



Legislative Department Seattle City Council Memorandum

Date: July 11, 2011
To: Councilmembers
From: Ben Noble, Central Staff Director
Subject: **Proposed Paid Sick and Safe Leave Ordinance**

On July 13th the Housing, Human Services, Health and Culture Committee will continue discussion of C.B. 117216, the proposed “paid sick leave” ordinance. This memorandum provides an outline of some of the key policy issues that the Committee may want to consider as part of its deliberations.

Basic Provisions of the Proposed Ordinance

I have prepared a separate summary that includes more detail about C.B. 117216, but the following should help provide some context for the discussion that follows.

The proposed ordinance includes the following basic provisions:

- Employers would be required to provide 5, 7 or 9 days per year of paid sick and safe leave, depending on the size of the firm. (These totals are based on full-time employees and would be prorated for part-time workers.) Unused time could be carried over from one year to the next, but the carry-over can be limited to the same 5, 7 and 9 day balances that can accrue in any single year.
- Paid time could be used for medical reasons and for matters related to being a victim of domestic violence. Time could be taken by employees for their own needs or to care for family members. In addition, paid leave could be taken when an employee’s place of work or their child’s school or care facility is closed by order of a public health official.
- Employees would have to provide advanced notice, if feasible, when they intend to take paid leave; and employers could require documentation for absences of four or more consecutive days.
- Enforcement would be conducted by the Seattle Office for Civil Rights (SOCR), on a complaint basis. The investigation, conciliation and appeal processes would follow the same model now used to enforce the City’s fair housing and employment discrimination codes. (A similar complaint-based system is currently used in San Francisco, and their enforcement office receives an average of five complaints per month). In addition, employees who are denied the required paid leave could separately pursue a claim in court.

- Start-up businesses with less than 250 full-time equivalents (Tier 1 and Tier 2 businesses, as defined in the legislation) would be exempt from the terms of the bill for their first two years of operation.
- Employees represented by a union could waive the paid leave requirements, but only explicitly, as part of negotiated contract.

Issue #1: Should the City Require Paid Sick and Safe Time?

As discussed in the recitals and findings of the Council Bill, there are several fundamental policy motivations that underlie the proposed legislation:

1. To protect the health of employees, their colleagues and the general public by reducing the barriers to acquiring preventive care and removing the financial incentive to work when ill.
2. To protect the health of employees’ family members, and those with whom they come in contact by reducing the barriers for employees assisting in the care of their family.
3. To protect the general public health by providing compensation to employees when their place of work, or their child’s school or care facility is closed due to a general public health risk. Reducing the financial impact to employees can make such closures less onerous to employees and thus more feasible to order.
4. To protect individual and public health by providing paid leave for victims of domestic violence, or the family of victims, to address issues arising in the aftermath of such incidents. Providing paid leave for victims to participate in the legal process has a potential to benefit the general public by helping to prevent future crimes.
5. To protect the economic security of individuals who need time away from work for reasons related to personal health, family health or domestic violence.

And while it is not stated as a specific goal of the legislation, the analysis below does highlight that there are potentially significant race and social justice impacts that could result from the legislation.

Who gets sick leave now?

To understand whether and how the proposed legislation can achieve these goals, one needs a basic understanding of how paid leave is now provided in the labor market.

National data from the U.S. Bureau of Labor Statistics shows that access to paid sick differs significantly in the public and private sectors. Within private industry, 61% of employees received paid sick time, compared to 89% in state and local governments.¹

Access varies also by size of firm and by occupational category. Eighty percent of firms with more than 500 employees offer paid leave, compared with 52% for those with fewer than 100.² And looking across private employers, 84% of management and professional staff receive paid sick leave. In contrast, less than 33% of workers in the lowest quartile of wage earners (who earn \$10.50 per hour or less) have access to paid leave.³ Consistent

with the demographic patterns of lower-income workers, numerous sources show that women and minorities are less likely to have access to paid sick leave.

And as highlighted below, access varies significantly among different types of employers. The table below summarizes data from a survey of San Francisco employers.

