

TO: HONORABLE BOARD OF LEGISLATORS  
COUNTY OF WESTCHESTER

Your Committee has reviewed “A LOCAL LAW amending the Laws of Westchester County by adopting a new Chapter 685 providing paid sick leave for certain employees.”

Your Committee is aware that roughly 36% of workers in Westchester County lack paid sick time, and low-income and part-time workers are especially unlikely to be covered. Access to paid sick time promotes safe and healthy work environments by reducing the spread of illness, health care costs, and work-family conflict by providing greater flexibility to fulfill caregiving responsibilities.

Your Committee is informed that workers of color are less likely to have access, with Hispanic workers substantially less likely to have access: 50% of Hispanic, 33% of Black, and 32% of Asian workers in Westchester County lack access to paid sick time. Additionally, state and local government workers are much more likely than private sector workers to have paid sick time: 87% of state and local government workers have access to paid sick time in Westchester County compared with 60% of private sector workers.

Your Committee notes that research shows that workers without access to paid sick time are three times more likely to forgo treatment for themselves and almost two times more likely to forgo care for a family member compared with workers who have paid sick time. Further, a recent study found that employers who provided paid sick time to their employees reported fewer occupational injuries among employees than those who did not have paid sick time coverage.

Your Committee is also aware that paid sick time allows parents to provide personal care for their sick children. Parental care makes children's recoveries faster and can prevent future health problems. When parents don't have paid sick time, they are more than twice as likely as parents with paid sick time to send a sick child to school or daycare, spreading illness, and five times as likely to report taking their child or a family member to the emergency room because they were unable to take time off work during normal work hours.

Your Committee further informed that paid sick time will reduce recovery time and decrease the likelihood of spreading illness to other members of the workforce and to the public. During the H1N1 flu pandemic of 2009, researchers estimate that 5 million cases of the flu would have been prevented if a federal law providing paid sick time had been in place.

Paid sick time will reduce health care expenditures. Emergency room visits increase health care costs on taxpayers. Nationally, providing all workers with paid sick time would reduce visits to hospital emergency departments and save \$1 billion per year in medical costs, including more than \$500 million in savings to publicly funded health insurance programs such as Medicare, Medicaid, and SCHIP. As baby boomers age, more and more elderly individuals will need support from family caregivers to lead healthy, independent lives. Paid sick time allows employees to take off work in order to care for an elderly family member, including taking the individual to a doctor's appointment or providing care during a health emergency.

Your Committee is further informed that providing paid sick time is good for a company's bottom line. Researchers estimate that the total cost of "presenteeism," where employees go to work sick and are less productive, is more than \$150 billion per year. Sick workers also spread disease to their co-workers. Paid sick time also results in reduced voluntary and involuntary turnover. It costs an employer 150% of a salaried employee's yearly salary to replace him or her. For an hourly employee, turnover costs the employer anywhere from 50% to 75% of the employee's annual pay. Since enacting a paid sick time law in 2007, San Francisco has performed better than surrounding counties in terms of total employment. Ensuring that all employers provide paid sick time, levels the playing field for employers who don't already provide this benefit and lets companies choose employees from a larger pool of people, allowing everyone to benefit.

Your Committee additionally notes that once paid sick time laws are enacted they are popular with both business and workers. For example, businesses in New York City look very positively on the law now that it has been in effect for several years. 86% of employers surveyed said they had a positive view of the law and a whopping 98% said they had seen no instances of abuse. Golden Gate Restaurant Association, in San Francisco, while originally an opponent, has since said the paid sick time law was successful and “the best public policy for the least cost,” also acknowledging that employees have not abused paid sick leave.

Your Committee is aware that since 2006, 40 jurisdictions, including 7 states, have enacted laws requiring employers to provide paid sick time to their employees. None of those jurisdictions have experienced negative economic consequences as a result of their paid sick time law. New York City showed steady job growth in the year after the law went into effect; San Francisco showed stronger job growth than in surrounding counties in the year after their law went into effect; Washington D.C. and Seattle saw no negative economic effects following implementation of their paid sick time law in either job loss or movement of businesses out of the city.

Your Committee further notes that Westchester County workers in service, transportation, and manufacturing occupations are less likely to have paid sick time. 54% in service occupations and 47% in transportation and manufacturing occupations do not have access to this benefit. This includes food service workers and home health aides, two groups which can very easily, and rapidly, spread disease.

