Legal Update Article

Minnesota Supreme Court Rejects Challenges to Minneapolis Sick and Safe Ordinance

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The Minnesota Supreme Court (5-2) has upheld the Minneapolis Sick and Safe Time Ordinance, ruling state law does not preempt the Ordinance, and it can apply to employers who are located outside of the City. *Minnesota Chamber of Commerce, et al. v. City of Minneapolis*, No. A18-0771 (Minn. June 10, 2020).

In 2016, Minneapolis was the first city in Minnesota to pass a paid sick leave ordinance. Effective July 1, 2017, the Ordinance required employers to provide a certain minimum level of paid sick leave to all employees who work at least 80 hours *a year* in the City. (For additional details regarding the Ordinance's requirements as compared with St. Paul and Duluth, see our article, Preparing for Duluth, Minnesota's Sick and Safe Time Ordinance Taking Effect January 1, 2020.)

The Suit

The Minnesota Chamber of Commerce, and other business groups (collectively, "Business Groups") filed suit against the City of Minneapolis. The Business Groups asserted Minnesota state law preempted the Ordinance. The Business Groups also argued that, because the Ordinance purported to apply to employers who operate outside of Minneapolis, it violated the extraterritoriality doctrine.

In 2019, the Minnesota Court of Appeals rejected those challenges. The Minnesota Supreme Court granted review of the case to decide these questions.

Supreme Court Decision

The Minnesota Supreme Court affirmed the lower court's decision, finding Minneapolis acted within its rights when it enacted the Ordinance.

First, the Court addressed conflict and field preemption arguments. It held the Ordinance does not conflict with any state law regarding employer-provided sick and safe leave. Although Minnesota Statute Section 181.9413 relates to the use of sick leave benefits, the Court found it did not conflict with the Ordinance because it does not "expressly grant[] a right to an employer to refuse to provide paid sick time." The Court explained, "The Ordinance imposes requirements stricter than the statute, but the additional terms only further the policy underlying the statute rather than posing an irreconcilable conflict .... Nothing in Minn. Stat. § 181.9413 forbids further regulation by local government." The Court found it appropriate to uphold the Ordinance as it "set[s] a standard higher than the floor set by the Legislature."

With respect to field preemption, the Court held that there was no indication the Minnesota Legislature intended "to preempt local action by occupying the field of employer-provided sick and safe time. There is no language in the statute indicating that the Legislature intended to create a uniform or comprehensive statutory scheme for employer-provided sick and safe time." Accordingly, state law does not preempt the Ordinance.

Second, the Business Groups argued the City improperly extended its jurisdiction outside of the City through the Ordinance, in violation of the extraterritoriality doctrine, because the Ordinance can apply to employers who do not have a physical presence in the City. The Ordinance is triggered for an individual employee once that particular employee works 80 hours a year in the City. The Court rejected that argument. It said:

> [T]he primary effect of the Ordinance is … to regulate activity within the geographic limits of the City of Minneapolis. The Ordinance allows employees to accrue paid time off only for hours worked within the geographic limits of the city …. Once employees accrue sick and safe time, employers are only required to allow an employee to use sick and safe time … when the employee is scheduled to perform work within the geographic boundaries of the city. These provisions ensure that the Ordinance does not operate extraterritorially, because they limit the accrual and use of sick and safe time to hours worked and scheduled within the city, respectively.

(Quotation and footnote omitted.)

The Dissent

Chief Justice Lorie Gildea and Justice Barry Anderson dissented because they would find "the effects of this ordinance extend beyond the borders of Minneapolis, in violation of the extraterritoriality doctrine." They commented, "The reach of the Ordinance is extraordinary." They found the 80-hours-per-year threshold particularly significant. The dissent offered examples of the Ordinance's broad reach and coverage: "a St. Louis Park pizza delivery business" that might deliver three pizzas a day to Minneapolis; an Apple Valley plant that picks up raw materials from a warehouse in Northeast Minneapolis each morning; a nationwide freight business in Arizona that may pick up materials in Minneapolis for three hours every other week.

The dissent also pointed out that, because "[a]n employer may not know which employees, if any at all, will meet the 80-hour requirements in a calendar year, … non-Minneapolis employers must create and maintain a recordkeeping system to track all employees who work in Minneapolis, however briefly, in the event that any employee *might* reach 80 hours."

For these reasons, the dissent would have invalidated the Ordinance, ominously noting, based on the majority's decision, "The better business choice, here, might be to avoid Minneapolis, or Minnesota, altogether."

Implications

Following the Supreme Court's decision, employers with employees who perform any work in Minneapolis should review their recordkeeping and other policies to ensure compliance with the Ordinance.

Although not at issue in the Court's decision, employers should consider that Minneapolis' Wage Theft Prevention Ordinance also contains requirements for employers based on the same work-80-hours-per-year-in-Minneapolis threshold, effective January 1, 2020. The Wage Theft Ordinance provides for civil penalties (and possible criminal penalties) for violations.

Jackson Lewis attorneys are committed to helping employers make the best business decisions. Please contact a Jackson Lewis attorney if you have questions about the Court's decision or need guidance with workplace issues.

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