



Employment Law Alert

A Labor & Employment Department Publication

August 2008

This Employment Law Alert is intended to provide general information for clients or interested individuals and should not be relied upon as legal advice. Please consult an attorney for specific advice regarding your particular situation.

Columbus

Fred G. Pressley, Jr.
614-227-2233
fpressley@porterwright.com

Brian D. Hall
614-227-2287
bhall@porterwright.com

Franck G. Wobst
614-227-2266
fwobst@porterwright.com

Dayton

Marc L. Fleischauer
937-449-6720
mfleischauer@porterwright.com

Caroline H. Gentry
937-449-6748
cgentry@porterwright.com

Cleveland

Margaret M. Koesel
216-443-2530
mkoesel@porterwright.com

Jeffrey J. Weber
216-443-2533
jweber@porterwright.com

Cincinnati

Rachel E. Burke
513-369-4236
rburke@porterwright.com

David T. Croall
513-369-4424
dcroall@porterwright.com

Please see our other publications at www.porterwright.com/publications.

Potential For Paid Sick Leave Mandate Warrants Pro-Active Strategy

With each passing day, it appears more likely that Ohioans will be going to the polls on November 4, 2008 to vote on whether employers that employ at least 25 workers in Ohio will be required by law to provide workers with up to seven days of paid sick leave annually. Passage of this measure would be both costly and disruptive to Ohio businesses. As a result, Ohio's business community must become more vocal in educating the voting public, particularly their employees, on the detriments of the so-called Ohio Healthy Families Act and, at the same time, begin taking steps to prepare for its potential enactment.

The process of bringing the paid sick leave mandate before the voters was initiated last year when supporters obtained enough valid signatures on petitions to require the Ohio legislature to consider the bill. When the legislature did not act on it by the May 8, 2008 deadline, the mandate's supporters were given another 90 days in which to obtain another 120,683 valid signatures necessary to put the initiative on the ballot in November. Their deadline for doing so is August 6, 2008, and there is no reason to believe that the supporters will fail to get a sufficient number of valid signatures.

In attempting to sell the mandate to the voting public, proponents have argued, and will continue to argue, that fairness dictates that workers should not have to choose between a day of pay and obtaining medical care for themselves or family members. In addition, the proponents suggest that the cost to employers of having unproductive sick workers showing up to work and potentially infecting their co-workers (and potentially customers) makes up for the cost of compliance. Recent polls suggest that a large number of potential voters are buying into these arguments.

These arguments, however, largely overlook the current and foreseeable economic climate in Ohio where employer mandates such as this can mean the difference between businesses locating in Ohio or some other state and between Ohio businesses staying put or moving existing operations out-of-state. The cost to covered employers includes not only the cost of the seven

Want the latest news?

For continued updates on the OHFA and other important employment and labor law developments, visit Employer Law Report, www.employerlawreport.com, our blog devoted to reporting recent developments and trends that affect employers.

Also, learn more about the OHFA at our Fall Employment Relations Seminar:

When: Tuesday, October 14, 2008
8:30 a.m.-12 p.m.

Where: The Hilton Columbus at
Easton Town Center

Among the important topics being discussed will be the Ohio Healthy Families Act, where we will provide clients and friends with the latest information about this proposed mandate for Ohio employers and steps they should take before November to lessen its impact on their workforce.

days of paid leave but also the loss of productivity caused by provisions that do not adequately permit covered employers to plan for unanticipated absences or to monitor abuses. Employer costs also will be impacted by recordkeeping requirements that unnecessarily require employers to track time worked by exempt employees.

Proponents of this mandate are attempting to convince voters that seven paid sick days will come at no cost to them. In almost all cases, this will not be true. Though some larger employers may be able to absorb the costs of compliance, most will have to make up the cost elsewhere. Many employers will need to eliminate or reduce other forms of leave to provide the requisite number of paid sick days. **To do so, however, employers must act before the mandate goes into effect** in December (to be extra prudent, before Election Day). Other employers may look for relief in their wage structure, their 401k contributions, their health insurance contributions or other employee benefits. Smaller employers may need to consider options such as layoffs, outsourcing, or other actions to get below the 25-employee threshold. Larger multi-state employers with smaller facilities in Ohio may, sadly, reconsider the viability of those operations.

Large and small employers alike need to begin considering how they will comply with this mandate should it become law. Just as importantly, employers need to engage their workforces so that they understand that paid sick leave mandates reduce employers' flexibility to tailor benefits packages to their workforce's particular needs. For instance, young, single workers may have little interest in paid sick leave and would prefer higher wages and larger 401k contributions. Similarly, workers with families may prefer better health insurance benefits with smaller co-pays and deductibles. If workers understand the consequences of mandated paid sick leave, there is a chance of overcoming the odds against defeating this mandate.

A summary of the Ohio Healthy Families Act is enclosed.