Firms Offering Paid Sick Days in San Francisco before City Regulation⁴

Industry	Percent of Employers Providing Paid Sick Leave (Before Requirement)
Accommodation and Food Service	24%
Construction	30%
Education, Health Care, and Social Services	68%
Finance, Insurance and Real Estate	87%
Professional, Scientific and Technical Services	80%
Retail and Wholesale Trade	62%
Other Services	55%
Other Services	20%
All Firms	65%

While these data show that 65% of employers provided leave before regulation, the number of covered employees was potentially larger, because larger firms, which tend to offer more generous benefits, provide jobs to a disproportionate number of employees. A survey of New York City found that 88% of *full-time* private-sector employees had access to paid leave that could be use for their own illness.⁵ But again, access varied significantly by industry, as just 12% of tipped employees in New Your City had such a benefit.⁶

Data from a Washington State survey of employee benefits shows that 62% of employers offer paid sick leave and/or paid leave for “undesigned purposes” to full-time employees.⁷ For part-time employees the same figure is 22%. And the data for Washington State shows a variation across industries that is comparable to that for San Francisco. Combining the private-sector data from San Francisco about industry-specific availability with Bureau of Labor Statistics data about public sector coverage and information from the Puget Sound Regional Council on sector-level employment within Seattle, provided a basis for estimating that about 145,00 of the city’s 462,000 jobs do not currently receive paid sick leave. A disproportionate share of these jobs are likely part-time, but what exact proportion is not clear from the available data. I should emphasize that this is rough estimate, and that no direct data exist about how many employees in the city have access to paid sick leave.

But bottom-line, a significant number of workers in Seattle are not provided paid sick leave, and those not covered are concentrated in a few industries and job-classifications,

namely restaurants and accommodation, construction, retail and lower-paid service sector positions.

Given this basic background, the remainder of the discussion around Issue #1 focuses on the potential benefits and costs of imposing a paid leave requirement in Seattle.

Will access to paid sick leave address the policy concerns outlined above?

Interestingly, this most basic question has not been well-researched. Available analysis does show that having paid sick leave does slightly increase the amount of time taken off work due to illness, and does increase medical visits for both employees and their children. However, because access to sick leave is highly correlated with having health insurance benefits, it can be hard to “tease out” the specific medical benefits and health impacts provided by access to sick leave alone.

In any case, there is not a rich literature showing a causal link between paid sick leave and improved individual or public health. This is not to say that the common-sense notion that sick leave improves public health is not true, rather that it has not been specifically studied in any great detail. Furthermore, it would perhaps be hard to demonstrate such a direct link, as it would be difficult to control for the large range of factors affecting health outcomes, and it would require analysis over a considerable period of time to detect meaningful long-term trends. That said, we can say a few things for certain.

With regard to individual and family health:

- Providing paid leave reduces the financial cost of taking time off work, and thus makes it easier for employees to address their medical needs and those of their families. This is simply a matter of basic economic incentives. And the available data support this conclusion. Among adult employees, 42% of those without sick days reported that they did not miss work due to illness. For those with paid sick days, the figure was 28%.⁸ Other studies show that workers with paid leave take more days off, on average, than those without.
- Parents with access to paid sick leave do take time off to care for their children. Among surveyed San Francisco workers, 60% of the working parents who took sick days took them to care for their children.⁹ This figure was 86% for single mothers.¹⁰
- Employees with access to sick leave are more likely to take time off to care for family members than those without (44% vs. 26%).¹¹ The fact that child care facilities generally require that young children be free of fever for a full 24 hours before they can return contributes to parents’ need to miss work.
- Increasing numbers of workers have taken on the responsibility of caring for their aging parents. The basic demographics of the “baby boom” imply that this trend will continue for the foreseeable future.
- Access to paid sick days appears to reduce incidences of delayed health care for employees’ family members, among those workers that have access to health care.¹²

With regard to communicable disease and public health:

- In the context of the proposed legislation, the Director of King County Public Health, Dr. David Fleming, has formally communicated to Council that “strategies that help prevent the spread for infections in the workplace by allowing persons with contagious diseases to stay home . . . make good sense from the public health perspective.”
- Estimates indicate that roughly 70% of flu transmissions occur outside the house, in schools, workplaces and other public settings.¹³ Not coincidentally, the Centers for Disease Control (CDC) recommend that employees stay home when they have the flu.
- “Social distancing” – that is avoiding person-to-person contact in social settings, including work and school – is a standard strategy for controlling the spread of major flu outbreaks.
- The United States Department of Health and Human Services recommends leave policies that allow time off for illness in order to help control potential outbreaks of pandemic flu.
- There is clear evidence that sick restaurant workers can spread diseases to their customers. Hepatitis A is well known to be food-borne and norovirus outbreaks have been linked to restaurant workers as well. However, this no demonstrable link between access to paid sick time and reduced incidences of such transmission. Common sense and the economic incentives identified above suggest that the link exists, but it has not been empirically demonstrated to date.

