

ORDINANCE NO. 7,505–N.S.

MINIMUM WAGE ORDINANCE, AMENDING BERKELEY MUNICIPAL CODE CHAPTER 13.99; AND PAID SICK LEAVE ORDINANCE, ADDING BERKELEY MUNICIPAL CODE CHAPTER 13.100

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1: That Chapter 13.99 of the Berkeley Municipal Code is hereby amended to read as follows:

**Chapter 13.99**

**MINIMUM WAGE**

**Sections:**

- 13.99.010 Title and Purpose.**
- 13.99.020 Authority.**
- 13.99.030 Definitions.**
- 13.99.040 Minimum Wage.**
- 13.99.050 Hospitality Service Charges**
- 13.99.055 Waiver Through Collective Bargaining.**
- 13.99.060 Notice, Posting and Payroll Records.**
- 13.99.070 Retaliation Prohibited.**
- 13.99.080 Implementation.**
- 13.99.090 Enforcement.**
- 13.99.100 No Preemption of Higher Standards.**
- 13.99.110 Reserved.**
- 13.99.120 Fees.**
- 13.99.130 Severability**

**13.99.010 Title and Purpose.**

This ordinance shall be known as the "Minimum Wage Ordinance."

The purpose of this ordinance is to protect the public health, safety and welfare. It does this by requiring that employees are compensated by their employers or respective subcontractors in such a manner as to enable and facilitate their individual self-reliance within the City of Berkeley.

**13.99.020 Authority.**

This Chapter is adopted pursuant to the powers vested in the City of Berkeley under the laws and Constitution of the State of California including, but not limited to, the police powers vested in the City pursuant to Article XI, Section 7 of the California Constitution and Section 1205(b) of the California Labor Law.

**13.99.030 Definitions.**

The following terms shall have the following meanings:

- A. "City" shall mean the City of Berkeley.
- B. "Department" shall mean the Department of Finance or other City department or agency as the City shall by resolution designate.
- C. "Employee" shall mean any person who:
  - 1. In a calendar week performs at least two (2) hours of work for an Employer within the geographic boundaries of the City; and
  - 2. Qualifies as an Employee entitled to payment of a minimum wage from any Employer under the California minimum wage law, as provided under Section 1197 of the California Labor Code and wage orders published by the California Industrial Welfare Commission, or is a participant in a Welfare-to-Work Program.
- D. "Employer" shall mean any Person, including corporate officers or executives, as defined in Section 18 of the California Labor Code, who directly or indirectly through any other person, including through the services of a temporary employment agency, staffing agency, subcontractor or similar entity, employs or exercises control over the wages, hours or working conditions of any Employee, or any person receiving or holding a business license through Title 9 of the Berkeley Municipal Code.
- E. "Minimum Wage" shall have the meaning set forth in Section 13.99.040 of this Chapter.
- F. "Nonprofit Corporation" shall mean a nonprofit corporation, duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and (if a foreign corporation) in good standing under the laws of the State of California, which corporation has established and maintains valid nonprofit status under Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, and all rules and regulations promulgated under such Section, or any non-profit educational organization qualified under Section 23701 (d) of the Revenue and Taxation code.
- G. "Person" shall mean an individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, business trust, estate, trust, association, joint venture, agency, instrumentality, or any other legal or commercial entity, whether domestic or foreign.
- H. "Service Charge" shall mean all separately-designated amounts collected from customers by an Employer at a food-service establishment, hotel or other

hospitality focused business, that are for service by Employees, or are described in such a way that customers might reasonably believe that the amounts are for those services or in lieu of tips, including but not limited to those charges designated on receipts under the term “service charge,” “delivery charge,” or “portage charge.”

I. “Youth Works” means the City of Berkeley operated employment program for Berkeley youth.

**13.99.040 Minimum Wage.**

A. Employers shall pay Employees no less than the Minimum Wage set forth below for each hour worked within the geographic boundaries of the City.

<b>Date</b>	<b>Minimum Hourly Wage</b>
October 1, 2016	\$12.53
October 1, 2017	\$13.75
October 1, 2018	\$15.00

B. To prevent inflation from eroding its value, beginning on July 1, 2019, and thereafter on the 1<sup>st</sup> of July of each year, the Minimum Wage shall increase by an amount corresponding to the prior calendar year's increase, if any, in the Consumer Price Index for urban wage earners and clerical workers for the San Francisco-Oakland-San Jose, CA metropolitan statistical area (or if such index is discontinued, then in the most similar successor index).

