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# CITY OF CHICAGO

## RULES

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# MINIMUM WAGE AND PAID SICK LEAVE



BY AUTHORITY VESTED IN THE COMMISSIONER OF THE DEPARTMENT OF BUSINESS AFFAIRS AND CONSUMER PROTECTION PURSUANT TO **MCC 1-24-090**, THE FOLLOWING RULES REGARDING THE CHICAGO MINIMUM WAGE AND PAID SICK LEAVE ARE ADOPTED HEREIN.

By Order of the Commissioner:

Signed:   
Commissioner Rosa Escareno

Date: 9/8/2017

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**CHICAGO MINIMUM WAGE AND PAID SICK LEAVE RULES**  
**SUPPORTING CHAPTER 1-24 OF THE MUNICIPAL CODE OF CHICAGO**

**ARTICLE 1 – GENERAL RULES**

**SECTION I. DEFINITIONS**

Terms used in these Rules that are defined in Chapter 1-24 of the Municipal Code of Chicago shall bear those definitions.

“**BACP**” means the City of Chicago’s Department of Business Affairs and Consumer Protection.

“**Business facility**” means a place maintained by an Employer where it conducts business operations, and also includes places where a Domestic Worker is employed and engages in work for an Employer.

“**Calendar year**” means twelve calendar months beginning at any point.

“**Covered Employee**” means any Employee who is not subject to any of the exclusions set out in the Ordinance and Rules, and who, in any two-week period, performs at least two hours of work for an Employer while physically present within the geographic boundaries of the City. For purposes of this definition, time spent traveling in the City that is compensated time, including, but not limited to, deliveries, sales calls, and travel related to other business activity taking place within the City, shall constitute work, even while physically present within the geographic boundaries of the City; however, time spent traveling in the City that is uncompensated commuting time shall not constitute work while physically present within the geographic boundaries of the City. Day and temporary laborers and occasional and irregular employees (occasional and irregular employees means employees whose employment requires not more than 90 days to complete) may all be Covered Employees from the day they begin work.

“**Day laborer**” has the meaning ascribed to it in Section 4-6-070 of the Municipal Code of Chicago. As such “day laborer” means any person referred by a day labor agency to a contract employer to perform day labor or seeking such a referral.

“**Ordinance**” means Chapter 1-24 of the Municipal Code of Chicago.

**SECTION II. GENERAL INFORMATION**

**Rule MW 1.01                      Application of the Ordinance**

All functions and powers of BACP and the Commissioner under the Ordinance shall be exercised in cooperation with the functions and powers of the U.S. Department of Labor under the Fair Labor Standards Act of 1938, 29 U.S.C. 201 *et seq.*, as amended, and the Illinois Department of Labor and its

Director under the Illinois Minimum Wage Law, 820 ILCS 105/1 *et seq.*, as amended. In the case of a conflict between the Ordinance and the Cook County Earned Sick Leave Ordinance, the Ordinance shall prevail within the City.

**Rule MW 1.02                    Immigration Status**

Immigration status does not affect an individual's status as a Covered Employee.

**Rule MW 1.03                    Domestic Workers and Day Laborers**

A person or entity that employs one or more domestic workers or day laborers who qualify as Covered Employees qualifies as an Employer.

**Rule MW 1.04                    Notice**

Each Employer shall post the notice described in Section 1-24-070 of the Ordinance that informs Covered Employees of the current minimum wage and of their rights under the Ordinance. The Commissioner shall prepare the notice and make it available online at <http://www.cityofchicago.org/minimumwage>. This rule does not apply to Employers who employ solely domestic workers and / or day laborers.

**Rule MW 1.05                    Exclusions**

The exclusions described in this rule that are defined by reference to state law may be affected by changes to the Illinois Minimum Wage Law. The Ordinance does not apply to hours worked:

- a) By Employees subject to the provision in subsection 4(a)(2) of the Illinois Minimum Wage Law which currently allows employers to pay certain employees a wage up to 50¢ per hour less than the state minimum wage during the first 90 consecutive calendar days of employment;
- b) By Employees subject to the provision in subsection 4(a)(3) of the Illinois Minimum Wage Law which currently allows Employers to pay Employees who are less than 18 years old a wage up to 50 cents per hour less than the state minimum wage;
- c) By camp counselors subject to subsections 4(d) and 4(e) of the Illinois Minimum Wage Law;
- d) By Employees licensed as "learners" by the Illinois Department of Labor, pursuant to Section 6 of the Illinois Minimum Wage Law. Generally speaking, the term "learner" refers to a person participating in a training program for an occupation in which he is employed, where the program involves either formal instruction or on-the-job training during a period when the Employee is entrusted with limited responsibility and is under supervision or guidance;
- e) By Employees of any subsidized temporary youth employment program;
- f) By Employees of any subsidized transitional employment program;

- g) By Employees of any governmental entity other than the City of Chicago.