As you know, this Honorable Board must comply with the requirements of the State Environmental Quality Review Act (“SEQRA”). Your Committee is advised that the Department of Planning has reviewed the applicable SEQRA regulations, and has concluded that this proposed Act\_\_\_\_\_. Your Committee concurs with that conclusion.

An affirmative vote of a majority of the voting strength of your Honorable Board is required for approval of this Act.

In light of the aforementioned, your Committee, after careful consideration, recommends the adoption of this local law.

Dated: \_\_\_\_\_, 2017

White Plains, New York

COMMITTEE ON

**RESOLUTION NO. \_\_\_\_ – 2017**

RESOLVED, that this Board hold a public hearing pursuant to Section 209.141(4) of the Laws of Westchester County on Local Law Intro. No. \_\_\_\_ - 2017, entitled “A LOCAL LAW amending the Laws of Westchester County by adopting a new Chapter 685 providing paid sick leave for certain employees.” The public hearing will be held at \_\_.m. on the \_\_\_\_\_ day of \_\_\_\_\_, 2017 in the Chambers of the Board of Legislators, 8th Floor, Michaelian Office Building, White Plains, New York. The Clerk of the Board shall cause notice of the time and date of such hearing to be published at least once in one or more newspapers published in the County of Westchester and selected by the Clerk of the Board for that purpose in the manner and time required by law.

A LOCAL LAW amending the Laws of Westchester County adding an Article III to Chapter 700 Human Rights providing paid sick leave for certain employees.

BE IT ENACTED by the County Board of the County of Westchester as follows:

Section 1. A new Article III is hereby added to Chapter 700 of the Laws of Westchester County to read as follows:

**Article III-PAID SICK LEAVE LAW**

**Sec. 700.36. Short Title.**

**Sec. 700.37. Definitions.**

**Sec. 700.38. Accrual of Earned Paid Sick Time.**

**Sec. 700.39. Use of Earned Paid Sick Time.**

**Sec. 700.40. Exercise of Rights Protected;**

**Retaliatory Personnel Actions Prohibited.**

**Sec. 700.41. Notice and Posting.**

**Sec. 700.42. Employer Records.**

**Sec. 700.43. Enforcement and Penalties.**

**Sec. 700.44. Civil Action.**

**Sec. 700.45. Confidentiality and Nondisclosure.**

**Sec. 700.46. Encouragement of More Generous Earned Paid Sick Leave Policies; No Effect on More Generous Policies or Laws.**

**Sec. 700.47. Other Legal Requirements.**

**Sec. 700.48. Public Education and Outreach.**

**Sec. 700.49. Collective Bargaining Agreement Opt Out.**

**Sec. 700.50. Severability.**

**Sec. 700.36. Short Title.**

This Chapter shall be known as and may be cited as the “Paid Sick Leave Law.”

## **Sec. 700.37. Definitions.**

For Purposes of this Chapter:

(1) "Child" shall mean, regardless of age, a biological, adopted or foster child, a legal ward, or a child of an employee standing in loco parentis.

(2) "Earned 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 685.31 of this Chapter, but in no case shall this hourly amount be less than that provided under section 652(1) of the labor law of New York.

(3) "Employee" shall mean any "employee" as defined in section 190(2) of the labor law of New York who is employed for hire within Westchester County for more than 80 hours in a calendar year who performs work on a full-time or part-time basis, including work performed in a transitional jobs program pursuant to section 336-f of the social services law of New York, but not including work performed as a participant in a work experience program pursuant to section 336-c of the social services law of New York.

(4) "Domestic partner" shall mean any "domestic partner" as defined under section 550.02(1) of the Laws of Westchester County or section 4 of the workers' compensation law of New York State.

(5) "Domestic worker" shall mean any "domestic worker" as defined in section 2(16) of the labor law of New York who is employed for hire within Westchester County for more than 80 hours in a calendar year who performs work on a full-time or part-time basis.

(6) "Employer" shall mean: (A) any "employer" as defined in section 190(3) of the labor law of New York; or (B) Westchester County. For the purposes of this Chapter, "employer" does not include any of the following:

(a) The United States Government;

(b) The State of New York including any office, department, independent agency, authority, institution, association, society or other body of the state, including the legislature and the judiciary; or

(c) With the exception of Westchester County, any local government, municipality, or county or any entity governed by general municipal law section 92 of New York or county law section 207 of New York.

In determining the number of employees performing work for an employer for compensation during a given week, 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 per week fluctuates, business size may be determined for the current calendar year based upon the average number of employees who worked for compensation per week during the preceding calendar year.