C. For the Employer Youth Works and for job training participants up to 25 years of age in youth job training programs operated by a Nonprofit Corporation or a governmental entity, the Minimum Wage shall be increased to \$12.00 on October 1, 2017. On October 1, 2018, the Minimum Wage shall be increased to \$13.25 and, starting July 1, 2019 and on every July 1 thereafter, the Minimum Wage shall be increased by \$1.25 per hour until it is equal to the Minimum Wage paid by all other Employers covered by this Section. An increase of less than \$1.25 per hour is permissible only for purposes of making the Minimum Wage provided for under this paragraph equal to the Minimum Wage paid by all other Employers under this Section. Once the Minimum Wage established by this paragraph is equal to the Minimum Wage for all other Employers, it shall increase in the same amounts and on the same terms as for all other Employers as provided by this Section.

D. The requirement to pay Minimum Wage as specified in this Section shall apply to all Employers except where prohibited by state or federal law.

E. A violation for unlawfully failing to pay the Minimum Wage shall be deemed to continue from the date immediately following the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2 of the California Labor Code, to the date immediately preceding the date the wages are paid in full.

F. Nothing in this section shall restrict the City from increasing the minimum wage rate beyond the amounts provided for in this section.

### **13.99.050 Hospitality Service Charges**

A. Service Charges shall be used by the Employer to directly benefit the Employees. No part of these charges may be paid to the Employer.

B. This section does not apply to any tip, gratuity, money, or part of any tip, gratuity, or money that has been voluntarily paid or given to or left for an Employee by customers over and above the actual amount due for services rendered or for goods, food, drink, or articles sold or served to the customer. No part of this chapter shall be construed to limit or prohibit the amount of any tip or gratuity left for an Employee.

C. No Employer or agent thereof shall deduct any amount from wages due to an Employee on account of a Service Charge or gratuity, or require an Employee to credit the amount, or any part thereof, of a Service Charge or gratuity against and as a part of the wages due to the Employee from the Employer or reduce required benefits of an Employee.

D. Each Employer shall define the chain of service and associated job duties entitled to a portion of the distributed service charges and notify the Employees of the distribution formula as well as provide in writing to each employee its plan of distribution of service charges to employees.

E. This Section shall not be applied to any events for which the employer already had a contract in place at the time the revised ordinance is adopted.

### **13.99.055 Waiver Through Collective Bargaining.**

To the extent required or permitted by federal or state law, all or any portion of the applicable requirements of this Chapter may be waived in a bona fide collective bargaining agreement, provided that such waiver is explicitly set forth in such agreement in clear and unambiguous terms. Any request to an individual Employee

by an Employer to waive his or her rights under this Chapter shall constitute a violation of this Chapter.

**13.99.060 Notice, Posting and Payroll Records.**

A. By August 1, 2017 the Department shall publish and make available to Employers a bulletin announcing the Minimum Wage rate which shall take effect on October 1, 2017. By August 1, 2018, the Department shall publish and make available to Employers a bulletin announcing the Minimum Wage rate which shall take effect on October 1, 2018. By May 1, 2019 and by May 1 of each year thereafter, the Department shall publish and make available to Employers a bulletin announcing the adjusted Minimum Wage rate, which shall take effect on July 1 of the same calendar year. In conjunction with this bulletin, the Department shall by the same dates specified above publish and make available to Employers, in all languages spoken by more than five percent of the work force in the City, a notice suitable for posting by Employers in the workplace informing Employees of the current Minimum Wage rate and of all their rights under this Chapter.

B. Every Employer shall post in a conspicuous place at any workplace or job site in the City where any Employee works the notice published each year by the Department informing Employees of the current Minimum Wage rate and of their rights under this Chapter. Every Employer shall post such notices in any language spoken by at least five percent of the Employees at the work-place or job site. Every Employer shall also provide each Employee at the time of hire with the Employer's name, address, and telephone number in writing. Failure to post such notice shall render the Employer subject to administrative citation, pursuant to Section 90, Subsection A, of this Chapter.

C. Employers shall retain payroll records pertaining to Employees for a period of four years, and shall allow the City access to such records, with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of this Chapter.

Where an Employer does not maintain or retain adequate records documenting wages paid and Service Charges collected and distributed or does not allow the City reasonable access to such records, the Employee's account of how much he or she was paid shall be presumed to be accurate, absent clear and convincing evidence otherwise. Furthermore, failure to maintain such records or to allow the City reasonable access shall render the Employer subject to administrative citation, pursuant to Section 90, Subsection A, of this Chapter. Such payroll records shall include the amount of hours worked, wages paid, Paid Sick Leave accrued, and distributions of hospitality Service Charges.

