



Government-mandated sick leave in Allegheny County is still a bad idea

Summary: An ordinance passed by Allegheny County Council on March 9 would have imposed a paid sick leave mandate on businesses in Allegheny County with 26 or more employees. The ordinance was a short-sighted measure that would harm businesses, many of which are still struggling with the effects of the coronavirus and trying to recover from economic shutdowns. The ordinance was vetoed by the county executive on procedural grounds and the veto has been sustained.

In his veto message the county executive noted a failure to follow “the appropriate process through which such policy should be established...this regulation should have been put in place following the provisions of the Local Health Administration Law.”

That law, contained in 16 PS, Article XXI, outlines a process where the county board of health submits rules and regulations to the county commissioners (the pre-Home Rule Charter governing board) “for approval or rejection.”

Based on the Home Rule Charter, County Council has 30 days to override a veto by a two-thirds vote. Council drafted a motion on March 19 to override the veto. The motion stated that any concern the executive had regarding the process was not brought up until “the day before the final vote on the ordinance.”

An attempt to override the veto on March 30 fell short and the executive’s veto was sustained.

The executive has indicated he is not opposed to the policy and has directed the board and department of health to “promulgate sick leave regulations” in his veto message.

Will these proposed regulations be identical to the final version of the ordinance? Or will they be substantially different from what the council approved? Here are some important considerations as the process moves to this next stage.

The ordinance outlined 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)* the Freedom Foundation in 2014 analyzed 10 studies on paid sick time policies in San Francisco, Washington, D.C., Connecticut and Seattle on employee turnover, business compliance, job growth, implementation and use of sick time among other topics. Cities with paid sick time ordinances had varying rates of sick time accrual (how many hours worked to earn one hour of sick time) and establishment size (based on number of employees) to which the ordinance applied. It found “overall, mandatory paid sick leave laws consistently have moderate negative consequences for affected businesses. At the same time such laws do not produce the benefits promised by supporters.”

The ordinance stated that “members of the workforce throughout Allegheny County lack access to paid sick days.” However, there was 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, 6,075 (18 percent) had 20 or more 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 for Allegheny County shows that there were 48,800 fewer people employed in January 2021 than a year earlier.

The ordinance stated that employees of businesses that have 26 or more employees would accrue no more than 40 hours of paid sick time in a calendar year. The accrual rate was one hour of paid sick leave for every 35 hours worked. The calendar year total and accrual rate would not preclude an employer from offering higher amounts. Independent contractors, state and federal employees, any member of a construction union with a collective bargaining agreement or seasonal employees were exempt.

The employee threshold, which was amended from the original ordinance, was higher than the 15 employee threshold in the City of Pittsburgh, whose sick leave policy we wrote about many times before and those writings hold true for the county’s ordinance.

As we pointed out in a *Policy Brief (Vol. 15, No. 35)* this is government setting an arbitrary number and presuming that it knows, for example, that a business with 29 employees can afford greater requirements than a business with 24 employees. It also does not anticipate that businesses that may have planned to hire more workers and exceed the 26 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."

The ordinance required employers to provide written notice to employees about paid sick time and retain records for two years so that an undetermined county agency (the county executive would determine who would be in charge of enforcement) could access the records "with appropriate notice and at a mutually agreeable time."

The agency's first method of resolution after a complaint is filed—either by an employer, employee, or authorized representative—was mediation. Penalties and fines could be levied. Employees could get restitution of lost wages and benefits and employers could be permitted to take disciplinary action. Employers who willfully violated the terms of the ordinance were 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."

Did the supporters of the ordinance anticipate that the county would have enforced sick leave requirements within the city? There was nothing in the ordinance that indicated that the city would not be included. If so, that would lead to a confusing situation since the city's ordinance applies to employers with fewer than 26 employees. That could lead to redundancy when there is talk of streamlining government. If the city would have handed off enforcement to the county, what would the city do with the money it was spending on that function?

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. Or it could lead to city-based businesses under 26 employees to move to other municipalities in the county if the employee cutoff remains.

Did the county determine what its costs for enforcing the sick leave provisions would be?

The first city with paid sick leave, San Francisco, has heard close to 400 complaints since 2008, an average of 30 per year. It has four full-time employees (FTE) in an office with a \$6.5 million budget that handles a variety of labor issues.

Philadelphia has required paid sick leave since 2015. It heard 91 sick leave complaints in the last two years and resolved 35. The office that handles enforcement along with other labor issues has 15 FTE and a \$0.9 million budget.

Chicago received 696 complaints related to its paid sick leave law in 2019 and 2020 and has a staff of four FTE and receives assistance from other departments.

Pittsburgh began enforcement last year so no data on complaints is available yet. The Office of Equity has been put in charge of administering the ordinance. Its 2021 budget is \$1.3 million and has 14 FTE.

**Local Government Paid Sick Leave Policies Enacted Since 2015
(Respective State Has Not Adopted a Statewide Policy)**

Local Government	Employee Threshold	Employee Earns 1 hour of paid sick time for every...	Maximum Accrual in Calendar Year
Philadelphia	10 or >	40 hours worked	40 hours
Pittsburgh	< 15, or 15 or >	35 hours worked	24 hours, 40 hours
Minneapolis	6 or >	30 hours worked	48 hours
Duluth	5 or >	50 hours worked	40 hours
Chicago	All who work 2 hours in a 2 week period	40 hours worked	40 hours
Cook County	All who work 2 hours in a 2 week period	40 hours worked	40 hours
Austin	< 16, or 16 or >	30 hours worked	48 hours, 64 hours
San Antonio	< 16, or 16 or >	30 hours worked	48 hours, 64 hours
Dallas	< 16, or 16 or >	30 hours worked	48 hours, 64 hours

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

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?”

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