

Guidelines for Administering
Pittsburgh City Code Chapter 626,
“Paid Sick Days Act.”

Revised: 12/4/23

Effective Date:

GUIDELINE 1. GENERAL PROVISIONS.

(a) Background. The Paid Sick Days Act, codified in Pittsburgh City Code as Chapter 626 (“Chapter 626”) was enacted to enhance public health by ensuring that eligible Employees across the City of Pittsburgh are able to earn Paid Sick Time. It applies to those Employees who work at least 35 hours within the geographic boundaries of the City of Pittsburgh in a Calendar Year as further described in Chapter 626 and herein.

(b) Purpose. The Guidelines set forth herein are intended to help interpret Chapter 626 and to clarify how the Mayor’s Office of Equal Protection will administer and enforce Chapter 626. These Guidelines should be read consistent with Chapter 626 and with any applicable health regulations that may be proffered by the Allegheny County Health Department regarding disease prevention and control as it relates to Chapter 626. See, e.g. Allegheny County Health Department (ACHD) Rules and Regulations, Article 3, Section 333 and Article VI, Section 605(F). The Mayor’s Office of Equal Protection may also seek guidance from the ACHD regarding questions involving disease prevention and control. Where applicable, the Mayor’s Office of Equal Protection may also request that the ACHD issue regulations as may be required for the application or enforcement of Chapter 626.

(c) Conflict with ordinance. If there is a conflict between Chapter 626 and these Guidelines, Chapter 626 shall prevail.

(d) Services of Interpreter(s). To the extent foreign or sign language interpreters are necessary for parties' meaningful participation in the enforcement process, such interpreters shall be provided by the Office of Equal Protection on request.

(e) Accommodations. To the extent reasonable accommodations pursuant to the Americans with Disabilities Act, the Rehabilitation Act, or the Pennsylvania Human Relations Act are necessary for parties to meaningfully participate in the enforcement process, such accommodations shall be provided by the Mayor's Office of Equal Protection on request.

(f) Nothing in these Guidelines shall be construed to prohibit parties from independently securing representation by counsel during the course of an Office of Equal Protection investigation or hearing.

(1) Counsel shall notify the Mayor's Office of Equal Protection of their appearance on behalf of a party in writing.

(2) Communication with counsel is communication with party.

(g) Expiration date. As it administers and enforces Chapter 626, the Mayor's Office of Equal Protection may revise or replace these Guidelines or a portion thereof. These Guidelines will remain in effect until rescinded or superseded. Any updated Guidelines will be posted on the City's website at <https://pittsburghpa.gov/mayor/paidsickleave>.

GUIDELINE 2. DEFINITIONS.

Unless otherwise stated, the definitions set forth in Chapter 626 apply to these Guidelines. In addition to the definitions provided in §626.02, the following terms are included for:

(a) Agency (as referred to in Chapter 626) means the Mayor's Office of Equal Protection.

(b) Commission Paid Employee means 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.

(c) Covered Employee means an individual employed by an Employer who performs work within the geographic boundaries of the City of Pittsburgh for at least 35 hours in a Calendar Year. The term does not include properly classified

independent contractors, State or Federal employees, any member of a construction union covered by a collective bargaining unit, or Seasonal Employees.

(d) Effective date means March 15, 2020.

(e) Employees Covered by a Collective Bargaining Agreement means Employees who are (1) covered by a collective bargaining agreement which is in effect, or (2) covered by an expired collective bargaining agreement. For purposes of Chapter 626, it does not include any member of a construction union covered by a collective bargaining unit.

(f) A worker's status as an Employee or Independent Contractor is determined by reference to Pennsylvania common law definitions. Where a misclassification has been alleged, a finding by the Internal Revenue Service shall create a rebuttable presumption as to the individual's status.

(g) Tipped Employee means an Employee who customarily and regularly receives more than \$30 a month in tips from the same employment.

GUIDELINE 3. ACCRUAL OF SICK TIME.

(a) Policy. An Employer shall adopt a policy or policies that comply with the Paid Sick Days Act.

(b) Accrual Start Date. Accrual of Sick Time begins on the Effective Date of Chapter 626, which is March 15, 2020, as to Employees employed on such date by Employer at the rates specified in Chapter 626.

(c) Accrual Rates. An Employer shall provide each Covered Employee at least one hour of Sick Time for every 35 hours worked for the Employer within the geographic boundaries of the City of Pittsburgh unless the Employer designates a higher amount. This minimum accrual rate applies to Covered Employees without regard to size of business. Sick Time shall accrue as follows:

(1) From the Effective Date, March 15, 2020, until one (1) year after the Effective Date, March 15, 2021, Covered Employees may accrue Unpaid Sick Time.

(2) Starting one year after the Effective Date, Employees may accrue Paid Sick Time.

