

Management Alert



If Pain, Yes Gain—Part XXXVI: Minnesota Court of Appeals Clarifies Minneapolis Paid Sick Leave Ordinance

By Marlin Duro, Joshua D. Seidman and Tracy M. Billows

Seyfarth Synopsis: Last week, the Minnesota Court of Appeals upheld the Minneapolis Sick and Safe Time Ordinance, but ruled that it cannot be enforced against nonresident employers. Barring reversal on appeal to the Minnesota Supreme Court, this decision provides useful guidance for employers, at least until the case is heard on the merits.

On September 18, 2017, the Minnesota Court of Appeals affirmed the Minnesota Hennepin County District Court's January 19, 2017 order, which granted in part and denied in part the Minnesota Chamber of Commerce's (the "Chamber") motion for a temporary injunction against the enforcement of the Minneapolis Sick and Safe Time Ordinance ("SSTO"). By doing so, the Court of Appeals allowed the SSTO to remain in effect, finding that it is not preempted by existing state law, and maintained that the SSTO, at least temporarily, should not be enforced against nonresident employers, i.e., employers located outside of the Minneapolis geographic city boundaries. While the City of Minneapolis or the Chamber could appeal the decision to the Minnesota Supreme Court, the Court of Appeals' decision serves as strong judicial guidance in interpreting the SSTO until any forthcoming hearing on the merits of the case.

A key aspect of the Court of Appeals' decision was affirming that the SSTO was not preempted by Minnesota's kin care law, Minn. Stat. § 181.9413 (2016). The Minnesota kin care law requires employers with 21 or more employees to allow their employees to use the personal/sick leave benefits provided by the employer for safety leave and to care for certain relatives. In contrast, the SSTO requires that employers provide paid sick leave benefits to eligible employees if the employers have six or more employees.

The Court of Appeals, in holding that the SSTO is not preempted by state law, rejected the Chamber's argument that the SSTO is irreconcilable with the state kin care law because it "impliedly permits employers to decline to provide leave benefits to employees." The Court reasoned that the SSTO is not preempted because an employer would not violate the state kin care law by providing the leave benefits required by the SSTO. Accordingly, unless the court holds otherwise when deciding the case on the merits or the Court of Appeals decision is reversed on appeal, the SSTO is valid and enforceable.

The Court of Appeals also upheld the District Court's holding that temporarily blocked enforcement of the SSTO against "any employer resident outside" the Minneapolis geographic boundaries. The Court viewed the SSTO's application to employers with at least one employee who works in Minneapolis for at least 80 hours in a year to be a provision with "extraterritorial" effects, at least at this stage of the litigation. The Court noted, citing supportive case law, that generally "the power and jurisdiction of the city are confined to its own limits and to its own internal concerns." The District Court determined that if the SSTO were enforced against nonresident employers before a hearing on the merits of the case, employers would be

harmful by “expend[ing] substantial time and resources . . . in order to comply with [the Ordinance] mandates.” Meanwhile, the city was unlikely to suffer “substantial harm from a temporary injunction” because the SSTO will not be rigorously enforced until July 1, 2018. Therefore, until a decision is reached on the merits of the case, and barring reversal of the Court of Appeals decision, the City of Minneapolis cannot enforce the SSTO against nonresident employers.

The SSTO, which took effect on July 1, 2017, requires employers with six or more full-time, part-time, or temporary employees to provide employees with paid sick time. Eligible employees accrue paid sick time at the rate of one hour of leave for every 30 hours worked, up to a maximum of 48 hours per year. Employers following an accrual system must allow employees to carry-over their accrued, unused paid sick time to the following year. The SSTO, however, permits employers to limit the total amount of unused paid sick time in an employee’s bank to 80 hours. Employees may use the paid sick time for their or their family members’ needs relating to physical or mental health, certain absences related to domestic abuse, sexual assault, and stalking, and certain school and workplace closings. For more information on the Minneapolis SSTO, see our earlier post [here](#).

To stay up-to-date on Paid Sick Leave developments, [click here](#) to sign up for Seyfarth’s Paid Sick Leave mailing list. With the paid sick leave landscape continuing to expand and grow in complexity, companies should reach out to their Seyfarth contact for solutions and recommendations on addressing compliance with this law and sick leave requirements generally, or Marlin Duro, at mduro@seyfarth.com, Joshua D. Seidman at jseidman@seyfarth.com, or Tracy M. Billows at tbillows@seyfarth.com.

www.seyfarth.com

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