(7) "Family member" means: an employee's child, spouse, domestic partner, parent, sibling, grandchild or grandparent; the child or parent of an employee's spouse or domestic partner; any



other individual related by blood to the employee; or any other individual whose close association with the employee is the equivalent of a family relationship.

(8) "Health care professional" means any person licensed under Federal or State law to provide medical or emergency services, including but not limited to doctors, nurses, midwives and emergency room personnel.

(9) "Parent" shall mean a biological, foster, step- or adoptive parent, or a legal guardian of an employee, or a person who stood in loco parentis when the employee was a minor child.

(10) "Retaliatory personnel action" means denial of any right guaranteed under this Chapter or any threat, discharge, suspension, demotion, reduction of hours, reporting or threatening to report an employee's suspected citizenship or immigration status, or the suspected citizenship or immigration status of a family member of the employee to a federal, state or local agency, or any other adverse action against an employee for the exercise of any right guaranteed herein including any sanctions against an employee who is the recipient of public benefits for rights guaranteed under this Chapter. Retaliation shall also include interference with or punishment for in any manner participating in or assisting an investigation, proceeding or hearing under this Chapter.

(11) "Family offense matter" shall mean acts or threats of disorderly conduct, harassment in the first degree, harassment in the second degree, aggravated harassment in the second degree, sexual misconduct, forcible touching, sexual abuse in the third degree, sexual abuse in the second degree as set forth in subdivision 1 of section 130.60 of the penal law, stalking in the first degree, stalking in the second degree, stalking in the third degree, stalking in the fourth degree, criminal mischief, menacing in the second degree, menacing in the third degree, reckless endangerment, strangulation in the first degree, strangulation in the second degree, criminal obstruction of breathing or blood circulation, assault in the second degree, assault in the third degree, an attempted assault, identity theft in the first degree, identity theft in the second degree, identity theft in the third degree, grand larceny in the fourth degree, grand larceny in the third degree or coercion in the second degree as set forth in subdivisions 1, 2 and 3 of section 135.60 of the penal law between spouses or former spouses, or between parent and child or between members of the same family or household. For purposes of this subsection, "members of the same family or household" shall mean (i) persons related by consanguinity or affinity; (ii) persons legally married to or in a domestic partnership with one another; (iii) persons formerly married to or in a domestic partnership with one another regardless of whether they still reside in the same household; (iv) persons who have a child in common, regardless of whether such persons have been married or domestic partners or have lived together at any time; and (v) persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time.

(12) "Sexual offense" shall mean an act or threat of an act that may constitute a violation of article 130 of the penal law.

(13) "Stalking" shall mean an act or threat of an act that may constitute a violation of section 120.45, 120.50, 120.55, or 120.60 of the penal law.

(14) “Year” means a regular and consecutive 12-month period as determined by the employer; except that for the purposes of sections 685.61 and 685.71 of this Chapter , “year” shall mean a calendar year.

**Sec. 700.38. Accrual of Earned Paid Sick Time.**

(1) All employees shall accrue a minimum of one hour of earned paid sick time for every 30 hours worked, other than a domestic worker who shall accrue earned paid sick time pursuant to subdivision 4 of this section. Employees of an employer with 5 or more employees, and all domestic workers, shall be entitled to earn and use up to 40 hours of earned paid sick time in a year, unless the employer selects a higher limit. Employees of an employer with fewer than 5 employees, except for domestic workers, shall be entitled to earn and use up to 40 hours of unpaid, job-protected sick time a year, which shall be earned in the same manner as earned paid sick time in this section and available for all of the same purposes and under the same conditions are earned paid sick time in this Chapter. Nothing in this Chapter shall be construed to discourage or prohibit an employer from allowing the accrual of earned paid sick time at a faster rate or use of earned paid sick time at an earlier date than this Chapter requires.

(2) Employees who are exempt from overtime requirements under 29 U.S.C. § 213(a)(1) of the Federal Fair Labor Standards Act will be assumed to work 40 hours in each work week for purposes of earned paid sick time accrual unless their normal work week is less than 40 hours, in which case earned paid sick time accrues based upon that normal work week.

(3) For an employee other than a domestic worker, earned paid sick time as provided in this section shall begin to accrue at the commencement of employment or 90 days after this law goes into effect, whichever is later. An employer may provide all paid sick time that an employee is expected to accrue in a year at the beginning of the year.

(4) In addition to the paid day or days of rest to which a domestic worker is entitled pursuant to section 161(1) of the labor law of New York, such domestic worker shall also be entitled to two days of earned paid sick time as of the date that such domestic worker is entitled to such paid day or days of rest and annually thereafter, provided that notwithstanding any provision of this Act to the contrary, such two days of earned paid sick time shall be calculated in the same manner as the paid day or days of rest are calculated pursuant to the provisions of section 161(1) of the labor law of New York.