**Rule MW 1.06                    Contents of Records of Employers**

Employers must maintain, at a minimum, the following records for Covered Employees, for a period of not less than 5 years, and shall make such records available for inspection upon request by BACP:

- a) Name of each Covered Employee;
- b) Mailing address, telephone number, and email address of each Covered Employee;
- c) Occupation and job title of each Covered Employee;
- d) Hire date of each Covered Employee;
- e) Date each Covered Employee was eligible to use Paid Sick Leave;
- f) Number of hours of Paid Sick Leave accrued by or awarded to each Covered Employee;
- g) Dates and number of hours each Covered Employee used Paid Sick Leave;
- h) Rates of pay of each Covered Employee;
- i) Hours worked each day and each workweek by each Covered Employee;
- j) Type of payment (hourly rate, salary, commission, etc.), straight-time and overtime pay, and total wages paid to each Covered Employee in each pay period;
- k) Additions and deductions from each Covered Employee's wages for each pay period and an explanation of additions and deductions;
- l) Dates of payment of each pay period covered by each wage payment to each Covered Employee

**ARTICLE 2 – MINIMUM WAGE RULES**

**Rule MW 2.01                    Covered Employee Exclusions**

The Ordinance does not apply:

- a) To individuals who work for an Employer who employs fewer than 4 employees;
- b) To hours worked by Employees of an Employer who has attained a Section 5 special license issued under the Illinois Minimum Wage Law;
- c) To certain individuals employed in agriculture or aquaculture as set out in 820 ILCS 105/3(d)(2);

- d) To individuals employed as outside salesmen;
- e) To individuals employed as a member of a religious corporation or organization;
- f) To individuals employed at an accredited Illinois college or university employed by the college or university at which the individual is a student who is covered under the provisions of the Fair Labor Standards Act of 1938, as heretofore or hereafter amended; and
- g) To individuals employed for a motor carrier and with respect to whom the U.S. Secretary of Transportation has the power to establish qualifications and maximum hours of service under the provisions of Title 49 U.S.C. or the State of Illinois under Section 18b-105 (Title 92 of the Illinois Administrative Code, Part 395 - Hours of Service of Drivers) of the Illinois Vehicle Code.

**Rule MW 2.02            Collective Bargaining Agreements**

The requirements of the Ordinance may be waived only if the waiver is explicitly set forth in a bona fide collective bargaining agreement in clear and unambiguous terms.

**Rule MW 2.03            Chicago Minimum Wage**

The minimum wage for each hour of work performed for an Employer by a Covered Employee as of July 1, 2017, is \$11.00 per hour. Updates to this amount will be posted at <http://www.cityofchicago.org/minimumwage>.

**Rule MW 2.04            Tipped Employees**

The minimum hourly wage for work performed for an Employer by a Covered Employee in occupations receiving gratuities as of June 1, 2017, is \$6.10. Updates to this amount will be posted at <http://www.cityofchicago.org/minimumwage>. If a Covered Employee's wages plus tips do not equal at least the number of hours worked times the applicable minimum wage, the Employer must make up the difference.

**Rule MW 2.05            Overtime**

- a) A Covered Employee is entitled to at least 1.5 times the City minimum wage for each hour in excess of 40 worked in any particular week. As of July 1, 2017, the City minimum wage is \$11.00 per hour; therefore, the minimum overtime wage is \$11.00 times 1.5, which equals \$16.50 per hour.
- b) A tipped Covered Employee is entitled to an overtime hourly wage of at least 1.5 times the City minimum wage, minus no more than the current maximum tip allowance. As of July 1, 2017, the maximum tip allowance is \$4.90 (calculated by subtracting the City tipped straight-time minimum wage of \$6.10 per hour from the general minimum wage of \$11.00 per hour) and the minimum tipped overtime wage is \$11.60 per hour (calculated by subtracting the maximum tip allowance of \$4.90 from the general minimum overtime wage

of \$16.50 per hour). Again, if a Covered Employee's wages plus tips do not equal at least the number of hours worked times the applicable minimum wage, the Employer must make up the difference.

