



June 28, 2016

Mayor Chris Coleman
Saint Paul City Councilmembers
City of Saint Paul
15 Kellogg Boulevard West
Saint Paul, MN 55102

RE: Proposed Earned Sick and Safe Time Ordinance

Dear Mayor Coleman and Members of the Saint Paul City Council:

The Saint Paul Area Chamber of Commerce has reviewed the proposed ordinance and has the following specific comments relative to the language. The Chamber offers these comments with the hope that the city will recognize that the strength of this community is, in large part, driven by a robust and engaged business sector. It is our hope that these comments will facilitate changes to the proposed ordinance that reflect the important interests of the business community. To this end, we offer specific recommendations for the council's consideration.

We note, however, the Chamber's long standing opposition to this ordinance. Public policy is being made with little data, driven by emotion, and with little calculation as to the multi-million dollar impact this will have on the business community. Moreover, the patchwork nature of this solution, affecting businesses in one municipality while having no impact on others only serves to harden the competitive environment that Saint Paul businesses will face. However, assuming that the City believes it necessary to now inject itself into the private employer/employee relationship, we offer the following comments and recommendations.

Comments relative to the Proposed Ordinance are linked to the section of the ordinance they apply to:

Purpose:

- a) The ordinance does not ensure that "all workers in the city of Saint Paul" are covered. As the ordinance itself notes there are numerous exemptions. Federal, State, independent contractors, and self-employed entrepreneurs are all exempted. To assert otherwise is simply not true. Moreover, no attempt was ever made to quantify the majority of workers in Saint Paul who already enjoy this benefit from their employer with no regulatory action needed by the city at all.
- b) The ordinance asserts that the purpose is to "diminish public and private health-care costs." We are unaware, and ask the city to provide, any peer reviewed data, from any city, county, or state

that has implemented mandatory earned sick and safe time, that said implementation has caused health-care costs to diminish. This seems to be unnecessary window dressing to support the implementation of this ordinance with no data to support it.

- c) Protecting the public's health similarly flies in the face of publically available data. As the Chamber demonstrated earlier this year, Minnesota Department of Health data reveals that the primary vector for illnesses is not sick employees, but the proverbial potato salad left out in the sun at a church picnic. Simply stated, there is no correlation in MDH data that would suggest that this ordinance will improve public health.
- e) The ordinance says that this ordinance will "promote the economic security and stability of workers and their families, as well as businesses serving the City of Saint Paul and its residents." We are unsure how charging every single business in Saint Paul the expense of compliance improves their economic security. If anything the inverse is true. For some businesses, particularly small ones, this new expense may be the proverbial straw that breaks the camels' back, putting the business out of business! In addition, the patchwork nature of this solution will only further encourage businesses to relocate across the street, to another municipality, to avoid the additional expense.

Of additional concern has been the ongoing message from many that this ordinance is the "moral" thing to do. Morality is of course in the eye of the beholder. When public officials cite morality as a primary reason to impose new costs on every business in the City of Saint Paul we are left wondering when the morals of the business owner will be recognized. Their desire to create jobs, to create success for themselves and their employees, and their willingness to take on risk, each and every day, seems to have become secondary to the perceived right of others to impose their concept of morals upon them. Perceived morality aside, there simply is no evidence to show that the proposed ordinance is rationally related to protecting the health and safety of Saint Paul's residents and workers.

Section 1. Definitions

The definition of employer (in combination with that of employee) creates significant ambiguity. An employee may perform work in the city of Saint Paul, from time to time, while working for an employer who is based in a different municipality. The lack of clarity as to how an employer is to be determined, and how an employee will know if he or she is covered by this ordinance, will only result in additional confusion and presumably additional discord in the employee/employer relationship. An employee may believe they are covered because they "perform work" in the geographic boundaries of the city while the employer, located elsewhere, may be entirely unaware of this unique municipal requirement. The city must define employer as one who is located in the municipal boundaries of the City, not one whose employees simply "may perform work" at some point, for some duration, during the course of employment.

We ask the city to crisply and clearly articulate who is, and who isn't, covered by this ordinance by establishing that only employers located in the city are covered, while employers not located in the city are not.

Section 2. Accrual of Sick and Safe Time

C. We strongly suggest that the 80 hour carry over be reduced to 48 hours. We believe that 48 hours (six days) is more than sufficient to cover the overwhelming majority of employees who need sick and safe time. The additional 32 hours (up to the maximum 80 hours) represents a significant new financial burden for all employers as all sick and safe time hours are represented as a liability (using Generally Accepted Accounting Principles) on the company's financial statements. The increased liability not only counts against the liquidity of the company, it might well prove an additional burden in the acquisition of commercial lending terms for business expansion.

If the average number of sick days taken is covered within the yearly 48 hours maximum, then the maximum should be retained as the ultimate cap. To do otherwise is simply to encourage what ultimately becomes a two week vacation asset for every employee.

D. We commend the city for recognizing that many employers already provide PTO for their employees that meets or exceeds the requirements of this ordinance. Codifying that such plans represent full compliance with the ordinance is an important recognition and we appreciate the clarification by the city. However, we note that even very generous plans may not fully meet the demands of this ordinance without additional cost by the employer. The new recordkeeping requirements, for example, create new financial burdens for even those employers already in compliance. We strongly recommend that the city modify this section to reflect that plans that meet the minimum requirements in terms of sick and safe time, for all employees (full and part-time) be recognized as compliant without the need for additional recordkeeping. Only if the plan no longer meets the sick and safe time minimums should recordkeeping be required.