(d) Determining the number of Employees. For purposes of calculating the number of Employees of an Employer to determine accrual caps, the

Employer should count all Employees, excluding the owner(s). If the number of Employees employed at any one time has varied over the last twelve (12) months, the Employer should use the highest number of workers employed at any one time in the preceding year. An Employer should count part-time Employees as one Employee rather than as a fraction of an Employee. Employees should be counted whether or not they are Covered Employees.

- (e) Accrual based on number of employees.
 - (1) 15 or More Employees. Covered Employees of Employers with fifteen (15) or more Employees accrue at least forty (40) hours of Paid Sick Time in a Calendar Year. The Employer may designate a higher amount.
 - (2) 15 or Fewer Employees. Covered Employees of Employers with fewer than fifteen (15) Employees accrue at least twenty-four (24) hours of Unpaid Sick Time in a Calendar Year. The Employer may designate a higher amount.
- (f) Paid Sick Leave rate not diminished by front-loading. When Employers make any portion of the yearly cap of Paid Sick Time available to Covered Employees at the beginning of the Calendar Year (“front-load”), they shall use a reasonable calculation, consistent with the accrual requirement set forth in Chapter 626, to ensure that the accrual, at all times, meets or exceeds the accrual rate of 1 hour Paid Sick Time per thirty-five (35) hours worked.
- (g) FLSA-Exempt Employees. An Employee who is exempt from overtime requirements under the Fair Labor Standards Act, 29 U.S.C. Section 213(a)(1) will be assumed to work forty (40) hours per week unless the normal workweek is less than forty (40) hours per week, in which case time will accrue based on the normal workweek.
- (h) Accrual increments. Sick Time is accrued in one-hour increments, unless an Employer’s written policies establish the accrual of Sick Time to be in fraction of an hour increments.
- (i) Carryover of Paid Sick Time. Accrued, unused Paid Sick Time shall be carried over from one Calendar Year to the next. Alternatively, if the Employer provides for at least the minimum number of hours of Paid Sick Time mandated by Chapter 626 (based on number of Employees) to be available as of the beginning of the Calendar Year, (i.e. “front-loads” Sick Time), it is not required to carry over the Employee's unused accrued Sick Time from the previous Calendar Year.
- (j) Loaned Sick Time. An Employer may loan Sick Time to an Employee in advance of accrual by such Employee.

- (k) **Transfer of Employers.** A new Employer that acquires the business of a prior Employer at the same location shall honor all previously earned Sick Time accrued by Covered Employees who remain employed and allow such Covered Employees to use that Paid Sick Time.
- (l) **Equivalent or excess paid leave policies.** If an Employer has a Paid Time Off policy and makes available an amount of paid leave sufficient to meet the accrual requirements of Chapter 626 and that paid leave can be used for the same purposes and under the same conditions as Sick Time under Chapter 626, that Employer is not required to provide additional Sick Time. Paid Time Off that requires advance or written notice, finding a replacement worker, or is subject to employer approval/refusal does not meet requirements of this Guideline. Paid Time Off benefits provided by an Employer in excess of what is required by Chapter 626 are not subject to the requirements of Chapter 626.
- (m) **Paid Leave under CBA.** If an Employer with a Collective Bargaining Agreement makes available an amount of paid leave sufficient to meet the accrual requirements of Chapter 626 and that paid leave can be used for the same purposes and under the same conditions as Sick Time under Chapter 626, that Employer is not required to provide additional Sick Time.

GUIDELINE 4. EMPLOYMENT BASED OUTSIDE CITY.

An Employee who works for an Employer located outside of the geographic boundaries of the City of Pittsburgh but who performs work within the geographic boundaries of the City of Pittsburgh is a Covered Employee once the Employee performs at least 35 hours of work within the geographic boundaries of the city in a Calendar Year.

- (a) In such instance, only the work performed within the City of Pittsburgh is required to be included in the computation of accrued Sick Time.
- (b) The within-Pittsburgh 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.

GUIDELINE 5. USE OF EARNED SICK TIME.

- (a) **Authorized use.** A Covered Employee is entitled to use accrued Sick Time for an absence from work for any use authorized by Chapter 626.

