



The Battle Over Paid Sick Leave – Pittsburgh’s Paid Sick Leave Law Suffers Another Blow – Is Philadelphia Next?

Insights

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There have been many recent, important developments in the area of paid sick leave in Pennsylvania. Recently, the Commonwealth Court of Pennsylvania (the “Appeals Court”) affirmed the Court of Common Pleas of Allegheny County’s (the “Trial Court”) ruling invalidating the Pittsburgh Paid Sick Days Act (“PSDA”).

The PSDA, which would mandate paid sick leave for virtually all employers doing business in the City of Pittsburgh, was initially challenged by the Pennsylvania Restaurant and Lodging Association and several local restaurants under the argument the City of Pittsburgh exceeded its municipal authority in enacting the PSDA. The Trial Court ruled, pursuant to the Home Rule Charter and Optional Plans Law (“Home Rule Charter Law”), that the PSDA placed unauthorized duties, responsibilities, and requirements on employers.

The Appeals Court confirmed the Trial Court’s ruling and noted, inter alia, that, not only did the PSDA force employers to provide employees with a minimum amount of paid sick leave, the PSDA impermissibly imposed other affirmative duties on employers (e.g., directing the manner of accruing sick leave, imposing certain notice and record-keeping duties, etc.). The City of Pittsburgh and the Service Employees International Union Local 32 BJ argued that paid sick leave was a public health regulation and therefore fell under an exception to the Home Rule Charter Law. The Appeals Court rejected this argument on the basis that the health regulations exception pertained only to building codes. The Appeals Court also rejected the public policy argument.

In a dissenting opinion, The Honorable Joseph Cosgrove concluded that cities such as Pittsburgh had inherent police powers to protect the health and safety of their residents, even if that action impacts businesses.

To the extent the issue reaches the Supreme Court of Pennsylvania, it may be a moot issue if Senate Bill 128, which is currently under consideration in the Senate Local Government Committee, is passed. Senate Bill 128 would prohibit Pennsylvania municipalities from requiring employers to provide any form of paid or unpaid employee leave that is not required by federal or state law. Senate Bill 128 would also strike down existing local ordinances that impose it. Significantly, Senate Bill 128, which was amended earlier this year, would apply retroactively to January 1, 2015, thus eradicating paid sick leave ordinances in Philadelphia and Pittsburgh. The primary argument in

support of Senate Bill 128 is that, to provide uniformity for businesses, labor policy should be established at the state and federal levels.

In sum, there are two potential grounds under which the PSDA – and even the Philadelphia paid sick leave ordinance – may be struck down. Nevertheless, many employers have already begun to change their sick leave policies to comply with the PSDA and the Philadelphia paid sick leave ordinance. In light of these recent developments, however, employers should review their current policies and continue to be cognizant of these developments. Please contact your Fisher Phillips attorney to discuss further.