

**THE CITY OF SAN DIEGO  
OFFICE OF THE CITY TREASURER  
MINIMUM WAGE PROGRAM**

**METHODOLOGY TO PROVIDE EQUITABLE RELIEF TO EMPLOYEES NOT  
PROVIDED EARNED SICK LEAVE**

REFERENCE: San Diego Municipal Code (SDMC) Chapter 3, Article 9, Division 1

AUTHORITY: SDMC § 39.0113(a)

**PURPOSE:**

The purpose of this regulation is to outline the procedure for calculating damages due to Employees working in the City of San Diego when an *Employer* is found to have not complied with the *Earned Sick Leave* (accrual and use) provisions of the City's *Earned Sick Leave* and *Minimum Wage Ordinance* ("Ordinance").

**BACKGROUND:**

On June 7, 2016, San Diego voters approved the Ordinance which ensured that "Employees who work in the City of San Diego receive a livable minimum wage and the right to take earned, paid sick leave to ensure a decent and healthy life for themselves and their families." The Ordinance requires that *Employers* must provide *Employees Earned Sick Leave* at an accrual rate of one (1) hour of *Earned Sick Leave* for every thirty (30) hours worked by the *Employee* within the geographic boundaries of the City of San Diego. Alternatively, *Employers* may satisfy the accrual provision of the Ordinance if the *Employer* provides an *Employee* no less than 40 hours of *Earned Sick Leave* at the beginning of each *Benefit Year*.

Under SDMC § 39.0113(a), the *Enforcement Office* is authorized to promulgate and issue administrative regulations to establish and adjudicate complaints and to order relief in cases of violations. This administrative regulation is intended to establish a process to determine damages due to an *Employee* when an *Employer* does not provide *Earned Sick Leave* or institutes a practice whereby *Employees* are not allowed to take *Earned Sick Leave* in accordance with the Ordinance.

**REGULATION:**

When an *Employer* has not complied with the *Earned Sick Leave* provisions of the Ordinance, the *Enforcement Office* will calculate the dollar amount of *Earned Sick Leave* owed to affected *Employees* in one of the following ways:

- a) The *Enforcement Office* will presume that each *Employee* would have used the *Earned Sick Leave* equivalent to the national average of "frequency of work-loss days" for adults aged 18-55, as published by the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention (CDC). When calculating back wages and penalties due, the *Enforcement Office* will subtract any *Earned Sick Leave* the *Employer* has paid the *Employee* from the CDC's national average for "work-loss days".
- b) The *Enforcement Office* may consider evidence from the *Employee* related to the number of days the *Employee* missed work and/or would have

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missed work which would have entitled the *Employee* to use more *Earned Sick Leave* than the CDC's national average.

In addition to wages owed for *Earned Sick Leave* violations, each affected *Employee* will receive access to accrued *Earned Sick Leave* hours, as assessed by the *Enforcement Office*.

If payroll records exist, the *Enforcement Office* will calculate the *Earned Sick Leave* hours that would have accrued for each year of noncompliance. The *Enforcement Office* will subtract the number of hours paid out to the *Employee* (either for usage of sick leave or as back wages resulting from a violation) from the accrual and restore the remaining balance of *Earned Sick Leave* hours that each *Employee* should have accrued, minus carryover restrictions; or

If payroll records do not exist, the *Employer* shall restore the maximum amount of *Earned Sick Leave* hours that the *Employee* could have accrued, less the number of hours paid out in back wages because of a violation, for the period of noncompliance, minus carryover restrictions.

**EFFECTIVE DATE**

These rules shall take effect beginning May 2019.