

CITY OF MINNEAPOLIS

# Municipal Sick Leave Policy Recommendations

Committee of the Whole  
Thursday, May 5, 2016

# Staff Direction #1

Directing the City Coordinator and the City Attorney to organize, convene, and lead a multi-department work group to review and respond to the recommendations of the Workplace Regulations Partnership Group (WPG) for a municipal policy on earned sick leave, including:

1. Draft an ordinance for a municipal earned sick leave policy for City Council consideration;
2. Develop a recommendation for a program to administer the municipal sick leave policy, including identifying a responsible department charged with implementing and enforcing any proposed ordinance, preparing a plan for start-up and ongoing operating costs, and creating a communications and outreach plan and timeline;
3. Identify outstanding concerns about a municipal sick leave policy and unresolved issues, including but not limited to issues identified in the WPG Report regarding casual employees and others with unique employment arrangements, issues articulated in the Cramer dissenting opinion, and those issues collected through community listening sessions, and propose strategies to mitigate, minimize, or resolve such concerns with the policy or administration of a municipal sick leave program to the extent practicable and not in conflict with the overall intent of the WPG Report

# Ordinance Scope

## - Covered Employers

Covered Employers are those with 6 or more employees, including the City

### Excludes:

- US Government
- MN state departments and agencies
- Other county or local governments

# Ordinance Scope

## - Covered Employees

Employees who perform at least 80 hours of work in a calendar year within the City's geographic boundaries

### Includes:

- Full-time
- Temporary
- Part-time

### Excludes:

- Independent contractors
- Construction workers paid prevailing wage for all hours worked  
Construction worker apprentices
- Health care providers who are casual employees

# Ordinance Scope

## - Effect on Other Leave Policies

- Ordinance is a minimum standard.
- Employers with paid time off policy meeting or exceeding ordinance, need not provide more paid sick and safe time.
- Encourages adoption and retention of more generous paid sick and safe leave.
- Employers may have a policy by which employees donate leave to other employees.
- Employers may advance sick and safe leave to an employee prior to accrual.

# Ordinance - Accrual of Sick and Safe Leave

- Accrual Rate: 1 hour for every 30 hours worked
- Carry-over of up to 80 hours to the next year
- Maximum Accrual: 48 hours in a calendar year
- May use after 90 calendar days of employment

# Ordinance – Usage of Sick and Safe Leave

May use accrued sick and safe time for:

- Employee
- Family Member
  - Child, step-child, adopted child, foster child, adult child
  - Spouse
  - Sibling
  - Parent, Step-parent, mother-in-law, father-in-law
  - Grandparent, grandchild
  - Guardian, ward or member of the household
  - Registered domestic partner



# Ordinance – Usage of Sick and Safe Leave

May use accrued sick and safe time for:

- Mental or physical illness, injury or health condition
- Medical diagnosis, care or treatment or a mental or physical illness, injury or health condition
- Preventive medical or health care
- An absence due to domestic abuse, sexual assault, or stalking
  - Seek medical attention
  - Obtain services from a victim services organization
  - Obtain psychological or other counseling
  - Seek relocation
  - Take legal action
- Closure of an employer's place of business or school/ place of care of a child for whom care is required where the closure is by order of a public official to limit exposure to an infectious agent, biological toxin or hazardous material or other public health emergency

# Ordinance – Usage of Sick and Safe Leave

- May use accrued sick and safe time in smallest increment of time tracked by employer's payroll system
- Must be compensated as same hourly rate with same benefits
- Employer not permitted to condition use on finding a replacement worker
  - May have a policy for voluntarily exchanging hours or trading shifts
- Employer may require reasonable documentation when employee has used 3 consecutive sick and safe days

# Ordinance – Employer Duties

- Post notice provided by MDCR informing employees of rights
  - Language spoken by at least 5% of employees
  - Must include in employee handbook
- Track hours of employees who occasionally work in the City
- Maintain required records for 3 years
  - Allow employees to inspect their own records
- Provide MDCR with access to the records
- Keep confidential health or medical information or information pertaining to domestic abuse, sexual assault, or stalking

# Ordinance – Termination, Transfer and Separation, Employer Succession

- No payout of accrued sick and safe time upon termination
  - If rehired within 26 weeks by same employer, accrued sick and safe time must be reinstated
- Accrued sick and safe time remains on the books for 3 years if employee is transferred out of the City
- Employees who remain employed with a successor employer maintain accrued sick and safe time and are entitled to use accrued time

