



Is government-mandated sick leave coming to Allegheny County?

Summary: A proposed ordinance would impose a paid sick leave mandate on businesses in Allegheny County as has been done in the City of Pittsburgh. This is a short-sighted measure that will harm businesses, many of which are struggling with the effects of the coronavirus and trying to recover from the economic shutdown.

The proposed county ordinance outlines some of the purported benefits of paid sick leave—greater productivity, reduction of turnover, greater loyalty from employees and improvements to public health. As noted in a *Policy Brief (Vol. 19, No. 27)* an analysis of 10 studies on paid sick time found “there were consistent ‘moderate negative consequences for affected businesses ... such laws do not produce the benefits promised by supporters.’”

The ordinance states that “members of the workforce throughout Allegheny County lack access to paid sick days.” However, there is nothing in the ordinance on how many employees this mandate would affect. Based on the U.S. Census Bureau’s data for County Business Patterns by Legal Form of Organization and Employment Size Class, in 2018 there were 33,732 establishments in Allegheny County with 705,835 employees. Of the establishments, 22,831 (68 percent) had fewer than 10 employees. That group includes many businesses that are trying to recover from the coronavirus and it is possible that many may close. The hard-hit classification of accommodation and food services counted 3,395 establishments and 66,624 employees in 2018.

The most recent data on employment in Allegheny County shows that there are 62,000 fewer people employed in August 2020 than a year earlier.

With few exceptions, the ordinance is a word-for-word replica of the City of Pittsburgh ordinance that passed in 2015 and was the subject of a lawsuit. After losing at the Common Pleas and Commonwealth court levels, the city’s ordinance stood when the Supreme Court ruled in its favor in July 2019. In the ruling the Court stated that the city’s paid sick days ordinance “...is more like a ‘health and safety ordinance’ that affects business than a statute with its principal focus upon regulating business for its own

sake...” Whether a yet-to-be enacted county ordinance would follow the same path through the courts and be ruled on in the same fashion as the city is unknown.

The county ordinance has the same accrual rate for paid sick leave (one hour for every 35 worked), exempts the same types of employees from the mandate (independent contractors, state and federal employees, any member of a construction union with a collective bargaining agreement or seasonal employees) and treats businesses differently based on the number of employees.

The county ordinance states that employees of businesses that have 15 or more employees can accrue no more than 40 hours of paid sick time in a calendar year. If the business has fewer than 15 employees, the cap is 24 hours in a calendar year. Unlike the city’s ordinance the county’s proposal does not allow businesses with fewer than 15 employees to provide unpaid sick time for the first calendar year after the effective date of the ordinance.

As we pointed out in a *Policy Brief (Vol. 15, No. 35)* this is government again presuming that it knows that a business with 18 employees can afford greater requirements than a business with 14 employees. It also does not anticipate that businesses that may have planned to hire more workers and exceed the 15 employee level might avoid doing so because of the mandate.

In a *Policy Brief (Vol. 15, No. 37)* we noted “all the big employers, the governments and government agencies, the universities, the hospitals and most large private sector firms already offer sick leave pay”; though governments can be very generous with benefits paid for by taxes from the private sector does not mean small and mid-sized businesses can. In yet another *Policy Brief (Vol. 15, No. 38)* we asked “why should it be the business owner’s responsibility to incur the cost? They can if they choose, but government mandating is a far different matter.”

Whereas in 2015 we warned that city-based businesses may look to other communities in Allegheny County to avoid the paid sick leave mandate, a countywide provision could lead to movement of businesses outside of the county—unless those counties pursue paid sick time requirements of their own.

Like the city, the county ordinance requires employers to provide written notice to employees about paid sick time and retain records for two years so that a yet-to-be determined county agency (the county executive would determine who would be in charge of enforcement) can access the records “with appropriate notice and at a mutually agreeable time.” Employers who willfully violate the terms of the ordinance are subject to a maximum fine of \$100 for each offense beginning one year after the effective date of the ordinance.

As we mentioned in the latter *Policy Brief* “a business owner can make a calculation as to whether the likely annual cost of paying fines after hassling with the implementing agency will be less than putting the mandated sick pay system in place. If that is the case

they may simply refuse to offer sick pay. [C]ollecting a \$100 fine per offense will be of little help for the employee.”

Given the recent data on employment, this is the worst possible time to cause businesses, especially small businesses and leisure and hospitality businesses, to put off hiring because of added costs and tedious paperwork and record-keeping.

Enforcement of the city’s ordinance began on March 15. Do the supporters of the county’s ordinance anticipate that the county will enforce sick leave requirements within the city? There is nothing in the proposed ordinance that indicates that the city will not be included in the county’s ordinance. That could lead to redundancy when there is talk of streamlining government. If the city hands off enforcement to the county, what does the city do with the money it was spending on that function?

The guidelines also outline how complaints are to be filed, the agency’s jurisdiction and investigation and ruling procedures. Has the county tried to determine what its costs for carrying out a similar arrangement would be?

As we reiterated in previous *Briefs*, “a healthy, dynamic small business community is very important. Why endanger that or make it more difficult with more heavy-handed government?”

Jake Haulk, Ph.D., President-emeritus

Eric Montarti, Research Director

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Allegheny Institute for Public Policy
305 Mt. Lebanon Blvd.* Suite 208* Pittsburgh PA 15234
Phone (412) 440-0079
E-mail: aipp@alleghenyinstitute.org
Website: www.alleghenyinstitute.org
Twitter: [AlleghenyInsti1](https://twitter.com/AlleghenyInsti1)