Employment Law Alert: Minneapolis Becomes First City in Midwest to Require Paid Sick Leave

May 31, 2016

Paid sick leave laws have gained considerable traction over the last few years. No federal law mandates paid sick or vacation time, and historically, employers have been mostly free to establish paid time off benefits in their discretion. As lower-wage workers continue to seek greater pay and protections, however, there has been a growing push for mandated paid sick time. In response, a few states and dozens of cities around the country have passed laws requiring employers to provide paid sick leave. Now, Minneapolis is getting onboard the paid sick leave wagon. After a controversial campaign that began over a year ago, Minneapolis has become the latest city—and the first in the Midwest—to mandate paid sick leave for employees.

The Process

Minneapolis Mayor Betsy Hodges first called on the Minneapolis City Council to pass a sick leave ordinance during her State of the City address in April 2015. Mayor Hodges not only advocated for paid sick leave, but also for advance notice of work schedules and financial penalties for short-notice work shifts. After corporate push back, Mayor Hodges narrowed her focus to paid sick leave, appointing a task force to examine the sick leave issue and to make a recommendation to the City Council. The 15-member task force, named the Workplace Partnership Group (WPG), comprised workers, business owners and executives, and representatives of business and labor organizations. After several rounds of public hearings, the WPG submitted its formal recommendation on a paid sick leave ordinance to the City Council in March 2016. On Friday, the City Council voted unanimously in favor of the proposed ordinance.

The Ordinance

The Minneapolis sick leave ordinance, which will become effective on July 1, 2017, requires any employer with six or more employees to provide its employees who work at least 80 hours per year in Minneapolis with paid sick leave. If the company has less than six employees, it must provide its employees who work at least 80 hours per year in Minneapolis with unpaid sick leave.

Here are the main highlights of the new paid sick leave requirements going into effect next year:

- Covered employees, whether full or part-time, will accrue one hour of sick time for every 30 hours worked, up to a maximum of 48 hours per year. For workers of employers with six or more employees, this accrual is for paid sick time. For workers of employers with less than six employees, this accrual is

for unpaid sick time.

- Employees may carry over a maximum of 80 hours of sick time from year to year.
- Employees may begin using sick time 90 days following the start of their employment.
- Employees may use sick time to care for medical appointments for their own illness or injury; to care for sick or injured family members; for absences due to domestic abuse, sexual assault, or stalking of the employee or family member; or for children whose schools or child care centers are closed because of weather, power outages, or other unexpected reasons.
- The ordinance applies to covered employees based in Minneapolis, but also to employees with a regular worksite outside of Minneapolis who regularly work in Minneapolis - such as repair or delivery personnel.
- For the period of July 1, 2017, through June 30, 2022, newly-formed businesses (other than chain establishments) have a one-year grace period until they must start providing paid sick leave, but must provide unpaid sick leave under the ordinance.
- The Minneapolis Department of Civil Rights will handle enforcement, either administratively or through the court system.
- Consequences for non-compliance may include paying employees the value of their sick leave entitlement, monetary fines, and attorneys' fees and costs. In addition, businesses licensed by the City could risk loss of their license for non-compliance.
- Retaliation against employees for taking sick leave is prohibited.
- The City is preparing a poster on the ordinance that will need to be posted by covered employers. In addition, the ordinance requires an employer with an employee handbook to include notice of the ordinance rights and remedies in its handbook.
- The ordinance does not require employers to pay for accrued but unused sick time upon an employee's termination of employment.

Practical Effects

Covered employers who do not currently provide any form of paid sick leave to employees will feel the greatest impact when the new Minneapolis ordinance goes into effect. Those employers will, as of July 1, 2017, need to adopt a sick paid leave program for employees who work at least 80 hours in Minneapolis that complies with the ordinance.

Employers that already provide paid sick leave may also feel the effects of the new ordinance. If a company's current paid sick leave program is not as generous as required by the ordinance, the employer will have to alter its program to comply. For example, if a covered employer allows eligible employees to accrue sick leave at a rate lower than one hour for every 30 hours worked, it will have to increase its accrual rate. Similarly, if a company allows less than 80 hours of sick time to carry over each year, it must increase that amount for eligible employees. Furthermore, if a company currently only offers paid sick leave to full-time employees, it will need to adjust its program to permit paid sick leave for *all* eligible employees,

including part-time workers, using the ordinance's accrual rate.

Additionally, employers who do not differentiate between sick time and vacation time - instead offering combined "paid time off" (PTO) - still need to be cognizant of the new ordinance. If the terms on which eligible employees can accrue and use PTO are less generous than what the Minneapolis ordinance requires, the employer will need to alter its policy. Employers with PTO policies are not required to establish a separate bank of paid sick time for eligible employees, but they must ensure that their PTO policy complies with the ordinance.

Furthermore, unionized employers that have a collective bargaining agreement that governs sick leave may *not* have to alter sick time policies for unionized employees. The Minneapolis ordinance allows these companies to "develop alternative means" of meeting the policy goals of the ordinance within the collective bargaining process.

Employers should also be mindful that, while the new ordinance technically only applies to employees working at least 80 hours per year in Minneapolis, it may lead to the unintended consequence of expanding sick leave benefits outside of Minneapolis. While not legally required by the ordinance, some companies with employees working inside and outside Minneapolis may elect to alter sick leave policies for all employees to avoid having to administer different sick leave policies and accruals for two sets of employees or to minimize employee complaints about different benefit standards.

Although Minneapolis is the first jurisdiction in Minnesota to pass a paid sick leave law, St. Paul may not be far behind. The City of St. Paul has formed a committee dedicated to researching and examining the paid sick leave issue. Also, Minnesota legislators have introduced paid sick leave bills in the last couple sessions, but no state-wide law has yet been passed.

The new Minneapolis law contains a number of other nuances and details that may affect employers' actions regarding sick leave policies. Companies with any employees working in Minneapolis should consult with legal counsel before implementing or modifying sick leave policies based on this new law.