

Portland, Maine



Yes. Life's good here.

Health & Human Services Committee Minutes

Tuesday, November 14th, 2017, 5:30 p.m. Room 24, City Hall

Committee Attendance:

Belinda S. Ray, Chair (District 1), Brian Batson (District 3),

City Staff Attendance:

Mayor, Ethan Strimling; Corporation Counsel, Anne Torregrossa; Finance Director, Brendan O'Connell; Director of Human Resources, Gina Tapp; Director of Health & Human Services, Dawn Stiles; Fire Chief, David Jackson; Assistant Police Chief, Vern Malloch;

AGENDA ITEM 1 – Meeting Called to Order and Minutes Reviewed:

Meeting was called to order at approximately 5:34 PM

Second order of business Agenda Item #4, Civil Service Ordinance Updates, was tabled for January, motion was seconded with all in favor

Chair Ray moved to accept minutes after a brief overview from the previous meeting. The motion was seconded with all in favor.

AGENDA ITEM 2 - Mandatory Paid Sick-Leave Ordinance (no public comment)

Chair Ray gave an overview of the process. There will be two public comments sessions before this could go in front of the council.

Mayor Strimling took the floor and spoke on the importance of this ordinance. The concern is that thousands of workers currently do not have earned paid sick time. *The Portland Earned Paid Sick and Safe Time Ordinance Draft* (See handout #1) the Mayor gave a quick overview before introducing Erin Hennesey & Eliza Townsend.

Presentation:

Earned Paid Sick Time Ordinance By: Erin Hennesey, Southern Maine Workers' Center & Eliza Townsend, Maine Women's Lobby (presentation Handout #2)

Presentation highlights are paid sick time is proven tool to:

- Decrease spread of illness
- Improve recovery
- Support preventative health care
- Improve productivity for business
- Reduce employee turnover

Paid sick time helps Portland children

- Aids children's health
- Shortens hospital stay
- Reduces disease transmission- keeping more kids healthy and in school

"Stay home if you are sick"

This is a growing momentum for earned paid sick leave policies – 8 states, 2 counties and 30 cities, including ten cities that are comparable to the size of Portland (Among the eight state are Connecticut, Massachusetts, Vermont and Rhode Island) see handout

Definition of family-supporting the diverse (chosen) families and caregivers relationships in the community
Supports Victims/Survivors of Violence paid "safe days"

Allowing all employees of all businesses in Portland (full time or part-time) to earn one hour a week of sick leave for every 30 hours they work. This is a small change, but will improve public health in the city of Portland.

Chair Ray asked Erin if she could provide the presentation including the data she spoke on regarding 20% stats on businesses (completed posted online)

Chair Ray asked the committee to start to review the draft ordinance (see handout #1)

A brief introduction of city staff was given: Gina Tapp, Human Resources Director; Dr. Kolawole Bankole, Public health; Amy Legere, Fire Department; Anne Torregrossa, Corporation Counsel; Brendan O'Connell, Finance Director; Dawn Stiles, Health & Human Services;

Committee began review of draft ordinance:

Definitions:

Chair Ray asked staff if it is typical for a policy to define to who gets benefits. Gina responded with that Yes, an employer typically defines benefit eligible employees such as full-time, part-time.

Chair Ray asked staff regarding seasonal employees, such as a college student home for the summer who is working full-time hours, would they receive benefits? Gina responded that a seasonal, per diem, on-call, usually don't have benefits tied to them and if they do they could be prorated.

Chair Ray requested clarification on defining an employee - What is the likelihood of a company moves their full time employees to having all part time employees? Anne responded that she will have to look into this further for the committee.

Chair Ray asked Gina if the city has concrete language defining family. Gina responded that any good employer can defines family different. The City defines "other family member" and recognizes domestic partners.

Councilor Mavdonnes requested the following information from staff:

- Stats on Union vs Non-union employees with the City of Portland
- How would an employer monitor affiliation or close association by blood?
- Red line version of ordinance (Anne will provide original version)
- FMLA information outlining types of employees such as Healthcare professionals (HR will provide)

Continuing with the definition section Councilor Batson requested specific definition of a healthcare professional.

Gina & Anne responded that the definition proposed in the draft was originated from FMLA (Family Medical Leave Act) employers are familiar with this requirement as it falls under Maine Statute & Federal Statutes.