(5) An employee may use earned paid sick time as it is accrued, except that an employer may require an employee hired after the date this law goes into effect to wait until the 90th day after commencing employment before using accrued earned paid sick time, unless otherwise permitted by the employer.

(6) Earned paid sick time shall be carried over to the following year. Alternatively, in lieu of carryover of unused earned paid sick time from one year to the next, an employer may pay an employee for unused earned paid sick time at the end of a year and provide the employee with an amount of paid sick time that meets or exceeds the requirements of this Chapter that is available for the employee’s immediate use at the beginning of the subsequent year.

(7) Any employer with a paid leave policy, such as a paid time off policy, who makes available an amount of paid leave sufficient to meet the accrual requirements of this section that may be used for the same purposes and under the same conditions as earned paid sick time under this Chapter is not required to provide additional paid sick time.

(8) 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 earned paid sick time that has not been used.

(9) If an employee is transferred to a separate division, entity or location, but remains employed by the same employer, the employee is entitled to all earned paid sick time accrued at the prior division, entity or location and is entitled to use all earned paid sick time as provided in this section. When there is a separation from employment and the employee is rehired within 9 months of separation by the same employer, previously accrued earned paid sick time that had not been used shall be reinstated. Further, the employee shall be entitled to use accrued earned paid sick time and accrue additional earned paid sick time at the re-commencement of employment.

(10) 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 earned paid sick time they accrued when employed by the original employer, and are entitled to use earned paid sick time previously accrued.

(11) At its discretion, an employer may loan earned paid sick time to an employee in advance of accrual by such employee.

(12) The provisions of this chapter do not apply to: (A) work study programs under 42 U.S.C. section 2753; (B) employees for the hours worked and compensated by or through qualified scholarships as defined in 26 U.S.C. section 117; or (C) independent contractors who do not meet the definition of employee under section 190(2) of the labor law of New York.

### **Sec. 700.39. Use of Earned Paid Sick Time.**

(1) Earned 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; or in the case of a child, to attend a school meeting or a meeting at a place where the child is receiving care necessitated by the child's health condition, disability, or related to the child's or family member's needs as a victim of a family offense matter, sexual offense, or stalking;

(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 oneself or a family member when it has been determined by the health authorities having jurisdiction or by a health care provider that the employee's or family member's presence in the community may jeopardize the health of others because of his or her exposure to a communicable disease, whether or not the employee or family member has actually contracted the communicable disease; or

(D) Absence necessary due to an employee's or employee's family member's status as the victim of a family offense matter, sexual offense, or stalking, provided the leave is to allow the employee to obtain for the employee or the employee's family member:

(1) Medical attention needed to recover from physical or psychological injury or disability caused by a family offense matter, sexual offense, or stalking;

(2) Services from a victim services organization;

(3) Psychological or other counseling;

(4) Relocation or taking steps to secure an existing home due to a family offense matter, sexual offense, or stalking; or

(5) Legal services, including preparing for or participating in any civil or criminal legal proceeding related to or resulting from the family offense matter, sexual offense, or stalking.

(2) Earned paid sick time shall be provided upon the request of an employee. Such request may be made orally, in writing, by electronic means or by any other means acceptable to the employer. When possible, the request shall include the expected duration of the absence.

(3) When the use of earned paid sick time is foreseeable, the employee shall make a good faith effort to provide notice of the need for such time to the employer in advance of the use of the earned paid sick time and shall make a reasonable effort to schedule the use of earned paid sick time in a manner that does not unduly disrupt the operations of the employer.

(4) An employer that requires notice of the need to use earned paid sick time where the need is not foreseeable shall provide a written policy that contains procedures for the employee to provide notice. An employer that has not provided to the employee a copy of its written policy for providing such notice shall not deny earned paid sick time to the employee based on non-compliance with such a policy.

(5) An employer may not require, as a condition of an employee's taking earned paid sick time, that the employee search for or find a replacement worker to cover the hours during which the employee is using earned paid sick time.

(6) Earned paid 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, provided that an employee must not be required to take earned paid sick time in an increment of more than 4 hours.

