

Referendum Passes Imposing Mandatory Sick Leave For Employees in City of Milwaukee

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Practice Area: Business and Corporate Law & Labor and Employment

On November 4, 2008, 68% of voters in Milwaukee approved a referendum that will require employers to provide workers in the City of Milwaukee with paid sick leave. The Ordinance requires private employers to provide one hour of paid sick leave for every thirty hours an employee works, regardless of whether the employee is full time, part time or temporary. Each employee of an employer with more than ten employees, whether full or part time, may accrue up to 72 hours (9 days) of leave in a calendar year. Employers with fewer than ten employees must allow employees to accrue up to 40 hours of paid sick leave. Sick leave begins to accrue immediately upon employment, but it cannot be used in the first 90 days of employment. The employee may also carry over any unused leave to the next calendar year, though the employee may not use more than the 72 hours in a given year (or 40 hours when the employer has less than ten employees). The employer is not required to pay out unused sick time upon termination.

The Ordinance applies to any "person who is employed within the geographic boundaries of the City by an employer." Because there is no limitation as to the location of the employer, employers located outside of the City of Milwaukee who employ workers within the City of Milwaukee must provide paid sick leave under the ordinance. It is unclear whether employees who work at multiple job sites in a given year, only some of which are in the City of Milwaukee, must receive the paid sick leave.

Employees may use paid sick leave for a broad range of issues, including:

- preventive medical care;
- an employee's diagnosis or treatment of a mental or physical illness, injury, or health condition;
- care of a family member who needs diagnosis, care, or treatment of a mental or physical illness, injury or health condition, or preventive medical care; or
- absence necessary due to domestic abuse, sexual assault, or stalking.

A "family member" is also very broadly defined in the Ordinance to include parents, children, spouse, grandparent, spouse of a grandparent, grandchild, sibling, spouse of a sibling, domestic partner, and "any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship." The Ordinance does not define "affinity." This definition of "family member" is much more broad than is provided under existing laws. The Ordinance is silent as to whether an employee must provide any notice before using the paid sick leave.

Under the ordinance, employers may not require “unreasonable documentation of illness” when an employee takes sick leave. The ordinance does not define “unreasonable documentation,” but it does specify that an employer may not require disclosure of information relating to the details of an employee’s medical condition as a condition of providing paid sick leave. Currently, employers are allowed to require certain documentation, such as a doctor’s note, upon return to work. It is unclear the extent to which such a requirement is still allowed under the Ordinance.

Once the Ordinance takes effect, employers with workers in the City of Milwaukee will need to review existing sick leave or paid time off policies and procedures to incorporate and comply with the requirements of the Ordinance. If an employer’s current policy complies with the Ordinance, no changes will be necessary. The nine paid days of sick leave under the Ordinance DO NOT NEED to be given over and above any amount of paid sick leave that an employer currently provides. The employer must be sure, however, that at least nine days are offered under the broad terms of the Ordinance. Employers will be required to post or distribute to all employees notice of the right to paid sick leave, the amount of sick leave available, the terms of use of paid sick leave, and that retaliation against employees who use paid sick leave is prohibited. The notice must be provided in English, Spanish, and Hmong.

The Ordinance takes effect once it is published, which must occur within ten days of approval, which would be November 14, 2008. Employers must be in compliance 90 days thereafter, which would be February 12, 2009. However, there will certainly be litigation needed to clarify the many ambiguous terms included in the Ordinance. The Metropolitan Milwaukee Association of Commerce has already filed notice with the City that it intends to file a legal challenge against the Ordinance. The legal challenge will likely delay the implementation of the Ordinance.

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