Research Protocol for CityHealth: Earned Sick Leave Laws

Prepared by Center for Public Health Law Research

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CITYHEALTH: EARNED SICK LEAVE LAWS
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Research Protocol

I.   **Dates of Protocol:** June 10, 2016; October 17, 2016; February 3, 2017; January 31, 2018; September 18, 2019; October 4, 2019; October 30, 2019; December 2, 2020

II.   **Scope:** Compile statutes and ordinances on earned sick leave laws across the 40 largest cities, their respective counties, 25 states and the District of Columbia. The purpose of the CityHealth project is to collect important public health policies and determine what makes a healthy city. For a particular health policy, the goal is to display the state, county, and city law involved in shaping this policy at the city level. This dataset contains coding questions examining earned sick leave laws. These laws require private sector employees to provide earned sick leave to their employees. This is a cross-sectional dataset originally capturing effective law valid through October 1, 2016 and crediting laws passed prior to final publication with future effective dates. It has since been updated and is now valid through March 1, 2020.

III. **Primary Data Collection**

   a.   **Original project dates:** June 1, 2016 – September 1, 2015

   b.   **Original dates covered in the dataset**: July 1, 2005 – August 1, 2015

   c.   **Data collection methods**: The team building this dataset consisted of three team members: two legal researchers ("Researchers") and one supervisor ("Supervisor") overseeing the quality control process.

   d.   **Databases used**: Searches conducted using Westlaw Next and HeinOnline; the laws were then collected from state-specific legislature websites. County and city laws were collected from official government websites, municode.com and amlegal.com.

   e.   **Search terms**: paid sick leave, sick leave, sick time, paid leave, medical leave, family and medical leave, paid sick leave preemption, sick leave preemption, earned sick leave

      i.   Key word searches were supplemented by examination of the table of contents of each relevant section of the law identified.

ii. Once all the relevant laws were identified in each jurisdiction, a master sheet was created for each jurisdiction that summarized the relevant laws within the scope at each jurisdictional level. This summary included the statutory history for each law and the effective date for that version of the law.

f. **Information about initial returns and additional inclusion or exclusion criteria**:

i. Earned sick leave laws are defined as laws requiring employers to provide paid time off from work to workers so that they can stay at home to address their health needs without losing pay. The laws will vary on the type of employer who is required by law to provide earned sick leave, usually depending upon the size of the business. Laws will also vary on the type of employees who are allowed to receive paid sick time, as well as the maximum amount they can accrue in a given year. For the purposes of our dataset, we looked at comprehensive earned sick leave laws that applied for regular, full-time employees only.

ii. The team clarified the scope to strictly include only earned sick leave laws that require private sector employers to provide sick leave to their employees at the state, county, or city level. Therefore, the team excluded laws on paid family leave administered through disability programs and parental leave. The Researchers checked these areas of the laws to ensure that they did not contain any information on paid sick leave.

iii. Similarly, the team did not include earned sick leave laws that only applied to a very small and specialized group of workers and instead coded for comprehensive earned sick leave laws. For example, there is a earned sick leave law in Long Beach, California that only covers hotel workers. Because this law does not apply to all private employers within the city of Long Beach, it, and similar specialized laws, were excluded from the scope of this project.

iv. Laws on unpaid sick leave were excluded and their maximum accrual rates were not included.

v. Some county and city codes contain sections on "sick leave" that apply only civil service employees of that city or county. Many of these laws exist outside the county and city code and in a municipal employee handbook or human resources manual. Because these laws did not apply to private employers, they were excluded from our dataset. Additionally, we did not include laws regarding requirements for private

employers contracting with the city, state, or federal government.

g. **Inclusion or exclusion criteria by question**

i. **For the question, *"What types of workers are explicitly exempt from earned sick leave?"***

The Researchers, in consultation with the content expert and the clients, focused on distinct categories of workers that are the most common exemptions. If a law included an exemption for a category of worker specific to the state, the Researchers caution noted the unique exemption while coding.