With regard to domestic violence: A direct link has not been established between paid leave and the likelihood of domestic violence victims seeking medical or psychological care or participating in any associated judicial proceedings. However:

- The economic incentives noted above for sick leave, also apply to victims of domestic violence. Paid time will make it less costly to address issues during work hours, if this is necessary.
- State law was amended in 2008 to specifically allow employees to take time off work to address the types of domestic violence-related needs for which paid leave would be available under the proposed legislation. The State does not mandate *paid* leave, but it does recognize the important of allowing employees time off to address the consequences of domestic violence.
- Financial dependence is one of the key reasons that domestic violence victims do not leave abusive situations.

With regard to families’ economic security: The data clearly show that paid leave is less frequently available for lower-wage workers. As noted above, less than one-third of workers in the lowest quartile of hourly wages have access to paid sick time. This compares to 84% for those in the highest quartile.

For families living on the economic margin, the financial disincentives to taking unpaid time from work are large. While their hourly wages may be low, each hour represents a significant share of their non-discretionary income. In addition, a long-term illness that requires extended unpaid leave can cost a significant percentage of their income. For

example, a three week-illness that resulted in 120 fewer paid hours would reduce a full-time worker's income by 5.7%.

If the individual or his/her family does not have some personal savings to fall back on, such an income loss could create an immediate financial shortfall that would limit their ability to purchase basic necessities and/or to make rent or housing payments. For example, an individual earning just over \$42,000 per year, which is the equivalent of full-time work at about \$20 per hour, typically spends \$1,500 on food and housing per month. A three-week spell of unpaid work could leave them with less than \$1,100 in monthly income.¹⁴

What cost might a paid sick and safe leave requirement impose on employers?

The cost to employers is the obvious counterbalance to the potential benefits described above. These costs will take two specific forms: i) the cost of the benefit itself; and ii) the cost of tracking and administering the benefit. What follows is some analysis of both.

Potential to reduce other forms of compensation. One essential point to consider is that the imposition of a paid leave requirement would not inherently increase the total compensation (wages plus benefits) paid to Seattle workers. There is every possibility, and indeed likelihood, that many employers will respond to the leave mandate by decreasing other forms of compensation and/or be reducing the total number of hours they offer workers. And such adjustments may not be obvious or directly observable in any way. A planned pay increase that is now not awarded or a bonus that is not paid are among the possible responses.

This is important to recognize because it implies that mandating paid leave has the potential effect of raising the priority of this benefit above other forms of compensation, including wages. The legislation effectively asserts that from a public-policy perspective paid sick and safe leave is more important than the other forms of compensation that might be sacrificed to ensure that it is provided.

And the evidence from San Francisco does indicate that such adjustments in compensation will occur for many workers. A 2009 study by the Urban Institute examined how 26 individual businesses responded to San Francisco's paid leave legislation.¹⁵ Ten of those firms specifically responded by adjusting other forms of compensation. Given that some of the firms had leave policies that already conformed, this represents a significant share of the firms that needed to add the leave benefit. A 2011 study by the Institute for Women's Policy Research that surveyed nearly 1,200 San Francisco workers, found that 32% of employees reported fewer work hours, benefit reductions and/or increased work demands after the paid leave mandate was established.¹⁶ For workers in the bottom 25% of hourly wages, more than 50% reported such changes. Given that a good many workers contacted in the survey already had paid leave of some form before the law was approved, these figures may represent a significant share of those workers who were newly provided paid sick and safe leave.

One important point to consider is that the employer responses in San Francisco occurred when three separate benefit changes were legislated in the City. A city-wide minimum wage, a health insurance requirement and paid leave mandate were all established at roughly the same time. The surveys and analysis described above focused specifically on paid leave, but it has been difficult to sort out the individual effects of this specific benefit.

