

2016 Minnesota State and Local Legislation

By Daniel G. Prokott

Faegre Baker Daniels LLP

Minneapolis Passes Paid Sick Leave Ordinance

- The Minneapolis City Council unanimously adopted the Minneapolis Sick and Safe Time Ordinance on May 27, 2016, and subsequently unanimously voted to amend the Minneapolis Ordinance on September 23, 2016
 - Paid sick and safe leave was just one of the several topics included in the original Minneapolis Working Families Agenda announced in April 2015
 - The other topics included in the original Minneapolis Working Families Agenda – increasing the minimum wage in Minneapolis, fair scheduling and wage theft prevention – were not pursued by the Minneapolis City Council in 2015 or 2016
- The Minneapolis Ordinance is scheduled to be effective July 1, 2017
 - For employers operating in their first 12 months after the hire date of the employer’s first employee (other than “chain establishments”), the employer is required to provide unpaid sick and safe time but is not required to provide paid sick and safe time until after 12 months (until July 1, 2022, at which point all employers will be subject to full enforcement)
 - “Chain establishments,” include any establishment doing business under the same trade name used by two or more establishments, or under the same ownership and doing the same business, whether such other establishments are located in the city or elsewhere and regardless of the type of ownership of each individual establishment
- **Scope:**
 - Any person or entity that employs one or more employees (regardless of where the employer is located), excluding the U.S. Government, the State of Minnesota and its related entities and any county or local government, except the City of Minneapolis
 - An employer with six or more employees (including full-time, part-time and temporary employees, whether or not such employees work in the City of Minneapolis) must compensate the employee at the same hourly rate with the same benefits as the employee’s “regular rate of pay” for the hours the employee was scheduled to earn during the time the employee uses his or her accrued sick and safe time
 - An employer with five or less employees must allow employees unpaid use of accrued sick and safe leave
 - “Employee” means any individual employed by an employer, including temporary employees and part-time employees, who perform work within the geographic

boundaries of the City of Minneapolis for at least 80 hours in a year for that employer

- “Employee” does not include independent contractors

- **Accrual:**

- Employees begin to accrue sick and safe time when employment starts and can begin using such time 90 days after employment begins
- Accrual occurs only in hour-unit increments
- One hour per every 30 hours worked or at least 48 hours granted in a lump sum after the initial 90 days of employment (provided at least 80 hours granted in a lump sum at the beginning of each subsequent calendar year)
- Exempt employees are considered to work 40 hours per week unless there is evidence of regularly working less than that
- Employees may carry over accrued, unused sick and safe time to the following year
- The total amount of accrued but unused sick and safe time for an employee may not exceed 80 hours at any time, unless an employer agrees to a higher amount
- Employers are not required to pay out accrued and unused sick and safe time upon termination of employment
- When there is a separation from employment and the employee is rehired within 90 days of separation by the same employer, previously accrued sick and safe time that had not been used must be reinstated

- **Usage and Pay:**

- Employees can begin using sick and safe time 90 days after employment begins
- Employees may use sick and safe time for themselves or members of their extended families and household
- Employees may use sick and safe time for mental and physical illness, diagnosis, treatment, preventative care, safety leave (including preparing for or participating in any civil or criminal legal proceeding related to or resulting from domestic abuse, sexual assault, or stalking), public health emergencies, or due to unexpected closure of school or family care facility
- If the need for use is foreseeable, an employer may require advance notice of up to seven (7) days
- An employer may require reasonable documentation for absences of more than three (3) consecutive days
- An employer may not require that the employee find a replacement worker to cover hours during which the employee uses the sick and safe time
- Employees may use sick and safe time in increments consistent with current business/payroll practices, as defined by industry standards or existing employer policy, provided such increment is not more than four hours
- An employer with six or more employees must compensate the employee at the same hourly rate with the same benefits as the employee’s “regular rate of pay” for the hours the employee was scheduled to earn during the time the employee uses his or her accrued sick and safe time, but in no case shall the employee be compensated at a rate less than the rate requirement in Minnesota Statutes, Section

177.24 (compensation is only required for hours that an employee is scheduled to have worked)