**Rule MW 2.06 Record requirements**

Employers must maintain, at a minimum, the following records for Covered Employees whose compensation is derived in part from gratuities, for a period of not less than five years, and shall make such records available for inspection upon request by BACP:

- a) An identifying symbol, letter, or number on the payroll record indicating such Covered Employee is a person whose wage is determined in part by gratuities.
- b) The report received from the Covered Employee setting forth gratuities received during each workday. Such reports submitted by the Covered Employee shall be signed.
- c) The amount by which the wage of each such Covered Employee has been deemed to be increased by gratuities as determined by the Employer. The amount per hour which the Employer takes as a gratuity credit shall be reported to the Covered Employee in writing each time it is changed from the amount per hour taken in the preceding pay period.
- d) Hours worked each work day in any occupation in which the Covered Employee does not receive gratuities, and total daily or weekly straight-time payment made by the employer for such hours.
- e) Hours worked each workday in occupations in which the Covered Employee received gratuities and total daily or weekly straight time earnings for such hours.

**ARTICLE 3 – PAID SICK LEAVE RULES**

**SECTION I. DEFINITIONS**

**“Benefit year”** means the twelve month period that an Employer sets for an Employee to receive Paid Sick Leave benefits. The months must be consecutive. An Employer may set different dates for each Employee or synchronize all of its Employees to have benefits granted at the same time or have other policies.

**“Date of eligibility”** means the first date upon which a Covered Employee may use Paid Sick Leave. For Covered Employees employed on July 1, 2017, the latest date of eligibility is December 28, 2017.

**“Family member”** may include, but is not limited to, a godchild, godparent, or co-parent. The definition is necessarily situation specific and governed by the circumstances of the individuals involved.

“Paid Time Off” means time an Employer provides to a Covered Employee that the Employee can use for any and all of the reasons in this Paid Sick Leave Ordinance during normal business hours and is compensated at the same rate and with the same benefits, including health care benefits, that the Covered Employee regularly accrues during hours worked. The time may also be used for other reasons.

## **SECTION II. PAID SICK LEAVE**

### **Rule MW 3.01            General**

The Paid Sick Leave portion of the Ordinance has three main categories which must be complied with: (1) accrual / grant of hours of Paid Sick Leave; (2) carryover of Paid Sick Leave from one year to the next; and (3) usage of Paid Sick Leave. Grant of sufficient hours may exempt an Employer from carryover as explained below. The Ordinance establishes minimum standards. Employers are at liberty to go above the standards set forth in the Ordinance. Those Employers whose Paid Time Off policies meet or exceed the requirements of the Ordinance in all three categories are not required to provide additional leave or the record requirements. However, other requirements of the Ordinance, such as when a Covered Employee must be allowed to begin using Paid Sick Leave, must still be followed.

### **Rule MW 3.02            Collective Bargaining Agreements**

With regard to Paid Sick Leave, this Ordinance does not change the terms of collective bargaining agreements entered into before July 1, 2017. The requirements of the Ordinance may be waived only if the waiver is explicitly set forth in a bona fide collective bargaining agreement entered into after July 1, 2017, in clear and unambiguous terms.

### **Rule MW 3.03            Eligibility**

Any Covered Employee who works at least 80 hours for an Employer within any 120-day period is eligible to use accrued Paid Sick Leave by the 180<sup>th</sup> calendar day following the commencement of employment, regardless of the number of persons the Employer employs.

### **Rule MW 3.04            Accrual**

- a) A Covered Employee shall begin accruing Paid Sick Leave on the first calendar day after the date of first employment, or July 1, 2017, if the Covered Employee is already employed by the Employer previous to that day, or the first calendar day after the expiration of a Collective Bargaining Agreement that was in place on July 1, 2017.
- b) Only hours worked within the City of Chicago count toward accrual of Paid Sick Leave.
- c) Salaried Employees: A Covered Employee who receives a salary and is exempt from overtime shall accrue one hour of Paid Sick Leave for each week of employment unless the salaried position is for an amount different from 40 hours worked per week, in which case the rate of accrual shall be 1 hour for every 40 hours of salaried work.



