

Management Alert

If Pain, Yes Gain—Part XXX: Pittsburgh Sick Time Law Barely Hanging on By a Thread After Appellate Court Decision

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Seyfarth Synopsis: On May 17, 2017, a panel of judges on the Commonwealth Court of Pennsylvania struck a second blow to Pittsburgh's Paid Sick Days Act, leaving the Act's future in serious jeopardy.

The Commonwealth Court of Pennsylvania's May 17, 2017 [decision](#) on the Pittsburgh Paid Sick Days Act ("PSDA")¹ affirmed the Allegheny County Court of Common Pleas' December 21, 2015 [order](#) invalidating the law which would have required employers to provide paid sick leave to all eligible Pittsburgh employees.

Pittsburgh is a "home rule charter" municipality, meaning its authority to regulate businesses is limited unless expressly provided by statewide statute.² The City introduced multiple arguments to overcome its home rule charter status. For instance, the City argued that the PSDA falls within its authority to enact public health regulations pertaining to "building codes." The Commonwealth Court rejected this argument as out of context, namely, that the City failed to establish a connection between the PSDA and building codes.

The City next argued it has the right to promulgate regulations for the general health of its citizens per the state's Second Class City Code.³ Once again, the Commonwealth Court disagreed. Specifically, the court noted that the PSDA's imposition of "numerous affirmative duties" on employers was not expressly authorized by statute, and therefore ran afoul of Pennsylvania's Home Rule Charter Law.

Finally, the Commonwealth Court also struck down the Service Employees International Union's argument that public policy justifies the PSDA. The court explained that "neither the wisdom nor the purpose of the [PSDA] is material" to the issue of whether the City had authority to adopt the PSDA. Due to the Home Rule Charter Law and lack of a state statute explicitly authorizing Pittsburgh to enact the PSDA, the Commonwealth Court found that the City lacks any such authority.

While not yet filed, it is likely that the City will appeal the Commonwealth Court's decision to the Pennsylvania Supreme Court. If overturned, the PSDA would require employers with 15 or more employees to provide each eligible employee with one hour of paid sick time for every 35 hours the employee works in Pittsburgh, up to 40 hours (i.e., five days) of paid sick leave per year.

¹ The PSDA was enacted in August 2015 and was originally scheduled to go into effect on January 11, 2016.

² Section 2962(f) of the Home Rule Charter Law states, in relevant part, that "[a] municipality which adopts a home rule charter shall not determine duties, responsibilities or requirements placed upon businesses, occupations and employers, ... except as expressly provided by statutes which are applicable in every part of this Commonwealth or which are applicable to all municipalities or to a class or classes of municipalities."

³ See Act of March 7, 1901, P.L. 20, as amended, 53 P.S. §§23101-23175

Employers with fewer than 15 employees would be required to provide their employees with one hour of sick leave for every 35 hours worked in Pittsburgh, up to 24 hours (i.e., three days) of unpaid sick leave per year. After the law's first anniversary, employers with fewer than 15 employees would be required to provide paid sick leave at the same accrual rate and up to the same 24-hour cap as set forth during the law's inaugural year. For more information on the PSDA, see our previous postings [here](#) and [here](#).

While this decision does not affect [Philadelphia's paid sick leave ordinance](#), a similar challenge may await the City of Brotherly Love if Pennsylvania courts ultimately put the PSDA to bed.

With the paid sick leave landscape continuing to expand and grow in complexity, companies should reach out to their Seyfarth contact for guidance on the PSDA and complying with sick leave requirements generally. To stay up-to-date on Paid Sick Leave developments, [click here](#) to sign up for Seyfarth's Paid Sick Leave mailing list.

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