



## Legal Alert: Milwaukee Employers Must Provide Paid Sick Leave Beginning February 10, 2009

1/26/2009

The voters of Milwaukee recently passed a "binding referendum" that created an ordinance that will go into effect on February 10, 2009, mandating that all employers within Milwaukee city limits provide employees with one hour of paid sick leave for every 30 hours worked. Milwaukee is the third city to recently pass a sick leave ordinance, following San Francisco and Washington, D.C.

### ***Who is Eligible for Paid Sick Leave?***

The Milwaukee ordinance provides that an employer must provide paid sick leave benefits to any employees, including part-time and temporary employees, who work within the city's boundaries.

### ***Definition of Employer:***

The ordinance defines an "employer" as any entity that is an "employer" under Wis. Stat. § 104.01(3)(a). That statute, in turn, defines an employer as "every person, firm or corporation, agent, manager, representative, contractor, subcontractor or principal, or other person having control or direction of any person employed at any labor or responsible directly or indirectly for the wages of another."

### ***Accrual of Leave:***

Under the ordinance, employees begin to accrue paid sick leave immediately, at the rate of one hour of leave per 30 hours worked, to a maximum of 72 hours of sick leave in a calendar year. The cap is 40 hours of leave in a calendar year for smaller employers.

Employees may not begin to use accrued sick leave until they have been employed for 90 days. The ordinance assumes exempt employees work 40 hours per week, unless their "regular work week" is less than 40 hours, in which case the regular work week controls. Employers who already have policies providing for paid sick leave may count the same paid sick leave toward both the company-provided leave allotment and the ordinance-required leave allotment.

### ***Definition of Sick Leave:***

The ordinance defines "sick leave" to include not only absences due to

mental or physical illness, injury or health condition, but also (1) time needed to care for such a condition or for "preventive medical care"; (2) care of a "family member," which includes a child, parent, spouse, grandparent, grandchild, sibling, spouse of a sibling, domestic partner, and any other person whose "close association with the employe[e] is the equivalent of a family relationship"; and (3) absence necessary for the employee or family member to seek medical attention, recover from injuries, obtain services, obtain counseling, seek relocation, or take legal action, due to domestic abuse, sexual assault or stalking.

***Other Prohibitions:***

The ordinance also prohibits an employer from: (1) "impos[ing] unreasonable barriers" on the use of paid sick leave; (2) requiring "unreasonable documentation of illness"; (3) penalizing an employee for taking leave; (4) retaliating against an employee for exercising rights under the ordinance; (5) requiring disclosure of information relating to domestic abuse, sexual assault or stalking; or (6) requiring disclosure of "details of an employe[e]'s medical condition as a condition of providing sick leave." If an employer obtains such private information, it must keep the information confidential.

***Notice/Posting Requirement:***

Finally, the ordinance requires employers to notify employees, either by distribution of a written notice or by posting in a conspicuous and accessible place in each covered establishment, notice of their entitlement to the paid sick leave, the amount of paid sick leave, the terms of its use, and the prohibition against retaliation.

***Record Retention:***

Employers must keep records of hours worked, and leave taken, for five years.

***Employers' Bottom Line:***

The ordinance leaves many details open for administrative rule-making by the city's Equal Rights Commission, e.g., how much medical documentation may an employer request before it is considered "unreasonable." The City's website states that such rules are currently being drafted. Meanwhile, the Metropolitan Milwaukee Association of Commerce has filed a lawsuit seeking to enjoin the ordinance from going into effect on February 10 as scheduled; a hearing on the Association's motion is scheduled for February 6. Finally, two Milwaukee suburbs have passed ordinances prohibiting their own councils from passing ordinances similar to the Milwaukee referendum, and three other suburbs may quickly follow suit.

Employers who are covered by the FMLA and the Milwaukee ordinance will need to review their sick leave policies to ensure that they are complying with the requirements of both laws. Additionally, all Milwaukee employers should review any paid sick leave policies to ensure they comply with the new ordinance. If you need assistance reviewing your sick leave policies or have questions regarding the new ordinance, please contact the Ford & Harrison attorney with whom you usually work or the author of this Alert, Andrew Tanick, a partner in our Minneapolis office at [atanick@fordharrison.com](mailto:atanick@fordharrison.com) or 612-486-1623.