D. If a violation of this Chapter has been finally determined, the City shall require the Employer to post public notice of the Employer's failure to comply in a form determined by the City. Failure to post such notice shall render the

Employer subject to administrative citation, pursuant to Section 90, Subsection A, of this Chapter.

E. Every Employer shall post a notice in a conspicuous place at any workplace or job site in the City where any Employee works, explaining which employees are included in the chain of service and distribution of the Services Charges and how Service Charges are distributed among Employees.

### **13.99.070 Retaliation Prohibited.**

A. It shall be unlawful for an Employer or any other party to discriminate in any manner or take any adverse action (including action relating to any term, condition or privilege of employment) against any person in retaliation for exercising rights protected under this Chapter. Rights protected under this Chapter include, but are not limited to: the right to be paid the specified minimum wage; the right to receive a distribution of hospitality service charges as specified; the right to file a complaint or inform any person about any party's alleged noncompliance with this Chapter; and the right to inform any person of his or her potential rights under this Chapter or otherwise educate any person about this Chapter or to assist him or her in asserting such rights.

B. No Employer may fund increases in compensation required by this Chapter, nor otherwise respond to the requirements of this Chapter, by reducing the compensation of any non-management Employee, nor by reducing vacation, or other non-wage benefits of any such Employees, nor by increasing charges to them for parking, meals, uniforms or other items unless the Employer demonstrates that its cost for such items have increased by the commensurate amount. If an Employer makes such adverse changes after this Chapter has become effective, then upon this Chapter's effective date, such Employer shall restore the conditions of the status quo ante. This section shall not apply to medical benefits.

C. Protections of this Chapter shall apply to any person who mistakenly, but in good faith, alleges noncompliance with this Chapter. Evidence that an Employer has taken adverse action against a person within ninety (90) days of the person's exercise of rights protected under this Chapter shall raise a rebuttable presumption that the Employer's action was retaliatory for the exercise of such rights. "Rebuttable presumption," as used in this section, means that a trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence. Failure to comply with this provision shall render the Employer subject to administrative citation, pursuant to Section 90, Subsection A, of this Chapter.

### **13.99.080 Implementation.**

A. Guidelines. The Department shall be authorized to coordinate implementation and enforcement of this Chapter and shall promulgate appropriate guidelines or rules for such purposes within 90 days of the date on which this Chapter becomes effective. The Department shall seek out partnerships with community-based organizations and collaborate with the Berkeley Labor Commission to facilitate effective implementation and enforcement of this Chapter. Any guidelines or rules promulgated by the Department shall have the force and effect of law and may be relied on by Employers, Employees and other parties to determine their rights and responsibilities under this Chapter. Any guidelines or rules may establish procedures for ensuring fair, efficient and cost-effective implementation of this Chapter, including supplementary procedures for helping to inform Employees of their rights under this Chapter, for monitoring Employer compliance with this Chapter, and for providing administrative hearings to determine whether an Employer or other person has violated the requirements of this Chapter.

B. Reporting Violations. An Employee or any other person may report to the Department in writing any suspected violation of this Chapter. The Department shall encourage reporting pursuant to this subsection by keeping confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the Employee or person reporting the violation. Provided, however, that with the authorization of such person, the Department may disclose his or her name and identifying information as necessary to enforce this Chapter or other Employee protection laws. In order to further encourage reporting by Employees, if the Department notifies an Employer that the Department is investigating a complaint, the Department shall require the Employer to post or otherwise notify its Employees that the Department is conducting an investigation, using a form provided by the Department. Failure to post such notice shall render the Employer subject to administrative citation, pursuant to Section 90, Subsection A, of this Chapter.

C. Investigation. The Department shall be responsible for investigating any possible violations of this Chapter by an Employer or other person. The Department shall have the authority to inspect workplaces, interview persons and request the City Attorney to subpoena books, papers, records, or other items relevant to the enforcement of this Chapter.

D. Informal Resolution. The Department shall make every effort to resolve complaints informally, in a timely manner, and shall have a policy that the Department shall take no more than six months to resolve any matter, before initiating an enforcement action. The failure of the Department to meet these timelines within six months shall not be grounds for closure or dismissal of the complaint.