Section 4. Confidentiality and Nondisclosure

The use of the phrase "safe time" puts many employers at a unique disadvantage. While the term Paid Time Off (PTO) can encompass all manner of time away from employment, the fact that this ordinance specifically calls out safe time virtually ensures that employees will have to share with their employers information that they may not wish to share; information that in turn now the employer is required to protect. A safe day requires the employer to be notified as to something that may be intensely personal on the part of the employee. We see little redeeming value in creating a situation where an employee must now tell their employer elements of their personal life that they may wish not to share with anyone, much less their employer.

We believe strongly that time taken off is at the discretion of the employer and employee, and that identifying the type of time taken off only introduces a new element of anxiety into the lives of both the employee and employer. We strongly encourage the city to eliminate this anxiety and simply call sick and safe time "paid time off" and allow employer and employees to deal with any time taken off on a personal basis, versus requiring the employee to identify the specific requirements of any time taken off.

Section 8. Employer Records

B. We suggest adding that records should not allow personal addresses to become available either. If someone is dealing with a domestic violence situation it hardly seems conducive to share their new home address with a governmental body that is regularly subject to data practices requests.

Moreover, we ask that the city clarify the term "Employer Records" to be specific to the task at hand. The term "employment records" can encompass significantly more data than simply hours worked and

earned sick and safe time. The city should only have access to information uniquely specific to hours worked and earned sick and safe time.

Section 12. Enforcement

We are very concerned that the ordinance provides no recourse for an employer to ask the director to be disqualified in the event that the director is compromised in his or her ability. For example, if an employee is in some way related to, or is a friend of the director, the employer would presumably want the director to recuse him or herself as compromised in the decision making process. The ordinance provides for no such appeal. The same may be true for an employee who files a suspected violation, only to find that the employer is a friend or relative of the director. The ordinance should allow all parties the ability to ensure a fair investigation and decision making process.

Section 15. Private Rights of Action

We strongly oppose this section. We encourage the city to adopt the approach that Minneapolis did in which employees appeal directly to the city for a decision. A private right of action only contributes to the degree to which employers (and employees) will face new legal fees from attorneys who believe, with or without merit, that there is money to be made in the pursuit of legal filings.

Moreover, if the city does decide to retain this section, the language should note that the prevailing party is entitled to reasonable attorney's fees, witness fees, and expenses. Why is the ordinance currently written only to benefit the employee? If employees (and their attorney) do not prevail in a legal action, the employer should be justified in demanding compensation as to the costs to defend from a frivolous lawsuit.

Section 18. Encouragement of More Generous Sick Time Policies; No Effect on More Generous Policies

We recommend moving this to the front of the ordinance. Even the estimate used by activists in this debate points out that the majority of employers already offer generous benefits to their employees, including paid time off. Good employers deserve to be recognized earlier in an ordinance that will affect them financially. Moreover, many employers provide robust complete benefit packages that support employees who are either sick or who are experiencing domestic violence. These employers should be commended by the city for the total value they create for their staff, not just the availability of sick and safe time hours.

Section 21. Effective Date

We encourage the city to move the effective date for all employer groups, regardless of size, to January 1, 2018. Consistency provides a measure of stability for all businesses and two effective dates have the potential to create confusion. For example, a business with 23 employees on Friday, June 30, 2017 (a Friday) but which adds two employees on Monday, July 3, 2017 would still have until January 1, 2018 to comply. But a business with 25 employees on Friday, June 30, 2017, who then only has 23 employees on Monday, July 3, 2017 would have already complied. One date would eliminate any confusion and provide for a consistent implementation date for all affected employers.

Additional Recommendations

- 1) We strongly suggest the city provide a size exemption for businesses. As many municipalities have done across the country, including Minneapolis, allowing smaller firms to provide unpaid sick and safe time to their employees ensures the spirit of the ordinance is adopted, without the significant financial impact that exists for very small employers. We recommend consistency with the Minneapolis ordinance and accordingly suggest that firms with five or less employees be exempt from the paid requirements of this ordinance while still being required to provide unpaid sick and safe time. Such an exemption would ensure that employees still have recourse to time off while the micro-employer is not subject to the financial implications of up to 20% of their workforce being gone for a day (in the case of a five person firm) while still having to pay that person for the time off.
- 2) We believe strongly that employers and employees subject to the conditions of a collective bargaining agreement should not be subject to this ordinance. The current ordinance provides that employers, who have bargained in good faith with their unions, grant sick and safe time benefits to the union members without any negotiation between the employer and union. This is patently unfair to the employer. Union management may have prioritized any number of items ahead of sick and safe time and indeed, this is their prerogative as a bargaining unit. Employers should not have to grant new benefits to the union, at the requirement of the city, without negotiations directly with the union.

We call upon the city to ensure that employers whose employees are represented by collective bargaining agreements be exempt from any sick and safe time requirements, if those requirements are not present in the current agreement, without additional negotiations between the employer and union management.

Finally, we note that the city has yet to define the costs associated with this ordinance on the part of the city. Where will the additional funds come from that support the educational and enforcement aspects of this ordinance? How much money will be necessary? We are very concerned that the costs necessary to fund this initiative will, in turn, be assessed on the very businesses forced to shoulder new costs to comply with this ordinance.

Sincerely,



Matt Kramer
President