

Minneapolis Becomes First City in Minnesota to Require Paid Sick Leave

By Gina K. Janeiro and Richard Greiffenstein

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Minneapolis, Minnesota, has joined the growing list of U.S. cities mandating paid sick leave for employees working in the city.

On May 27, 2016, the Minneapolis City Council unanimously passed a citywide sick leave ordinance, the Minneapolis Sick and Safe Time Ordinance (“Ordinance”), requiring employers with at least six employees, regardless of their location, to provide *paid* sick and safe time leave to employees who work in the City of Minneapolis. The Ordinance goes into effect on *July 1, 2017*.

Who Is Covered?

Employers with at least one employee working in Minneapolis, regardless of the employer’s location, are required to comply with the Ordinance. The definition of “employers” includes individuals, corporations, partnerships, associations, nonprofit organizations, groups of persons, and the City of Minneapolis. It does not include the federal, state, county, or local government.

Only employees, including exempt and non-exempt employees, working at least 80 hours in one calendar year on a full- or part-time basis, or temporary basis, in the city of Minneapolis are “covered employees” under the Ordinance.

Employers with at least six employees must provide their covered employees paid sick leave. Employers with up to five employees must allow their covered employees unpaid use of their accrued sick time.

For the first five years after the Ordinance becomes effective, new employers, other than “chain establishments” defined by the Ordinance, can provide unpaid sick leave, rather than paid leave, during the first year they are in business.

Employers who provide their employees sick time under a *paid* time off (“PTO”) policy or other *paid* leave policy that meets or exceeds the minimum requirements of the Ordinance are not required to provide additional sick time.

Accrual of Paid Sick Time

Covered employees will accrue sick time at the rate of one hour for every 30 hours worked. Employers may cap the accrual of paid sick time to 48 hours in one calendar or fiscal year.

Employees can carry over accrued but unused sick time to the following year, but the employer need not allow an employee to bank more than 80 hours of unused paid sick time at any one time.

New employees begin to accrue paid sick leave time at the commencement of their employment, but cannot use their paid sick time until 90 calendar days after the start of their employment.

Employers are not required to pay out unused time upon termination of employment. However, if the employee is rehired within 90 days of separation, previously accrued and unused sick time must be reinstated.

The Ordinance does not prohibit an employer from advancing sick time to an employee prior to accrual by such employee.

Use of Paid Sick Time

Under the new Ordinance, employees can use their paid sick time for their own mental and physical

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illness, injury, health conditions, diagnostic or preventive care, as well as to care for the similar needs of their qualifying family members.

Additionally, employees may use paid sick time to deal with domestic abuse, sexual assault, or stalking that affect the employee or the employee's family members. They also may use paid sick time for the care of a family member whose school or place of care has been closed due to inclement weather or other unexpected closure.

The Ordinance allows employers the right to request documentation of an illness or absence for absences of more than three consecutive days. Employers also may require employees to provide up to seven days of advance notice when the use of sick time is foreseeable.

Employees may use paid sick time in increments consistent with current payroll practices as defined by industry standards or existing employer policy, provided such increment is not more than four hours.

Lastly, employees are protected from employer retaliation when exercising their rights under the Ordinance.

Notice and Recordkeeping

The Ordinance requires employers to display a poster prepared by the Minneapolis Department of Civil Rights in a conspicuous place and accessible to all employees. The poster must be in English and any other language spoken by at least five percent of the employees at the Minneapolis worksite, provided the Department has made available the notice in that language.

Additionally, if an employer provides an employee handbook, it must include a notice of employee rights and remedies under the Ordinance in the handbook.

A covered employer must provide an employee, in writing or electronically, an accounting of any accrued sick time available to the employee and used sick time upon the employee's request.

Employers must maintain records for each employee showing the accrued sick time and the used sick time for each day of the workweek. Such records must be retained for at least three years in addition to the current calendar year. The Ordinance also provides for inspection of such records by employees and the Department.

Enforcement

The Department will enforce the Ordinance, including investigating potential violations pursuant to a complaint or when the Department has reason to believe that a violation has occurred. The Department will pursue violations of the Ordinance by serving notice of the investigation on the employer, requesting a written position statement, and, potentially, a request for records.

If the Department determines that a violation has occurred, it may order reinstatement, back pay, credit or payment of sick time, and administrative penalties or fines.

What's Next?

Employers covered by the new Ordinance should review their existing policies carefully to ensure their time-off policies provide qualified employees with the minimum standards established by the Ordinance.

Employers must post the appropriate notice and employers with employee handbooks also must update their handbooks to include a policy regarding the Ordinance.

Jackson Lewis attorneys routinely work with employers throughout Minnesota on compliance and implementation strategies, including the many nuances of this new leave requirement.

Jackson Lewis is providing a complimentary seminar on complying with sick leave requirements, including those under the Minneapolis Ordinance, on June 10, 2016. Please register for the seminar at: <http://www.jacksonlewis.com/event/paid-sick-leave-contagious>.

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