(7) For earned paid sick time of more than 3 consecutive work days, an employer may require reasonable documentation that the earned paid sick time has been used for a purpose covered by subsection (1). Documentation signed by a health care professional indicating that earned paid sick time is necessary shall be considered reasonable documentation for purposes of this section. In cases where an employee or employee's family member is a victim of a family offense matter, sexual offense, or stalking, one of the following types of documentation selected by the employee shall be considered reasonable documentation: (A) a police report indicating that the employee or employee's family member was a victim of a family offense matter, sexual offense, or stalking; (B) a court order protecting the employee or employee's family member from the perpetrator of a family offense matter, sexual offense, or stalking or other evidence from the court or prosecuting attorney that the employee or employee's family member has appeared in court; (C) documentation from a medical professional, domestic violence advocate, health care

provider, a member of the clergy or counselor that the employee or employee's family member was undergoing treatment for, or seeking assistance to address, physical or mental injuries or abuse resulting from a family offense matter, sexual offense, or stalking; or (D) an employee's written statement affirming the employee's or employee's family member's status as the victim of a family offense matter, sexual offense, or stalking, and that the leave was taken for one of the purposes of subdivision (1)(D) of this section. The employee's written statement, by itself, is reasonable documentation for absences under this paragraph. The written statement does not need to be in an affidavit format or notarized, but shall be legible if handwritten and shall reasonably make clear the employee's identity, and if applicable, the employee's relationship to the family member. An employer may not require that the documentation explain the nature of the illness or the details of the family offense matter, sexual offense, or stalking.

#### **Sec. 700.40. Exercise of Rights Protected; Retaliatory Personnel Actions Prohibited.**

(1) It shall be unlawful for an employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this Chapter.

(2) An employer shall not take retaliatory personnel action or discriminate against an employee or former employee because the person has exercised rights protected under this Chapter. Such rights include but are not limited to the right to request or use earned paid sick time pursuant to this Chapter; the right to file a complaint with a court or inform any person about any employer's alleged violation of this Chapter; and the right to inform any person of his or her potential rights under this Chapter.

(3) It shall be unlawful for an employer's absence control policy to count earned paid sick time taken under this Chapter as an absence that may lead to or result in discipline, discharge, demotion, suspension, or any other adverse action.

(4) Protections of this section shall apply to any person who mistakenly but in good faith alleges violations of this Chapter.

(5) There shall be a rebuttable presumption of unlawful retaliatory personnel action under this section whenever an employer takes adverse action against a person within 90 days of when that person: (A) files a complaint with a court alleging a violation of any provision of this Chapter; (B) informs any person about an employer's alleged violation of this Chapter; (C) opposes any policy, practice, or act that is unlawful under this Chapter; or (D) informs any person of his or her rights under this Chapter.

(6) The protections of this section shall apply equally to employees who are entitled to earn and use unpaid, job-protected sick time under (1) of Section 685.21.

#### **Sec. 700.41. Notice and Posting.**

(1) Employers shall give employees written notice of the following at the commencement of employment or by 90 days after the law's effective date, whichever is later: employees are entitled to earned paid sick time and the amount of earned paid sick time, the terms of its use guaranteed under this Chapter, that retaliatory personnel action against employees who request or use earned paid sick time is prohibited, and that each employee has the right to bring a civil

action if earned paid sick time as required by this Chapter is denied by the employer or the employee is subjected to retaliatory personnel action for requesting or taking earned paid sick time.

(2) The notice required in (1) shall be in English, and the primary language spoken by that employee, provided that such notice has been provided by the County of Westchester.

(3) Employers shall display a poster that contains the information required in (1) in a conspicuous and accessible place in each establishment where such employees are employed. The poster displayed shall be in English, Chinese, French-Creole, Italian, Korean, Russian, Spanish, and any language deemed appropriate by the County of Westchester, provided that such poster has been provided by the County of Westchester.

(4) The County of Westchester shall create and make available to employers, in English, Chinese, French-Creole, Italian, Korean, Russian, Spanish, and any language deemed appropriate by the County of Westchester, model notices and posters that contain the information required under (1) for employers' use in complying with (1) and (3).

(5) An employer who willfully violates the notice and posting requirements of this section shall be subject to a civil fine in an amount not to exceed \$500 for each separate offense.

#### **Sec. 700.42. Employer Records.**

Employers shall retain records documenting hours worked by employees and earned paid sick time taken by employees, for a period of three years. When an issue arises as to an employee's entitlement to earned paid sick time under this section, if the employer does not maintain or retain adequate records documenting hours worked by the employee and earned paid sick time taken by the employee, it shall be presumed that the employer has violated the Chapter, absent clear and convincing evidence otherwise.