- (b) Employment period prior to use. The use of accrued Paid Sick Time may begin on the 90th calendar day following a Covered Employee's commencement of employment.
- (c) Work Site Transfer. An Employer shall continue to allow a Covered Employee to use previously earned Sick Time accrued under Chapter 626 after that same employee transfers to a separate division, entity, or location for a work site for the same Employer located within the city.
- (d) Requests and prior notification of use. Advance written requests to use Sick Time are permitted but not required. At minimum, an advance oral request must be provided to the Employer by a Covered Employee for the use of Sick Time according to the requirements of Chapter 626. The request shall include the anticipated duration of the absence when possible.
- (e) Employer advanced notification policies. An Employer is permitted to maintain its own reasonable advanced notification policy to state how long before a shift a Covered Employee must make an oral request to use Sick Time. In the absence of any such policy, an oral request shall be provided to an Employer at least one (1) hour prior to the start of the affected employee's shift where it is possible to do so. A Covered Employee must make a good faith effort to notify the Employer as soon as possible regarding the need to use Sick Time.
 - (1) Foreseeable circumstances. An Employer may include in its advanced notification policy a requirement for advanced notice of a Covered Employee's intention to use Sick Time for the use of Sick Time that is foreseeable, such as a previously scheduled appointment with a Health Care Professional. The advance notice requirement should not exceed seven (7) days prior to the date that the requested use of Sick Time is to begin. A Covered Employee shall make a reasonable effort to schedule the use of Sick Time in a manner that does not unduly disrupt the Employer's operations.
 - (2) Unforeseeable circumstances or inability to provide stated advanced notice. If the need for the use of Sick Time is unforeseeable or the Covered Employee is unable to provide the stated required advanced notice for a foreseeable absence (e.g. seven (7) days), the Employer must still allow the employee to use accrued Sick Time for a qualified absence. In such instance, the Covered Employee must make a good faith effort to notify the Employer as soon as possible as to the need to use Sick Time.
- (f) Use increments. A Covered Employee may use accrued Sick Time in the smallest increment that the Employer's payroll system uses to account for absences or use of other time.

- (g) No requirement to find replacement. An Employer may not require that a Covered Employee making use of accrued Sick Time search for or find a replacement worker to cover the hours during which the employee is using Sick Time.

GUIDELINE 6. VERIFICATION PROCEDURES.

- (a) In general. For the use of Sick Time that lasts three (3) or more full consecutive days, an Employer may require the Covered Employee to present reasonable documentation that the Sick Time has been used for a purpose covered by Section 626; however, it may not require that the documentation specify the precise nature of the illness. As an example, documentation signed by a Health Care Professional indicating that Sick Time is necessary shall be considered reasonable documentation.
- (b) Employee privacy. Other than reasonable documentation required for absences spanning three (3) or more full consecutive days, an Employer shall not require a Covered Employee making use of Sick Time to explain the specific details or nature of the employee's or an employee's family member's medical condition.
- (c) Confidentiality of information. If an Employer possesses any health information about a Covered Employee or that employee's family member, the Employer should treat such information as confidential and take reasonable steps to protect its confidentiality. No such information should be disclosed except to the affected Employee or with the prior written permission of the Employee in accordance with applicable law/regulations.
- (d) FMLA Exception. When a Covered Employee's absence is covered by Chapter 626 and may also be covered by the federal Family and Medical Leave Act ("FMLA"), an Employer does not violate §626.04(e) by seeking medical certification in accordance with the FMLA for that absence, regardless of its length.

GUIDELINE 7. RATE OF PAY FOR USE OF PAID SICK TIME.

- (a) Use of base rate of pay. As provided in §626(i), "Paid Sick Time" is defined as time off from employment that is provided by an Employer for the purposes described in §626.04, and that is "compensated at the same base rate of pay and with the same benefits, including health care benefits, as an employee would have earned at the time of their use of the Paid Sick Time."

- (1) Covered Employees who are compensated based on a set salary or on time worked at a fixed hourly rate shall be compensated for any accrued Paid Sick Time based on the same rate as they would normally earn from work.
- (2) Tipped Employees and Commission Paid Employees shall be compensated for any accrued Paid Sick Time at a rate not less than the minimum hourly rate for hours worked, as required under the Pennsylvania Minimum Wage Act of 1968, 43 P.S. 333.104(a). Rate of pay shall be the base rate of pay and shall not include lost tips or commissions.
- (3) The Employer is required to compensate the Covered Employee only at his or her regular hourly rate (or at minimum wage) whether or not the Employee has earned or could have earned pay at an overtime rate during some part of the relevant pay period.

(b) Sample calculations of normal hourly compensation. An Employer shall calculate a Covered Employee's normal hourly compensation using a reasonable calculation based on the hourly rate that an employee would have earned for the time the employee used Paid Sick Time. Examples for specific types of rates include, but are not limited to:

- (1) Piece rate. For a Covered Employee paid partially or wholly on a piece rate basis (i.e. paid for each unit of production at a fixed rate), dividing the total earning by the total hours worked in the most recent work week in which the employee performed identical or substantially similar work to the work the employee would have performed had the employee not used Paid Sick Time.
- (2) Salaried employees. For a salaried Covered Employee, dividing the gross annual salary by 52 to determine the employee's weekly salary, and then dividing the weekly salary by the number of hours in the employee's normal work week, even if the employee actually works more or fewer hours in a particular work week.
- (3) Fluctuating pay. For a Covered Employee whose hourly rate of pay fluctuates:
 - (i) Where the Employer can identify the hourly rates of pay for which the Covered Employee was scheduled to have worked, a calculation equal to the scheduled hourly rates of pay the Employee would have earned during the period in which Paid Sick Time is used.
 - (ii) Where the Employer cannot identify the hourly rates of pay which the Covered Employee would have earned if the employee worked, they should

- calculate the Employee's average hourly rate of pay in the current and preceding 30 days, whichever yields the higher hourly rate.
- (4) Shift of indeterminate length. For a Covered Employee scheduled to work a shift of indeterminate length (e.g., a shift that is defined by business needs rather than a specific number of hours), pay shall be calculated by multiplying the employee's normal hourly compensation by the total hours worked by a replacement Employee in the shift for which Paid Sick Leave was taken, or similarly situated Employees who worked that same or a similar shift.

