

Pittsburgh's costly and counterproductive sick leave law

Summary: The Pennsylvania Supreme Court has upheld a City of Pittsburgh's ordinance requiring private employers to offer paid sick leave to full- and part-time employees. But the mandate likely will impose significant costs on businesses, many of which already operate on thin margins. There also are serious questions about the efficacy of the measure's stated goal of improving the public health.

Effective Jan. 11, 2016, the City of Pittsburgh's "Paid Sick Days Act" (*Title VI, Article VII, Section 626, of the Code of Ordinances*) required private employers to provide paid sick time to full- and part-time workers.

"The ordinance is intended to improve the public health by ensuring that employees can use accrued time when they (or their family members) are sick," a city overview of the policy states.

All employees who work within the geographical boundaries of the city are covered. Those not covered are federal and state employees; independent contractors; construction workers in a collective bargaining unit and seasonal workers employed for 16 weeks or fewer who have been notified in writing at the time of hire of their start and end dates.

Per the ordinance overview, one hour of sick time is accrued for every 35 hours worked, up to 40 hours per year (five days) if their place of work employs 15 or more people, and up to 24 hours per year (three days) if their place of work employs fewer than 15 people and only accrue unpaid sick time in the first year after the effective date.

Challenged by the business community, both Allegheny County Common Pleas and the state Commonwealth courts struck down the ordinance as being barred by the state's home rule charter law. But the state Supreme Court, in a 4-3 ruling on July 17, upheld the law in what one dissenting justice called a "circuitous" spate of legal rationalizing.

That said, the validity of the ordinance now is a case of settled law.

Sans any legislative action to amend the home rule charter law to disallow any municipalities from enacting regulations not expressly permitted by the state—that is, minus any legal wriggle room that invites judicial contortions—the practical challenges and effects of the sick leave ordinance now must be dealt with.

And those are as myriad as they are problematic.

As now-Allegheny Institute President-emeritus Jake Haulk detailed when the ordinance first was proposed in 2015 (*Policy Brief Vol. 15, No. 35*), mandatory paid sick leave represents “added regulatory costs (that) will hasten the demise of (small, start-up businesses) that might have otherwise made it and grown into business that could offer, on its own volition, paid sick leave.”

Furthermore, asked Haulk:

“How does the city know if a certain business with 18 employees can better afford the greater paid leave requirements than other businesses with 14 employees?

“This is government hubris at its absolute worst. Businesses with plans to boost hiring beyond the 15-employee level might well ditch the plans because of the escalation in paid leave benefits for all its employees.”

Additionally, prices could be forced up or affected businesses could be forced to move outside city limits.

Enforcement and fairness are other tricky issues. Some employers might find it cheaper to pay the \$100-per-offense fine than offer paid sick leave. Sanctions against employees who abuse the sick leave law are left to the employer.

Thus, the sick leave bill “is not fair, is anti-business and amounts to paternalism at its worst,” Haulk said.

Aside from what Haulk later noted (*Policy Brief Vol. 17, No. 6*) was government taking “upon itself the power to impose political or social desiderata on businesses,” there’s an even more troubling question regarding mandatory paid sick leave:

Does it improve the public health? A [2014 study](#) suggests not.

The Freedom Foundation, a Washington state think tank, evaluated what it said were 10 of the most important and widely cited studies from both supporters and opponents of mandatory paid sick leave.

Not only did it conclude there were consistent “moderate negative consequences for affected businesses ... such laws do not produce the benefits promised by supporters.”

“Government sick leave mandates even fail to prevent employees from coming to work sick, ostensibly the most basic goal of such requirements,” concluded study author Max Nelsen.

“Critically, no evidence indicates that paid sick leave regulations noticeably reduce presenteeism,” he continued. “If the policy fails to achieve a reduction in the frequency of employees coming to work while sick, then all of the public health justifications offered by labor activists, however persuasive, are invalid.”

As Haulk noted four years ago, Pittsburgh’s sick leave bill offers a “profound insight into an ideological wasteland in which the state and its big cities are immersed.”

If not its highest court, it must be added.

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