#### **Sec. 700.43. Enforcement and Penalties; procedure.**

a. The Commission shall enforce the provisions of this Article using multiple means of communication to receive complaints regarding non-compliance with this Article and investigate complaints received by the commission in a timely manner.

b. Except as otherwise provided in this Article, any person alleging a violation of this Article shall have the right within one year from the occurrence of the alleged violation, personally or by an attorney at law, to make, sign and file with the commission a verified complaint in writing which shall set forth the name and address of the person or entity alleged to have committed the violation of this Article complained of, the particulars thereof, and such other information as may be required by the commission. The complainant may utilize the services of the County Clerk's Office in order to have his or her signature notarized on any documents required in connection with the filing of a complaint for the purposes of this section. The commission shall promulgate and make available appropriate forms of complaints.

c. A complainant may withdraw a complaint at any time prior to the written response by the respondent to the complaint. Subsequent to the service of an answer by the respondent, the

complainant may withdraw a complaint, provided, however, that, upon application by the respondent, the commission may preclude the complainant from subsequently filing any complaint with the commission based upon the same transactions or occurrences or series of transactions or occurrences as the complaint which was withdrawn.

d. The Executive Director of the commission may initiate a complaint alleging that a respondent has engaged in a pattern or series of violations as set forth in this Article affecting more than one person. Such complaint shall be signed and verified by the Executive Director and shall set forth the name and address of the person or entity alleged to have committed violations of this Article, the violations complained of and the particulars thereof, together with such other information as may be required by the commission. In any complaint initiated by the Executive Director, the relief awarded by the commission in the event of a finding that the respondent has committed violations of this Article complained of shall be limited to the relief authorized in paragraph h. of this section. The Executive Director may withdraw a complaint at any time prior to the service of an answer by the respondent, provided, however, that, upon application by the respondent, the commission may preclude the Executive Director from subsequently filing any complaint based upon the same transactions or occurrences or series of transactions or occurrences as the complaint which was withdrawn. The Executive Director shall serve notice of such withdrawal by mail upon persons aggrieved by the unlawful discriminatory practices complained of, to the extent that such persons are identified. If not otherwise precluded from doing so by the commission pursuant to paragraph b. of this section, such persons shall be permitted to file a complaint pursuant to paragraph a. of this section based upon the same transactions or occurrences or series of transactions or occurrences as the complaint which was withdrawn by the Executive Director. Such persons may file a complaint within the time period provided for in paragraph b or within 30 days of the service of withdrawal notice by the Executive Director, whichever is greater.

e. Within 30 days after the filing of any complaint, the commission shall serve a copy thereof by mail upon the respondent and all persons it deems to be necessary parties. Within 30 days of written notification of a complaint by the commission, the person or entity identified in the complaint shall provide the department with a written response and such further information related to the complaint as the commission may request. Within 60 days after a complaint is filed, the commission shall conduct an investigation of such complaint to determine whether a violation of this Article has occurred. If the commission determines that reasonable grounds exist to believe that a violation has occurred, it shall issue to the offending party or entity, within 180 days of the filing of the complaint, a Notice of Violation. The commission shall prescribe the form and wording of such Notice of Violation. If it finds with respect to any respondent that that there is no reasonable grounds exist to believe that a violation of this Article has occurred, the commission shall issue an order dismissing the complaint as to such respondent, which order shall be served by mail upon all necessary parties to the proceeding.

f. The commission may, at any time after the filing of the complaint, endeavor to eliminate any alleged violation of this Article by any method of dispute resolution prescribed by rule of the commission including, but not limited to, mediation and conciliation. The commission may enter into an agreement with any respondent resolving the complaint by agreement ("conciliation agreement"). Such conciliation agreement may include provisions requiring the respondent to

refrain from violating any of the provisions of this Article in the future and may contain such further provisions as may be agreed upon by the commission and the respondent. Prior to entering into a conciliation agreement, the commission shall provide a copy thereof to the complainant by mail. If the complainant agrees to the terms of the agreement or fails to object to such terms within 15 days after it was mailed to the complainant, the commission may proceed to enter into the agreement. If the complainant desires to object to the agreement he or she shall specify such objections in writing and file same with the commission within 15 days after the proposed agreement was mailed to the complainant. Upon review of such objections, the commission may make such order as it, in its sole discretion, may find to be just and proper, including (a) an order approving the conciliation agreement; (b) an order dismissing the complaint; and (c) an order scheduling a hearing on the complaint. Any statement made by any complainant or by any respondent during any alternate dispute resolution process conducted by, or on behalf of, the commission shall be not be admitted into evidence during any hearing or proceeding before the commission, unless the party making the statement affirmatively authorizes, in writing, the admission of the statement. The failure or refusal of any party to participate in the alternate dispute resolution process, or the failure or refusal of any party to accept a recommendation by any mediator as to the resolution of the matter, shall not be admissible in any hearing or proceeding before the commission.