Direct Costs. Having said all this about opportunities for adjustments, if no such changes are made, what direct costs might be incurred if the benefit is simply added to total compensation? As the table below shows, the answer depends critically on how many days of leave employees take. Expressed in the percentage of work hours, this table summarizes the potential cost associated with any given employee under three different leave scenarios.

Cost of Paid Leave Measured as a Percentage of Work Hours

Business Size	Max. Allowed Per Yr.	% of Work	% of Work	% of Work	
		Hours if 4 <u>days</u> of Paid Time is Used	Hours if <u>Half</u> Avail Time is Used	Hours if <u>All</u> Avail Time is Used	
Tier 1	< 50 FTE	40 hours (5 days)	1.5%	1.0%	1.9%
Tier 2	50-249 FTE	56 hours (7 days)	1.5%	1.3%	2.7%
Tier 3	250+ FTE	72 hours (9 days)	1.5%	1.7%	3.4%
Major Employer	1,000+ Emp.	144 hours (18 days)	1.5%	3.4%	6.9%

A firm's total cost will depend on the average number of days taken across all employees. I could not find a simple authoritative estimate of how many sick days workers with leave take each year. But data from various sources suggest that workers generally average 3-4 sick days per year. At an average rate of 4 days, the direct cost of the benefit, *assuming no offset in other compensation*, is about 1.5% of wages. This is roughly consistent with current estimates from the Bureau of Labor Statistics. When adjusted for the fact that many workers don't receive paid sick leave, the Bureau's figures show that the cost for private sector employers is roughly 1.8% of total compensation.¹⁷

However, given that many employers will be able to adjust other forms of compensation if the leave mandate becomes a burden, the percentage figures shown in the table above overestimate the direct costs to be borne by employers. That said, it is also worth considering that businesses that pay minimum wage and offer no benefits will have no

opportunity to adjust other forms of compensation and could thus face the highest direct costs, at least in percentage terms.

To the extent that these and other businesses cannot reduce other forms of compensation, the paid leave requirement will increase costs. This cost increase will create a financial incentive for businesses in Seattle to reduce their use of “labor services”. This could lead them to offer employees fewer total hours or to reduce their total number of employees. These are not intended outcomes, but they are the likely responses of some firms. That said, the experience from San Francisco generally shows that firms were able to adjust to the new regulations with minimal to moderate impact on their overall business operations and their bottom line.

Adjusting to the new regulations. Experience from San Francisco shows that the costs of implementation will also vary across the size of firms and differ among industry groups. Costs will be lowest for those firms that currently offer some form of paid leave:

- Those with an existing Paid-time Off (PTO) program, which pool sick time and vacation time into one “pot” of paid leave, may be able to meet the requirements without any additional cost. Alternatively these firms may incur minor costs as they increase the total number of days available and/or adjust their policies about the carry-over of unused time.
- Those that currently offer paid vacation time, but not sick or safe time, can minimize their costs by simply shifting to a PTO model. Depending on the amount of vacation time now offered, they may or may not need to increase the total amount of leave provided.

Paid leave is less common among small and medium-sized firms, so it is more likely that they will need to newly establish a paid leave program.¹⁸ And as noted previously, paid leave is relatively uncommon in the restaurant, retail and construction businesses. The “shift-swapping” provisions, which would allow restaurants and retail businesses that rely on commission-base sales to avoid directly paying for hours that are not worked, have the potential to minimize direct costs for this group of employers.

Administering the new benefit. Implementation of the ordinance will require that firms track for each employee:

- The cumulative days of employment, including days worked during previous spells of employment if the service break is less than 9 months. This could require that information be maintained for several years, particularly for seasonal workers who work for a few weeks of months each year.
- The total hours worked over the course of the year (which drives the accrual of leave) and the amount of leave taken (to compute net hours available in the employee’s “bank”). If vacation and sick/safe time are awarded separately, these will need to be tracked separately.
- The number of hours carried-forward from the previous year, if available and applicable.

- And for employees who work some, but not all of their time in Seattle, this information will need be tracked separately for time worked and leave taken while assigned to Seattle. This requirement is one that will likely represent a new administrative demand for almost all companies that have employees who work only part of their hours in Seattle. Tracking employees' hours is obviously standard practice, but tracking where those hours are worked is not generally required for payroll purposes.

