

# PAID SICK LEAVE

*“My boss told me that I no longer had my job at the restaurant. I was in shock. Getting fired was devastating.”*

—**Elose Arestil**, dishwasher in Miami, after being injured on the job.<sup>1</sup>

*“I had to prioritize my family over work, and I lost my job.”*

—**Ai Elo**, waitress in New York City, after being fired because she stayed home to take care of her ill brother.<sup>2</sup>

## **THE PROBLEM**

More than 40 million American workers get no paid sick leave.<sup>3</sup> Most of these workers are in service industries like restaurants, health care, and retail – so the problem is particularly acute in cities, where these jobs cluster. Lack of paid sick leave disproportionately burdens minorities and low-wage workers, including the vast majority of food service workers.<sup>4</sup> When they are sick, these employees either have to show up for work – which threatens their health,<sup>5</sup> the health of their co-workers, and of the customers they serve – or stay home and lose valuable pay and risk termination. Because many working parents cannot stay home to take care of their sick children, those children are sent to school, which harms them and other kids. The United States is one of twenty-two rich countries in the world without a national law guaranteeing workers receive either paid sick days or paid sick leave.<sup>6</sup>

## **THE SOLUTION**

While the best solution would be federal law, efforts in Congress to pass the Healthy Families Act – which would guarantee up to seven paid sick days a year for workers at companies with at least 15 employees – have so far been unsuccessful.<sup>7</sup> Without federal action, cities are taking the lead on the issue. Paid sick leave laws have taken effect in **San Francisco** (2006),<sup>7</sup> **Washington D.C.** (2008), and **Seattle** (2011). Voters passed a law in **Milwaukee** (2008), but Governor Scott Walker and the

legislature later outlawed local paid sick leave laws. In 2011, Connecticut became the first state to pass a paid sick leave law. Broad-based campaigns – supported by unions and advocacy organizations committed to the wellbeing of women, children, immigrants, and workers – are active in dozens of cities and states around the country.<sup>9</sup> Paid sick leave is attractive for city-level reform because many cities are permitted to exercise “police power” and pass legislation protecting the “health, safety, morals, and general welfare of the public.” Furthermore, in most cases there are no preemption issues.<sup>10</sup> At the time of writing, the **Los Angeles** City Council is considering a proposed law that would allow **Los Angeles** workers to earn at least six paid sick leave days annually, twice the state minimum.<sup>11</sup> The ordinance is in the process of being drafted and is intended to take effect by July 1st, 2016. Mayor Garcetti has thrown his support behind this law and the city council, and is expected to sign the ordinance by May 1st, 2016.<sup>12</sup>

## **POLICY ISSUES**

The following topics will likely come up when designing your city’s paid sick leave legislation. Legislators can tailor proposals to the political realities in their city.

**COVERAGE:** The scope of coverage is a central question in all campaigns. Advocates have sought to broaden coverage to include as many workers as possible; opponents have sought to carve out small businesses or particular industries. **San Francisco’s** law is broadest, covering

any worker – part or full time – who works within the city for an employer. In order to win passage, advocates in **Washington, D.C.** had to accept an exclusion of restaurant waiters, which is particularly problematic given the public health consequences of such employees working while ill. In **Connecticut**, advocates had to agree to a carve-out for businesses with fewer than 50 employees, manufacturers, some non-profits, and firms that employ temporary workers.

