



## **Guidelines for Administering Pittsburgh City Code Chapter 626, "Paid Sick Days Act."**

Posted: December 16, 2019

Effective Date: March 15, 2020

### **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 Equity ("MOE") 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 MOE may also seek guidance from the ACHD regarding questions involving disease prevention and control. Where applicable, the MOE 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) Expiration date. As it administers and enforces Chapter 626, the MOE 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 These Guidelines will remain in effect until rescinded or superseded.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 <http://paysickleave.pittsburghpa.gov>.

## **GUIDELINE 2. DEFINITIONS.**

(a) 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

- (1) Agency (as referred to in Chapter 626) means the Mayor's Office of Equity.
- (2) 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.
- (3) 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 independent contractors, State or Federal employees, any member of a construction union covered by a collective bargaining unit, or Seasonal Employees.
- (4) Effective date means March 15, 2020.
- (5) 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.

- (6) Independent Contractor means one who controls the method and manner in which work is done, but for whom a business controls the results of the work. E.g., a self-employed individual who receives a 1099-MISC tax form based on work performed for a business client who pays the contractor more than \$600 per year.
- (7) 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) Accrual Start Date. Accrual of Sick Time begins on the Effective Date of Chapter 626, which is March 15, 2020, as to Employees currently employed on such date by Employer at the rates specified in Chapter 626.

(b) Accrual Rates. An Employer shall provide each 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.

(1) Employees of Employers with **fifteen (15) or more** employees shall accrue a minimum of one (1) hour of **Paid 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.

(2) Employees of Employers with **less than fifteen (15)** employees shall accrue a minimum of one (1) 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. Accrual of Sick Time shall be broken down as follows:

- (i) From the Effective Date until the completion of one (1) year after the Effective Date, Employees may accrue **Unpaid Sick Time**.

(ii) Starting one year after the Effective Date, Employees may begin to accrue **Paid Sick Time**.

(c) 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 at any one time. 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.

(d) Accrual caps based on number of employees.

(1) 15 or More Employees. Covered Employees of Employers with fifteen (15) or more Employees are permitted to accrue no more than forty (40) hours of Paid Sick Time in a Calendar Year, unless the Employer designates a higher amount.

(2) 15 or Fewer Employees.

(i) For the first year after the effective date of Chapter 626, Covered Employees of Employers with fewer than fifteen (15) Employees are permitted to accrue no more than twenty-four (24) hours of Unpaid Sick Time, unless the Employer designates a higher amount.

(ii) After one year from the effective date of Chapter 626, Covered Employees of Employers with fewer than fifteen (15) Employees are permitted to accrue no

more than twenty-four (24) hours of Paid Sick Time, unless the Employer designates a higher amount.

(e) 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.

(f) 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.

(g) Carryover of Sick Time.

(1) Accrued, unused Sick Time shall be carried over from one Calendar Year to the next up to the applicable accrual cap for a Covered Employee.

(2) Alternatively, if the Employer provides for at least the maximum 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.

(3) If the Employer chooses to "front-load" Sick Time to make the yearly cap of Sick Time available to Covered Employees at the beginning of the year, it must:

(i) ensure that the requirements for accrual and use of Sick Time in Chapter 626 are met throughout the year; and

(ii) For Employers who make a portion of the yearly cap of Paid Sick Time available to Covered

Employees at the beginning of the Calendar Year, the Employer shall use a reasonable calculation, consistent with the accrual requirement set forth in Chapter 626, to ensure that the accrual meets or exceeds the amount of Paid Sick Time the Covered Employee would have otherwise accrued.

(h) Loaned Sick Time. An Employer may loan Sick Time to an Employee in advance of accrual by such Employee.

(i) Transfer of Employers. A new Employer succeeding a prior Employer at the same location shall honor all previously earned Sick Time accrued by Covered Employees and allow such Covered Employee to use that time.

(j) Equivalent or excess paid leave policies. If an Employer has a paid leave 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 leave benefits provided by an Employer in excess of what is required by Chapter 626 are not subject to the requirements of Chapter 626.

(k) 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 Sick Time may begin on the 90<sup>th</sup> calendar day following a Covered Employee’s commencement of employment

(c) Transfer to work site outside City of Pittsburgh. 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 outside 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 soon 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. If the need for the use of Sick Time is foreseeable, such as a prior scheduled appointment with a Health Care Professional, the Employer may include in its advanced notification policy a requirement for advanced notice of a Covered Employee's intention to use Sick Time. 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 Tim.

(f) Use increments. A Covered Employee may use accrued Sick Time in the smaller of hourly increments or 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 as a condition for providing such 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 required by 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, a calculation based on 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), the rate of pay may be calculated by multiplying the employee's normal hourly compensation by the total hours worked by a replacement Employee in the same shift, 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. Unless an Employer requires verification for use of Paid Sick Time of three (3) or more full consecutive days, it is recommended that an Employer pay for accrued Paid Sick Time to a Covered Employee no later than the payday for the pay period in which the Paid Sick time was used by that employee. 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 provide Paid Sick Time no later than the payday for the pay period during which verification is provided to the Employer. The ultimate 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 PAID SICK TIME AND RECORD RETENTION.**

(a) Notice of time accrued. It is recommended that Employers choose 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 access the information.

(b) Records retention. Employers shall retain records required under Chapter 626 documenting hours worked by Employees and Sick Time taken by Covered Employees for a period of two (2) years. It shall allow the MOE to have access to 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. If an issue arises as to the entitlement of an Employee to Sick Time under Chapter 626, if the Employer does not maintain or retain adequate records documenting hours worked and Sick Time used or does not allow the MOE to have reasonable access to the records, it shall be presumed that the Employer has violated Chapter 626 absent clear and convincing evidence otherwise presented.

