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TOWN OF MORRISTOWN

ORDINANCE O-35-2016

AN ORDINANCE OF THE TOWN OF MORRISTOWN IN THE COUNTY OF MORRIS, NEW JERSEY, TO IMPLEMENT PAID SICK LEAVE

WHEREAS, Most workers in the Town of Morristown will at some time during each year need limited time off from work to take care of his or her own health needs or the health needs of members of their families.

WHEREAS, Nationally, nearly forty percent of private sector workers are without any paid sick time. In addition, many workers who do have paid sick time are disciplined for using it, or cannot use that time to care for sick children.

WHEREAS, Low-income workers are significantly less likely to have paid sick time than other members of the workforce. Nationally, only one in five of the lowest-income workers (21 percent) has access to paid sick time.

WHEREAS, Providing workers time off to attend to their own health care and the health care of family members will ensure a healthier and more productive workforce in Morristown.

WHEREAS, Paid sick time will have a positive effect on the individual and public health of Morristown by allowing sick workers to earn a limited number of hours per year to care for themselves or a close family member when illness strikes or medical needs arise. Paid sick time will reduce recovery time, promote the use of regular medical providers rather than hospital emergency departments, and reduce the likelihood of people spreading illness to other members of the workforce and to the public.

WHEREAS, Paid sick time will reduce health care expenditures by promoting access to primary and preventive care. Nationally, providing all workers with paid sick time would result in $1.1 billion in annual savings in hospital emergency department costs, including more than $500 million in savings to publicly funded health insurance programs such as Medicare, Medicaid and SCHIP. Access to paid sick time can also help decrease the likelihood that a worker will put off needed care, and can increase the rates of preventive care among workers and their children.

WHEREAS, Paid sick time will allow parents to provide personal care for their sick children. Parental care makes children's recovery faster and can prevent future health problems. Parents who don't have paid sick time are more than twice as likely as parents with paid sick days to send a sick child to school or daycare, and five times as likely to report taking their child or a family member to a hospital emergency room because they were unable to take time off work during their regular work hours.

WHEREAS, Paid sick time will reduce contagion. Workers in jobs with high levels of public contact, such as restaurant workers and child care workers, are very unlikely to have paid sick time. As a result, these workers may have no choice but to go to work when they are ill, thereby increasing the risk of passing illnesses on to co-workers and customers while jeopardizing their own health. Overall, people without paid sick days are 1.5 times more likely than people with paid sick days to go to work with a contagious illness like the flu.

WHEREAS, A recent peer-reviewed epidemiological study found that nearly one in five food service workers have come to work vomiting or with diarrhea in the past year, creating dangerous health conditions. The largest national survey of U.S. restaurant workers found that two-thirds of restaurant waitstaff and cooks have come to work sick.

WHEREAS, In the event of a disease outbreak that presents a threat to public health-for example, the H1N1 outbreak of 2009-government officials request that sick workers stay home and keep sick children home from school or child care to prevent the spread of illness, and to safeguard workplace productivity. However, because many workers lack paid sick time, they may be unable to comply.

WHEREAS, During the height of the H1N1 pandemic, workers with lower rates of access to paid sick days were more likely than those with higher rates of access to paid sick days to go to work sick and, as a result, the pandemic lasted longer in their workplaces as the virus spread from co-worker to co-worker. A new study estimates that lack of paid sick time was responsible for five million cases of influenza-like illness during the pandemic.

WHEREAS, Providing paid sick time is good for businesses. Paid sick time results in reduced worker turnover, which leads to reduced costs incurred from advertising, interviewing and training new hires. Firing and replacing workers can cost anywhere from 25 to 200 percent of an employee's annual compensation.

WHEREAS, Paid sick time will reduce the risk of "presenteeism"-workers coming to work with illnesses and health conditions that reduce their productivity-a problem that costs the national economy $160 billion annually.

WHEREAS, Paid sick time will reduce the competitive disadvantage that many employers face when they choose to provide sick time to their workers.