After initial coding, the Researchers met with the content expert to further develop these distinct answer choices to specifically capture the exemptions that are most prevalent in debates about earned sick leave laws. For example, several recent earned sick leave laws in New Jersey cities do not exempt all employees covered by a collective bargaining agreement, but they do specifically exempt construction workers covered by a collective bargaining agreement. Therefore, the team added the answer choice "construction workers" to capture any law that specifically exempts construction workers covered by a collective bargaining agreement.

ii. **For the question, *"Family members that employees can use earned sick time for"***

"Domestic partner" should only be coded when that term is explicitly stated in the law. It should not be coded when the word "spouse" since "domestic partner" is a separate status distinction under the law.

During the 2020 assessment, the coding rule was implemented to code "domestic partner" when the law defines a family member as a person related by "civil union."

For laws that cover "all persons related by blood or affinity" (or other substantially similar language), all family member choices should be coded.

iii. **For the question, *"What remedies are available to the employee?"***

The Researchers coded this question with the understanding that the "return of withheld sick leave" would mean that the

employee gets back their allotted sick time and "back pay" would mean the employee gets lost wages back, including after they leave the job. "Damages" includes any damages provided by the statute, including, but not limited to, liquidated damages, compensatory damages, and punitive damages.

iv. **For the question, *"Does the state explicitly preempt localities from passing earned sick leave laws?"***

The term "localities" includes both cities and counties.

IV. Coding

a. **Development of coding scheme**: The Researchers and Supervisor drafted coding questions. The team then reached out to a earned sick leave content expert, Sherry Leiwant, Co-President and Co-Founder of A Better Balance: The Work & Family Legal Center for her input on the questions. The team made the suggested edits to the question set and circulated it for review by the clients until all parties felt they had been sufficiently refined. Once the coding questions were finalized, they were entered into the Workbench. The team developed a coding scheme that both allows state, county, and city laws to be tracked individually and reflects the applicable law at the city level. This was achieved by coding state, county, and city laws independently, and then coding a final set of questions when all three sets of laws apply.

The team originally included questions on the accrual rates and caps on earned sick leave accrual under the earned sick leave laws. This presented an issue for the coding scheme because each state and city with an earned sick leave law had different accrual rates and caps for different sized companies. Furthermore, there was no uniformity among these states and cities in how they grouped and defined these differently sized companies. After discussing with the client, the team decided that the overall value of including such specific information did not warrant attempting to restructure the coding scheme to capture easily accessible information. Therefore, questions on accrual rates and caps were omitted.

b. **Coding methods:** The Researchers were responsible for coding 20 cities each, including the respective state and county laws. Both Researchers independently coded their assigned jurisdictions. After coding their first five jurisdictions each, the Researchers 100% redundantly coded the first 10 cities to evaluate the questions and responses. If this yields a divergence rate below 5%, the Researchers will go on to redundantly code 20% of the remaining records.
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c. **Quality control:** The Supervisor oversaw the quality of the data by downloading the data from the MonQcle into Microsoft Excel and

reviewing it in order to find caution flags, missing answer choices, and errors in the coding. An original coding review sheet was sent to the Researchers for their review. Issues in the coding were discussed by the Researchers in coding meetings and resolved accordingly.

    i. The Supervisor reviewed the redundant coding by downloading the data from the MonQcle into Microsoft Excel and comparing the records, variable by variable, looking for divergences. When a divergence was identified, it was discussed with the researchers. The reason for the divergence was identified and resolved. A measure of divergence was calculated by the Researcher and the redundant record was deleted.

        1. The initial rate of divergence on August 7, 2015 was 4.42%. Because this stage yielded a divergence rate of below 5%, the Researchers continued to code 20% of the total number of remaining records. The overall rate of divergence for the remaining records was 2.43%.

    ii. Once all of these issues were resolved, the entries were re-coded accordingly. The Supervisor then did a final check of the original coding for all states and ensured that the state coding was consistent for the Arizona, California, Tennessee, and Texas entries since these states had multiple cities included in this dataset.

        1. A naïve coder was brought on towards the end of the coding process. When a divergence was identified, it was discussed with the Researchers and the naïve coder. The reason for the divergence was identified and resolved. A measure of divergence was calculated by the Researcher and the naïve coding record was deleted. There were no changes to the coding scheme in response to the naïve coding divergences.

            a. The rate of divergence on August 18, 2015 was 2.65%.