- d) Employees on commission: A Covered Employee who works on commission and whose hours are not tracked shall accrue Paid Sick Leave as a salaried employee would.
- e) Employers are not required to allow accrual of Paid Sick Leave during a Covered Employee's use of any paid or unpaid leave.
- f) Accrual of Paid Sick Leave shall be in hourly increments, but Employers shall keep track of hours worked by non-salaried employees so that a Covered Employee is properly awarded with Paid Sick Leave.

**Rule MW 3.05                      Accrual vs. Immediate Grant**

Instead of following an accrual model, Employers may choose to immediately grant their Covered Employees their Paid Sick Leave at the beginning of employment or benefit year, a practice sometimes known as frontloading. Frontloading done in the manner explained below relieves the Employer from having to follow the accrual and carryover model.

- a) If an Employer grants Covered Employees 40 hours of Paid Sick Leave no later than 180 days after the Covered Employee began working for the Employer, and the Employer is not subject to FMLA, then the Employer is not required to provide additional paid leave.
- b) An Employer subject to FMLA is not required to provide additional paid leave if it:
  - 1) grants Covered Employees 40 hours of Paid Sick Leave no later than 180 days after the Covered Employee began working for the Employer, and
  - 2) makes available an additional 20 hours of Paid Sick Leave at the beginning of each subsequent benefit year to be used for FMLA purposes. An Employer who does this must still grant 40 hours of regular Paid Sick Leave to its Covered Employees at the beginning of the benefit year, where 20 of those hours may be taken for FMLA purposes. Thus, a Covered Employee would be able to use 40 hours of regular Paid Sick Leave in a year and up to 20 hours of FMLA time if the Covered Employee qualifies to take FMLA time. Or, a Covered Employee could take 40 hours of FMLA time, if qualified, and 20 hours of regular Paid Sick Leave. If a Covered Employee does not have a condition for which FMLA applies, the Covered Employee would be able to take a maximum of 40 hours of Paid Sick Leave.

**Rule MW 3.06                      Carryover**

- a) An Employer subject to FMLA who grants 40 hours of Paid Sick Leave at the beginning of the Covered Employee's benefit year must allow the Covered Employee to carry over up to 40 hours of the unused Paid Sick Leave into the next benefit year to be used exclusively for FMLA purposes.
- b) If an Employer's benefit year begins after any Covered Employee's start date, up to 20 hours of any accrued Paid Sick Leave shall be carried over to the benefit year. Unlike normal carry-

over, where the figure gets halved, all of the unused accrued Paid Sick Leave, up to 20 hours, in the less than a year before the benefit year begins, is carried over.

- c) If a Covered Employee has an odd number of hours of Paid Sick Leave at the end of a year, the number shall be rounded up to the next even number for calculating the number of hours for carryover of regular use Paid Sick Leave (as opposed to Paid Sick Leave for FMLA purposes). So if a Covered Employee has 17 hours of Paid Sick Leave remaining at the end of the year, that number is rounded up to 18 hours. The Covered Employee may carry over half of that to the next year, and so may carry over 9 hours of Paid Sick Leave.

**Rule MW 3.07                      FMLA**

- a) From year to year, a Covered Employee who works for an Employer that is subject to FMLA may carry over up to 40 hours of accrued and unused Paid Sick Leave to be used exclusively for FMLA purposes.
- b) A maximum of 20 hours of regular Paid Sick Leave and 40 hours of Paid Sick Leave for FMLA purposes may be carried over from one year to the next if a Covered Employee works for an Employer that is subject to FMLA. Thus, if a Covered Employee who accrues 40 hours of Paid Sick Leave each year does not use any Paid Sick Leave for three years, the Covered Employee can still only carry over a maximum of 40 hours of Paid Sick Leave that may be used for FMLA purposes and 20 hours for regular sick leave even though the Covered Employee accrued a total of 120 hours of Paid Sick Leave over that three-year period.

**Rule MW 3.08                      Usage**

- a) A Covered Employee must be allowed to use Paid Sick Leave no later than 180 days after the Covered Employee began working for an Employer if the Covered Employee worked at least 80 hours for an Employer within any 120-day period. This rule applies whether the Employer uses the accrual method or immediately grants Paid Sick Leave at the beginning of a benefit year.
- b) A Covered Employee may use Paid Sick Leave in hourly increments unless the Employer establishes a written minimum use policy that has been made available to all Employees.
- c) A Covered Employee may use a maximum of 40 hours of accrued regular Paid Sick Leave during a benefit year.
- d) A Covered Employee who works for an Employer subject to FMLA may use up to 60 hours of accrued Paid Sick Leave during a benefit year if the Covered Employee has to take leave protected by FMLA. At least 20 of the 60 hours must be hours that had been carried over for, or granted for, FMLA purposes.