GUIDELINE 8. RECOMMENDED TIME OF PAYMENT OF PAID SICK TIME.

- (a) Employer not requiring verification. If no verification is required, it is recommended that an Employer pay a Covered Employee for accrued Paid Sick Time no later than the payday for the pay period in which the Paid Sick time was used. The ultimate choice of time of payment must comply with applicable wage payment laws.
- (b) Employer requiring verification. If an Employer requires verification of the use of Paid Sick time of three (3) or more full consecutive days as provided by Chapter 626 and Guideline 6 herein, it is recommended that an Employer pay the Covered Employee for their Paid Sick Time off no later than the payday for the pay period during which verification is provided to the Employer. The choice of time of payment must comply with applicable wage payment laws.

GUIDELINE 9. BREAKS IN SERVICE.

- (a) General. Except as provided in this Guideline, a Covered Employee who is rehired by the same Employer, whether at the same or a different location, within six (6) months following separation from employment with that Employer shall have any previously accrued Paid Sick Time reinstated and available for use at the time of commencement of employment.
- (b) No requirement for Employer to pay out unused sick time. An Employer is not required to provide financial or other reimbursement to a Covered Employee upon that employee's termination, resignation, retirement, or other separation from employment for unused Sick Time that has accrued. An Employer may choose, but is not required, to pay a Covered Employee for any portion of that employee's unused accrued Paid Sick Time at the time the employee separates from employment.

However, if that employee is rehired by the same Employer within six (6) months after having received a payout of Paid Sick Time, the Employer is not required to reinstate the Paid Sick Time that was paid out to the employee at the time of separation.

GUIDELINE 10. EMPLOYER NOTIFICATION OF POLICY, PAID SICK TIME, AND RECORD RETENTION.

- (a) Notice of time accrued. Employers shall choose and maintain a reasonable system for providing notification of accrued Sick Time, including listing updated amounts of Sick Time available on pay stubs (e.g., regular payroll statements) or in an online system where Employees can regularly access the information.
- (b) Records retention. Employers shall retain records required under Chapter 626 documenting its Paid Sick Leave policy, hours worked by Employees, and Sick Time taken by Covered Employees for a period of two (2) years. It shall allow the Mayor's Office of Equal Protection to review these records with appropriate notice and at a mutually agreeable time to monitor compliance with the requirements of Chapter 626.
- (c) Presumption in absence of records. In the event that an issue arises as to the entitlement of an Employee to Sick Time under Chapter 626, and the Employer does not maintain or retain adequate records documenting hours worked and Sick Time used or does not allow the Mayor's Office of Equal Protection to review the records, absent clear and convincing evidence otherwise, it shall be presumed that the Employer has violated Chapter 626. If a party fails to respond to Office of Equal Protection inquiries within timeframes established by these Guidelines and of which they were notified, it shall be presumed that the Employer has violated Chapter 626 absent clear and convincing evidence otherwise presented.
- (d) Failure to respond. Respondent's failure to timely respond shall constitute a waiver of the right to respond to said inquiries.

GUIDELINE 11. NOTICE AND POSTING.

- (a) Content of Notice. An Employer shall display a notice at each worksite that provides notice of employee rights to Sick Time under Chapter 626, available limits, and terms of use. The notice must also include information that retaliation against Employees who request or use Sick Time is prohibited and that a Covered

Employee has the right to file a complaint with the Mayor's Office of Equal Protection if Sick Time authorized by Chapter 626 is denied by the Employer or if the Employee is retaliated against for requesting or using accrued Sick Time. A sample sign for this purpose (Notice Form) is provided on the City's website at <https://pittsburghpa.gov/mayor/paid-sick-leave-notice>.

