

Labor and Employment Attorneys

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## October 2008 Labor and Employment Update

### ORDINANCE REQUIRING MANDATORY PAID SICK LEAVE FOR ALL MILWAUKEE EMPLOYEES TO BE DECIDED BY REFERENDUM

On November 4, 2008, the citizens of Milwaukee will vote on a referendum determining whether private employers must provide up to nine days of paid sick leave for every employee in the City of Milwaukee. Passage of this referendum would impact employers both in Milwaukee and in surrounding areas.

This major referendum came to the ballot box through the Wisconsin Direct Legislation Statute. This statute allows citizens to implement local ordinances if enough support is shown through petitions. In this instance, a coalition led by 9 to 5, the National Association for Working Women, collected over 40,000 signatures for a petition requiring employers to provide paid sick leave to employees in Milwaukee. Since the coalition met the threshold requirements of the Direct Legislation Statute, the petition went directly to the Milwaukee Common Council as a proposed ordinance. The Council had two options, either adopt the proposed ordinance or place the ordinance on the ballot for the citizens of Milwaukee to decide. The Council chose the latter, and therefore the proposed ordinance, written by the coalition, will be before the citizens of Milwaukee in November.

### KEY ASPECTS OF THE PROPOSED ORDINANCE

The proposed ordinance allows an employee to take paid sick leave for the employee's own care, to care for a "family member," or for absences due to domestic abuse, sexual assault or stalking. Most employees would receive up to nine days (72 hours) of paid sick leave per year, regardless of whether they are a full-time, part-time, or temporary employee. For smaller businesses (those who compensate fewer than ten employees in a week), employees would receive up to five days (40 hours) of paid sick leave per year.

Under the proposed ordinance, employees accrue one hour of paid sick leave for every 30 hours they work. Accrual begins immediately, but employees must wait until the 90th day after their start date to expend any hours accrued. Additionally, employees can carry over paid sick leave from one calendar year to the next, but the maximum of nine days or five days (as described above) remains. Employers do not have to include any accrued sick leave in termination packages for employees.

The proposed ordinance imposes many restrictions on employers when structuring a policy for employees to use their paid leave. Employers cannot require as a prerequisite to paid leave (1) disclosure of the details of an employee's medical condition or information relating to domestic abuse, sexual assault or stalking; (2) that the employee find a replacement; or (3) any unreasonable barriers or documentation. Additionally, employers cannot retaliate or discriminate against an employee because the employee is exercising his or her right to paid leave under the proposed ordinance. Employees will have the right to file a complaint with the Milwaukee Equal Rights Commission to enforce their rights under the proposed ordinance.

## **DEFINITIONAL PROBLEMS BROADEN THE SCOPE OF THE PROPOSED ORDINANCE AND PROVIDE THE UTMOST FLEXIBILITY TO EMPLOYEES**

Under the proposed ordinance, an employee may take paid leave for their own or a family member's "mental or physical illness, injury or health condition or need for medical diagnosis, care, or treatment of a mental or physical illness, injury or health condition or need for preventive medical care." Augmenting this already broad description, the proposed ordinance does not provide any definitions for this section. Therefore, employers have no guidance as to the circumstances under which an employee can take paid leave in regards to a medical situation.

Furthermore, the broad definition of "family member" extends the realm of possible leave. As defined by the proposed ordinance, "family member" includes a child, parent, person to whom the employee is legally married, grandparent (the parent of a parent or a spouse of a grandparent), grandchild, biological/foster/adopted sibling, spouse of a biological/foster/adopted sibling, a domestic partner, and any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

This unrestrained definition of who and what to care for essentially provides employees with the ability to use paid leave in any way they see fit.

## **PASSAGE OF THE REFERENDUM WOULD SIGNIFICANTLY AFFECT EMPLOYERS IN THE CITY OF MILWAUKEE AND SURROUNDING AREAS**

The passage of this proposed ordinance will have a significant impact on employers located in Milwaukee. It may also significantly impact employers outside Milwaukee who do business within the city because the ordinance applies to all employees who are "employed within the geographical boundaries of the City [of Milwaukee] by an employer." One possible interpretation of that language would include employers whose employees work within the city in any capacity (*e.g.*, construction companies located outside Milwaukee but with projects inside the geographical limits of the city).

If an employer's current paid time off (PTO) policy meets the broad criteria set forth in the proposed ordinance (*i.e.*, the policy makes available an amount of paid leave sufficient to meet the accrual requirements of the proposed ordinance that may be used for the same purposes and under the same conditions as paid sick leave under the proposed ordinance), that employer will not have to provide additional paid sick leave. However, most employers' current PTO policies are not as broad in definitional scope and have some restrictions. Therefore, PTO policies will need to be dramatically revised to abide by the requirements of the proposed ordinance.

## **THE REACTION OF THE BUSINESS COMMUNITY**

Believing that the proposed ordinance will impede economic development in the City of Milwaukee, the Metropolitan Milwaukee Association of Commerce has issued statements opposing the proposed ordinance. Additionally, Milwaukee Mayor Tom Barrett, fearing that the proposed ordinance would put the City of Milwaukee at an economic disadvantage, recently issued a statement opposing the proposed ordinance. Specifically, Mayor Barrett is concerned that such an ordinance would counter efforts to attract new investment and expansion of Milwaukee businesses. Instead, Mayor Barrett expressed his preference for this issue to be addressed at the national level.



## CONCLUSION

If the referendum passes by 50.1% of the vote, the ordinance will automatically become law. Although there is a provision in the ordinance that states the effective date will not be until 90 days after "publication," the ordinance does not include a definition of publication. Therefore, employers must closely track the referendum and, should it pass, be prepared to implement new policies as of November 5, 2008.

Please contact Reinhart's Labor and Employment attorneys if you have any questions or would like to review your current policies and procedures to ensure compliance with this proposed ordinance.

This *Headlines in Labor and Employment Law* provides general information about labor and employment issues. It should not be construed as legal advice or a legal opinion. Readers should seek legal counsel concerning specific factual situations confronting them.

