

**CITY OF PHILADELPHIA  
LAW DEPARTMENT**

**MEMORANDUM**

**DATE:** April 12, 2016

**TO:** Michael DiBerardinis, Managing Director *MD*  
**FROM:** Martha Johnston, Senior Attorney/MJ *Martha Johnston*  
**SUBJECT:** Regulations Regarding Chapter 9-4100 of The Philadelphia Code

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I have reviewed the Office of Managing Director's proposed Regulations Regarding Chapter 9-4100 of The Philadelphia Code – Promoting Healthy Families and Workplaces, and find them to be legal and in proper form. In accordance with Section 8-407(a) of the Philadelphia Home Rule Charter, you may now forward the proposed Regulations to the Department of Records where they will be made available for public inspection.

Attachment

Cc: Rich Lazer, Deputy Mayor of Labor  
Crystal M. Miller, Mayor's Office of Labor

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DEPARTMENT OF RECORDS  
2016 APR 13 PM 1:14

Office of the Managing Director

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 (“Promoting Healthy Families and Workplaces”) are hereby adopted:

1. **Definitions.** In addition to the definitions provided in § 9-4103, the following terms have the following meanings for the purposes of Chapter 9-4100.
  - a. **Agency.** The Office of Wage and Benefits Compliance, within the Mayor’s Office of Labor.
  - b. **Calendar Year.** The annual period beginning on January 1 and ending on December 31 of each year.
  - c. **Chapter 9-4100.** Chapter 9-4100 of The Philadelphia Code.
  - d. **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.
  - e. **Employees Covered by a Collective Bargaining Agreement.** Employees who are (.1) covered by a collective bargaining agreement which is in effect, or (.2) covered by an expired collective bargaining agreement.
  - f. **Tipped Employee.** An employee who customarily and regularly receives more than \$30 a month in tips from the same employment.

§ 9-4104. **Accrual of Paid Sick Time.**

2. Employers that employ ten or more Employees for at least forty weeks in a Calendar Year shall provide paid sick time to their Employees in accordance with the provisions of Chapter 9-4100. In order to qualify as an “Employee” under Chapter 9-4100, the individual must work within the City of Philadelphia for at least 40 hours in a year. Accordingly, only Employers who employ ten or more Employees who work within the City of Philadelphia for 40 or more hours per year must provide paid sick time.
3. Employers of Employees who are not entitled to paid sick time under Chapter 9-4100 (for example, Employers who employ fewer than ten (10) Employees for 40 weeks in a calendar year) shall provide unpaid sick time in accordance with all of the provisions of that Chapter.
4. 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 paid sick time.

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2016 APR 13 PM 1:14

DEPARTMENT OF REVENUE

- a. The within-City portion of regular travel time into and out of the City, such as that performed by truck drivers or delivery services, may be calculated by reference to the average travel time for the particular route.
5. An Employee who performs work on a temporary basis (not subject to the exclusions of § 9-4103(3)) 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:
    - a. The employment of the person who signs the Employee's paycheck;
    - b. The entity that issues the Employee's W-2 form;
    - c. The entity that issues other tax forms to the Employee, such as the 1099 form;
    - d. The entity that directs the day-to-day work of the Employee;
    - e. 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
    - f. The terms of any written contract between the Temporary Employment Agency and the placement Employer.

The Temporary Employment Agency and the placement Employer shall be jointly responsible for ensuring that the Employee may use accrued paid or unpaid sick leave in accordance with Chapter 9-4100.

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 of the time worked for Employers within Philadelphia, regardless of the length of the assignment.
7. An Employer who hires an employee for a term of less than six months and subsequently extends the Employee's 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.
  - a. Example: An employee is hired for a project expected to last less than six months. The project is extended and ultimately lasts for a year. When the employee reaches the six-month point, he or she becomes eligible for sick time under this Chapter. 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.
8. Accrued unused sick time shall be carried over from one calendar year to the next; however an Employee is not entitled under this Chapter to accrue, or to use, more than 40 hours of sick time in a calendar year. The Employer may choose to provide more paid or unpaid sick time. 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, it is not required to carry over the Employee's unused accrued sick time from the previous calendar year.

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 to provide more hours of paid leave designated only for sick time. However, to comply with Chapter 9-4100 the policy must provide for at least 40 hours per year of paid sick time, if accrued, and Employees must be allowed to use such paid leave under all of the conditions of Chapter 9-4100. Those conditions include, but are not limited to, the ability to use paid sick time for the care of a "family member" as defined in § 9-4105(8); and the ability to take sick time on short notice, as necessary. An Employer may not impose discipline or any adverse consequences (including "points" or other measures that may add up to eventual discipline) on an Employee who uses paid sick time in accordance with Chapter 9-4100. Paid leave benefits provided by an Employer in excess of what is required by Chapter 9-4100 are not subject to the requirements of Chapter 9-4100.