- (b) Display of sign; timing. At all times, Employers must display the sign, in a conspicuous and accessible location where any of their Covered Employees work, in English, Spanish, and any other primary languages of the employees at the particular workplace. If display of a sign is not feasible, including a situation where the employee works remotely or does not have a regular workplace, Employers may provide the sign on an individual, ongoing basis in the employee's primary language in a physical or electronic format that is reasonably conspicuous and accessible.
- (c) Size of sign. Each sign displayed in accordance with this Guideline must be at least 8.5 inches by 11 inches in area.
- (d) Multi-lingual materials. The Mayor's Office of Equal Protection shall develop multilingual versions of written notices and forms required for the implementation and enforcement of Chapter 626. Failure of the Mayor's Office of Equal Protection to provide multilingual materials shall not relieve covered Employers of their obligation under this provision. An Employer shall post written notices in any language primarily spoken by any Covered Employee.
- (e) Complaint Forms. Complaint forms as further discussed in Guideline 14 shall be posted at <http://paysickleave.pittsburghpa.gov> or are available in paper form at the Mayor's Office of Equal Protection.
- (f) Violation of notice and posting requirements. An Employer found to have willfully violated this notice provision of this Guideline shall be subject to a fine not to exceed \$100 for each instance. Failure to post notifications in Covered Employees' primary language shall constitute a violation of this provision. Every day of an Employer's failure to notify an individual Covered Employee shall constitute a single instance of violation.
- (g) No relief from notice obligation. The Mayor's Office of Equal Protection's failure to provide a written notice to covered Employers does not relieve covered Employers of their obligation under this provision.
- (h) Direct Investigation. The Mayor's Office of Equal Protection may, at its discretion, contact an Employer to determine whether that Employer is in compliance with the policy, notice, and posting requirements. A complaint is not required for the Mayor's Office of Equal Protection to do so. The Mayor's Office of Equal Protection may open an investigation to determine whether an Employer

has violated this notice provision. Such an investigation may include, at the discretion of the Office of Equal Protection, document review, interviews, or onsite inspection.

GUIDELINE 12. RETALIATION PROHIBITED.

(a) Prohibition of Retaliation. An Employer may not transfer, demote, discharge, suspend, reduce hours, or threaten such actions against a Covered Employee who requests or uses accrued Sick Time, reports or attempts to report a violation of these Guidelines or Chapter 626 of the Pittsburgh City Code, participates or attempts to participate in an investigation or proceeding under these Guidelines or Chapter 626 of the Pittsburgh City Code, or otherwise exercises any rights afforded under Chapter 626 of the Pittsburgh City Code. Retaliation may include the following: considering use of Sick Time in performance reviews or setting wages, disciplining or terminating Covered Employees for using accrued Sick Time, reporting or threatening to report an Employee or Employee's family member to law enforcement, or discouraging or denying Covered Employees from using their accrued Sick Time. For example, an Employer may not establish a point system in which Employees receive points for using their Sick Time, and after receiving a specific number of points, the Employee is terminated.

(b) Action allowed if not qualified use. The prohibition against retaliation does not prevent an Employer from taking reasonable action (e.g., discipline) when a Covered Employee's use of Sick Time is not for a qualified use enumerated in Section 626.04 of Chapter 626.

(c) Restitution in cases of retaliation. Section 5(E) of the legislation creates a "rebuttable presumption" of unlawful retaliation "whenever an employer takes action against a person within 90 days" of filing a paid sick leave complaint, informing any person of a violation of the statute, cooperating with the Mayor's Office of Equal Protection, opposing unlawful policy or practice, or informing a person of Paid Sick Day Act rights. As a result, the Mayor's Office of Equal Protection may seek "full restitution to the employee for all lost wages and benefits and reinstatement" under Section 9(E) in cases of retaliation. Without the possibility of restitution and reinstatement, there is no penalty for employers who retaliate against their employees. The statute is clear that such conduct is illegal and it provides a deterrent and remedy for such retaliation in Section 9(E), which the Mayor's Office of Equal Protection enforces.

GUIDELINE 13. COORDINATION WITH OTHER POLICIES.

- (a) More generous policies. Nothing in Chapter 626 shall be construed to discourage or prohibit an Employer from adopting or retaining a Paid Sick Time policy that is more generous than the requirements set forth in Chapter 626.
- (b) No diminishment of other obligations. Nothing in Chapter 626 shall be construed as diminishing the obligation of an Employer to comply with any contract, collective bargaining agreement, Employee benefit plan or other agreement providing more generous sick time to an Employee than required here.
- (c) No diminishment of rights of public employees. Nothing in Chapter 626 shall be construed as diminishing the rights of public employees regarding sick time or the use of sick time as provided in the laws of Pennsylvania.
- (d) Additional purposes. Employers may permit use of Paid Sick Time for additional purposes.

GUIDELINE 14. ADMINISTRATION

- (a) Voluntary compliance. During the period beginning with the filing of a complaint and ending with a final determination under Chapter 626, the Mayor's Office of Equal Protection shall attempt to resolve any alleged violations or failures to comply through voluntary compliance. In resolving a complaint through voluntary compliance, the Mayor's Office of Equal Protection will seek a just resolution and obtain assurances that the respondent has satisfactorily remedied any violations and will take action to assure present and future compliance.
- (b) Filing of complaints.
 - (1) Complaint must be timely filed. The Mayor's Office of Equal Protection will not investigate an alleged violation of Chapter 626 of the Pittsburgh City Code unless the allegation is the subject of a complaint filed by, or on behalf of, an aggrieved employee within six (6) months from the date of the alleged violation in accordance with Chapter 626 and these Guidelines. Complaints may be submitted by webform on the Office's website, or a PDF may be emailed or a hard copy mailed to the Mayor's Office of Equal Protection.