g. Where the commission has found that reasonable grounds exist to believe that a violation of this Article has occurred and has issued a Notice of Violation to the respondent and if alternative dispute resolution pursuant to paragraph e. above is either not initiated or does not resolve the complaint, the commission shall issue and cause to be issued and served a written notice requiring the respondent to appear at a public hearing upon reasonable notice at a time and place to be fixed by the commission and specified in the notice. If the respondent fails to appear for the hearing, the commission may enter the default and the hearing shall proceed on the evidence in support of the complaint. Such default may be set aside for good cause shown upon such terms and conditions as may be just.

h. A respondent may appear at such public hearing in person or otherwise, with or without counsel, cross examine witnesses and the complainant and submit testimony. Attempts at conciliation, or statements made during such attempts, shall not be received in evidence. The complainant and all parties shall be allowed to present testimony in person or by counsel and cross examine witnesses. Subpoenas shall be issued in the manner provided for in the civil practice law and rules to compel the attendance of witnesses or to require the production of any relevant evidence before the commission. The testimony taken at the hearing shall be under oath and a record made. Hearings may be conducted directly before the commission or the commission may refer the hearing to an administrative law judge to conduct the hearing and render a written report, containing recommendations as to findings and, if appropriate, relief, to the commission. To the extent practicable, administrative law judges should be attorneys-at-law admitted to practice law in the State of New York. At the conclusion of the hearing, or as soon thereafter as may be practicable, the commission shall issue its determination, stating its findings of fact.



i. In the event that the commission shall, after a hearing, determine that a respondent has committed a violation of this Article, it shall issue an order containing such of the following provisions as may, in the judgment of the commission, effectuate the purposes of this Article:

1. Requiring the payment of three times the wages that should have been paid under this Article or two hundred fifty dollars, whichever is greater for each instance of sick time taken by an employee but unlawfully not compensated by the employer;
2. Requiring the payment of five hundred dollars for each instance of sick time requested by an employee but unlawfully denied by the employer and not taken by the employee or unlawfully conditioned upon searching for or finding a replacement worker;
3. Awarding full compensation including wages and benefits lost and the payment of five hundred dollars and equitable relief as appropriate for each instance of unlawful retaliation not including discharge from employment;
4. Awarding full compensation including wages and benefits lost, payment of two thousand five hundred dollars and equitable relief, including reinstatement, as appropriate for each instance of unlawful discharge from employment;

j. Any entity or person found to be in violation of the sections 700.38, 700.39 and 700.40 of this Article shall be liable for a civil penalty payable to the County not to exceed five hundred dollars for the first violation and, for subsequent violations that occur within two years of any previous violation, not to exceed seven hundred and fifty dollars for the second violation and not to exceed one thousand dollars for each succeeding violation.

k. The commission shall establish rules of practice or procedure to govern, expedite and effectuate the foregoing procedure and its own actions thereunder, provided that such rules are not inconsistent with the provisions hereof.

l. The commission shall not have jurisdiction to entertain or initiate a complaint where:

1. The complainant or party aggrieved has initiated a civil action in any court based upon the same transaction or occurrence or series of transactions or occurrences which are the subject of the complaint filed or sought to be filed with the commission, unless such civil action has been voluntarily discontinued or withdrawn by the complainant;
2. The complainant or party aggrieved has filed a complaint, action or proceeding with any administrative agency of the State or the County of Westchester, based upon the same transaction or occurrence or series of transactions or occurrences which are the subject of the complaint filed or sought to be filed with the commission;

m. Any complainant, respondent or other person aggrieved by an order of the commission which is an order after a hearing, a an order imposing penalties, an order dismissing a complaint, or by an order of the commission which makes a final disposition of a complaint may obtain judicial review thereof under Article 78 of the Civil Practice Law and Rules, and the commission may obtain an order of court for its enforcement and for the enforcement of any other order of the commission, in a proceeding as provided in this section. Such proceeding shall be brought in the New York State Supreme Court, Westchester County, or in such other County wherein any person required in the order to take affirmative action resides or transacts business. Such proceeding shall be initiated by the filing of a notice of petition and petition in such court. Thereafter, at a time and in a manner to be specified by the court, the commission shall file with

the court a written transcript of the record of all prior proceedings. Upon the filing of a notice of petition and petition, the court shall have jurisdiction of the proceeding and of the questions determined therein.