**GUIDELINE 11. NOTICE AND POSTING.**

(a) Content of Sign. An Employer shall display a sign at each worksite that provides notice of employee rights to Sick Time under Chapter 626, available limits, and terms of use. The sign must also provide notice 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 MOE 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 <http://paysickleave.pittsburghpa.gov>.

(b) Display of sign; timing. Employers must display the sign, in a conspicuous and accessible location where any of their 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 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. By the Effective Date, the MOE shall begin to develop multilingual versions of written notices and forms required for the implementation and enforcement of Chapter 626.

(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 MOE.

(f) Violation of notice 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 offense.

## **GUIDELINE 12. RETALIATION PROHIBITED.**

(a) Prohibition. An Employer may not transfer, demote, discharge, suspend, reduce hours, or directly 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 in connection with the use of Sick Time, 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.

### **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 are not prevented from

permitting 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 MOE shall attempt to resolve any alleged violations or failures to comply through voluntary compliance. In resolving a complaint through voluntary compliance, the MOE 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 MOE 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 emailed or a hard copy may be mailed to the MOE.

(2) Jurisdiction. Upon receiving a complaint, the MOE shall determine if the complaint falls under the scope of Chapter 626 of the Pittsburgh City Code.

i. If the MOE determines the complaint falls under the scope of Chapter 626 of the Pittsburgh City Code, the Chief Equity Officer shall assign the complaint to an investigator.

ii. Unless a complaint is filed anonymously, if the Chief Equity Officer determines the complaint does not fall under the scope of Chapter 626 of the Pittsburgh City Code, the Chief Equity Officer 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 MOE shall

not take any further actions under the complaint.

(3) Forms and procedures. The MOE 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 the postage meter date if there is no postmark.

(c) Investigation of complaints.

(1) Fairness, impartiality, and objectivity. The MOE shall perform investigations in a fair, impartial, and objective manner, according to the procedures in this Guideline.

(2) Forms and procedures. The Chief Equity Officer 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 and the respondent a full opportunity to present witness statements, documents, or other information relevant to the allegations in the complaint and shall take, or cause to be taken, the following actions within ten (10) business days of being assigned a complaint:

- (A) Make all reasonable efforts to schedule an initial interview with the complainant; and
- (B) 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) days to provide information in response to the complaint. 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 Chief Equity Officer may dismiss the complaint upon compliance.

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

iii. The MOE may convene a fact-finding hearing during the investigation in accordance with the requirements for practices and procedures before local agencies.

(4) Rules of evidence. Investigations, including fact-finding hearings, are not governed by the formal rules of evidence. The Chief Equity Officer 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) Final determinations on complaints.

(1) Investigator's determination. The investigator shall submit a recommended determination to the Chief Equity Officer 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 Chief Equity Officer. The investigator's recommended determination shall be delivered to the Chief Equity Officer within 75 days of assignment of the complaint to the investigator. The investigator shall provide the complainant, respondent, and Chief Equity Officer 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) Chief Equity Officer's review. The Chief Equity Officer 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 Chief Equity Officer 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 Chief Equity Officer. The investigator shall prepare a new recommended determination for the Chief Equity Officer's evaluation under this Guideline.

ii. Issue a written notice of dismissal of the complaint to the complainant and the respondent if the Chief Equity Officer 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 unless the respondent establishes voluntary compliance to the satisfaction of the Chief Equity Officer 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 Chief Equity Officer concludes that a

preponderance of the evidence establishes a violation of Chapter 626 of the Pittsburgh City Code.

(i) For purposes of this Guideline, written notice is deemed to be received by the respondent 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.

(ii) 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.

(4) Time to close complaint. The Chief Equity Officer shall endeavor to close the investigation and determination of all complaints no later than the 120<sup>th</sup> day after the complaint is assigned to an investigator. If the Chief Equity Officer is unable to close the investigation within the 120-day period, the Chief Equity Officer shall notify the complainant and respondent in writing of the reasons for the delay.

(5) Appeal. A final determination by the MOE may be appealed as stated in Guideline 15.

(e) Closure of complaints. The Chief Equity Officer shall close the investigation of a complaint at the earliest to occur of the following:

(1) The complaint is withdrawn by the complainant.

(2) The Chief Equity Officer determines the complaint does not fall under the scope of Chapter 626 of the Pittsburgh City Code.

(3) The Chief Equity Officer determines that the complainant has failed reasonably to cooperate in the investigation of the complaint or has abandoned the complaint.

(4) The Chief Equity Officer determines that the preponderance of the evidence does not establish a violation of Chapter 626 of the Pittsburgh City Code.

(5) The respondent establishes to the satisfaction of the MOE

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.

(6) The respondent pays any penalty, if imposed.

(7) On appeal, the Court of Common Pleas reverses the MOE's final determination that a civil penalty was inappropriate or a violation occurred.

(f) Forms and procedures. The MOE may prescribe forms and additional administrative procedures for the closure of complaint investigations.

#### **GUIDELINE 15. APPEAL.**

Final determinations made in accordance with the procedures set forth in this Guideline are subject to appeal to the Court of Common Pleas in accordance with the requirements for appeal of a final determination of a local agency.

#### **GUIDELINE 16. REFERRAL TO OTHER AGENCIES.**

Where it appears that an allegation may involve violations of other applicable law, the MOE may refer the matter to the relevant agency for further action.