# Ordinance – Department of Civil Rights Authority

- To implement, administer and enforce
- To promulgate rules
- To investigate possible violations
  - On the basis of a report
  - On the basis of any other credible information, including violations found during the course of an investigation
- Order appropriate relief for violations



# Ordinance – Implementation

- Effective Date – July 1, 2017
  - Phased enforcement
- Multilingual and culturally specific outreach and community engagement
- Create guidelines, FAQs
- Exploration of work-sharing agreements with the State
- Adopt rules
- Create multilingual notices for Employer use

# Ordinance – Enforcement

- First violation within first 12 months following effective date
  - Mediate disputes
  - Issue warning and notice to correct
- Second violation within first 12 months following effective date & any violation after first 12 months
  - Administrative process
  - Appeal to a City hearing officer



# Ordinance – Enforcement: Administrative Process

- Investigation authority
  - Based upon a report of a suspected violation
  - Based upon any other credible information
  - Sole discretion of MDCR to investigate or pursue
- Reports of suspected violation
  - Must be filed within 365 days of occurrence
  - Employee or other person may file
- Rebuttable presumption of violation if employer fails to respond to a notice of violation or request for information

# Ordinance – Enforcement: Administrative Process

- MDCR rules must set forth the timelines and processes
- MDCR shall consider any statement of position or evidence with respect to the alleged violation provided by the employer or filer of the alleged violation
- Investigation must be objective and impartial
- May require a fact finding conference or participation in another process
  - Define the issues, resolve resolvable issues
  - Determine undisputed elements
  - Discuss or negotiate settlement
- Director must issue a Determination of Violation if no settlement

# Ordinance – Enforcement: Administrative Process Relief

Relief includes:

- Reinstatement and back pay
- Crediting of accrued by not credited time plus payment to employee of 2x the dollar value of the time but not exceeding \$250.00
- Payment of accrued time unlawfully withheld plus payment to employee of 2x the dollar value of the time but not exceeding \$250.00
- Up to a \$1,500.00 administrative penalty payable to the employee for retaliation or confidentiality violations
- Up to a \$50.00 per day administrative fine payable to the City for violations of notice posting, required statements to employees and record keeping

# Ordinance – Enforcement Process

- Employer has 15 days to appeal
- Appeal is a hearing held before a City administrative hearing officer
  - Burden of proof is preponderance of the evidence
  - Required corrective action is reasonable
- Hearing officer decision is final
- Employer may petition by writ of certiorari to the MN Court of Appeals
- City Attorney may initiate civil action if employer doesn't comply with a final determination of violation

# Staff Direction #2

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# WPG Recommendations re: enforcement

- Broad education effort to help employers and employees understand implications of policy when implemented.
- Single point of contact within the City for employees and employers to address issues.
- Explicit protection from retaliation.
- Transparent notification to employees including written notice and workplace posting.
- Annual outcome evaluation reported to City residents, businesses, employees, and other stakeholders.
- Partnership approach that includes a stakeholder group to review and improve upon policy implementation over time.
- City compliance consistent with current practice, including individual relief to aggrieved parties.
- City prohibits licensees from contracting for services where the contractor has failed to comply with this ordinance.
- Enactment of the policy should be at least six months following passage of the ordinance by Council.

# Who should administer this policy?

## We recommend enforcement being housed with the Civil Rights Department

- Descendants of the Minneapolis Fair Employment Practices Commission established by former Minneapolis Mayor Hubert Humphrey, they have over 50 years experience in investigating and pursuing claims regarding discrimination in a variety of areas, including employment and unlawful retaliation or reprisal
- They have also been charged with the enforcement of prevailing wage claims (federally under the Davis-Bacon Act as well as qualifying claims under Minneapolis ordinance) and contract compliance issues relating to affirmative action planning and requirements and goals set forth under the Small and Underutilized Business Program
- They have extensive experience in dealing with a variety of employers regardless of where the same are located as discrimination complaints are investigated based on where the complaint stems from, not where the employer is corporately located
- Their approach is closely aligned with that recommended by the WPG as being compliance-focused and based on broad and extensive outreach efforts:
  - Department's mediation program has increased over 50+ yearly since 2013
    - In 2016, 27% of all discrimination complaints successfully mediated.
    - Since January 1, 2015, Department has recovered (through mediation and conciliation) over half a million dollars for aggrieved parties
  - Continued emphasis on engagement with attendance at over 50 presentations, cultural festivals, or community events in 2015.