**Sec. 700.44. Civil Action.**

(1) Any person who claims to have been aggrieved by a violation of this Chapter may commence a civil action in the appropriate court of jurisdiction not later than one (1) year after the occurrence or the termination of an alleged violation, whichever occurs last, to obtain appropriate relief with respect to such unlawful violation.

(2) In a civil action under this section, if the court finds an unlawful violation has occurred, the court may grant as relief, as it deems appropriate, any permanent or temporary injunction, the full amount of any unpaid earned sick time plus any actual damages suffered as the result of the employer's violation of this Chapter, liquidated damages, reasonable attorney's fees, and other legal or equitable relief as may be appropriate to remedy the violation, including, without limitation, reinstatement to employment and back pay.

**Sec. 700.45. Confidentiality and Nondisclosure.**

An employer may not require the disclosure of details relating to an employee's or his or her family member's medical condition or require the disclosure of details relating to an employee's or his or her family member's status as a victim of family offenses, sexual offenses or stalking as a condition of providing safe/sick time under this chapter. Health information about an employee or an employee's family member, and information concerning an employee's or his or her family member's status or perceived status as a victim of family offenses, sexual offenses or stalking obtained solely for the purposes of utilizing safe/sick time pursuant to this chapter, shall be treated as confidential and shall not be disclosed except by the affected employee, with the written permission of the affected employee or as required by law, unless otherwise required by law. Provided, however, that nothing in this section shall preclude an employer from considering information provided in connection with a request for safe leave in connection with a request for reasonable accommodation pursuant to Section 700.03(8) of the Laws of Westchester County.

Unless as otherwise required by law, any health or safety information possessed by an employer regarding an employee or employee's family member must:

\_\_\_\_\_ (1) be maintained on a separate form and in a separate file from other personnel information;

\_\_\_\_\_ (2) be treated as confidential medical records; and

\_\_\_\_\_ (3) not be disclosed except to the affected employee or with the express written permission of the affected employee.

**Sec. 700.46. Encouragement of More Generous Earned Paid Sick Leave Policies;  
No Effect on More Generous Policies or Laws.**

(1) Nothing in this Chapter shall be construed to discourage or prohibit an employer from the adoption or retention of an earned paid sick time policy more generous than the one required herein.

(2) Nothing in this Chapter 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. Nothing in this Chapter 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 New York State or Westchester County pertaining to public employees.

**Sec. 700.47. Other Legal Requirements.**

This Chapter provides minimum requirements pertaining to earned 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 earned paid sick time or that extends other protections to employees. In addition, nothing in this Chapter shall be construed to prevent, interfere or conflict with any rights of an employee under the New York Disability Benefits Law and Paid Family Leave Benefits Law, N.Y. Workers' Comp. Law § 200 et seq.

**Sec. 700.48. Public Education and Outreach.**

The County of Westchester shall develop and implement a multilingual outreach program to inform employees, parents and persons who are under the care of a health care provider about the availability of earned paid sick time under this Chapter. This program shall include the distribution of notices and other written materials in English and Spanish and any language deemed appropriate by the County to child care and elder care providers, domestic violence shelters, schools, hospitals, community health centers and other health care providers in Westchester County.

**Sec. 700.49. Collective Bargaining Agreement Opt Out.**

a. The provisions of this chapter shall not apply to any employee covered by a valid collective bargaining agreement if (i) such provisions are expressly waived in such collective bargaining agreement and (ii) such agreement provides for a comparable benefit for the employees covered by such agreement in the form of paid days off; such paid days off shall be in the form of leave, compensation, other employee benefits, or some combination thereof. Comparable benefits shall include, but are not limited to, vacation time, personal time, sick time, and holiday and Sunday time pay at premium rates.

b. Notwithstanding subdivision a of this section, the provisions of this chapter shall not apply to any employee in the construction or grocery industry covered by a valid collective bargaining agreement if such provisions are expressly waived in such collective bargaining agreement.

**Sec. 700.50. Severability.**

If any provision of this Chapter or application thereof to any person or circumstance is judged invalid, the invalidity shall not affect other provisions or applications of the Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are declared severable.

§2. This Local Law shall take effect 90 days after its adoption. In the case of employees covered by a collective bargaining agreement in effect on the effective date prescribed herein, this Local Law shall apply beginning on the stated expiration date in the collective bargaining agreement.