

Milwaukee Paid Sick Days Ordinance Update

We wrote in November 2008 regarding the City of Milwaukee mandatory paid sick days ordinance created by referendum, which requires all Milwaukee employers to provide paid sick leave to all employees. The ordinance is scheduled to go into effect next Tuesday, February 10th, although the Metropolitan Milwaukee Chamber of Commerce (MMAC) has a Milwaukee Circuit Court hearing on February 6th to place a temporary injunction to halt enactment. The City of Milwaukee supports the temporary injunction to allow the City time to address legal issues of the ordinance. The temporary injunction will likely only *delay* implementation, and employers need to prepare for the possibility of having to comply with the paid sick leave ordinance.

Employer Preparation for the Milwaukee Paid Sick Days Ordinance

“The ordinance requires accrual starting February 10th, but paid sick leave under the ordinance cannot be taken until May 10th. It is therefore likely in your best interest to indicate to your employees prior to February 10th that they can use currently earned PTO in accordance with the ordinance and that it will be counted towards the limits set in the ordinance. The ordinance does not preclude a policy that is more generous than required, and employers can then at least limit the total employee time off for 2009.”

e.g. An employee who currently has accrued 10 days of PTO that he/she can use for all of 2009 could take all of those days off prior to May 10th. If the mandatory sick leave ordinance goes into effect on February 10th, they will also start accruing paid sick leave and may be able to take as many as nine *additional* paid sick days in 2009. If the employer changes its policy stating that time can be taken off according to the ordinance immediately, it is possible that the employee would receive no additional paid sick time in 2009.

For the above example, the employer would need to alter its PTO policy to cap the overall accrual for any calendar year and make other changes to be compliant with the ordinance. Due to the complicated nature of labor law, we strongly recommend employers contact their attorneys prior to implementing any policy change.

We believe that the current economic instability and layoff trends increase the chances that the temporary injunction will be granted; nonetheless, we recommend all employers consider a transitional policy to go into effect on February 10th. This *may* include the following:

- Notify employees that you intend to alter your company’s vacation, PTO and sick pay policies to comply with the ordinance
- Notify employees that current accrued paid time off can also be taken and counted under the Paid Sick Leave Ordinance
- Prepare to post the Paid Sick Days Ordinance similar to other required employer postings
- Prepare to monitor and track paid sick time eligibility, accrual and usage

Every company’s vacation, PTO and sick leave policy is different, and we therefore recommend all employers consult their attorney before formally adopting any policy change. There are many vague aspects of the ordinance that depend on the individual business, including:

- Employee notification requirements (advance notice, documentation, form of notification, etc.)
- Time increment that employees can take sick leave
- Integration with current maternity leave policy
- Possible separate benefits for employers with employees working both in and out of the City of Milwaukee
- Integration with collective bargaining agreements

If the temporary injunction is not granted on February 6th, we recommend that employers alter PTO policies immediately to comply with the notice and minimize the overall possible cost for 2009. Even if the injunction is granted, employers may wish to consider altering their PTO policy now since there are anti-retaliation provisions in the ordinance that prohibit any retaliation for employees taking paid sick leave.

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