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BREAKING NEWS -- City of Milwaukee Employees Now Entitled To Paid Sick Leave

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The City of Milwaukee has now joined only a handful of other cities in the country which mandate that employers operating within the city provide paid sick leave to their employees. On November 4, 2008, City of Milwaukee voters passed a resolution requiring the City of Milwaukee Common Council to adopt an ordinance that mandates that employers in the City of Milwaukee provide up to five (5) or nine (9) paid sick days to their employees. The ordinance has an effective date of ninety (90) days following publication.

By its terms, the ordinance applies to any person who is “employed within the geographic boundaries of the city by an employer” and, as a result, arguably applies to *any* business entity that conducts business within the City of Milwaukee. It is unclear whether this could mean that an employee who performs work within the city for an employer that is located outside the city may accrue sick leave while performing work within the city limits.

Under the ordinance, any employee working within the City of Milwaukee for an employer with more than ten (10) employees, accrues paid sick leave at the minimum rate of one (1) hour per thirty (30) hours worked, up to seventy-two (72) hours or nine (9) full work days of sick leave in a calendar year.

Employees of “small businesses,” which is defined as a company that has ten (10) or fewer employees in a given workweek, must be provided up to forty (40) hours, or five (5) days, of paid sick leave. Under the definition, *every* employee working for compensation in a week, whether full-time, part-time, or temporary (including employees supplied by a staffing agency), must be counted toward the ten (10) employee threshold.

Employees may use sick leave for the employee’s own “mental or physical illness, injury or health condition or need for medical diagnosis, care or treatment of a mental or physical illness, injury or health

condition or need for preventative medical care.” Leave can also be taken for care of a family member (i.e., child, parent, spouse, grandparent, grandchild, sibling, the spouse of a sibling, domestic partner, or other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship) with a mental or physical illness, injury or health condition. Furthermore, an employer may not require, as a condition of an employee taking leave, that the employee find a replacement worker or require that the employee provide “unreasonable documentation” of the illness.

The ordinance does not address how accrued sick leave can be taken. Given that leave accrues in one-hour increments, it is likely that the ordinance will be construed to allow leave to be taken in one-hour increments.

Accrual of paid sick leave begins upon the commencement of employment in hour-unit increments; however, employees are only entitled to use accrued paid sick leave starting on the 90th calendar day following their start date. After the 90th calendar day, employees may use paid sick days as they accrue. Under the ordinance, employees are also permitted to carry-over accrued paid sick leave from one calendar year to the next; however, the caps of seventy-two (72) hours per employee, and forty (40) hours for “small business” employees, still apply. Employers are not required to pay an employee for accrued and unused sick days at the termination of the employment relationship.

Employers who have sick leave or paid time off policies that meet the minimum requirements of the ordinance, providing leave for the same purposes and under the same conditions, are not required to provide additional paid sick leave. Employers that do not presently provide sick leave to their employees who work in the City of Milwaukee are required to adopt such a policy within 90 days of publication of the ordinance by the City of Milwaukee Common Council.

If you have any questions about the issues raised by this e-alert, please feel free to contact Laura A. Lindner or Oyvind Wistrom at (414) 273-3910 or by e-mail at llindner@lindner-marsack.com or owistrom@lindner-marsack.com.

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