**13.99.090 Enforcement.**

A. Where prompt compliance is not forthcoming, the City and the Department shall take any appropriate enforcement action to secure compliance, including but not limited to the following:

1. The City may issue an Administrative Citation pursuant to Chapter 1.28 of the Berkeley Municipal Code. The amount of this fine shall vary based on the provision of this Chapter being violated, as specified below:

a. A fine of one thousand dollars (\$1,000.00) may be assessed for retaliation by an Employer against an Employee for exercising rights protected under this Chapter for each Employee retaliated against.

b. A fine of five hundred dollars (\$500.00) may be assessed for any of the following violations of this Chapter:

- i. Failure to post any notice, bulletin, or information required under Section 60 of this Chapter
- ii. Failure to provide notice of investigation to Employees
- iii. Failure to post notice of violation to public
- iv. Failure to maintain payroll records for four years
- v. Failure to allow the City access to payroll records
- vi. Failure to provide to an Employee any information required to be provided to an Employee under Section 60 of this Chapter.

c. A fine equal to the total amount of appropriate remedies, pursuant to subsection E of this section. Any and all money collected in this way that is the rightful property of an Employee, such as back wages, interest, and civil penalty payments, shall be disbursed by the City in a prompt manner.

2. Alternatively, the City may pursue administrative remedies in accordance with the following procedures:

a. Whenever the City determines that a violation of any provision of this Chapter is occurring or has occurred, the City may issue a written compliance order to the Employer responsible for the violation.

b. A compliance order issued pursuant to this chapter shall contain the following information:

- i. The date and location of the violation;



- ii. A description of the violation;
- iii. The actions required to correct the violation;
- iv. The time period after which administrative penalties will begin to accrue if compliance with the order has not been achieved;
- v. Either a copy of this Chapter or an explanation of the consequences of noncompliance with this Chapter and a description of the hearing procedure and appeal process;
- vi. A warning that the compliance order shall become final unless a written request for hearing before the City is received within fourteen days of receipt of the compliance order.

c. Following receipt of a timely request for a hearing, the City shall provide the Employer responsible for the violation with a hearing and, if necessary, a subsequent appeal to the City Council that affords the Employer due process. During the pendency of the hearing and any subsequent appellate process, the City will not enforce any aspect of the compliance order.

3. The City may initiate a civil action for injunctive relief and damages and civil penalties in a court of competent jurisdiction.

B. Any person aggrieved by a violation of this Chapter, any entity a member of which is aggrieved by a violation of this Chapter, or any other person or entity acting on behalf of the public as provided for under applicable state law, may bring a civil action in a court of competent jurisdiction against the Employer or other person violating this Chapter and, upon prevailing, shall be awarded reasonable attorneys' fees and costs and shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, without limitation, the payment of any back wages unlawfully withheld, the payment of an additional sum as a civil penalty in the amount of \$50 to each Employee or person whose rights under this Chapter were violated for each day that the violation occurred or continued, reinstatement in employment and/or injunctive relief. Provided, however, that any person or entity enforcing this Chapter on behalf of the public as provided for under applicable state law shall, upon prevailing, be entitled only to equitable, injunctive or restitutionary relief to Employees, and reasonable attorneys' fees and costs.

C. This Section shall not be construed to limit an Employee's right to bring legal action for a violation of any other laws concerning wages, hours, or other

standards or rights nor shall exhaustion of remedies under this Chapter be a prerequisite to the assertion of any right.

D. Except where prohibited by state or federal law, City agencies or departments may revoke or suspend any registration certificates, permits or licenses held or requested by the Employer until such time as the violation is remedied. The City shall not renew any such license of an Employer with outstanding violations, as finally determined under this Chapter, until such time as the violation is remedied.

E. The remedies for violation of this Chapter include but are not limited to:

1. Reinstatement, the payment of back wages unlawfully withheld, and the payment of an additional sum as a civil penalty in the amount of \$50 to each Employee or person whose rights under this Chapter were violated for each day or portion thereof that the violation occurred or continued, and fines imposed pursuant to other provisions of this Code or state law.

2. Interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the California Civil Code, which shall accrue from the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2 of the California Labor Code, to the date the wages are paid in full.

3. Reimbursement of the City's administrative costs of enforcement and reasonable attorney's fees.

4. If a repeated violation of this Chapter has been finally determined, the City may require the Employer to pay an additional sum as a civil penalty in the amount of \$50 to the City for each Employee or person whose rights under this Chapter were violated for each day or portion thereof that the violation occurred or continued, and fines imposed pursuant to other provisions of this Code or state law.