# How should this policy be implemented?

- Staff concurs with the WPG's recommendation that implementation should be broad-based and involve substantial educational/ community engagement
- Goal is to create a variety of tools for employers (FAQ's, rules, guidelines, notices etc.) that will simplify implementation process and follow up with targeted outreach and communications strategies
- Staff also recommends an approach in which enforcement measures will be primarily corrective or remedial for the first 12 months of its implementation (for new violations)
- Staff also recommends the creation of an advisory body to assist in reviewing impact and outcomes of this policy - more on this on May 25<sup>th</sup> as per staff direction

# Timeline for implementation

In speaking to the Civil Rights Department, they reflected on the recent change and outreach efforts pertaining to the creation of the Office of Police Conduct Review: *they did that in 9 months and wished they had had at least 12 to do more thorough vetting and engagement*

- We recommend at least 12 months before this policy's effective date so that staff can:
  - ✓ Establish policies and procedures governing this policy
  - ✓ Create and translate notices, FAQ's, guidelines and other documents needed to effectively administer this policy
  - ✓ Hire additional staff already allocated within this year's budget
  - ✓ Perform targeted outreach and education campaigns/communications strategies with NCR and Communications staff to ensure stakeholders are engaged and knowledgeable about their rights and obligations under this policy
  - ✓ Set up tracking and evaluation mechanisms to assess the impact and outcomes of this policy moving forward
- We also recommend a phased implementation approach where the first 12 months of implementation are primarily corrective/remedial for those with new violations
- With the above approach, staff feels the 2 additional hires budgeted for initially should be sufficient at the moment, allowing for future consideration of resource needs based on increased workload once the policy becomes fully implemented

# Timeline for implementation

SUMMER/FALL 2016:

## IDENTIFY KEY MESSAGES, STAKEHOLDERS, RESOURCES

- Work internally to hire staff and draft enforcement rules
- Identify critical messages, tailored for different audiences

FALL/WINTER/SPRING  
2016-17:

## COMMUNICATION PLAN

- Seek and consider public input before finalizing rules
- Educate key constituencies on rights and responsibilities

### Build Meaningful Relationships/Partnerships

- City/public leaders
- Legal partners
- Community stakeholders
- Organizations/members
- Advisory group

### Push Media Communications

- Press releases
- Community outlets
- Social media
- Website
- Printed guidance & FAQ

### Collaborate with existing Department Outreach

- Commission meetings
- Listening sessions
- Public festivals
- Working groups/Advisory group

# Staff Direction #3

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# Additional issues

As part of this work, staff also heard additional recommendations, suggestions and concerns about the enactment of such a policy

Many addressed in ordinance

- Ensuing retaliation is expressly prohibited
- Ensuring employees receive appropriate notice of their rights as it relates to sick leave
- Ensuring employers who already provide PTO policies are not overburdened by having to comply with additional mandates if they already meet the minimum requirements of the city's policy
- Ensuring employers can use existing payroll tracking mechanisms to comply with this policy
- Ensuring that employers had reasonable means to manage such a policy from the perspective of managing workforce needs (with employee notice for foreseeable sick and ability to request documentation if needed) **but also** making sure employee privacy issues were addressed
- Encouraging broader or more generous policies (like bereavement leave)
- Addressing healthcare providers who are casual employees through ordinance

Others were beyond the scope of City's ordinance

- Have this policy pass at a federal, state or even regional level
- Consider in the future a broader citywide tax mechanism to support this benefit
- Advocate for higher reimbursement rates for nonprofit entities that are paid through government funds

Others focused on impact to new and existing businesses/employers

- Concerns over possible administrative burdens
- Need to support small businesses/employers
- Concerns about effects on the local economy and job growth

# Focusing on impact to economy & employers



**The concerns brought forward from primarily the business community were genuine and real:**

- Feeling overburdened by regulation
- Feeling financially unable to fully embrace what most acknowledged was a valuable and well-intentioned policy
- Feeling concerned about having to manage multiple payroll systems where their employees work in multiple cities/states
- Feeling like the City of Minneapolis doesn’t do enough to support those wanting to do businesses locally, particularly small businesses

**Additional questions concerning the impact of existing policies in jurisdictions that had enacted them were no less genuine:**

- Did it increase public health or decrease “presenteism?”
- What were the enforcement costs?
- Was job growth impacted by such policies?
- Did business/employers raise prices for residents to offset the costs of such policies?

# Focusing on impact to economy & employers

(cont.)

While many jurisdictions have not had time or resources to evaluate the impact of their sick leave policies, preliminary studies indicate that the effect on local economies and job growth is minimal.

According to an October 2015 publication by the U.S. Department of Labor, “[s]tate and local economies with earned sick time laws are doing well.”

