

MODEL PAID SICK DAYS ENFORCEMENT PROVISIONS

(Excerpted from the Model Paid Sick Time Law prepared by A Better Balance and the National Partnership for Women and Families.)

Section 8. Enforcement

NOTE: There are several different ways to enforce an earned paid sick time law, and a bill can contain a combination of them as long as the jurisdiction permits the types of enforcement selected. The model language includes all options.

Issue for Advocates #25: Procedures for Agency Enforcement/Availability of Courts

(1) *Administrative Enforcement*

(A) The Agency shall enforce the provisions of this Act. In effectuating such enforcement, the Agency shall establish a system utilizing multiple means of communication to receive complaints regarding non-compliance with this Act and investigate complaints received by the Agency in a timely manner.

(B) Any person alleging a violation of this Act shall have the right to file a complaint with the Agency within [X days/weeks/months/years] of the date the person knew or should have known of the alleged violation. The Agency 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 Agency may disclose his or her name and identifying information as necessary to enforce this Act or for other appropriate purposes.

(C) Upon receiving a complaint alleging a violation of this Act, the Agency shall investigate such complaint and attempt to resolve it through mediation between the complainant and the subject of the complaint, or other means. The Agency shall keep complainants notified regarding the status of their complaint and any resultant investigation. If the Agency believes that a violation has occurred, it shall issue to the offending person or entity a notice of violation and the relief required of the offending person or entity. The Agency shall prescribe the form and wording of such notices of violation including any method of appealing the decision of the Agency.

(D) The Agency shall have the power to impose penalties provided for in this Act and to grant an employee or former employee all appropriate relief. Such relief shall include but not be limited to: (1) for each instance of earned paid sick time taken by an employee but unlawfully not compensated by the employer: three times the wages that should have been paid under this Act or \$X, whichever is greater; (2) for each instance of earned paid sick time requested by an employee but unlawfully denied by the employer and not taken by the employee or unlawfully conditioned upon searching for or finding a replacement worker: \$X; (3) for each instance of unlawful retaliation not including discharge from employment: full compensation

including wages and benefits lost, an additional amount of at least \$X and equitable relief as appropriate; and (4) for each instance of unlawful discharge from employment: full compensation including wages and benefits lost, \$X and equitable relief, including reinstatement, as appropriate.

(E) Any entity or person found to be in violation of the provisions of this Act shall be liable for a civil penalty payable to [state/county/city] not to exceed \$X for the first violation and, for subsequent violations that occur within two years of any previous violation, not to exceed \$X for the second violation and not to exceed \$X for each successive violation.

(F) The Agency shall annually report on its website the number and nature of the complaints received pursuant to this Act, the results of investigations undertaken pursuant to this Act, including the number of complaints not substantiated and the number of notices of violations issued, the number and nature of adjudications pursuant to this Act, and the average time for a complaint to be resolved pursuant to this chapter.

(2) *Civil Enforcement*

(A) The Agency, the Attorney General [or City/County Attorney], any person aggrieved by a violation of this Act, or any entity a member of which is aggrieved by a violation of this Act may bring a civil action in a court of competent jurisdiction against an employer violating this Act. Such action may be brought by a person aggrieved by a violation of this section without first filing an administrative complaint.

Issue for Advocates #26: Liquidated Damages

(B) Upon prevailing in an action brought pursuant to this section, aggrieved persons shall recover the full amount of any unpaid earned sick time plus any actual damages suffered as the result of the employer's violation of this Act plus an equal amount of liquidated damages. Aggrieved persons shall also be entitled to reasonable attorney's fees.

(C) Upon prevailing in an action brought pursuant to this section, aggrieved persons shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation, including, without limitation, reinstatement to employment, back pay and injunctive relief.

(D) Any person aggrieved by a violation of this Act may file a complaint with the Attorney General [or City/County Attorney]. The filing of a complaint with the Attorney General [or City/County Attorney] will not preclude the filing of a civil action.

(E) The Attorney General [or City/County Attorney] may bring a civil action to enforce this Act. The Attorney General [or City/County Attorney] may seek injunctive relief. In addition to injunctive relief, or in lieu thereof, for any employer or other person found to have willfully violated this Act, the Attorney General [or City/County Attorney] may seek to impose a fine of X [example: \$1,000] per violation, payable to the [City/County/State].

Issue for Advocates #27: Setting the Statute of Limitations

(F) The statute of limitations for a civil action brought pursuant to this section shall be for a period of # years from the date the alleged violation occurred or the date the employee knew or should have known of the violation.

(G) Actions brought pursuant to this section may be brought as a class action pursuant to the laws of [state].

(3) [City/County/State] officials are hereby authorized to consider, to the maximum extent permitted by law, an employer's record of noncompliance with this Act in making decisions on [city/county/state] contracts, land use approvals and other entitlements to expand or operate within the [city/county/state]. The [city/county/state] is authorized to either deny approval or to condition approval on the employer's future compliance.