**NUMBER OF DAYS:** Many paid sick bills start by requiring 10 days of paid sick leave for all workers, falling back to fewer days as a compromise to win passage. A number of bills provide two tiers – 9 days for most employees, 5 days for employees of small businesses – to address opponents’ claims that small businesses cannot afford to provide such benefits. The rate at which the leave accrues (typically 1 hour leave for every 30 or 40 hours worked), the date on which it begins to accrue (at start of employment or later), and the length of a probation period (immediate use of benefit or waiting period to use), are all likely to be points of contention. Data from a **San Francisco** survey is useful to allay employer concerns over the cost of paid sick leave: “despite the availability of either five or nine sick days under the [Paid Sick Leave Ordinance], the typical worker with access used only three paid sick days in the previous year, and one-quarter of employees with access used zero paid sick days.”<sup>13</sup>

**USAGE:** Most laws and proposals permit workers to take time off to care for themselves or for a sick family member or to seek assistance related to domestic violence. There are slight variations in the definition of a “family member” across the proposals, but most define it expansively to include domestic partners and people related through blood and marriage. Some proposals would permit time off to get routine/ preventive medical care.

**ENFORCEMENT:** It is important to ensure that any paid sick law includes enforcement provisions so that workers are actually able to use their leave. Legislation should include: requirements that employers notify their employees of their rights and keep records of the leave accrued and taken by employees; a private right of action so that employees can sue (in court or through an agency) if their rights are violated; penalties for non-compliance by employers; and the establishment of investigation and enforcement tools within a city agency. If a city does not have a labor bureau, enforcement can sometimes be vested in a department of health, consumer affairs, business development/ licensing, or work- force development.

## **LANDSCAPE AND RESOURCES**

**Family Values at Work** is a consortium of 24 state and local coalitions pushing for paid sick leave. The **National Partnership for Women and Families** is leading the campaign

for a national paid sick leave law and provides support on local campaigns. The **Institute for Women’s Policy Research** has extensive research on the costs and benefits of paid sick leave policies. The **Center for Popular Democracy**, the **Leadership Center for the Common Good**, and the **Working Families Party** provide legal, strategy, and organizing support to local campaigns. **A Better Balance** advocates for a range of policies that advance the rights of working families and provides legal support on campaigns.

## **NOTES**

- 1 Sick and Fired: Why We Need Earned Sick Days to Boost the Economy, available at <http://familyvaluesatwork.org/wp-content/uploads/2011/10/Sick-and-Fired-Online-Booklet.pdf>
- 2 Seattle Mayor Mike McGinn Signs Landmark Paid Sick Days Legislation, Washington Policy Watch (Sept. 23, 2011), <http://www.eoionline.org/blog/seattle-mayor-mike-mcginn-signs-landmark-paid-sick-days-legislation/>
- 3 Editorial, New York Times (Aug. 14, 2012).
- 4 Elejalde-Ruiz, A. (2016, February 17). Lack of paid sick days worst for Hispanics, low-wage workers, study finds. In *Chicago Tribune*.
- 5 Paid Sick Leave and Nonfatal Occupational Injuries, American Journal of Public Health, available at <http://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2011.300482>
- 6 See <http://cepr.net/publications/reports/contagion-nation>.
- 7 The legislation has 118 cosponsors in the House and 18 in the Senate. See <http://www.govtrack.us/congress/bills/112/hr1876>.
- 8 For a detailed evaluation of the impact of the ordinance in San Francisco, see Robert Drago and Vicky Lovell, San Francisco’s Paid Sick Leave Ordinance: Outcomes for Employers and Employees, available at <http://www.iwpr.org/publications/pubs/San-Fran-PSD>
- 9 For a list of active campaigns, see <http://familyvaluesatwork.org/in-your-state>.
- 10 The federal Family Medical Leave Act guarantees unpaid leave to some employees at firms that have 50 or more workers. However, it does not preempt local paid leave law. Wisconsin and Louisiana have both prohibited cities from mandating the provision of paid sick leave.
- 11 Alpert Reyes, E. (2016, April). 6 paid sick days for workers in L.A.? City Council says yes. In *Los Angeles Times*. Retrieved April 21, 2016.
- 12 CBS Los Angeles. (2016, April 19). LA City Council OKs Plan Requiring Employers To Increase Paid Sick Days. In *CBS Los Angeles*.
- 13 Drago and Lovell at 1.