V.   October 2016 Update

    a. **Data collection methods:** One Researcher conducted research to determine if any states had enacted relevant legislation effective through October 1, 2016, and to identify pending legislation that may be close to passage. The Researcher used the same search terms stated above. The team also met with the client to discuss important features

of earned sick leave laws. The client wanted a way to capture the maximum accrual rate for earned sick leave in the different cities, keeping in mind that cities will vary in what they require employers to offer based on the size of the company. We therefore added the following questions and re-coded each city:

    i. "What is the minimum number of people a company must employ to be covered by the earned sick leave law?"

    ii. "What is the smallest cap on the number of earned sick hours permitted to be accrued for any size of business?"

These specific questions were redundantly coded for each city and there was a 0% divergence rate.

b. **Coding updated findings:** The Researcher found that state laws were amended in the following states: Arizona, Indiana, Wisconsin, North Carolina, Tennessee, and Oregon. He also found that city laws were amended in San Diego, Los Angeles, and Seattle. Additionally, one California law that only applied to San Francisco was amended, so the San Francisco entry was updated as well.

c. **Quality control:** The Supervisor originally assigned three states for redundant coding. The initial rate of divergence was 9.8%, so the team met to discuss the issues and better define the coding scheme. The Supervisor assigned another three records for redundant coding and the divergence rate dropped to 0%. The team discussed whether caution notes should be added to a few cities to further explain nuances to their laws. The team decided to caution note cities with future laws effective in 2017, like Chicago.

VI.   **February 2017 Update**

a. **Data collection methods:** Prior to publication, the Cityhealth group requested that we pull, code, and give credit to cities who have passed earned sick leave laws in 2016 even if their effective date extended beyond the present date. The reasoning was to give cities credit for taking action on earned sick leave laws. After receiving notifications of passed but not yet effective laws from the Cityhealth group, one Researcher located, entered, and coded the passed law. The Supervisor kept note of the cities credited for laws passed in 2016 but not yet effective so that the Researchers can do on-going checks in case anything in the text of the law changes between now and the actual effective date. Although the rest of the dataset remains valid through October 1, 2016, these future laws are entered by their effective date but scored due to their 2016 passage.

b. **Coding updated findings:** The Researcher found that Chicago and Cook County passed earned sick leave laws in 2016. The state of Arizona passed an earned sick leave law, affecting the Mesa, Phoenix, and Tucson entries. The state of Washington passed an earned sick leave law providing more coverage to employees in the city of Seattle. Both the Chicago and Arizona laws were passed alongside Minimum Wage increases. Even though the Minimum Wage increases became effective on January 1, 2017, the earned sick leave provisions for each law are seemingly not effective until July 2017. The Washington law is not effective until January 2018.

c. **Quality control:** The Supervisor originally assigned all new records for redundant coding. The rate of divergence was 5%. The team met to discuss the coding issues and resolved the divergences as needed. The Supervisor also reviewed each individual entry and compared the findings to secondary sources.

VII.   December 2017 Update

a. **Data collection methods:** The Researchers conducted a review of each city that included searching for amendments to laws that were previously collected, new policies within scope, and for any new earned sick leave laws that had been enacted since the February 2017 update. Amendments were updated through an effective date of December 1, 2017, while newly enacted earned sick leave laws were added regardless of effective date. The Researchers searched for earned sick leave laws with WestlawNext, Google, city ordinance databases, and city websites.

b. **Coding updated findings:** In addition to researching each city for newly amended laws, additional laws, and newly enacted laws, coders also made note of any potential coding inconsistencies. Atlanta, Baltimore, Charlotte, Memphis, Mesa, Nashville, New York City, Portland, San Francisco, Seattle, and Washington, D.C. had updates. Washington State added a earned sick leave law effecting Seattle effective January 1, 2018. Missouri enacted a law effective August 28, 2017, that preempts Kansas City from regulating earned sick leave. Maryland enacted a earned sick leave law effective February 11, 2018 that applies to Baltimore. Austin added a earned sick leave law on February 16, 2018, effective October 1, 2018.

c. **Quality control:** The Supervisor originally assigned all new and updated records for redundant coding. The rate of divergence was 2.68%. The team met to discuss the coding issues and resolved the divergences as needed. The team clarified a coding rule for question the question asking which family members that employees can use earned sick leave time for. After discussing during a redundant coding review meeting, we decided that domestic partner should only be coded

when domestic partner is expressly noted, and that spouse is not sufficient language to code domestic partner. After adding the new Austin law, we decided that laws covering time off to care for "persons related by blood or affinity" were intentionally drafted to be broad and all-encompassing, so we coded all family member choices.