Councilor Mavdones noticed that this draft does not require to pay out earned sick leave to those who leave voluntary or who are terminated – Anne responded that this is correct.

Accrual of Earned Paid Sick Time

Councilor Batson: Section #3 *Accrued paid sick leave shall be awarded and available for use no more than eight days after it is accrued. Alternatively, an employer may award paid sick time in advance of accrual in an amount anticipated to be accrued over a year's time. **Is there a grace period?***

Chair spoke up that this may be tied to your paycheck where you are paid a week later.

Councilor Mavodones: ***Are there limits to what can be used?***

Anne responded if you have to go to a doctor's appointment for one hour you can use one hour. If you have to use the next day for a total of four hours you can use four hour increments. You do not have to take a whole eight hour shift. Anne mentioned she will clarify the language going forward.

Councilor Mavodones requested information regarding financial impact for businesses- A request of information from Brendan O'Connell on financial impact from various businesses along expense liability on sick leave usage. Brendan will follow up on this item

Gina spoke to the committee on a stats she prepared for this evening (she gave the document to the Committee to review) The Committee gave an overview of the document provided

- 2016 sick leave usage for city employees.
- by department
- sick leave hours usage gross 65k
- 1375 employees
- Actual leave cost totaling \$1.5 million

Following the review of this document Councilor Mavodones requested the following from staff

- stats to possibly include termination payout and FICA cost
- stats NOT include salary employees (where they are paid out regardless) Per Mayor Strimling

Accrual of Earned Sick Time Continued

Chair Ray proposed that the ordinance reflect having a cap on accrual. Is it possible to stop accrual at 40 hours? Once you reach 40 hours the employee will need to use or lose it.

Anne responded this would need to be written in ordinance unless paid out, cap 6 days per year

Mayor Strimling responded when drafting this ordinance it was discussed it was to go in the draft as *to once the employer gave you 6 days they did not have to give you anymore.*

Council Mavodones added to the conversation in regarding calendar year vs fiscal year? Where different businesses may have different budget dates.

*follow-up item

Use of Earned Paid Sick Time

Chair Ray reviewed Section #4- *Attend a school meeting or meeting at a place where a family member is receiving care necessitated by the family member's health condition or disability - **Was this attended for parent teacher conference? Or school meeting?*** Eliza responded to refers to "health"

Chair request a change to this sentence to reflect "health"

Procedures for Taking Earned Paid Sick Time

Councilor Batson- Under #2 *When the need for use of earned sick time is not foreseeable, an employee must provide notice to the employer as soon as practical under the facts and circumstances of the particular case. **What constitutes this? How does an Employer to define this?***

Anne responded with this is not a new requirement for employer. This is a general standard as an employer has to follow leave acts (FMLA) smaller business, 15/50 small business requirements; job protected leave; they can't fire you for it, but employer does not have to pay you for the leave; there is a balance for abuse of sick leave vs sick leave use for medical leave;

Councilor Batson- good faith effort?

Anne added that employer's already struggling with current leave act.

Councilor Mavodones requested a table showing/outlining types of leave by law (Gina gave to Committee) please send/provide digital. ***What are similar types of leave?***

Eliza added to the conversation (with approval from Committee) that small businesses are familiar with FMLA.

Chair Ray added to the conversation asking for further clarification on *particle term* from Section #2? Gina responded with employee's preplanning if they need surgery- that is practical. If you are sick that is unforeseeable.

Councilor Mavodones: ***Can an employer require documentation for employer out more than 3 consecutive days?*** Gina responded with she would accept a note from doctor's that is on letterhead with brief description of when they can return to work. Anne gave information on current *CEBA Doctor's Note Requirements* surrounding (abusers) on dealing with an employee taking sick leave but not necessarily on consecutive days.

Chair Ray: ***Does this cover time to and from doctor's office? Was the intent to cover cost of doctor's visit if you require a doctor's note?*** The conversation continued with the committee and staff. This will have to be a follow-up item.

Councilor Mavodones: ***It is not unusual to require documentation from mutual agreed doctor, such as a Concentra- Does this draft preclude that?*** Eliza expressed to the committee she has a concern with sending employee's to employer's doctor's involving mental illness issues.

Anne added to the conversation that reasonable documentation does not have to require to send to an employer's doctor.

Councilor Batson added to the conversation that a trip to the ER on a weekend or holiday where the employer requires doctor's note that could be a large expense, falling on employer over \$1000.

