

Milwaukee Paid Sick Days Ordinance

City of Milwaukee voters overwhelmingly passed a referendum requiring all employers to provide paid sick leave to all employees. This referendum was a product of *9to5, The National Association of Working Women*, which collected more than 40,000 signatures demanding the referendum be presented to voters. Wisconsin's direct legislation law more or less forced the issue to the binding referendum passed on November 4th. The referendum had bipartisan opposition, including Mayor Tom Barrett and County Executive Scott Walker, but the wording on the ballot made it difficult for any politician to actively oppose the measure.

Milwaukee Paid Sick Days Ordinance FAQ	
What employers are affected?	All private businesses employing individuals in the City of Milwaukee ; the ordinance excludes all public employers, but includes non-Milwaukee employers with employees working in the City.
What employees are eligible?	Since the sick pay earned is based on hours worked, all employees are eligible.
What is the minimum benefit?	Small employers who averaged less than 10 employees per week in the prior year are capped at 40 hours per year of benefit for each employee.
What is the maximum benefit?	All other private employers are capped at 72 hours (9 days) per year.
When are employees eligible?	Employees accrue time immediately but cannot use the paid sick leave until 90 days after start date.
How is each employee's benefit calculated?	Employers need to provide one hour of paid sick leave for every thirty hours worked by an employee, with a maximum credit of 40 hours worked per week (or 1.33 hours per full week worked).
Does it carry forward to future years?	Yes, with a maximum carryover of 40 hours for small employers and 72 hours for other employers.
What qualifies for paid sick leave?	Medical diagnosis, care, treatment, preventative care, or similar attention for employee or family member.
Is sick pay paid upon termination?	No, but those individuals rehired within one year would maintain previous sick leave bank and not be subject to 90 day waiting period.
How are exempt (salaried) employees measured?	Salaried employees accrue time based on their "regular work week" subject to a maximum of 40 hours per week for purposes of paid sick leave determination.

requires employers from outside the City with employees working in Milwaukee to provide paid sick days according to the formula in the ordinance.

The best option for employers in planning for the impact of the paid sick days ordinance is to learn from the similar law enacted in San Francisco in mid-2007. While their results are not authoritative in Wisconsin, they serve as a good baseline and offer ideas for managing the change.

While it currently appears likely that paid sick leave will go into effect in Milwaukee, the Metropolitan Milwaukee Association of Commerce (MMAC) has already filed a notice of claim to the City regarding legal actions to stop the sick leave mandate. Subject to legal challenges, the date of enactment is currently slated for no later than February 14, 2009.

We recommend all City of Milwaukee employers educate themselves with the specifics of the ordinance and prepare for the financial and pragmatic considerations. The law will challenge employers in a number of ways, including:

- Financial impact of absent employees
- Practical impact of replacing employee responsibilities during absence
- Customer service impact
- Recordkeeping burden
- Patient care for health care businesses with schedules made in advance
- Legal considerations for day care businesses and similar operations with minimum staff to child ratios
- New company policy development and administration

The key planning consideration is that the ordinance accrues benefits only for **hours worked in the City of Milwaukee**. This may exclude vacation hours, other PTO, and holidays as well as any hours worked outside the City. This consideration may require some administrative recordkeeping, but could reduce overall exposure by 10-20%. This provision also

A significant nonfinancial issue for employers is likely employee notification of paid sick leave, because all employers want to ensure ample employee coverage and plan in advance. The Milwaukee ordinance does not mention notice requirements for employees to employers, but it is also not intended to provide undue burden on employers to find replacement workers at a moment's notice. The ordinance simply states "an employer may not impose unreasonable barriers to use of paid sick leave or require unreasonable documentation of illness."

The City of San Francisco specified that employers could require advance notice for *foreseeable* absences (medical appointments, etc.) and set a two hour notice guideline for most *unforeseeable absences*. Additionally, San Francisco employers can require documentation verifying an absence of four or more consecutive days or for medical appointments. Once the dust settles from the legal process, we presume Milwaukee employers will want to implement similar formal policies on sick leave notice to comply with the ordinance yet still allow for practical management of employee coverage.

Employers will have the financial impact of replacing workers on sick leave. While the ordinance does not mention a required minimum number of hours at a time an employee must take for sick leave, the San Francisco guidelines allow employers to require employees to use more hours than needed to the extent the employers can verify they had to pay for a replacement employee for the longer period of time. For example, an employee who calls in sick cannot do so in 2-hour increments if the employer has to find a replacement employee for the entire day. We will have to wait for clarification on the Milwaukee ordinance to be sure of this area.

From a financial standpoint, the ordinance specifically precludes employers from penalizing employees "for use of sick leave by reducing any benefits otherwise due the employee." Since we are at least 90 days from enactment, we recommend employers simply stay educated on the legal developments and remain in contact with legal counsel if concerned about the immediate financial impact.

Milwaukee Referenda Affect the Health of Milwaukee Business Owners

While the 2008 presidential election had the most advertising and received the bulk of the media attention, two important referenda on the Milwaukee ballot may have a more immediate effect on area small businesses.

In addition to the paid sick days ordinance, Milwaukee County passed a referendum to allow the State Legislature to increase the county sales tax 1.0%, taking the total sales tax from 5.6% to 6.6%.

We would be happy to discuss how these referenda may affect you and your business.