



June 12, 2009

Circuit Court Judge Rules Milwaukee Sick Leave Ordinance Unconstitutional - - Enters Permanent Injunction

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Milwaukee County Circuit Court Judge Thomas Cooper ruled today that the City of Milwaukee's sick pay ordinance is unconstitutional and has granted the Metropolitan Milwaukee Association of Commerce (MMAC) a permanent injunction. This means that mandatory paid sick leave will not be required for employers operating in the City of Milwaukee unless an appeals court overturns Judge Cooper's decision.

The sick leave ordinance was passed by referendum by the voters of the City of Milwaukee on November 4, 2008 and was initially scheduled to go into effect in early 2009. The law would have required employees working in the City of Milwaukee to receive up to one hour of paid sick leave for every 30 hours worked in the city. Employees of companies with fewer than 10 workers would have been entitled to receive up to five sick days, and those working for larger companies would have accrued up to nine days.

The MMAC mounted a legal challenge to the ordinance raising several arguments that the ordinance was invalid and unconstitutional. Judge Cooper had previously granted the MMAC a temporary injunction on February 6, 2009, staying the implementation and enforcement of the controversial ordinance. At the time, Judge Cooper indicated that he expected that his ruling would be challenged in the Court of Appeals and the Wisconsin Supreme Court. Today's ruling makes the injunction

permanent.

In ordering the permanent injunction, Judge Cooper found that the ballot question presented to the electorate was invalid in that it did not include a “concise statement” of the ordinance. Specifically, he noted that the ballot did not indicate that employees would be permitted to seek certain leave for domestic or sexual violence or stalking. Judge Copper also concluded that the ordinance is unconstitutional in that certain provisions relating to leave for domestic violence and sexual assault were not rationally related to the overall objectives of the ordinance.

This represents a significant victory not only for employers located in the City of Milwaukee, but also employers that have workers performing services within the boundaries of the City of Milwaukee. Lindner & Marsack, S.C. was actively involved in opposing the implementation of the ordinance, including filing an amicus brief on behalf of the Wisconsin Association of Staffing Services (WASS). An appeal to the Wisconsin Court of Appeals has already been promised by supporters of the bill which include 9to5, the working women organization that led the campaign for the ordinance.

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