Chair Ray added to the conversation that only required documentation if they feel sick leave may be abused, draft does not require a note.

Mayor closed the conversation with finding the middle ground for employee and employer.

Section 4. Exercise of Rights Protected; Retaliation Prohibited

Chair Ray requested Anne to clarify ***Section (D) Protections of this section shall apply to any person who mistakenly but reasonably alleges a violation of this article.*** Anne responded that there is a standard that it has to be a reasonable belief standard. The employee may call out sick but if she gives the reason of because of her cat. This reason, her cat, does not fall under a protected class. Having both parties understanding "reasonable" There could be a situation where both parties could misinterpretation of the ordinance of what "reasonable" means. Will need to clarify.

Councilor Mavodones; reviewed ***Section (C) What is the cities role in enforcement? Abuse of sick time and get fired –I have been wronged?*** Anne responded with an employee may take off every Friday (does not require a note) the employee decides not to share for what the reason was for calling out. The challenge could be for the employer has to make the decision abuser of sick leave. The challenge could be the employee could be hunting or undergoing treatment? If the employee does not share why they were out and they get fired. They could go to the city and ask for assistance. Does the city make the determination? Anne we would have to clarify going forward.

Notice of Rights

Councilor Batson reviewed ***Section (f) What constituents as an offense? Each day? Where does this fall?*** Anne responded that this is a good section to clarify. \$100 per notice? Per day? Either way we should clarify.

For the city most ordinance penalties run per day.

Councilor Mavodones reviewed ***Section (C) Notice of posters shall be provided in English, Spanish, Somali, Chinese, Vietnamese, Russian, Croatian, French, Arabic, Polish, Acholi, Farsi, Dinka, Khmer, Creole, and any language spoken by at least 5% of the employer's workforce, provided that such notice has been provided by the City of Portland.- Is this from City of Portland? Dr. Bankole confirmed yes.*** As he continued reviewing ***Section (E) The amount earned paid sick time available to employee... Who would keep track of this? Would this be the employer's payroll?***

Committee asked Brendan if there was a way to find out the cost of the posters maybe by finding the cost when the city did the minimum wage posters.

Chair Ray proposed question to staff regarding Section (C) Can the poster be on the website? So city wouldn't be tasked with cost of prints.

Recordkeeping requirements

Councilor Mavodones: Reviewing ***Section (A) Employers shall retain records documentation hours worked by employees and earned sick time earned and taken by employees for a period of six years. How does this square with the law? Is this universal?*** Anne responded with that 6 years is typical statute of limitations.

Mayor asked about our payroll records? Anne responded with as a government entity we have different requirements.

Chair Ray reviewed ***Section (B) Employers shall allow the city of Portland access to records– is this legal for the city to coordinate an audit?*** Chair requested a change. The conversation continued and the enforcement section addresses this issue. Anne will follow-up with requested changes

Enforcement

Councilor Mavodones: Section B1 Complaint process & C1 Private Cause of Action after conversation he has requested future follow-up. He continued to review **Section B3 regarding additional amount 2x what the employer was paid.** Anne responded with that this came from the original draft she received as an enforcement penalties. He continued to review **Section (c) Private Cause of Action #2.** Councilor Mavodones expressed concern with last sentence. **Chair Ray agreed and asked Anne if there was another course of action? What would that be? Would they have to go to court to receive wages?** Anne responded with if you are violations of the ordinance \$100 a day – and you continue to refuse to pay employee the city will come after you with civil penalties– **What's incentive for an employee to go thru this process to receive days wages? Without enhanced of penalties – follow up item.**

Committee requested from Corporation Counsel:

- Best estimate in terms of cost
- What would be the staff time to prosecute on of these cases?
- Is it possible to check with other municipalities and see what their legal departments do regarding penalties? And how many do they process a year?

Public Outreach

Chair Ray gave an overview that this is a multiple step process. There is no time frame provided in the draft. Do we need to have one? Within 30 days? Anne responded with a reasonable expectations.

Committee completed draft ordinance review.

Chair gave overview of the next steps

- Follow-up in February meeting with answers
- Anne will prepare the next draft
- Staff to answer questions and get possible staff recommendations going forward

Brendan spoke that January may be a difficult time. Chair Ray spoke that a few items will be on the agenda on January and February seems more realistic time. The public may want to see this before they comment. The committee decided to come back in Feb. there may have to have two meetings.

Meeting adjourned