



Published in the 2017 July/August issue of the *Hennepin Lawyer*, a membership publication of the Hennepin County Bar Association. Used with permission. 612-752-6000 thl@hcba.org

# Paid Leave: Expansion of Workers' Rights in the Twin Cities Faces Challenges

By Colin K. Thomsen and Michael Gerould

**As of July 1, 2017, employers in Minneapolis will have to begin providing employees with paid leave to deal with illness and personal emergencies. St. Paul has a similar ordinance that will go into effect at the same time.**

**T**he new ordinances—if they survive the crucibles of litigation and legislative action—put the Twin Cities on the cutting edge of a push to expand workers' rights at the local level. In just the last two years, dozens of cities, from Los Angeles to Chicago to Pittsburgh, have passed paid sick or safety leave ordinances of various kinds. Perhaps stymied by Republican majorities at the federal level and in state legislatures, workers' advocates have been lobbying city governments to provide greater benefits to employees, including paid time off for wage workers who traditionally cannot get it.

Minneapolis and St. Paul each passed their ordinances in early 2016. Barring unexpected events, beginning July 1, 2017, most employers in the city of Minneapolis will be required to grant their employees one hour of leave for every 30 hours worked. The time can be used—subject to certain limitations—to compensate employees for dealing with their illnesses and personal emergencies affecting themselves and their loved ones. Employers with six or more employees must provide paid time; employers with five or fewer employees must provide the leave, but need not pay the employee for it.

## Employers Strike Back

However, certain business interests in the city and around the state acted quickly to try and block the ordinances. In October 2016, the Minnesota Chamber of Commerce and a number of other organizations sued the city of Minneapolis, seeking an injunction to block implementation of the ordinance. As drafted, even employers based outside of Minneapolis must honor the ordinance as to any employees who work at least 80 hours a year in the city. The chamber argued that the 80-hour rule amounted to an impermissible

extraterritorial application of the city's authority, and that the ordinance conflicted with and was, by implication, preempted by state law.<sup>1</sup>

In January, Hennepin County District Court Judge Mel Dickstein granted the chamber a limited temporary restraining order. Judge Dickstein rejected the chamber's latter arguments, but agreed that the city lacked the power to apply the ordinance beyond city limits. Accordingly, the 80-hour rule is currently subject to the restraining order. In the meantime, the case is before the Minnesota Court of Appeals.

While the chamber's lawsuit was ongoing, pressure began mounting in the state legislature to block the ordinance and others like it. The Uniform State Labor Standards Act (better known as "preemption bill") would have barred local governments from passing their own ordinances on issues affecting employee benefits and minimum wages. Proponents argued that the Minneapolis and St. Paul ordinances were creating a confusing patchwork of labor laws that would make it harder for employers to do business in the state. The bill cleared both the House and Senate, albeit with significant opposition from workers' rights groups and others.

However, in May, Gov. Mark Dayton indicated that he would likely veto the bill. While the issue remains undecided at the time this article is written, it seems likely that the sick and safe leave ordinance will become effective on July 1.

## Into the Details

With the new ordinance likely to come on line, employers in Minneapolis need to be ready for what is likely to be a significant change. Here is a quick overview of what employers and employees need to know. (We are focusing specifically on the Minneapolis ordinance.)

### *Which employers are affected?*

All employers within the city of Minneapolis are affected by this legislation. Employers with six or more employees must provide paid time off, while smaller employers may provide unpaid leave. Until 2022, employers of any size may ignore the requirement during their first year of operation. Depending on the outcome of the chamber's lawsuit, even employers outside of Minneapolis could be affected as well.

### *Which employees are covered?*

Employees whose place of employment is physically located within the city limits will be entitled to the leave. In its website dedicated to the new ordinance, the city of Minneapolis

is talking like it will be able to apply the law, as written, to employees based elsewhere who do at least 80 hours of work within the city limits—but, as mentioned previously, that issue is being litigated. Newly hired employees will begin accruing leave on their first day; however, employers may bar employees from taking accrued leave during their first 90 days of employment. Independent contractors are not covered.

### *What do employees get?*

Covered employees must accrue one hour of leave per 30 hours worked, with a maximum of 48 hours per year. Exempt (salaried) employees are presumed to work 40 hours a week and accrue their time accordingly.

### *What can the leave be used for?*

Employees can use their leave to care for their own serious illness or that of a member of their family or household. Additionally, an employee can also use the leave to deal with issues caused by domestic violence, sexual harassment, or stalking.

Notably, the ordinance applies much more broadly than more familiar laws, such as the Family Medical Leave Act (FMLA). Under the Minneapolis ordinance, employees can use the time to care for themselves or their child, stepchild, adopted child, foster child, adult child, spouse, sibling, parent, stepparent, mother-in-law, father-in-law, grandchild, grandparent, guardian, ward, registered domestic partner, or anyone currently residing in the employee's home. By contrast, the FMLA usually applies only to immediate family members (the employee and his or her spouse and children).

### *Does the time carry over?*

Yes, for a maximum of 48 hours per year and 80 hours total. Accrual is measured against a "benefit year" which is defined as a consecutive, 12-month period as defined by the employer. Employers also have the option of "front-loading" an employee's time at the beginning of a benefit year if they wish. (This means the employee can provide 48 hours or more of sick time following an employee's first 90 days of employment.)

### *What about notice and recording requirements?*

Employers are required to display a poster (available for download from the city) informing employees about the ordinance. Further, employers are required to provide each employee with the balance of his or her accrued time on request, and may choose to include it on pay stubs or electronically.

### *How will this interact with other laws?*

That's not entirely clear. Depending on the circumstances, sick and safe time could be used concurrently with FMLA or other forms of leave. Employers should be aware that the state of Minnesota provides for dozens of other categories of leave for everything from organ donation to service in the civil air patrol. Each statute has different coverage, applicability, and notice requirements.

### *If employers don't comply—so what?*

The Minneapolis ordinance does not provide a private right of action for employees whose employers fail to honor it. Instead, employees may complain to the Minneapolis Department of Civil Rights Labor Standards Division, which is empowered to investigate complaints and may assess civil penalties.<sup>2</sup>

<sup>1</sup> See Minnesota Chamber of Commerce, et al. v. City of Minneapolis, Court File No. 27-CV-16-1505L.  
<sup>2</sup> See Minneapolis Code of Ordinances, Title 2, Chapter 40; see also <http://sicktimeinfo.weebly.com/>.



**Colin Keith  
Thomsen**

[colint@e-ulaw.com](mailto:colint@e-ulaw.com)

Mr. Thomsen is an attorney at Engelmeier & Umanah in Minneapolis and has represented and counseled businesses and individuals on a wide variety of issues in employment, business, and intellectual property law. He is a 2015 cum laude graduate of Hamline University School of Law.



**Michael  
Gerould**

[michaelg@e-ulaw.com](mailto:michaelg@e-ulaw.com)

Mr. Gerould is an attorney at Engelmeier & Umanah in Minneapolis and counsels employers in broad aspects of employment law topics, including discrimination, harassment, retaliation, leaves of absence, discipline and discharge, and investigates employee complaints.