NOW, THEREFORE BE IT ORDAINED, by the Town Council of the Town of Morristown, County of Morris and State of New Jersey, being the governing body thereof, that the Town of Morristown hereby adopts the following addition to Chapter II - Administration:

Section 1. Definitions.

For purposes of this Ordinance:

(1) "Department" means the Department of Administration.

(2) "Calendar year" means a regular and consecutive 12 month period, as determined by an employer.

(3) "Construction union" means a labor organization that represents, for purposes of collective bargaining, employees involved in the performance of construction, reconstruction, demolition, alteration, custom fabrication, or repair work and who are enrolled or have graduated from a "registered apprenticeship program."

(4) "Employee" is as defined in N.J.S.A. 34:11-56a1(h) who works in the Town of Morristown for at least 80 hours in a year except that "Employee" for purposes of this Ordinance does not include any person employed by any governmental entity or instrumentality including any New Jersey school district or Board of Education or (b) any person who is a member of a construction union and is covered by a collective bargaining agreement negotiated by that union.

(5) "Employer" is as defined in N.J.S.A. 34:11-56a1(g) except that Employer does not include (a) the United States government; (b) the State or its political subdivisions or any office, department, Department, authority, institution, association, society or any instrumentality of the State including the legislature or judiciary; or (c) the Town of Morristown.

(6) "Family Member" means

(A) A biological, adopted or foster child, stepchild or legal ward, a child of a domestic partner, a child of a civil union partner, or a child to whom the employee stands in loco parentis;

(B) A biological, foster, stepparent or adoptive parent or legal guardian of an employee or of an employee's spouse, domestic partner or civil union partner or a person who stood in loco parentis when the employee was a minor child;

(C) A person to whom the employee is legally married under the laws of New Jersey or any other State or with whom the employee has entered into a civil union under N.J.S.A. Title 37;

(D) A grandparent or spouse, civil union partner or domestic partner of a grandparent;

(E) A grandchild;

(F) A domestic partner of an employee as defined in N.J.S.A. 26:8A-3 et. seq. or

(G) A sibling.

(7) "Health Care Professional" means any person licensed under Federal or New Jersey law to provide medical or emergency services, including but not limited to doctors, nurses and emergency room personnel.

(8) "Paid Sick Time" means time that is compensated at the same hourly rate and with the same benefits, including health care benefits, as the Employee normally earns during hours worked and is provided by an Employer to an Employee for the purposes described in Section 3 of this Ordinance, but in no case shall the hourly wage be less than that provided under N.J.S.A. 34:11-56a.

(9) "Registered apprenticeship program" means an apprenticeship program that is registered with and approved by the United States Department of Labor and which meets not less than two of the following requirements:

(A) has active, employed, registered apprentices;

(B) has graduated apprentices to journey worker status during a majority of the years that the program has been in operation; or

(C) has graduated apprentices to journey worker status during three of the immediately preceding five years, provides each trainee with combined classroom and on-the-job training under the direct and close supervision of a highly skilled worker in an occupation recognized as an apprenticeable trade and meets the program performance standards of enrollment and graduation under 29 C.F.R. Part 29, section 29.63.1.

(10) "Retaliation" means the denial of any right guaranteed under this Ordinance and any threat, discipline, discharge, suspension, demotion, reduction of hours, or any other adverse action against an Employee for the exercise of any right guaranteed herein, including for filing a complaint or informing any person about any employer's alleged violation of this Act;

cooperating with the Department in its investigations of alleged violations of this Act; participating in any administrative or judicial action regarding an alleged violation of this Act; and informing any person of his or her potential rights under this Act.

Section 2. Employees Covered by Collective Bargaining Agreements.

(1) All or any portion of the applicable requirements of this Ordinance shall not apply to Employees covered by a collective bargaining agreement, to the extent that such requirements are expressly waived in the collective bargaining agreement in clear and unambiguous terms. (2) With respect to Employees covered by a collective bargaining agreement in effect at the time of the effective date of this Ordinance, no provision of this Ordinance shall apply until the expiration of the collective bargaining agreement; however, if the terms of an expired collective bargaining agreement provide paid sick leave that is more generous than provided by this Ordinance, those terms of the expired collective bargaining agreement apply to the extent required by law.

