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Sick and Safe Time Leave Reaches Northern Minnesota

The City of Duluth, Minnesota recently became the third major Minnesota city to enact a local law providing eligible employees with paid leave for sick or safe time absences. On May 29, 2018, the Duluth City Council adopted Ordinance No. 10571 (the Ordinance), which establishes minimum standards for earned sick and safe time leave. The Ordinance is set to take effect on January 1, 2020.

Covered Employers and Employees

The Ordinance is written to apply to employers with five or more employees nationwide regardless of where those employees are located. Employee eligibility, however, is written to tie to how much time an employee spends working in Duluth. Employees are to be eligible for paid sick or safe leave under the Ordinance if they: (1) work in Duluth more than 50% of their working time in a 12month period; or (2) are based in Duluth, spend a substantial part of their time working in Duluth, and do not spend more than 50% of their work time in a 12month period outside of Duluth.

Minnesota employers should note that this employee eligibility standard differs from the standards set by the Minneapolis and St. Paul sick and safe time ordinances, both of which only require employees to perform at least 80 hours of work in the respective city each year to qualify for leave under the city's law.

There is a possibility that the Duluth Ordinance could face legal challenges as to its scope before it becomes effective. The Minneapolis sick and safety ordinance prompted a lawsuit, with Minnesota courts holding that the ordinance was largely lawful, but could not be applied extra-territorially to employers located outside of Minneapolis.

Leave Accrual Requirements

The Duluth Ordinance states that eligible employees must accrue one hour of paid sick and safe time leave for every 50 hours worked in Duluth, with accrual starting immediately upon employment. Eligible employees may accrue up to a total of 64 hours per year, however, the Ordinance provides that employers may cap the use of sick and safe time leave at 40 hours per year. If an employee has unused, accrued sick and safe time at the end of the year, the employer must allow that time to be carried over into the next year. Any carry-over may be capped, however, at 40 hours each year. Under the Ordinance, employers are not required to payout accrued but unused sick and safe time hours upon termination or other separation from employment.

Sick and Safe Time Usage

The Duluth Ordinance provides that employees are eligible to use accrued sick and safe time after 90 calendar days of employment. Accrued time may be used due to the employee's own illness or to care for a family member. Under the Ordinance, a family member includes an employee's child, spouse or domestic partner, parent, sibling, grandparent, grandchild, and any other individual related by blood or whose close association with the employee is the equivalent of



a family relationship. Covered sick time purposes include a mental or physical illness, injury, or health condition, medical diagnosis, care, or treatment of the same, and preventive medical care. Paid leave may also be taken as safe time for absences due to domestic abuse, sexual assault, or stalking of the employee or employees family member.

Paid leave may be taken under the Ordinance in increments consistent with the current business/payroll practice as defined by industry standards or existing employer policies. Required increments may not, however, exceed four hours. Employees may be required to comply with the employers usual notice and procedural requirements for absences or for requesting leave, provided that such requirements do not interfere with the purposes for which the leave is needed.

An employer that currently offers its employees paid time off benefits (such as PTO, sick, and/or vacation days) that equal or are greater than required by the Ordinance may satisfy the Ordinance through those existing benefits.

Next Steps

With nearly 18 months before the Duluth Ordinance goes into effect, employers have time to assess whether they have employees covered by the Ordinance and to prepare to comply. Covered employers should review their time off policies and, if needed, make changes to ensure compliance. In addition, employers subject to the Ordinance will need to consider whether to adjust their time off policies just for the Duluth Ordinance or whether they might adjust policies more broadly to minimize administrative burdens and potential morale issues that can be associated with maintaining different policies for different workers.