(2) Jurisdiction and Standing. Upon receiving a complaint, the Mayor's Office of Equal Protection shall determine if the complaint falls under the scope of Chapter 626 of the Pittsburgh City Code.

(i) If the Mayor's Office of Equal Protection determines the complaint falls under the scope of Chapter 626 of the Pittsburgh City Code, the Manager of the Office of Equal Protection shall assign the complaint to an investigator.

(ii) Unless a complaint is filed anonymously, if the Manager of the Office of Equal Protection determines the complaint does not fall under the scope of Chapter 626 of the Pittsburgh City Code, the Manager of the Office of Equal Protection shall send written notice to the Employee or the Employee's representative giving a clear and concise explanation of the reasons why the complaint does not fall under the scope of Chapter 626 of the Pittsburgh City Code. The Mayor's Office of Equal Protection shall not take any further action on the complaint.

(iii) It is the general rule that in order for the Mayor's Office of Equal Protection to begin investigating a paid sick leave complaint, the complainant must have standing, i.e. some cognizable harm related to the loss of accrued sick time as a qualified employee. Nevertheless, in situations where the complainant is acting as a whistleblower to reveal an Employer's noncompliance with the statute, the Mayor's Office of Equal Protection, in accordance with Section 8(C), may choose to anonymize the identity of the complainant, notify the employer of the anonymous complaint, and investigate the allegations of noncompliance by conducting interviews, collecting evidence, and scheduling site visits. Nothing in the text of Section 8(C) requires a complainant to have personally lost accrued sick time in order to report a violation or for the City to investigate a violation. In situations involving an anonymous whistleblower, the Mayor's Office of Equal Protection cannot issue a binding final determination regarding employees who have not previously filed complaints. Yet the Mayor's Office of Equal Protection can issue a binding final determination about workplace violations, such as lack of Paid Sick Leave signage, as well as seek to resolve the anonymous whistleblower complaint through the mediation process with the goal of attaining voluntary compliance.

(3) Forms and procedures. The Mayor's Office of Equal Protection may prescribe forms and additional administrative procedures for filing complaints. A Complaint Form may be found at <http://paysickleave.pittsburghpa.gov>.

(4) Holidays. If the last day for filing a complaint falls on a City, state, or federal holiday, a complaint received on the next regular City business day following the holiday will be deemed filed on the last day for filing the complaint.

(5) Mailed complaints. A complaint received by United States mail will be deemed filed on the date the complaint is postmarked or, if there is no postmark, the postage meter date.

(c) Investigation of complaints.

(1) Fairness, impartiality, and objectivity. The Mayor's Office of Equal Protection shall perform investigations in a fair, impartial, and objective manner, according to the procedures in this Guideline.

(2) Forms and procedures. The Manager of the Office of Equal Protection may prescribe forms and additional administrative procedures for the investigation of complaints.

(3) Presentation and collection of evidence.

(i) The investigator shall allow the complainant a full opportunity to present witness statements, documents, or other information relevant to the allegations in the complaint and shall make all reasonable efforts to schedule an initial interview with the complainant within ten (10) business days of being assigned a complaint. Following the initial interview, serve the respondent with a copy of the complaint and a request for responsive information, along with a notice that the respondent has twenty-one (21) business days to provide information in response to the complaint.

(ii) The investigator shall allow the respondent a full opportunity to present witness statements, documents, or other information relevant to the allegations in the complaint and shall make all reasonable efforts to schedule an initial interview with the respondent within ten (10) business days of receipt of response.

(iii) If the respondent responds to the complaint by acknowledging the violation and recommending steps to come into compliance voluntarily, then the investigator may stop investigating and the Manager of the Office of Equal Protection may dismiss the complaint upon compliance.

(iv) If the respondent fails to respond within the twenty-one (21) day response timeframe, the investigator may make a recommended determination

based on the information in the possession of the Office of Equal Protection, to the Manager of the Office of Equal Protection, who may make a final determination pursuant to this Guideline.

(v) The complainant and the respondent may submit witness statements and documents during the investigation that tend to prove or disprove the allegations in the complaint. The investigator may request additional witnesses or documents from either party during the investigation.

(vi) The Mayor's Office of Equal Protection may elect to convene a fact-finding hearing during the investigation in accordance with the requirements for practices and procedures before local agencies pursuant to Title 2 of the Pennsylvania Consolidated Statutes. Such a hearing shall be convened in the event any party to a complaint timely requests one, pursuant to Guideline 15.