- “Regular rate of pay” means the employee’s hourly rate (or equivalent rate for an exempt employee) and excludes tips, commissions, expense reimbursements, bonuses, overtime payments, gifts, and certain other types of payments
 - Construction industry employees may be paid the applicable prevailing wage rate or the rate established in a registered apprenticeship agreement
 - An employer with five or less employees must allow employees unpaid use of accrued sick and safe time
 - A health care provider may only use sick and safe time when the health care provider has been scheduled to work (a health care provider has not been scheduled to work for shifts for which the health care provider chooses to call in and request a shift occurring within twenty-four (24) hours, or for shifts for which the health care provider has only been asked to remain available or on call, unless the health care provider has been asked to remain on the employer’s premises)
 - Employers who provide their employees sick and safe time under a paid time off policy or other paid leave policy that is sufficient to meet the accrual requirements and use purposes of the Minneapolis Ordinance are not required to provide additional sick and safe time (but this does not mean such employers are exempt from other provisions of the Minneapolis Ordinance, such as the recordkeeping requirements)
- **Recordkeeping:**
 - An employer must maintain accurate records for three years showing (1) for non-exempt employees, hours worked; (2) hours of leave available for sick and safe time purposes; and (3) hours of leave used for sick and safe time purposes
 - Sick and safe time accrual must be recorded no less frequent than a monthly basis
 - There is no obligation to track hours for employees who work less than 80 hours in the City of Minneapolis during the calendar year
- **Implementation, Monitoring and Enforcement:**
 - The Minneapolis Department of Civil Rights Director has broad authority to implement, administer and enforce the new law
 - Employees are protected from retaliation in any form
 - Employers are required to display a poster (to be created by the City) in English and other languages
 - An employer that provides an employee handbook to its employees must include in the handbook notice of employees’ sick and safe time rights and remedies
 - Employers must treat any health or medical information regarding an employee or an employee’s family member or information pertaining to domestic abuse, sexual assault, or stalking of an employee or an employee’s family member as confidential
 - Upon request by an employee, an employer must provide in writing or electronically with the employee’s then-current amount of used and available sick and safe time

- The Minneapolis Ordinance includes multiple enforcement provisions, including investigation and appeal procedures, fines, penalties and other relief
- The Minnesota Chamber of Commerce and other parties, including large and small employers, filed a lawsuit in Hennepin County district court challenging the Minneapolis Ordinance on October 14, 2016.

Saint Paul Passes Paid Sick Leave Ordinance

- The Saint Paul City Council unanimously adopted the Saint Paul Sick and Safe Time Ordinance on September 7, 2016
 - The Saint Paul Ordinance is scheduled to be effective July 1, 2017 for employers with 24 or more employees and July 1, 2018 for employers with 23 or fewer employees
 - For employers operating in their first six months after the hire date of the employer's first employee, the employer is required to provide unpaid sick and safe time but is not required to provide paid sick and safe time until after six months (until January 1, 2023, at which point all employers will be subject to full enforcement)
- **Scope:**
 - "Employer" means a person who has one or more employees (regardless of where the employer is located), excluding the U.S. Government, the State of Minnesota and its related entities and any county or local government, except the City of Minneapolis
 - There is no "small" employer exception to providing paid sick and safe leave
 - "Employee" means any individual employed by an employer, including temporary employees and part-time employees, who perform work within the geographic boundaries of the City of Saint Paul for at least 80 hours in a year for that employer
 - "Employee" does not include independent contractors
- **Accrual:**
 - Employees begin to accrue sick and safe time when employment starts and can begin using such time 90 days after employment begins
 - Accrual occurs only in hour-unit increments
 - One hour per every 30 hours worked or at least 48 hours granted in a lump sum after the initial 90 days of employment (provided at least 80 hours granted in a lump sum at the beginning of each subsequent calendar year)
 - Employees may carry over accrued, unused sick and safe time to the following year
 - The total amount of accrued but unused sick and safe time for an employee may not exceed 80 hours at any time, unless an employer agrees to a higher amount
 - Employers are not required to pay out accrued and unused sick and safe time upon termination of employment

- When there is a separation from employment and the employee is rehired within 90 days of separation by the same employer, previously accrued sick and safe time that has not been used must be reinstated
 - There also are certain requirements for retaining and reinstating sick and safe leave for up to three years in the case of intracompany transfers outside of Saint Paul and then back into Saint Paul, as well as in the case of a transfer of the business from one employer to another employer
- **Usage and Pay:**
 - Employees can begin using sick and safe time 90 days after employment begins
 - Employees may use sick and safe time for themselves or their family members
 - Employees may use sick and safe time for mental and physical illness, injury or health condition, diagnosis, treatment, preventative care, safety leave (including preparing for or participating in any civil or criminal legal proceeding related to or resulting from domestic abuse, sexual assault, or stalking), public health emergencies, or due to unexpected closure of school or family care facility
 - An employer may require an employee to comply with the employer's usual and customary notice and procedural requirements for absences or for requesting leave, provided that such requirements do not interfere with the purposes for which the leave is needed
 - An employer may require reasonable documentation for absences of more than three (3) consecutive days
 - An employer may not require that the employee find a replacement worker to cover hours during which the employee uses the sick and safe time
 - Employees may use sick and safe time in increments consistent with current business/payroll practices, as defined by industry standards or existing employer policy, provided such increment is not more than four hours
 - An employer must compensate an employee for used sick and safe time at the employee's standard hourly rate, for hourly employees, or an equivalent rate, for salaried employees for the hours the employee was scheduled to have worked
 - Employees are not entitled to compensation for lost tips or commissions
 - Construction industry employees may be paid the applicable prevailing wage rate or the rate established in a registered apprenticeship agreement
 - Employers who provide their employees sick and safe time under a paid time off policy, or a combination of sick and vacation time, that meets the accrual requirements and use purposes of the Saint Paul Ordinance are not required to provide additional sick and safe time (but this does not mean such employers are exempt from other provisions of the Saint Paul Ordinance, such as the recordkeeping requirements)
- **Recordkeeping:**
 - An employer must maintain accurate records documenting hours worked by employees and sick and safe time taken by employees for three years
 - Employers must allow the Saint Paul Department of Human Rights and Equal Employment Opportunity access to such records