The observations immediately above about implementation costs differing by size of firm and industry also apply to the cost of administering the new paid leave requirement. For large firms, which are likely to already offer paid leave and have a professional personnel function, administration of the new benefit will be relatively easier and less costly. However, one particular challenge for such large firms is that Seattle-specific requirements could lead to unequal benefits among employees based here and elsewhere in the county or state. Firms often prefer to offer comparable benefits to all employees, and unless they choose to extend the mandated paid leave benefits to employees based outside Seattle, their human resource staff will need to track data and enforce separate rules for Seattle- and non-Seattle employees.

Firms that outsource their payroll functions are also likely to find it easier to track hours in the manner needed to administer the benefit. Given that the paid leave requirement will be implemented city-wide, firms providing payroll services will likely adapt quickly and automate the leave calculations. The costs of adjusting the underlying software can be shared across all their Seattle clients.

But smaller firms that track hours and pay in-house will need to set up all new systems. And so will industries where paid leave has not been the norm.

The post-implementation survey conducted in San Francisco addressed the issue of administering the new benefit, but the results are somewhat open to interpretation. Overall, the survey found that just over 30% of the firms found the leave requirement "somewhat difficult" or "very difficult" to administer.¹⁹ While this percentage is relatively lower, if one considers that only 35% of employers didn't offer paid sick leave before the new regulations, these results might imply that a significant majority of these firms found implementation challenging.

In any case, ease of administration is one reason that firms may shift to the PTO model. Vacation and sick hours do not need to be tracked separately, and questions about documentation of sick leave disappear if all leave is grouped together.

Give the potential challenges of administering the benefit and the need to adjust payroll systems and the tracking of hours, a robust outreach and education program will likely help smooth implementation of any new paid leave regulation. San Francisco's roll-out included such an effort.

Race and Social Justice (RSJ) Impacts.

It is clear that the proposed legislation could have important RSJ impacts. Consistent with the City's goal of explicitly accounting for such issues, consider the following:

- Low-wage workers are far less likely to have access to paid sick leave. Specific data on this point have been cited already.
- People of color are over-represented in low-wage jobs, and thus there are racial inequities in access to paid sick leave. Consistent with this observation, the survey in San Francisco showed that compared to white workers (22%), a greater share of black (29%) and latino (31%) employees indicated that the paid leave benefit made it easier to care for themselves or their family.²⁰
- Low-income families are more sensitive to lost wages and thus have stronger incentives to work when they are ill, if they do not have access to paid leave.
- Families that are dependent on both parents working are less able to manage child or family illnesses without taking some time away from work.
- Single parents find it particularly challenging to manage child and family illnesses without access to paid leave.
- A significant share of Seattle's children live in low-income and/or single parent households, and these children would likely benefit from their parents' access to paid leave.
- Women generally take a greater share of the responsibility for the care of children and family. In this context, having to take leave without pay, or risking work-related repercussions from taking leave, can lead to disproportionate negative impacts on their near- and long-term employment opportunities.

While these observations argue in support of the proposed legislation, they are not the only RSJ impacts to consider. To the extent that the costs of the proposed ordinance fall hardest on small-businesses, this may lead to disproportionate impacts on immigrant and minority-owned businesses. Entrepreneurship offers an important path to financial self-sufficiency for immigrants and minorities. Mandates that significantly increase costs for small and fledgling businesses could increase the barriers to this set of opportunities. The two-year exemption for new business that is included in the proposed legislation should help minimize these impacts.

Additional benefits of offering paid sick and safe leave.

Although the new mandate will clearly impose costs of some magnitude on almost all firms, there may be some additional benefits beyond the specific public policy goals that underlie the legislation. For example, paid leave is a benefit that could help recruitment and retention, - acting as a specific attraction for workers with families and providing the flexibility that all types of employees appreciate.

Issue #2: How much paid leave should be required?

There is obviously no simple answer to this question. Although average use of paid sick leave is generally relatively low, in any given year some individuals may suffer one or more prolonged illnesses. Thus, the average number of days now taken by those with sick leave is not the appropriate level to set as a requirement given the policy goals that underlie the current proposal. More generous requirements will generally be of greater

value to the employee and will help minimize the financial incentives to work when ill, but the specific leave requirements must be weighed against the costs imposed on employers.

The discussion below provides a comparison among the requirements established in other cities and states, and also summarizes data from the Bureau of Labor Statistics about how many days are provided in private sector firms of different sizes.