F. The remedies, penalties and procedures provided under this Chapter are cumulative and are not intended to be exclusive of any other available remedies, penalties and procedures established by law which may be pursued to address violations of this Chapter. Actions taken pursuant to this Chapter shall not prejudice or adversely affect any other action, civil or criminal, that may be brought to abate a violation or to seek compensation for damages suffered.

### **13.99.100 No Preemption of Higher Standards**

The purpose of this Chapter is to provide for payment of a local Minimum Wage and minimum labor standards. This Chapter shall not be construed to preempt or otherwise limit or affect the applicability of any other law, regulation, requirement,

policy or standard that provides for payment of higher or supplemental wages or benefits, or that extends other protections. This Chapter shall not be construed to limit a discharged Employee's right to bring a common law cause of action for wrongful termination.

**13.99.110 Reserved.**

**13.99.120 Fees.**

Nothing herein shall preclude the City Council from imposing a cost recovery fee on all Employers to pay the cost of administering this Chapter.

**13.99.130 Severability**

If any part or provision of this ordinance, or the application of this ordinance to any person or circumstance, is held invalid, the remainder of this ordinance, including the application of such part or provisions to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the provisions of this ordinance are severable.

Section 2. That a new Berkeley Municipal Code Chapter 13.100 is adopted to read as follows:

**Chapter 13.100**

**PAID SICK LEAVE**

**Sections:**

- 13.100.010 Title.**
- 13.100.020 Purpose.**
- 13.100.030 Definitions.**
- 13.100.040 Accrual and Use of Paid Sick Leave.**
- 13.100.050 Waiver Through Collective Bargaining.**
- 13.100.060 Notice, Posting and Payroll Records.**
- 13.100.070 Retaliation Prohibited.**
- 13.100.080 Implementation and Enforcement.**
- 13.100.090 City Undertaking Limited Promotion of General Welfare.**
- 13.100.100 Severability.**
- 13.100.110 Other Legal Requirements.**
- 13.100.120 More Generous Employer Leave Policies.**

**13.100.010 Title.**

This Chapter shall be known as the "Paid Sick Leave Ordinance"

**13.100.020 Purpose.**

Paid sick leave provides employees protection against loss of income during absences from work due to illness or injury to themselves, a family member or another designated person that requires direct care by the employee. Sick leave is intended to be used only for the purposes set forth herein.

Paid sick leave benefits both the individuals receiving the benefit and their families, as well as community public health. Many workers without paid sick leave choose to go to work while ill to avoid a reduction in their paychecks and threat to job security. As a result, the Centers for Disease Control and Prevention and other public health researchers have linked the lack of paid sick leave with the transmission of illness. Sick workers may infect their coworkers and members of the public in the workplace, on public transit, and in between. Studies have also found that workers with paid sick leave are more likely to access preventative health care.

### **13.100.030 Definitions.**

The following terms shall have the following meanings:

A. "City" shall mean the City of Berkeley.

B. "Employer" shall mean any person, including corporate officers or executives, as defined in Section 18 of the California Labor Code, who directly or indirectly through any other person, including through the services of a temporary employment agency, staffing agency, subcontractor or similar entity, employs or exercises control over the wages, hours or working conditions of any Employee, or any person receiving or holding a business license through Title 9 of the Berkeley Municipal Code.

C. "Employee" shall mean any person who:

1. In a calendar week performs at least two (2) hours of work for an Employer within the geographic boundaries of the City; and
2. Qualifies as an employee entitled to payment of a minimum wage from any employer under the California minimum wage law, as provided under Section 1197 of the California Labor Code and wage orders published by the California Industrial Welfare Commission, or is a participant in a Welfare-to-Work Program.

D. "Paid Sick Leave" shall have the meaning defined in California Labor Code §

233(b)(4) as follows: "Sick leave means accrued increments of compensated leave provided by an Employer to an Employee as a benefit of the employment for use by the Employee during an absence from the employment for any of the following reasons specified in 13.100.040.B of this Chapter. "Sick leave" does not include any benefit provided under an Employee welfare benefit plan subject to the federal Employee Retirement Income Security Act of 1974 (Public Law 93-406, as amended) and does not include any insurance benefit, workers' compensation benefit, unemployment compensation disability benefit, or benefit not payable from the Employer's general assets", except that the definition here extends beyond the Employee's own illness, injury, medical condition, need for medical diagnosis or treatment, or medical reason, to also encompass time taken off work by an Employee for the purpose of providing care or assistance to other

persons, as specified further in 13.100.040(B)(2), with an illness, injury, medical condition, need for medical diagnosis or treatment, or other medical reason.

