

## Milwaukee Case Legal Analysis

June 15, 2009 &mdash; MILWAUKEE COURT RULED THAT MILWAUKEE HAS THE AUTHORITY TO ENACT PAID SICK DAYS LAW BUT STRUCK DOWN LAW BECAUSE OF INCLUSION OF DOMESTIC VIOLENCE PROVISIONS

Milwaukee voters enacted a paid sick days ordinance by ballot initiative in November, 2008 with 70% of the electorate voting in favor of requiring all businesses operating in the City of Milwaukee to provide paid sick time to their employees. The legality of the ordinance was challenged by a business group, the Metropolitan Milwaukee Association of Commerce (MMAC) on 10 separate legal grounds. On June 12, a trial court in Milwaukee rejected all statutory and constitutional claims related to the ordinance's requirement of paid sick time to take care of the illness or preventive care of an employee or the employee's close family member. However, the court held that the ordinance's coverage of domestic violence related absences with respect to court appearances or relocation was not indicated in the ballot question and arguably was beyond the police power of the city. Consequently, the court ruled the paid sick days ordinance invalid and issued an injunction against implementation.

The MMAC raised a laundry list of arguments against the ordinance claiming that it was preempted by state law on living wage, worker's compensation, family and medical leave and by Federal law in the National Labor Relations Act and the Labor Management Relations Act. The business association also claimed that the ordinance was unconstitutional because it was beyond the city's police power, violated the contract clause of both the Federal and state constitutions, unconstitutionally applied across geographical boundaries and was unconstitutionally vague. Finally, the MMAC argued that the ballot question did not have sufficient detail, articulating five details not contained in the question.

The court rejected all of MMAC's arguments with respect to requirements that employers provide paid time off for workers to care for themselves or their family members when ill or in need of preventive care. Importantly, the court found that paid sick time is different from minimum wage and is not preempted by state statutes that restrict local legislation on minimum wage. However, the court found that because the ballot question did not specifically mention that it would apply to time off needed to go to court or relocate due to domestic violence, the question was insufficient. The court also found that giving time off to victims of domestic violence for those purposes is not related to "the Ordinance's overall objectives of protecting the public welfare, health, safety and prosperity of the City&hellip;&rdquo; and therefore were arguably outside the police power of the city.

The court further held that because the law governing ballot initiatives provides that a duly passed initiative cannot be amended or repealed for two years, the court cannot sever the domestic violence provisions and allow the ordinance to stand with respect to time off to deal with health issues and must instead reject the entire ordinance.

An appeal is expected. The implications of the decision for other paid sick days campaigns throughout the country, however, is a positive one, supporting the legality of municipalities, states and the Federal government enacting laws requiring employers to provide paid sick time for their employees.