

PAID SICK LEAVE - NEXT STEPS

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What Is It?

“Shall the City of Milwaukee adopt...a substitute ordinance requiring employers within the city to provide paid sick leave to employees?”

- Referendum passed on November 4, 2008
 - Ordinance published on November 12, 2008
 - Tracking / Accruing starts February 10, 2009
 - Employers have to allow employees to take paid sick leave on or before May 11, 2009*
 - *Unless MMAC’s challenge dictates otherwise.*
 - Where Do We Go From Here ???
- * The City may clarify this issue – whether employers must make paid sick leave available to 90-plus day employees as it is earned or on the 90th day after February 10, 2009



Where Do We Go From Here?

- **You need to have a game plan in place:**
 - Tracking / Accrual
 - Coverage Issues particular to your situation
 - Policy – Is it compliant?
 - Going forward...
 - No regulations in Milwaukee
 - Look to San Francisco and District of Columbia examples
 - Modify down the road to fit Milwaukee regulations...
 - Be Responsive in 2009!



Where Do We Go From Here?

Focus Areas Going Forward:

- ***Tracking / Accrual***
 - Ensure your system correctly tracks hours at rate of at least 1 hour / 30 worked
 - Ensure that you clarify the arrangements in writing and correctly track hours for salaried employees who work less than 40 hours per week
 - Start tracking hours and accruing paid sick leave on February 10, 2009 or upon commencement of employment thereafter



Where Do We Go From Here?

Focus Areas Going Forward: **Coverage**

- Determine who is “employed in the geographic boundaries of the City...”
- Determine how to handle employees who work in the City on an irregular basis, transfer in or transfer out of the City of Milwaukee
- In San Francisco, “...employees who perform work on an occasional basis are covered by the ordinance only if they perform 56 or more hours of work in a calendar year.” *Rule 6.4.*
- It remains to be seen whether the City regulations will take this approach or whether they *can* take this approach...



Where Do We Go From Here?

Focus Areas Going Forward: *Policy*

- Do you have a PTO Bank under Section 112-3 (9) that “makes available...” sufficient time for the same purposes expressed in the Ordinance or do you have a stand-alone Sick Leave Policy?
- Does the Policy allow employees to take paid sick leave for the following purposes?
 - Employee’s own physical/mental condition
 - Care of family member’s condition
 - Does Policy define “Family member?”
 - Absence due to domestic abuse, sexual assault or stalking such as obtaining medical attention, relocation, counseling, obtaining victim services assistance, taking legal action related to abuse or assault...



Where Do We Go From Here?

Focus Areas Going Forward: *Policy*

- Does the policy inform employees:
 - That employees are entitled to take paid sick leave?
 - Regarding the terms of the “guaranteed” use of paid sick leave?
 - That retaliation against employees who use paid sick leave is prohibited?



Where Do We Go From Here?

Focus Areas Going Forward: *Policy*

- Does the policy meet the PSLO minimums:
 - That the accrual rate in the policy follows the 1/30 standard? Or does the employer provide more generous blocks of time?
 - That employees begin to accrue paid sick leave upon the commencement of employment?
 - That employees can use paid sick leave on their 90th day of employment?



Where Do We Go From Here?

Focus Areas Going Forward: *Policy*

- Does the Policy set “unreasonable” barriers to the use of sick leave or require unreasonable documentation?
 - San Francisco – Requiring a doctor’s note for <3 day absence is *unreasonable* while requiring a note for 3 or >3 day is *reasonable*.
- Does it require only reasonable documentation?
 - San Francisco – Employer may require greater documentation in cases of clear pattern or clear instances of abuse of paid sick leave (e.g., where vacation has been denied, Fri./Mon. “sick,” etc.)
- Does the policy penalize employee for use of sick days by reducing benefits?
 - Carryover for everyone but pay out those above the cap? Does this penalize those who have used paid sick leave?
- This topic should be fleshed out further in the regulations !!!



Where Do We Go From Here?

Focus Areas Going Forward: *Be Responsive*

- Consider implementing / updating your Open Door policies!!!
 - Encourage employees to bring any issues arising under your Paid Sick Leave policy to you and respond to them in a timely fashion
 - Avoid claims; deal with outstanding issues
 - Encourage communication – if you don't talk to them, someone else will...
- Some of the compliance issues will be dealt with in regulations, some by you on a case-by-case basis, some by claims filed with City of Milwaukee...



Implementing / Invalidating Ordinance?

Focus Areas Going Forward: *Stay Tuned!*

- City of Milwaukee Dept. of Employee Relations
<http://www.city.milwaukee.gov/der/PSLO>
 - MMAC's "Mandated Sick Leave Benefit" Website
<http://www.mmac.org/>
 - Office of Labor Standards Enforcement guidance*
http://www.sfgov.org/site/olse_index.asp?id=49389
 - DC Register – Accrued Safe and Sick Leave Act, Dec. 19, 2008 at pp.12707 -12718*
<http://newsroom.dc.gov/list.aspx/agency/os/section/37>
- * *This is guidance only, you will need to fine-tune your policy later to ensure compliance with the City of Milwaukee Paid Sick Leave Ordinance and its implementing regulations*

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