E. "Small Business" shall mean, for the sole purpose of interpreting this Chapter, an Employer for which fewer than twenty-five persons work for compensation during a given week. In determining the number of persons performing work for an Employer during a given week, all persons performing work for compensation on a full-time, part-time, or temporary basis shall be counted, including persons made available to work through the services of a temporary services or staffing agency or similar entity.

### **13.100.040 Accrual and Use of Paid Sick Leave.**

#### **A. Accrual of Paid Sick Leave.**

1. Employees who have accrued Paid Sick Leave under current California law prior to October 1, 2017 shall continue to accrue and use such Paid Sick Leave consistent with current California law. Employees who have not accrued Paid Sick Leave under current California law by October 1, 2017 shall begin to accrue Paid Sick Leave on October 1, 2017, or at the commencement of employment with the Employer, whichever is later.

2. For every 30 hours worked after Paid Sick Leave begins to accrue for an Employee, the Employee shall accrue one hour of Paid Sick Leave. Such leave shall accrue only in hour-unit increments; there shall be no accrual of a fraction of an hour of such leave.

3. For Employees of Small Businesses, there shall be a cap of 48 hours of accrued Paid Sick Leave. For Employees of other Employers, there shall be a cap of 72 hours of accrued Paid Sick Leave. Accrued Paid Sick Leave for Employees carries over from year to year (whether calendar year or fiscal year), but shall not exceed the aforementioned caps. Nothing herein precludes an Employer from establishing a higher cap or no cap on the number of accrued hours.

4. If an Employer has a paid leave policy, such as a paid time off policy, vacation, or other paid leave policy that makes available to Employees an amount of paid leave that may be used for the same purposes as Paid Sick Leave under this Chapter and that is sufficient to meet the requirements for accrued Paid Sick Leave as stated in subsections

(A) and (B), the Employer is not required to provide additional Paid Sick Leave.

5. An Employer is not required to provide financial or other reimbursement to an Employee upon the Employee's termination, resignation, retirement, or other separation from employment, for accrued Paid Sick Leave that the Employee has not used.

6. The rate of pay shall be the Employee's hourly wage. If the Employee in the 90 days of employment before taking accrued sick leave had different hourly pay rates, was paid by commission or piece rate, or was a nonexempt salaried Employee, then the rate of pay shall be 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.

#### **B. Use of Paid Sick Leave.**

1. An Employee may begin using Paid Sick Leave 90 calendar days after commencement of employment.

2. An Employee may use Paid Sick Leave not only when he or she is ill or injured or for the purpose of the Employee's receiving medical care, treatment, or diagnosis, as specified more fully in California Labor Code § 233(b)(4), but also to aid or care for the following persons when they are ill or injured or receiving medical care, treatment, or diagnosis: child, parent, legal guardian or ward, sibling, grandparent, grandchild, and spouse, registered domestic partner under any state or local law, or designated person. "Child" includes a child of a domestic partner and a child of a person standing in loco parentis. The Employee may use all or any percentage of his or her Paid Sick Leave to aid or care for the aforementioned persons. The aforementioned child, parent, sibling, grandparent, and grandchild relationships include not only biological relationships but also relationships resulting from adoption; step-relationships; and foster care relationships.

3. If the employee has no spouse or registered domestic partner, the employee may designate one person as to whom the employee may use paid sick leave to aid or care for the person. The opportunity to make such a designation shall be extended to the employee no later than the date on which the employee has worked 30 hours after paid sick leave begins to accrue pursuant to Section 13.100.040.A.2. There shall be a window of 10 work days for the employee to make this designation. Thereafter, the opportunity to make such a designation, including the opportunity to change such a designation previously made, shall be extended to the employee on an annual basis, with a window of 10 work days for the employee to make the designation.

4. An Employer may not require, as a condition of an Employee's 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.

5. If the need for paid sick leave is foreseeable, the Employee shall provide reasonable advance notification. If the need for paid sick leave is unforeseeable, the Employee shall provide notice of the need for the leave as soon as practicable.

6. An Employer may lend paid sick days to an Employee in advance of accrual, at the Employer's discretion and with proper documentation of Paid Sick Leave lent and accrued.

7. An Employer may only take reasonable measures to verify or document that an Employee's use of Paid Sick Leave is lawful, and shall not require an Employee to incur expenses in excess of \$15 in order to show his or her eligibility for such Paid Sick Leave.

8. An Employer shall provide payment for sick leave taken by an Employee no later than the payday for the next regular payroll period after the sick leave was taken.