10. When there is a separation from employment and the Employee is rehired within six months of separation by the same Employer, previously accrued sick time that was not used shall be reinstated and the Employee shall be entitled to use such accrued sick time at any time after such reinstatement.

**§ 9-4105. Use of Paid Sick Time.**

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

12. An Employee shall provide notice to his or her Employer of the need to use accrued paid or unpaid sick leave as promptly as possible after learning of the need to take such leave. When the 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.

13. As provided in § 9-4103(11), "paid sick time" is time off from employment that is provided by an Employer for the purposes described in § 9-4105, and that "is compensated at the same hourly rate and with the same benefits, including health care benefits, as the employee normally earns from the employee's employment at the time the employee uses the paid sick time."

(a) Employees who are compensated based on a set salary or on time worked at a fixed hourly rate shall be compensated for sick time based on the same rate as they would normally earn from work.

(b) Tipped Employees and Commission Paid Employees shall be compensated for sick time at a rate not less than the minimum hourly rate for hours worked, as required under

DEPARTMENT OF PROFESSIONS  
2016 APR 23 PM 1:14

the Pennsylvania Minimum Wage Act of 1968, 43 P.S. § 333.104(a), or by § 17-1305 of The Philadelphia Code, where applicable.

(c) The Employer is required to compensate the Employee only at his or her regular hourly rate (or at minimum wage as provided in 13(b)), whether or not the Employee has earned or would have earned pay at an overtime rate during some part of the relevant pay period.

(d) Employers shall allow Employees to use accrued sick time in hourly units, or, if the Employer's payroll system uses smaller units, such as ¼ hour, to account for leave time, Employees may use the same unit for sick time.

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

#### **§ 9-4107. Notice and Posting.**

15. Employers shall post a notice, in the form supplied by the Agency, in a conspicuous place accessible to employees, or shall provide a written handout to all employees, containing the information required by § 9-4107. If the Employer produces an employee handbook, this information shall also be included in such handbook, promptly in the case of an electronic version, and upon the handbook's next revision in the case of a printed version.

#### **§ 9-4110. Enforcement.**

16. The Office of Wage and Benefits Compliance, within the Mayor's Office of Labor, will enforce the requirements of Chapter 9-4100, upon receiving complaints or reports of violations. Any such complaints or reports, by an Employee or by a third party who has personal knowledge of the violation, must be submitted on the complaint form provided by the Agency, at [www.phila.gov](http://www.phila.gov), or mailed from the Agency upon request.

17. Complainants may submit complaints to the Agency by email, to [paidicksickleave@phila.gov](mailto:paidicksickleave@phila.gov), or by mail to:

Mayor's Office of Labor  
Attn: Office of Wage and Benefits Compliance  
City Hall  
Philadelphia, PA 19102

Complaints must be submitted no later than one year after the date the complainant became aware of the violation. Complaints must state the facts constituting the violation and the relief sought. Complainants should attach any available supporting documents,

including but not limited to: paystubs, work time records, employment contract, copy of Employer policy on sick leave, and copy of the Employee's leave request.

17. The Agency will provide confirmation to the complainant of its receipt of the complaint, and will conduct an eligibility review to determine if the complaint requires investigation. The Agency will notify the complainant within 30 days of receipt if the complaint is eligible for enforcement (e.g., is submitted regarding an Employer who meets the "Employer" definition, and other threshold requirements of Chapter 9-4100).

18. The Agency will investigate all eligible complaints. If appropriate, the Agency will conduct mediation between the employer and the employee to attempt to resolve the complaint. The complainant will be kept informed of the status of the investigation, by email or mail notices provided upon any significant development in the investigation of the case, and at least every 60 days.

19. The Agency will keep the identity of the complainant confidential, unless disclosure of the complainant's identity is necessary for the conduct or resolution of its investigation. Prior to any such disclosure, the Agency will notify the complainant of its intent to disclose his or her identity.

20. If the Agency concludes that an Employer has violated Chapter 9-4100, and such violation is not promptly corrected through mediation or otherwise, the Agency will issue a notice of violation to the Employer. A copy of such notice will be provided to the complainant. The Employer will have sixty (60) days from the date of such notice within which to remedy the violation.

21. The Agency may, in its discretion, upon finding a violation which appears willful or which is not promptly corrected, order an Employer to pay a fine or penalty, and may order other relief, including reinstatement and restitution, pursuant to Chapter 9-4100.

22. After the Agency has rendered a final decision, or after 180 days have elapsed from the filing of a complaint with the Agency if no final decision has been rendered within that time, a person aggrieved by a violation of Chapter 9-4100 may bring a civil action pursuant to § 9-4110 (9). At that time either party may request a copy of any Agency records concerning the administrative complaint.

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DEPARTMENT OF REVENUE  
APR 13 PM 14