The Supervisor also reviewed each individual entry and compared the findings to secondary sources. This dataset is now valid through December 1, 2017.

VIII.   August 2019 Update

   a. **Data collection methods:** The Researchers conducted a review of each city that included searching for amendments to laws that were previously collected, new policies within scope, and for any new earned sick leave laws that had been enacted since the December 2017 update. Amendments were updated through an effective date of August 1, 2019, while newly enacted earned sick leave laws passed prior to publication were added regardless of effective date. The Researchers searched for earned sick leave laws with WestlawNext, Google, city ordinance databases, and city websites.

   b. **Coding updated findings:** In addition to researching each city for newly amended laws, additional laws, and newly enacted laws, coders also made note of any potential coding inconsistencies. Seventeen cities had updates this cycle, with Dallas, Detroit, Las Vegas, and San Antonio each having substantive updates that impacted their final medal standing. In both Detroit and Las Vegas, the state passed an earned sick leave law that covered business sizes of 50 or more. While Austin earned a gold medal for its Earned Sick Leave law, there are several active court cases and one ruling blocking its implementation and postponing its effective date. We decided to retain the gold medal coding this year as the law did in fact pass. For Albuquerque, Bernalillo County did add an Earned Sick Leave law, but it only applies to unincorporated areas.

   c. **Quality control:** The Supervisor originally assigned all substantively amended records for coding, along with an additional group of records to check older coding, leading to a total of six records redundantly coded. The rate of divergence was 1.28%. The team met to discuss the coding issues and resolved the divergences. The divergences during this round was due to an older version of the new San Antonio ordinance, which at first did not apply to all business sizes until 2021. The San Antonio ordinance has since been revised which eliminated the divergence. Each city was given an opportunity to review the assessment prior to publication.

Although not a coding divergence, the researchers did meet to discuss a clarification that should be added to the research protocol. In the Nevada law for Las Vegas, the law does not require the employee to provide a reason for taking paid sick time. In that instance, we would code yes for the questions surrounding taking time off to care for all family members and coding yes for the question on taking time off for dealing with a domestic violence situation.

The Supervisor also reviewed each individual entry and compared the findings to secondary sources. This dataset is now valid through August 1, 2019.

IX.   **March 2020 Update**

a.   **Valid through date note for all datasets:** All of the CityHealth datasets that are currently published were published in December 2020. Please see the individual policy pages or protocols for the exact valid through date as not all of the datasets had the same valid through date for this update.

b.   **Data collection methods:** The Researchers conducted a review of each city that included searching for amendments to laws that were previously collected, new policies within scope, and for any new earned sick leave laws that had been enacted since the August 1, 2019 update. Amendments were updated through an effective date of March 1, 2020, while newly enacted earned sick leave laws passed prior to publication were added regardless of effective date. The Researchers searched for earned sick leave laws with WestlawNext, Google, city ordinance databases, and city websites.

c.   **Coding updated findings:** Three cities (Denver, Portland, and Seattle) had updates in the 2020 assessment, though only Denver's update was a substantive change impacting the medal result. The state of Colorado added a new Earned Sick Leave law, earning Denver a Gold medal. While the text of the Colorado law had an effective date of January 1, 2020, the earned sick leave provision becomes operative on January 1, 2021 through an in-text effective date. The provision effective January 1, 2021 covers business sizes of 16 or more and would earn a silver medal under the scoring criteria. Another provision, effective January 1, 2022, will apply to all business sizes, which earns Denver a gold medal under the scoring criteria. Denver was credited for the January 1, 2022 provision in the 2022 assessment for passing a law that will cover all size employers in the future.

i.   For the question, *"Family members that employees can use earned sick time for"*

During the 2020 assessment, the coding rule was implemented to code "domestic partner" when the law defines a family member as a person related by "civil union."

d. This dataset does not capture COVID-19 emergency laws, including the federal law providing for paid sick leave for certain size employers during the pandemic.

e. **Quality control:** The Supervisor originally assigned all substantively amended records for coding, along with an additional group of records to check older coding, leading to a total of five records redundantly coded. The rate of divergence was 0%. The Supervisor also reviewed each individual entry and compared the findings to secondary sources. This dataset is now valid through March 1, 2020.