- e) An Employer that grants its Covered Employees greater Paid Sick Leave hours than the Ordinance requires may limit the Ordinance-required usage parameters to the number of hours guaranteed by the Ordinance.
- f) For Covered Employees who are paid on a commission basis, whether base wage plus commission or commission only, the Employer must pay the Paid Sick Leave to the Covered Employee at the hourly rate of pay based on the base wage or the applicable minimum wage, whichever is greater.

**Rule MW 3.09            Disciplinary Leave**

An Employer is not required to allow the use of Paid Sick Leave when a Covered Employee has been suspended or otherwise placed on leave for disciplinary reasons.

**Rule MW 3.10            Breaks in service / Seasonal workers**

When a Covered Employee is separated from employment and rehired by the same Employer, previously accrued unused Paid Sick Leave shall be available for use and/or carry over by the Covered Employee only at the discretion of the Employer. An Employer shall not terminate a Covered Employee to avoid providing sick leave benefits.

**Rule MW 3.11            Payment of Paid Sick Leave**

- a) Paid Sick Leave must be paid no later than the next regular payroll period beginning after the Paid Sick Leave was used by the Employee.
- b) An Employer may not request a Covered Employee to waive the right to take sick leave in exchange for receiving payment for unused sick leave.
- c) An Employer is not required to pay out any accrued and unused Paid Sick Leave upon a Covered Employee's termination, resignation, retirement, or other separation from employment.

**Rule MW 3.12            Notification Policy**

An Employer may establish reasonable methods for the Covered Employee to notify the Employer of the Covered Employee's need to use Paid Sick Leave.

**Rule MW 3.13            Successor Employer**

Unused Paid Sick Leave shall be retained by the Covered Employee if the Employer sells, transfers, or otherwise assigns the business to another Employer and the Covered Employee continues to work in the City.

**Rule MW 3.14            Certification**

Section 1-24-045(c)(5) of the Ordinance provides that an Employer may require certification for the use of Paid Sick Leave if a Covered Employee is absent for more than three consecutive work days.

In light of the potentially significant impact on interstate commerce caused by unexpected absences during peak travel periods, a common carrier regulated under subchapter II of the Railway Labor Act, 45 U.S.C. §§ 181-188, may require certification for the use of Paid Sick Leave for an absence of one or more work days during travel periods associated with Federal holidays and from October 29 through November 1. Such a certification requirement, and any action taken in accordance with the Employer's paid sick leave policy in conjunction with the Covered Employee's failure to provide such certification, shall not in and of itself be deemed to contravene Section 1-24-080 of the Ordinance.

## **ARTICLE 4 – COMPLAINT PROCEDURE AND CITY INVESTIGATION**

### **Rule MW 4.01            Filing a Complaint**

- a) A Covered Employee who was not paid the minimum wage or who has not been granted paid sick leave required by the Ordinance may file a complaint by completing the complaint form found online at <http://www.cityofchicago.org/minimumwage> and sending it to the address on the form. In the alternative, the Employee may register a complaint by calling 311. However, a complaint registered with the City's 311 system via telephone or online will not be deemed filed unless and until the complainant submits a complaint form. All information requested by the complaint form must be provided to allow proper review and investigation of the alleged violation.
- b) Documents that substantiate a claim shall be made available to BACP to allow the Department to proceed.
- c) The Commissioner may choose not to accept a complaint filed more than three years after the disputed wages were due or sick time not granted. This decision shall not alter a Covered Employee's ability to exercise rights granted under Section 1-24-110 of the Ordinance.
- d) Employees are not required to provide, and the City will not request, information regarding the immigration status of any person filing a complaint.

### **Rule MW 4.02            Investigation Procedures**

- a) BACP will review each complaint form for timeliness and completeness.
- b) Within 30 days of receiving a valid complaint, BACP will send a subpoena to the business requesting a submission of the records listed in Rule MW 1.06.
- c) BACP will review records submitted by the business.
- d) If the Employer does not voluntarily comply with the request for records or provide proof of compliance with the Ordinance, the Commissioner may issue administrative notices of violation seeking fines payable to the City, license suspension or revocation, and / or restitution to the current and former Covered Employees.