9. No Employer that is not a Small Business may limit the accrual or use of Paid Sick Leave except as specified in this Chapter. A Small Business may limit the use of Paid Sick Leave to 48 hours per calendar year.

10. It shall be unlawful for any Employer to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under or in connection

with this section, including, but not limited to, by using the taking of earned sick time under this section as a negative factor in any employment action such as evaluation, promotion, disciplinary action or termination, or otherwise subjecting an Employee to discipline for the use of earned sick time under this section.

**13.100.050 Waiver Through Collective Bargaining.**

To the extent required or allowed by state or federal law, all or any portion of the applicable requirements of this Chapter may be waived in a bona fide collective bargaining agreement, provided that such waiver is explicitly set forth in such agreement in clear and unambiguous terms.

**13.100.060 Notice, Posting and Payroll Records.**

A. Every Employer shall post in a conspicuous place at any workplace or job site in the City where any Employee works, the notice published each year by the City informing Employees of their Paid Sick Leave rights under this Chapter. Every Employer shall post such notices in any language spoken by at least five percent of the Employees at the work-place or job site. In instances where an Employee does not have a regular physical location where they perform their work, the Employer shall provide a copy of the Paid Sick Leave public notice to the Employee when they are hired or assigned to complete work within the City of Berkeley. The notice shall be provided to the employee before they commence work within the City limits and must be provided in the language most easily comprehended by the Employee. Failure to post such notice shall render the Employer subject to administrative citation pursuant to Section 13.100.080.B of this Chapter.

B. Employers shall retain payroll records pertaining to Employees for a period of four years, and shall allow the City access to such records, with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of this Chapter. Where an Employer does not maintain or retain adequate records documenting accrued paid sick leave or does not allow the City reasonable access to such records, the

Employee's account of how much he or she was paid shall be presumed to be accurate, absent clear and convincing evidence otherwise. Furthermore, failure to maintain such records or to allow the City reasonable access shall render the Employer subject to administrative citation, pursuant to Section 13.100.080.B of this Chapter. Such records shall include the amount of hours worked, wages paid, and Paid Sick Leave accrued.

C. If a violation of this Chapter has been finally determined, the City shall require the Employer to post public notice of the Employer's failure to comply in a form determined by the City. Failure to post such notice shall render the Employer subject to administrative citation, pursuant to Section 13.100.080.B of this Chapter.

D. Reporting of Paid Sick Leave. Employers shall include the number of hours of Paid Sick Leave accrued to date in such records that they provide to Employees at the end of each pay period. Failure to provide such records shall render the Employer subject to administrative citation, pursuant to Section 13.100.080.B, of this Chapter.

**13.100.070 Retaliation Prohibited.**

A. It shall be unlawful for an Employer or any other party to discriminate in any manner or take any adverse action (including action relating to any term, condition or privilege of employment) against any person in retaliation for exercising rights protected under this Chapter. Rights protected under this Chapter include, but are not limited to: the right to accrue and use Paid Sick Leave as specified; the right to file a complaint or inform any person about any party's alleged noncompliance with this Chapter; and the right to inform any person of his or her potential rights under this Chapter or otherwise educate any person about this Chapter or to assist him or her in asserting such rights. Protections of this Chapter shall apply to any person who mistakenly, but in good faith, alleges noncompliance with this Chapter. Taking adverse action against a person within ninety (90) days of the person's exercise of rights protected under this Chapter shall raise a rebuttable presumption of having done so in retaliation for the exercise of such rights. Failure to comply with this provision shall render the Employer subject to administrative citation, pursuant to Section 13.100.080.B of this Chapter.

**13.100.080 Implementation and Enforcement.**

A. The City shall be authorized to coordinate implementation and enforcement of this Chapter and may promulgate appropriate guidelines or rules for such purposes. Any guidelines or rules promulgated by the Agency shall have the force and effect of law and may be relied on by employers, employees, and other persons to determine their rights and responsibilities under this Chapter. Any guidelines or rules may establish procedures for ensuring fair, efficient, and cost-effective implementation of this Chapter, including supplementary procedures for helping to inform employees of their rights under this Chapter, for monitoring employer compliance with this Chapter, and for providing administrative hearings to determine whether an employer or other person has violated the requirements of this Chapter.

