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.