Section 3. Accrual of Paid Sick Time.

(1) All Employees accrue a minimum of one hour of paid sick time for every 30 hours actually worked, subject to the limits set forth below in paragraphs 2 and 3. (2) Employers who employ ten or more Employees for compensation are not required to provide more than 40 hours of paid sick time in a calendar year; (3) Employers who employ fewer than ten Employees for compensation are not required to provide more than 24 hours of paid sick time in a calendar year, except for Employees who are child care workers, home health care workers and food service workers. For child care workers, home health care workers and food service workers, Employers are required to provide up to 40 hours of paid sick time, so long as the hours are accrued in a calendar year as set forth in paragraph 1 above. (4) In determining the number of Employees performing work for an Employer, all Employees performing work for compensation on a full-time, part-time, or temporary basis shall be counted, provided that where the number of Employees who work for an Employer for compensation fluctuates, business size may be determined for the current calendar year based upon the average number of Employees who worked for compensation during the preceding calendar year, (5) Employees who are exempt from overtime requirements under 29 U.S.C. § 213(a)(1) of the Federal Fair Labor Standards Act are assumed to work 40 hours in each work week for purposes of paid sick time accrual unless their normal work week is less than 40 hours, in which case paid sick time accrues based upon that normal work week. (6) Employees begin to accrue Paid Sick Time on the first day of employment. Employees are entitled to use accrued Paid Sick Time beginning on the 90th calendar day of their employment and thereafter Employees are entitled to use Paid Sick Time as it is accrued. (7) Accrued but unused Paid Sick Time shall be carried over to the following calendar year, provided that no Employer shall be required to carry over more than forty (40) hours of unused Paid Sick Time from one calendar year to the next or allow the use of more than forty (40) hours of Paid Sick Time in a calendar year. An Employer shall not be required to carry over unused Paid Sick Time if the Employee is paid for any unused Paid Sick Time at the end of the calendar year in which such time is accrued. (8) Any Employer with a paid leave policy, such as a paid time off policy, that provides an amount of paid leave sufficient to meet the total annual accrual requirements of this section that may be used for the same purposes and under the same conditions as paid sick time under this Ordinance is not required to provide additional paid sick time. (9) Nothing in this section shall be construed as requiring financial or other reimbursement to an Employee from an Employer upon the Employee's termination, resignation, retirement, or

other separation from employment for accrued paid sick time that has not been used. (10) If an Employee is transferred to a separate division, entity, or location, but remains employed by the same Employer in the Town of Morristown, the Employee is entitled to all paid sick time accrued at the prior division, entity, or location and is entitled to use all paid sick time as provided in this section. If there is a separation from employment and the employee is rehired within six (6) months of separation, previously accrued unpaid sick time that had not been used shall be reinstated. Further, the employee is entitled to use accrued unpaid sick time and accrue additional unpaid sick time at the re-commencement of employment. (11) When a different employer succeeds or takes the place of an existing employer, all employees of the original employer who remain employed by the successor employer are entitled to all paid sick time accrued when employed by the original employer and are entitled to use all paid sick leave previously accrued. (12) At its sole discretion, an Employer may loan paid sick time to an Employee in advance of accrual by such Employee. A decision by an Employer to deny a loan request by an Employee shall not subject the Employer to any liability under this Ordinance.

Section 4. Use of Paid Sick Time.