- If the employer does not maintain or retain adequate records and a dispute arises, then there is a presumption that the employer has violated the Saint Paul Ordinance, absent clear and convincing evidence otherwise
 - Records and documents relating to medical certifications, re-certifications, or medical histories of employees or employees' family members created for purposes of complying with the Saint Paul Ordinance must be maintained as confidential medical records separate from the usual personnel files and comply with the ADA's confidentiality requirements (as applicable)
 - There is no obligation to track hours for employees who work less than 80 hours in the City of Saint Paul during the calendar year
- **Implementation, Monitoring and Enforcement:**
 - The Director of the Saint Paul Department of Human Rights and Equal Employment Opportunity has broad authority to implement, administer and enforce the new law
 - Employers shall give notice to employees that: employees are entitled to earned sick and safe time; the amount of earned sick and safe time and the terms of its use guaranteed under the Saint Paul Ordinance; that retaliation is prohibited; and that each employee has the right to file a complaint; this notice requirement can be satisfied by posting a poster created by the Saint Paul Department of Human Rights and Equal Employment Opportunity
 - An employer that provides an employee handbook to its employees must include in the handbook notice of employees' sick and safe time rights and remedies
 - Upon request by an employee, an employer must provide in writing or electronically with the employee's then-current amount of used and available sick and safe time
 - The Saint Paul Ordinance includes multiple enforcement provisions, including investigation and appeal procedures, fines, penalties and other relief

Changes to the Minnesota Veteran's Preference Act

The Minnesota Legislature passed several changes to the Minnesota Veteran's Preference Act during the 2016 legislative session.

Minn. Stat. § 197.455 was amended to allow a county, home rule charter or statutory city, town, school district, or other municipality or political subdivision to require a veteran to complete an initial hiring probationary period and, if the initial probation period is completed, a veteran may not be removed from a position except for incompetency or misconduct shown after a hearing and is otherwise entitled to the same rights and legal protections that state employees receive under Minn. Stat. § 197.455.

Minn. Stat. § 197.46 was amended to reduce the veteran's period to request a hearing after receiving notice of the government's intent to discharge him/her from employment to 30 days, instead of the previously allowed 60 days. The failure of the veteran to request a hearing within this 30 day period constitutes a waiver of the right to a hearing and all other legal remedies for reinstatement. Additionally, the option to have the hearing before a "three-person panel" has been

changed to “an arbitrator.” In cases where a hearing will be held by an arbitrator, the employer shall request from the Bureau of Mediation Services a list of seven persons to serve as an arbitrator. The employer shall strike the first name from the list and the parties shall alternately strike names from the list until the name of one arbitrator remains. After receiving each of the employer's elections to strike a person from the list, the veteran has 48 hours to strike a person from the list. The person remaining after the striking procedure must be the arbitrator. Upon the selection of the arbitrator, the employer shall notify the designated arbitrator and request available dates to hold the hearing

Finally, Minn. Stat. § 197.46 was amended to provide: “For disputes heard by a civil service board, commission or merit system authority, or an arbitrator, the governmental subdivisions shall bear all costs associated with the hearing, but not including attorney fees for attorneys representing the veteran. If the veteran prevails in a dispute heard by a civil service board, commission or merit system authority, or an arbitrator and the hearing reverses the level of the alleged incompetency or misconduct requiring discharge, the governmental subdivision shall pay the veteran’s reasonable attorney fees.”

State Minimum Wage Increases (Again)

Effective August 1, 2014, the minimum wage in Minnesota increased to \$8.00 per hour for large employers (an enterprise whose annual gross volume of sales made or business done is not less than \$500,000.00 exclusive of excise taxes at the retail level that are separately stated and covered by the Minnesota Fair Labor Standards Act, Sections 177.21 – 177.35) and \$6.50 per hour for small employers (an enterprise whose annual gross volume of sales made or business done is less than \$500,000.00). The law passed in 2014 also established future increases to the state minimum wages in 2015 and 2016, with the minimum wage for large employers as of August 1, 2016 set at \$9.50 per hour and the minimum wage for small employers as of August 1, 2016 set at \$7.75 per hour. The state minimum wages may increase on an annual basis in the future based on inflation, with the next potential increase to be effective January 1, 2018.

Paid Family Leave Does Not Pass

The Minnesota Senate’s tax proposal included a Paid Family Leave program, authored by Sen. Katie Sieben (DFL-Newport). This provision was not included in the final tax bill. The program would have charged employers and employees to support a fund that would provide a partial wage replacement for up to 12 weeks annually for parents bonding with newborn children or caring for an ailing family member.