

## **Absent Court Intervention Mandated Paid Sick Leave Will Soon Be Reality for Milwaukee Employers**

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On November 4, 2008, City of Milwaukee voters overwhelmingly passed a referendum mandating that all private employers provide employees up to nine days of paid sick leave. Businesses employing individuals within the City of Milwaukee must prepare to comply with this ordinance.

9to5, National Association of Working Women, collected more than 40,000 signatures demanding that the referendum be presented to the voters. The signatures were filed with the City Clerk, and under Wisconsin's direct legislation statute the City of Milwaukee Common Council had two choices: (1) approve the proposed ordinance with no changes (and no opportunity for veto by Mayor Tom Barrett), or (2) send the issue to the voters as a binding referendum. Since the ordinance is not the product of the typical political debate and language compromises which accompany many pieces of legislation, the paid sick leave ordinance contains many vague and employee friendly provisions that will be difficult for employers to interpret and administer. These ambiguities will be left to the City's administrative rule making or the litigation process.

The ordinance provides that all private sector employees employed within the City shall accrue one hour of paid sick leave for every 30 hours worked (i.e., nine paid sick days per year with accruals to be carried over from year to year). Employees of a "small business," defined as a company with fewer than 10 workers (including part-time and temporary workers), may accrue and use a maximum sick leave bank of 40 hours per calendar year (i.e., five paid sick days per year).

Under the ordinance, employees begin to accrue paid sick leave immediately upon commencement of employment, but are not entitled to use the accrued sick leave until the 90th calendar day following the start of employment. There is no requirement to pay out accrued sick leave upon termination of employment, but those individuals rehired within one year would maintain their previous sick leave bank and be able to use the benefit upon rehire.

The mandated paid sick leave can be used by an employee for his or her own physical or mental condition or for any preventative medical care. Preventative care is not defined in the ordinance, and arguably applies to any ancillary activity that may prevent physical or mental health issues. Employees will also be able to take leave for a "family member" for the same reasons. The term "family member" is very broadly defined going so far as to cover the "spouse of a biological, foster or adopted sibling," "domestic partner," and "any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship." Thus, if an employee's close "affinity" friend has any need for "preventative medical care," the employee is allowed paid sick leave. In addition, an employer may not require that "the

employee search for or find a replacement worker,” nor can an employer require “unreasonable documentation.” Further, “an employer may not require disclosure of information relating to . . . the details of an employee’s medical condition as a condition of providing sick leave.” The ordinance also contains notice posting, anti-retaliation and enforcement provisions.

The Metro Milwaukee Association of Commerce filed a claim with the City shortly after the November 4<sup>th</sup> election. The City denied the claim on November 25, 2008, allowing litigation over the ordinance to move forward. Absent the court’s entry of injunctive relief, covered employers will need to be in compliance on February 10, 2009.

*Frank Gumina is a shareholder of Whyte Hirschboeck Dudek S.C. and member of its labor and employment law team. If you have any questions or would like to receive a copy of the proposed ordinance, you may contact Mr. Gumina at (414) 978-5387 or fgumina@whdlaw.com.*