(1) Paid Sick Time shall be provided to an Employee by an Employer for:

(A) An Employee's mental or physical illness, injury, or health condition; an Employee's need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; an Employee's need for preventive medical care;

(B) Care of a Family Member with a mental or physical illness, injury, or health condition; care of a Family Member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; care of a Family Member who needs preventive medical care;

(C) Closure of the Employee's place of business by order of a public official due to a public health emergency or an Employee's need to care for a child whose school or place of care has been closed by order of a public official due to a public health emergency, or care for Family Member when it has been determined by the health authorities having jurisdiction or by a health care provider that the Family Member's presence in the community would jeopardize the health of others because of the Family Member's exposure to a communicable disease, whether or not the Family Member has actually contracted the communicable disease. (2) Nothing in this Act prohibits an Employer from requesting that an Employee confirm in writing following use of Paid Sick Time that the Paid Sick Time was used for an authorized purpose under this Act. (3) Where the need to use Paid Sick Time is foreseeable, an Employer may require reasonable advance notice of the intention to use Paid Sick Time. In no event shall an Employee be required to give notice more than seven days prior to the date such sick time is to begin. Where such need is not foreseeable, an Employer may require an Employee to provide notice of the need for the use of sick time before the beginning of the Employee's work shift or work day or, in cases such as emergencies where advance notice is not possible, notice shall be provided by the Employee as soon as practicable. (4) An Employer may not require, as a condition of an Employee's taking Paid Sick Time, that the Employee search for or find a replacement worker to cover the hours during which the Employee is absent. (5) Accrued sick time may be used 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. (6) After an Employee has used Paid Sick Time for 3 consecutive days or 3 consecutive instances, an Employer may require an Employee to provide reasonable

documentation that the time has been used for a purpose covered by subsection (1). In this instance, the Employer may require documentation signed by a health care professional indicating that the Paid Sick Time was necessary; however, an Employer may not require that the documentation explain the nature of the illness.

Section 5. Exercise of Rights Protected; Retaliation Prohibited.

(1) No person shall interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this Ordinance. (2) No person shall retaliate against an Employee because the Employee has properly exercised rights protected under this Ordinance.

Section 6. Notice and Posting and Fines and Penalties for Violations of Notice, Posting and Other Requirements.

(1) All Employers shall give written notice to each Employee at the commencement of the Employee's employment (or as soon as practicable if the Employee is already employed on the effective date of this law) regarding Employee's rights under this Ordinance. Such notice shall describe the right to paid sick time, the accrual rate and the amount of Paid Sick Time, and the terms of its use under this Ordinance; the right to be free from retaliation for properly requesting use of Paid Sick Time; and the right to file a complaint or bring an action in municipal court if paid sick time is denied by the employer or the employee is retaliated against for requesting or taking paid sick time. Such notice shall be in English and the primary language spoken by that Employee, so long as the primary language of that Employee is also the primary language of at least 10% of the Employer's workforce. (2) Employers shall also display a poster in a conspicuous and accessible place in each business establishment where Employees are employed containing the information required in subsection (1). The poster shall be in English and in any language that is the first language of at least 10% of the Employer's workforce. (3) The Department can create and make available to Employers notices and posters in English and Spanish and any other languages deemed appropriate by the Department that contain the information required under subsection (1) for Employers' use in complying with this section.

Section 7. Fines.

Any Employer who violates the provisions of this Ordinance is subject to a fine as provided in Section 1-5 of the Code of the Town of Morristown, 2007. In addition to the fines set forth above, any Employer who violates this Ordinance is subject to payment of restitution in the amount of any Paid Sick Time unlawfully withheld.

Section 8. Employer Records.

Employers shall allow the Department reasonable access to records and to monitor compliance with the requirements of this Act. An Employer's failure to maintain or retain adequate records documenting hours worked by an Employee and Paid Sick Time taken by an Employee creates a rebuttable presumption that the Employer has violated this Ordinance, absent clear and convincing evidence otherwise.

Section 9. Enforcement and Regulations.

(1) The Department shall coordinate implementation and enforcement of this Ordinance and promulgate appropriate guidelines or regulations for such purposes.

(2) The Department shall have broad powers to ensure compliance with this Ordinance.

(3) In the event an allegation of noncompliance cannot be resolved by the Department with the Employer, a complaint may be filed, by the Department and/or the Employee as the complainant, in the Morristown Municipal Court for any alleged violation of this Ordinance.