B. Where prompt compliance is not forthcoming, the City shall take any appropriate enforcement action to secure compliance, including but not limited to the following:

1. The City may issue an Administrative Citation pursuant to Chapter 1.28 of the Berkeley Municipal Code. The amount of this fine shall vary based on the provision of this Chapter being violated, as specified below:

a. A fine of one thousand dollars (\$1,000.00) may be assessed for retaliation by an Employer against an Employee for exercising rights protected under this Chapter for each Employee retaliated against.

b. A fine of five hundred dollars (\$500.00) may be assessed for any of the following violations of this Chapter:

- i. Failure to post notice of the Paid Sick Leave Ordinance
- ii. Failure to provide notice of investigation to Employees
- iii. Failure to post notice of violation to public
- iv. Failure to maintain payroll records documenting accrual of Paid Sick Leave for four years; and



v. Failure to allow the City access to payroll records

c. A fine equal to the total amount of appropriate remedies, pursuant to subdivision B. Any and all money collected in this way that is the rightful property of an Employee, such as back wages, interest, and civil penalty payments, shall be disbursed by the City in a prompt manner.

2. The City may initiate a civil action for injunctive relief and damages and civil penalties in a court of competent jurisdiction.

C. The City or any person aggrieved by a violation of this Chapter, any entity a member of which is aggrieved by a violation of this Chapter, or any other person or entity acting on behalf of the employee and all other employees affected by the employer's violations or on behalf of the public as provided for under applicable state law, may bring a civil action in a court of competent jurisdiction against the Employer or other person violating this Chapter and, upon prevailing, shall be awarded reasonable attorneys' fees and costs and shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, without limitation, the payment of any back wages unlawfully withheld, the payment of an additional sum as a civil penalty in the amount of \$50 to each Employee or person whose rights under this Chapter were violated for each day that the violation occurred or continued, reinstatement in employment and/or injunctive relief. Provided, however, that any person or entity enforcing this Chapter on behalf of the public as provided for under applicable state law shall, upon prevailing, be entitled only to equitable, injunctive or restitutionary relief to Employees, and reasonable attorneys' fees and costs.

D. This Section shall not be construed to limit an Employee's right to bring legal action for a violation of any other laws concerning wages, hours, or other standards or rights nor shall exhaustion of remedies under this Chapter be a prerequisite to the assertion of any right.

E. Except where prohibited by state or federal law, City agencies or departments may revoke or suspend any registration certificates, permits or licenses held or requested by the Employer until such time as the violation is remedied. The City shall not renew any such license of an Employer with outstanding violations, as finally determined under this Chapter, until such time as the violation is remedied.

F. The remedies for violation of this Chapter include but are not limited to:

1. The issuance of Paid Sick Leave time unlawfully withheld.

2. Reimbursement of the City's administrative costs of enforcement and reasonable attorney's fees.

3. If a repeated violation of this Chapter has been finally determined, the City may require the Employer to pay an additional sum as a civil penalty in the amount of \$50 to the City for each Employee or person whose rights under this Chapter were violated for each day or portion thereof that the violation occurred or continued, and fines imposed pursuant to other provisions of this Code or state law.

G. The remedies, penalties and procedures provided under this Chapter are cumulative and are not intended to be exclusive of any other available remedies, penalties and procedures established by law which may be pursued to address

violations of this Chapter. Actions taken pursuant to this Chapter shall not prejudice or adversely affect any other action, civil or criminal, that may be brought to abate a violation or to seek compensation for damages suffered.

**13.100.090 City Undertaking Limited Promotion of General Welfare.**

In undertaking the adoption and enforcement of this Chapter, the City is undertaking only to promote the general welfare. The City is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury. This Chapter does not create a legally enforceable right by any member of the public against the City.

**13.100.100 Severability.**

If any part or provision of this Chapter, or the application of this Chapter to any person or circumstance, is held invalid, the remainder of this Chapter, including the application of such part or provision to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the provisions of this Chapter are severable.

**13.100.110 Other Legal Requirements.**

This Chapter provides minimum requirements pertaining to paid sick leave and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for greater accrual or use by employees of sick leave, whether paid or unpaid, or that extends other protections to employees.

**13.100.120 More Generous Employer Leave Policies.**

This Chapter provides minimum requirements pertaining to paid sick leave and shall not be construed to prevent employers from adopting or retaining leave policies that are more generous than policies that comply with this Chapter. Employers are encouraged to provide more generous leave policies than required by this Chapter.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within fifteen days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a special meeting of the Council of the City of Berkeley held on August 29, 2016, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Arreguin, Capitelli, Droste, Maio, Moore, Wengraf, Worthington and Bates.

Noes: None.

Absent: Anderson.