(4) Rules of evidence. Investigations, including fact-finding hearings, are not governed by the formal rules of evidence. The Hearing Officer, Manager of the Office of Equal Protection, and investigator may consider all relevant information that tends to prove or disprove the allegations in the complaint, regardless of whether the information would be admissible in a court of law.

(d) Office of Equal Protection's final determinations on complaints.

(1) Investigator's determination. The investigator shall submit a recommended determination to the Manager of the Office of Equal Protection on each complaint assigned to the investigator. The recommendation must state whether the evidence is sufficient or insufficient to establish a violation of Chapter 626 based on a preponderance of the evidence submitted during the investigation.

(2) Time for delivering investigator's determination to Manager of the Office of Equal Protection. The investigator's recommended determination shall be delivered to the Manager of the Office of Equal Protection within 75 days of assignment of the complaint to the investigator. The investigator shall provide the complainant, respondent, and Manager of the Office of Equal Protection with written justification concerning any complaint for which a recommended determination is not made within 75 days of the date the complaint is assigned. If the investigator cannot meet the 75-days deadline, the investigator may notify the director, the complainant, and the respondent and provide an estimated date of completion.

(3) Manager of the Office of Equal Protection's review. The Manager of the Office of Equal Protection shall administratively review the complaint and the evidence gathered during the investigation, and shall consider the investigator's recommended determination. Within 15 business days of receiving the investigator's recommendation, the Manager of the Office of Equal Protection shall take one of the following actions:

(i) Return the complaint to the investigator for additional analysis or to gather and analyze additional evidence, and the investigator shall perform the tasks assigned by the Manager of the Office of Equal Protection. The investigator shall prepare a new recommended determination for the Manager of the Office of Equal Protection's evaluation pursuant to this Guideline.

(ii) Issue a written notice of dismissal of the complaint to the complainant and the respondent if the Manager of the Office of Equal Protection concludes that a preponderance of the evidence does not establish a violation of Chapter 626 of the Pittsburgh City Code.

(iii) Issue a written notice of violation and that a penalty will be assessed. The Office of Equal Protection may, in its discretion, dismiss such a violation if the respondent establishes voluntary compliance to the satisfaction of the Manager of the Office of Equal Protection within 10 business days of the respondent's receipt of the notice. Notice must be sent to the respondent, with a copy to the complainant, if the Manager of the Office of Equal Protection concludes that a preponderance of the evidence establishes a violation of Chapter 626 of the Pittsburgh City Code.

(iv) Any notice issued pursuant to this subsection by the Manager of the Office of Equal Protection shall include reasonable notice of the parties' rights to seek full hearing on the Office of Equal Protection's final determination and deadlines for same.

(e) For purposes of this Guideline, written notice is deemed to be received by the respondent the day it is emailed and/or three (3) days after the date the written notice is placed in the United States mail with proper postage and properly addressed to the respondent.

(f) The fact that the notice is returned undelivered or that the return receipt is not signed by the addressee does not affect the validity of the notice.

(g) Time to close complaint. The Manager of the Office of Equal Protection shall endeavor to close the investigation and determination of all complaints no later

than the 120th day after the complaint is assigned to an investigator. If the Manager of the Office of Equal Protection is unable to close the investigation within the 120-day period, the Manager of the Office of Equal Protection shall notify the complainant and respondent in writing of the reasons for the delay.

- (h) Appeal. A final determination by the Mayor's Office of Equal Protection may be appealed as stated in Guideline 15.
- (i) Closure of complaints. The Manager of the Office of Equal Protection shall close the investigation of a complaint at the earliest to occur of the following:
 - (1) The complaint is withdrawn by the complainant, either explicitly in writing or constructively by failing to respond to two or more Mayor's Office of Equal Protection inquiries within 60 days.
 - (2) The Manager of the Office of Equal Protection determines the complaint does not fall under the scope of Chapter 626 of the Pittsburgh City Code.
 - (3) The Manager of the Office of Equal Protection determines the complaint does not fall under the scope of Chapter 626 of the Pittsburgh City Code.
 - (4) The Manager of the Office of Equal Protection determines that the complainant has failed reasonably to cooperate in the investigation of the complaint or has abandoned the complaint.
 - (5) The Manager of the Office of Equal Protection determines that the preponderance of the evidence does not establish a violation of Chapter 626 of the Pittsburgh City Code.
 - (6) The respondent establishes to the satisfaction of the Mayor's Office of Equal Protection at any point in the process that a violation has been remedied and that the respondent has voluntarily complied with Chapter 626 of the Pittsburgh City Code.
 - (7) The respondent waives appeal and pays all owed compensation and penalties, if imposed.
 - (8) On appeal, the Court of Common Pleas reverses the Mayor's Office of Equal Protection's final determination that a remedy was appropriate or a violation occurred.
- (j) Forms and procedures. The Mayor's Office of Equal Protection may prescribe forms and additional administrative procedures for the closure of complaint investigations.