(4) The Municipal Court shall have the power to adjudicate all allegations of violations of this Ordinance and impose fines or penalties provided for in this Ordinance, or any further relief deem appropriate by the court including but not limited to restitution, reinstatement, injunctive or declaratory relief.

(5) Submitting a complaint to the Department is neither a prerequisite nor a bar to bringing a private action.

(6) The Department shall have the power to do outreach to inform the residents of the Town of their rights under this Act and to publicize online and in other media the names of Employers who violate this Act.

Section 10. Confidentiality and Nondisclosure.

(1) An Employer may not require disclosure of the specific details relating to an Employee's or an Employee's Family Member's medical condition as a condition of providing Paid Sick Time under this Ordinance. If an Employer possesses health information about an Employee or Employee's Family Member, such information shall be treated as confidential and shall not be disclosed by the Employer except to the affected Employee or with the permission of the affected Employee.

(2) The Department shall maintain confidential the identity of any complaining person unless disclosure of the identity is necessary for resolution of the investigation. The Department shall, to the extent practicable, notify a complaining person that the Department will be disclosing his or her identify prior to such disclosure.

Section 11. No Effect on More Generous Policies.

(1) Nothing in this Ordinance shall be construed to discourage or prohibit an Employer from the adoption or retention of a paid sick time policy more generous than the one required herein. (2) Nothing in this Ordinance shall be construed as diminishing the obligation of an Employer to comply with any contract, collective bargaining agreement, employment benefit plan, or other agreement providing more generous paid sick time to an Employee than required herein. (3) Nothing in this Ordinance shall be construed as diminishing the rights of public Employees regarding paid sick time or use of paid sick time as provided in the laws of the State of New Jersey pertaining to public Employees.

(4) Nothing in this Ordinance shall be construed as diminishing the rights secured by S2177, the "New Jersey Security and Financial Empowerment Act" for domestic violence victims in the Town of Morristown.

(5) Nothing in this Ordinance shall be construed or interpreted in a way that would conflict with any State or Federal law pertaining to paid sick time or employee benefits.

Section 12. Other Legal Requirements.

This Ordinance provides minimum requirements pertaining to Paid Sick Time and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation,

requirement, policy, or standard that provides for greater accrual or use by Employees of sick time, whether paid or unpaid, or that extends other protections to Employees.

BE IT FURTHER ORDAINED, that if any section, paragraph, subsection, clause or provision of this Ordinance shall be adjudged by the courts to be invalid, such adjudication shall apply only to the section, paragraph, subsection, clause or provision so adjudicated, and the remainder of the Ordinance shall be deemed valid and effective; and

BE IT FURTHER ORDAINED, that any ordinances or parts thereof in conflict with the provisions of this Ordinance are repealed to the extent of such conflict; and

BE IT FURTHER ORDAINED, that this Ordinance shall take effect upon passage and publication in accordance with applicable law.

ATTEST:

Kevin D. Harris,
Town Clerk

ADOPTED:

Timothy P. Dougherty,
Mayor
Date: 9/14/2016

requirement, policy, or standard that provides for greater accrual or use by Employees of sick time, whether paid or unpaid, or that extends other protections to Employees.

BE IT FURTHER ORDAINED, that if any section, paragraph, subsection, clause or provision of this Ordinance shall be adjudged by the courts to be invalid, such adjudication shall apply only to the section, paragraph, subsection, clause or provision so adjudicated, and the remainder of the Ordinance shall be deemed valid and effective; and

BE IT FURTHER ORDAINED, that any ordinances or parts thereof in conflict with the provisions of this Ordinance are repealed to the extent of such conflict; and

BE IT FURTHER ORDAINED, that this Ordinance shall take effect upon passage and publication in accordance with applicable law.

I, Robin J. Kesselmeyer, Deputy Town Clerk of the Town of Morristown, do hereby certify the above to be a true and exact copy of the Ordinance duly passed and adopted by the Town Council of the Town of Morristown at the Regular Council meeting held on September 13, 2016.

Dated: September 14, 2016

Robin J. Kesselmeyer

Robin J. Kesselmeyer
Deputy Town Clerk