Comparing Minimum Paid Leave Days in Different Cities and States

Size	Definition	Mil.	San Fran.	Wash. D.C.	Conn.	Seattle
Small Employers	Definition varies between 1 and 50 employees elsewhere. <i>Up to 49 FTE in Seattle.</i>	5 days	5 days	3 days	0 days	5 days
Medium-Sized Employers	Definition varies between 10 and 99 employees elsewhere. <i>Up to 249 FTE in Seattle.</i>	9 days	9 days	5 days	5 days	7 days
Large Employers	Definition covers firms with 100+ employees elsewhere. <i>250+ FTE in Seattle.</i>	9 days	9 days	7 days	5 days	9 days
Major Empl. with PTO	<i>1,000+ employees. Only applies in Seattle</i>	9 days	9 days	7 days	5 days	18 days

- The specific requirements in other jurisdictions vary significantly. Washington D.C. sets a low, 3-day requirement for small businesses, but does require 7 days for large employers.
- San Francisco currently has the highest requirement - 9 days of paid leave – but this only applies to employers with 100 or more staff. Milwaukee matched this requirement, but the city ordinance has been preempted by State law.
- Connecticut exempts small employers (up to 50 employees) and then requires a flat 5 days of leave, regardless of firm size.

One provision that does stand out is the proposed Seattle requirement for 18 days of leave for “Major Employers” that use a PTO program. This is a significantly higher standard than has been established elsewhere.

Data from the Bureau of Labor Statistics confirms that the within the private sector the amount of paid leave varies with firm size:²¹

- Overall, private-sector employers that provide paid sick leave grant an average of 8 days after one year of service;

- For employers with fewer than 100 employees, the average is just under 6 days; and
- For employers with 500 or more employees, the average is 11 days.

A 2010 survey of New York Business showed comparable, but slightly lower, figures. Small employers offered total paid leave (not just sick days) that averaged 7.1 days and large employers 8.7 days.

These data suggest that the ability of firms to afford the costs of such leave increases with firm size, and in this sense validates the approach of establishing higher leave requirements for larger companies.

Issue #3: Should employees be able to waive the paid leave requirement - as part of a collective bargaining process or through individual “premium pay” programs?

Unionized Employees. As written, the proposed ordinance establishes minimum paid leave standards for both unionized and non-unionized employees. If the terms of an existing union contract do not meet these standards, the employer would still be compelled to meet the requirements.

However, as part of any future collective bargaining process, a union and an employer could agree to waive the requirements. This right is expressly acknowledged in the proposed ordinance. Presumably, a union would only agree to do so in exchange for some other form of compensation.

From a public policy perspective, such a waiver is not consistent with the health goals established as the key motivation for the current legislation. Employees who “trade” the paid leave requirement for some other benefit will once again have a financial incentive to work when they or a family member are ill. And while paid leave might be traded for some other important health-related benefit, the legislation offers no assurances that this will be the case.

Other jurisdictions have addressed this issue in different ways:

- Milwaukee and Connecticut do not allow the benefit to be waived.
- San Francisco allows the waiver and includes language that matches the proposed ordinance.
- Washington D.C. allows a waiver, but under the condition that at least three days of leave must be preserved. Recall that three days is the minimum leave requirement in D.C. This approach protects, to some degree, the health goals of the legislation, but also allows employees to establish which forms of compensation are most important to them.

I would note that this not just a theoretical concern. Staff with the City of San Francisco indicated that many of the local construction trade unions have negotiated contracts that waive the city’s paid leave requirement.

Non-represented workers and premium pay. Premium pay is frequently offered to workers as an alternative to benefits, most typically for part-time or temporary workers. The premium is paid above and beyond the standard hourly wage for the position. For example, the City currently offers a premium of 5 to 25% for certain temporary workers. The proposed legislation would generally allow for such premiums, but would *not* permit additional pay in lieu of the paid sick and safe time benefit (unless negotiated through a union).

Individual employees are expressly prohibited from waiving their right to paid leave in exchange for additional premium. Premiums could cover the value of health insurance, vacation, retirement, etc., but not paid sick and safe leave. This approach is consistent with the legislation’s stated health goals, but does limit the flexibility that employers and individual employees have in establishing the terms of employment.

Issue #4: What is the appropriate threshold for imposing the requirement on employees who work only a portion of their hours in Seattle?