(k) Failure of the Mayor's Office of Equal Protection to issue a finding of compliance or noncompliance does not relieve the Employer of its obligations under the law.

GUIDELINE 15. HEARINGS & APPEALS.

(a) Final determinations made in accordance with the procedures set forth in these Guidelines are subject to appeal to a Hearing Officer.

(1) Notice: When the Office of Equal Protection notifies the parties of the final determination of the Manager of the Office of Equal Protection, it shall notify the parties of their rights to appeal the determination to a full hearing.

(2) Hearing Officer: The Mayor's Manager of the Office of Equal Protection may refer the matter to the Office of the Controller for designation of a Hearing Officer, who shall conduct a full hearing.

(3) Hearing Demand and Waiver

(i) The parties shall notify the Office of Equal Protection in writing of their intent to seek full hearing within 15 days of receiving written notice of the Office of Equal Protection's final determination.

(ii) The parties may waive further hearing.

(iii) The parties' failure to timely notify the Office of Equal Protection of their demand for full hearing shall be construed as its waiver.

(iv) Respondent's payment of owed compensation or penalties shall be construed as waiver of appeal.

(b) Practice and Procedure of Hearings

(1) Recording. In the event of full hearing, all testimony shall be recorded and a full and complete record kept of the proceedings.

(i) The nature of the recording (whether audio, video, stenographic, or otherwise) shall be within the discretion of the Hearing Officer.

(ii) In any case, hearing recording(s) shall be provided to and retained for two years from closure date by the Office of Equal Protection.

(2) Evidence and Cross-Examination

(i) Hearings shall not be governed by the Rules of Evidence and all relevant evidence of reasonably probative value may be heard.

(ii) Reasonable examination, cross-examination, and argument shall be permitted.

(3) Fairness, impartiality, and objectivity: Hearing Officers shall conduct hearings in a fair, impartial, and objective manner, according to the procedures in this Guideline.

(4) Findings: At the conclusion of the hearing, the Hearing Officer shall make written findings, including their reasoning. Findings shall be provided to all parties and the Office of Equal Protection as soon as reasonably practicable and in no case more than thirty (30) days from the conclusion of the hearing.

(c) Appeal of Hearing Officer's Findings to the Court of Common Pleas. Following a full hearing, the parties may appeal the decision of the Hearing Officer to the Court of Common Pleas in accordance with Title 2.

GUIDELINE 16. ASSESSMENT AND APPEAL OF OWED COMPENSATION OR PENALTIES.

(a) Fee Schedule. The Office of Equal Protection may, in its discretion, establish a fee schedule for penalties for violations of the Paid Sick Days Act, pursuant to Chapter 626.

(b) Assessment. The Office of Equal Protection may, pursuant to its findings, assess and recommend appropriate compensation and penalties.

(c) Appeal. Penalties assessed by the Office of Equal Protection in its final determination shall be levied by the Pittsburgh Magistrates Court and may be appealed to a full hearing. If necessary, the finding of the Hearing Officer after full hearing may be appealed to the Court of Common Pleas.

(d) Enforcement. Penalties assessed by the Office of Equal Protection, pursuant to Chapter 626, shall be enforced, pursuant to Title 42, section 1143 of the Pennsylvania Consolidated Statutes, by the Pittsburgh Magistrates Court.

GUIDELINE 17. Public Information.

(a) Anonymous complainants. The Office of Equal Protection shall keep confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the complainant reporting the violation. With their authorization, the Agency may disclose complainant's name and identifying information as necessary to enforce Chapter 626 or for other appropriate purposes.

(b) Assertion of privilege, disclosure. In the event the law requires disclosure of identifying information of a complainant who does not authorize it, the Mayor's Office of Equal Protection shall, on behalf of the complainant, assert any legally appropriate privilege to prevent its release. If no privilege is defensible, the Mayor's Office of Equal Protection shall notify the complainant in advance of any release of identifying information.

(c) Investigation notice by respondent. The Office of Equal Protection may require a respondent to post or otherwise notify its workers of an ongoing investigation. The Office of Equal Protection shall create the notice of investigation in English and other languages.

(d) Compliance notice; Safe, Thriving, and Noncompliant designations. The Office of Equal Protection shall provide compliant businesses with notices of compliance to be posted in their places of business as appropriate. Designation as a Safe Workplace shall be applied to businesses meeting the requirements of the ordinance; designation as a Thriving Workplace shall be applied to businesses exceeding the requirements of the ordinance. Businesses that do not meet the requirements of the law shall be designated Non-compliant.

(e) Public information. From time to time, as deemed appropriate by the Office of Equal Protection, information regarding the compliance/non-compliance findings of any of its investigations may be made public.

GUIDELINE 18. REFERRAL TO OTHER AGENCIES.

Where it appears that an allegation may involve violations of other applicable law, the Mayor's Office of Equal Protection may refer the matter to the relevant agency for further action.