Citing studies performed in San Francisco, Seattle, and Washington (DC), the Department of Labor found that “[s]everal studies of employment, sales, and other measures of economic well-being in jurisdictions that have enacted new earned sick time laws did not see economic harm.”

- Notably:
  - San Francisco: “following implementation of the 2007 earned sick time ordinance, San Francisco had faster job growth during growth periods and smaller job losses during down times than surrounding counties.”
  - Seattle: “after the first year of implementation, preliminary data showed that there was lower unemployment in the surrounding county than in the state, while the county outpaced the state in job growth, including in retail and food and drink places.<sup>32</sup> Another study showed that there was no statistical evidence that the ordinance caused businesses to shut down or leave Seattle; rather, the number of employers grew more in Seattle than in comparison cities.”
  - Washington, DC: “fears that businesses would move over the city line after the 2008 earned sick time law was implemented were found to be unsubstantiated.”



# Focusing on impact to economy & employers

(cont.)

Other reports yielded similar results:

- June 2015 post implementation self-evaluation report titled *NYC's Paid Sick Leave Law – First Year Milestones*: rather than being the "death knell for New York City's economy," during the period of the law's enactment "New York City's economy has thrived."
- April 2015 report by the National Partnership for Women and Families titled *Paid Sick Days: Low Cost, High Reward for Workers, Employers and Communities* also cites reports from San Francisco, Washington (DC), Connecticut, Seattle, and Jersey City: the "growing body of evidence from the longest standing laws shows paid sick days makes business and economic sense."
- June 2014 White House's Council of Economic Advisors report *The Economics of Paid and Unpaid Leave* referring to paid leave and flexible workplace policies generally: "these practices can benefit employers by improving their ability to recruit and retain talent, lowering costly turnover and minimizing loss of firm-specific skills and human capital, as well as boosting morale and productivity."
- March 2014 report titled *Good for Business? Connecticut's Paid Sick Leave Law* followed up on the states implementation of leave and found: "[m]ost employers reported a modest impact or no impact of the law on their costs or business operations, and they typically found that the administrative burden was minimal. Finally, a year and a half after its implementation, more than three-quarters of surveyed employers expressed support for the earned paid sick leave law."



# How do we address these concerns?

- Development of an evaluation mechanism to measure the impact of this policy so we can take swift action if we find evidence of an unintended consequence
  - Includes the provision in draft ordinance requiring annual evaluation
  - Also includes the upcoming recommendation scheduled for May 25 regarding the creation of a permanent advisory body to assist with this effort, which should include some of the ideas brought forward in the “partnership approach” forwarded by WPG member Steve Cramer such as:
    - Workplace recognition for current practices like a "Minneapolis Proud“ employer designation
    - Dissemination of best practices
    - Volunteer "peer to peer" business practice consulting
    - On-going evaluation of administrative/cost efficiency opportunities with City policies and procedures as they impact business practices
    - Development of possible business incentives
  - Includes the Department of Health’s pre-application to the Robert Wood Johnson Foundation's funding opportunity Policies for Action: Policy and Law Research to Build a Culture of Health). The 2-year \$250,000 grant would enable the department to study the health impacts of the policy's implementation. If asked to submit an application, it would be due on June 8.



# How do we address these concerns?

Importantly, strengthening support to businesses generally, but small businesses/employers specifically

- Current Business Made Simple & ELMS efforts
  - ✓ Developing strategies for the "counter/customer experience" that considers differences in business needs (size, complexity, experience etc.) and the differences in customers themselves (trust in government, language differences, experience etc.)
  - ✓ Consideration of "navigators" that help entrepreneurs and small businesses get answers quicker and in their native language if possible
  - ✓ Streamlining permit/licensing/billing requirements and statements
  - ✓ Creating easy to understand checklists and guides that help employers know how to navigate our processes
  - ✓ Creating a portal for businesses/employers so they can do more online
  - ✓ Developing materials and strategies aimed specifically at entrepreneurs and small businesses/employers, including robust business planning tools that can assist in obtaining loans and other funding opportunities
  - ✓ Mapping of all small/entrepreneurial business touchpoints to see how to best align and/or consolidate
  
- Current Supplier Diversity efforts:
  - ✓ Increasing certification options for small and M/WBE to increase ability to do business with the City
  - ✓ Developing a race and gender neutral program targeted specifically at small businesses
  - ✓ Expanding the Business Technical Assistance Program. In 2015:
    - Worked with 16 non-profit grantees
    - Provided 2,295 B-TAP hours to over 144 clients:
      - 41 or 28% of which were start ups
      - 86% were extreme-low or low income



Thank you for your  
attention.

Questions?

