

One Minute Memo®



If Pain, Yes Gain - Part IX: Complications for NJ Paid Sick Leave

By Christopher Lowe and Joshua D. Seidman

After New Jersey finished 2014 as the state with the most municipal paid sick leave laws in the country,¹ the 2015 outlook for at least one of its laws has grown increasingly unclear. As we reported last [November](#), residents of Trenton and Montclair voted in favor of paid sick leave that closely follows the [Newark ordinance](#) and generally requires employers with 10 or more employees to provide one hour of paid sick time for every 30 hours worked by the employee, up to 40 hours (i.e., five days) of paid sick leave per year. Smaller employers must still allow employees to accrue paid sick leave at the same rate, but only need to offer up to 24 hours (i.e., three days) of paid sick leave per year. Both ordinances were scheduled to become effective on March 4, 2014, however, due to some unexpected complications, only the Montclair ordinance went into effect as planned.

Trenton's ordinance was blocked when a group of six business associations² filed a lawsuit on March 2, 2015, against the City of Trenton seeking to enjoin the March 4th effective date, and ultimately invalidate the city's mandatory paid sick leave ordinance. On March 6th, Trenton agreed to delay enforcement of the ordinance pending a ruling by Mercer County Superior Court Judge Mary Jacobson. An injunction hearing is currently scheduled for April 9, 2015. Nevertheless, prudence dictates that employers prepare for enforcement in the event that Judge Jacobson rules in the city's favor.

The business associations offer several reasons why the preliminary injunction should be granted; namely, the ordinance (1) exceeds the city's police powers by regulating employers outside of Trenton, and even outside of New Jersey; (2) is preempted by the New Jersey Temporary Disability Benefits Act ("NJTDBA"), the New Jersey Family Leave Insurance Law provision of the NJTDBA, the New Jersey Family Leave Act, and New Jersey state wage and hour laws and regulations, that arguably occupy the fields of paid sick leave and minimum wage; and (3) infringes on substantive due process, equal protection, and contractual rights under the New Jersey and U.S. Constitutions.

It is unclear how Judge Jacobson will rule, but any ruling to strike or limit the Trenton ordinance could have larger implications across the state. We are continuing to monitor this lawsuit and will be sure to advise you of any developments.

While attention has been focused on Trenton, Bloomfield, N.J. recently enacted its own paid sick leave law. The Bloomfield law, like Trenton, Montclair and most other New Jersey municipalities, largely follows Newark's ordinance,³ and is scheduled to go into effect on or around June 30, 2015 - 120 days after enactment. This too may be affected by events in Trenton, so stay tuned.

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¹At the end of 2014, mandatory paid sick leave laws were either in effect or scheduled to go into effect in eight New Jersey municipalities - Jersey City, Newark, Passaic, East Orange, Paterson, Irvington, Trenton, and Montclair.

²The six plaintiffs are: New Jersey Business & Industry Association; New Jersey State Chamber of Commerce; New Jersey Food Council; New Jersey Restaurant Association; New Jersey Retail Merchants Association; and National Federation of Independent Businesses.

³Jersey City's paid sick leave ordinance, while similar to the Newark law, differs in several notable areas. Please see our [earlier post](#) comparing the two laws.

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