for reports of violation.

3.4 Reported Violations must be filed within one year of an alleged violation.

3.5 A Reported Violation must include a description of the facts that form the basis of the alleged violation(s), and should, when possible, include approximate date(s) of the alleged violation(s), the names and contact information of person(s) with personal knowledge of the facts alleged, and documents or other evidentiary material.

3.6 The Department has sole discretion to decide whether to investigate, prioritize or pursue a violation of the Ordinance. The Department may not investigate a Reported Violation that is frivolous on its face, undefined or does not identify the alleged violator.

3.7 The Department may provide technical assistance or otherwise attempt to settle a dispute informally.

3.8 The Minnesota Government Data Practices Act governs the data provided to the Department.

3.9 If the Department decides not to investigate or otherwise pursue a Reported Violation, the Department must promptly provide a written notification to the reporter and include an explanation of its decision and the reporter's rights to appeal. The reporter may, within 21 calendar days of the date of the written notification, file a request for reconsideration with the Director. The Director shall respond in writing to the request for reconsideration within 10 calendar days.

Rule 4. Investigation process.

4.1 The Department may conduct an investigation on its own initiative or following receipt of a Reported Violation.

4.2 Upon Department decision to pursue an investigation, the Department shall send, by U.S. mail, a notice of investigation to the employer. The notice of investigation shall include pertinent facts, allegations, and jurisdictional authority.

4.3 A warning not to retaliate against Employees shall accompany the notice of investigation.

4.4 An employer shall submit all payroll and time records or other data requested by the Department in the format requested by the Department.

4.5 An employer may submit to the department any additional documentation, evidence, or written information it deems necessary.

4.6 Employer responses must be submitted within 21 calendar days of the date of the notice to the employer.

4.7 When deemed appropriate by the Director, the Department may hold fact finding or settlement conferences during the investigation of a Reported Violation to identify undisputed elements of a Reported Violation, define and resolve the disputed elements of the Reported Violation, or attempt to settle the dispute through negotiated agreement. The Director shall provide written notice of such a conference at least 10 calendar days in advance.

4.8 An Employer's failure to timely and fully respond to a request issued by the Department or to participate in a fact-finding or settlement conference creates a rebuttable presumption of a violation.

4.9 The Director may extend any of the time limits in this Rule for a reasonable period upon request or upon the Director's initiative to promote full and fair proceedings.

Rule 5. Disposition of Investigation.

5.1 The Department may agree to a settlement of the investigation prior to the issuance of a determination.

5.2 Except where the Department enters into a settlement of the matter prior to issuance of a determination or where the Department declines to pursue a Reported Violation, the Department shall issue a written determination and findings of fact resulting from its investigation and a statement of whether a violation occurred based upon a preponderance of the evidence. Such a determination shall be issued in writing to the Employer and reporter and include explanation of rights to appeal.

5.3 The Department may order any appropriate relief as a result of its investigation and final determination including, but not limited to, administrative fines and remedies listed in section 40.410(b) of the Ordinance.

Rule 6. Appeals

6.1 A reporter or employer may appeal a determination by filing an appeal in writing to the Department within 21 calendar days from the date of service of the written determination.

6.2 In addition to procedures specified in section 40.130 of the Ordinance, appeals shall be governed by Minneapolis Code of Ordinances, Title 1, Chapter 2, Administrative Enforcement and Hearing Process, section 2.100.

6.3 The hearing officer shall consider the record submitted to it by the Department and any written position statements submitted by the parties. A party may not produce new information for the purpose of challenging the Department's findings or an administrative fine if the information

was previously available yet not submitted. This rule shall not prevent the hearing officer from taking testimony in the discretion of the hearing officer.