

Mandatory Paid Sick Leave

Issue

Labor groups, under pressure from out-of-state union organizers, are pushing to make West Virginia one of the first states in the nation to require all employers of 15 or more employees to provide seven (7) days of paid sick leave or a pro-rata amount for part-time employees. Under the proposed bill, no doctor's certification is required until after the third (3rd) day, creating rules different than many collective bargaining agreements, employer policies and the Federal Medical Leave Act. Because of its additional costs, both administrative and payroll, to small employers, and many differences from the federal FMLA, this bill is both costly to employers and does not improve West Virginia's ability to attract and retain employers.

Background

The Healthy Families Act, (H.B. 4447), was introduced in 2008 and referred to the House Judiciary. The bill requires employers of 15 or more employees to provide 7 paid days of sick leave. Part-time employees, 30 hours or less, get a pro-rata amount of paid sick leave. Leave can be taken in increments of an hour or less, which will add administrative record keeping costs to employers. No medical certification is required until after the third (3rd) consecutive day of absence. Accrued sick leave shall carry over from year to year, although it does not require the employer to permit an employee to accumulate more than seven (7) days a year. Documentation must be kept for 3 years.

The Commissioner of Labor is charged with enforcement, including investigation, audits and filing of both civil or criminal complaints for violations with: 1) Civil fines of \$100.00 for each separate offense; 2) Willful delays in cooperation with DOL investigation or failing to make documents available: \$100 - \$500 per violation; 3) Discharges or discrimination, including using paid sick leave as a negative factor in a no-fault attendance policy or employment action: \$100 - \$500 per violation. In addition, it provides a new discrimination cause of action for employees, including treble damages, reinstatement, promotion and attorney fees. An entire new class of lawsuits can be expected due to this provision.

The bill says employers with "paid leave options" (PTO) need not modify policies, if the employer's paid leave is at least equivalent to the paid sick leave requirements of the bill. *Presumably employer PTO policies must still contain the same eligibility as set forth in law: i.e., permits 3 days absence before medical certification required and allow leave to be taken in increments of less than an hour.*

The Chamber's Position

The West Virginia Chamber of Commerce opposes a broad and sweeping mandatory paid sick leave law because it would make our state's business climate less competitive. Moreover, employers large and small would be negatively affected by additional administrative costs, a new cause of action for discrimination and compliance requirements that are different than the federal Family Medical Leave Act. Experience shows that those employers in West Virginia who can afford to provide paid sick leave do so already. Those who do not, especially small employers with less than fifty (50) employees, would be greatly burdened by this bill. Additionally, the Chamber is concerned that West Virginia should NOT be among the few states to burden small businesses with these additional costs and regulations.