While most employees spend the vast majority of their working hours at one location, small contractors, construction workers, delivery drivers and others may only work a portion of their time in Seattle. Similarly, employees who are attending extended conferences or conventions, and are technically “on the clock” while in Seattle for such events.

The City cannot regulate hours worked outside its jurisdiction, but the question remains about when to apply the regulations for employees who work a portion of their hours in the city. As now written, the paid leave mandate applies to any employee who works 80 or more hours within the city limits. Once that trigger point is reached, all hours worked in the City accrue paid leave at the rates set out in the ordinance. (The City cannot regulate hours not worked in Seattle, so an employer is only required to provide paid leave during future assignments in the city.)

While the policy goals of the ordinance lean toward broad application of the regulations and a low threshold for when leave accrues, the complications and costs of record keeping argue for a higher threshold.

Looking to other jurisdictions provides a couple of different models, one based on total hours, the other on the percentage of time worked:

- San Francisco’s enforcement rules set the threshold at 56 hours (six days). The enforcement staff there indicates that this has not been a significant issue in implementation. (This may well be because compliance is low. But if this is the case, then the number of employee complaints has also been low.)
- Milwaukee’s administrative regulations had set the threshold at 90 hours.
- In Washington D.C., the leave requirement only applies to employees who work at least 50% of their time within the District (or that spend substantial share of their time in the District and less than 50% in any one state).

I discussed this issue with the City’s audit staff, who are generally familiar with employer’s record keeping practices, and they cited the 80-hour threshold as a likely concern for employer’s with personnel who travel in and out of the city. Employers regularly track each employee’s total hours, but generally not where those hours are worked.

Issue #5: Do the proposed “shift swapping” provisions serve the policy goals of the ordinance and should it apply to Tier 3 firms?

The “shift swapping” provisions of the ordinance are designed to address situations where employees earn a significant share of their income from tips or commission. The terms of the proposed legislation provide for the following:

- Swaps are purely voluntary – the employer is not obligated to offer a substitute shift and employees are not obligated to accept a substitute shift.
- If an employee accepts a substitute shift, the time off will still be deducted from their balance of earned leave.
- Only Tier 1 and Tier 2 businesses are eligible.

At first glance these terms might seem unfair to the employee. Although they agree to work as substitute shift rather than being paid for their sick time, they still have leave deducted from their balance. However, because working offers the opportunity to earn income – tips or commission – above their base pay, employees benefit from the substitute shift by preserving the earnings that would otherwise be lost.

For the employer, arranging the swap can be a burden, but because employees will have leave time deducted from their balance, they needn’t fear that employees will take advantage and regularly call in sick when they have been scheduled for an undesirable shift.

From a health perspective, the swap minimizes the incentives for employees to work when they are ill, and thus contributes to the underlying goals of the legislation.

Given these observations, it seems worth asking whether Tier 3 firms should also be eligible for shift swapping. In general, somewhat more generous leave standards are proposed for Tier 3 firms because in balancing cost and benefits it is assumed that they can better absorb costs. However, in this context, the question is not really one of affordability, but rather establishing appropriate incentives for both employers and employees. And the policy advantages of shift swapping apply to all workers who earn tips or commission, regardless of employer size. This suggests that it would make sense to extend the swap provisions to Tier 3 employers.

Issue #6: Should employers who do not provide health insurance be required to pay some or all of the costs of documenting extended absences?

The proposed legislation permits employers to require written documentation from a health care provider for illness-related absences of more than three days. However,

employers who do *not* offer health insurance would be required to share in any out-of-pocket costs that employees incur in securing such documentation. Tier 1 and Tier 2 employers would have to pay 50% of the cost; Tier 3 employers 100%.

The goal of this provision is not to impose undue costs on employers, but rather to minimize the barriers employees face when they need to take sick leave. Without health insurance, a trip to a doctor for appropriate diagnosis and documentation could be costly.

On the other hand, requiring documentation provides a mechanism for employers to discourage abuse of the available leave, and being forced to pay for such documentation could significantly increase the cost of implementing the proposed legislation. Ultimately, this comes down to question of balancing employers need to verify the reason for an extended leave and the documentation costs faced by employees.

All other jurisdictions that mandate paid leave have provisions that address documentation – generally allowing employers to use “reasonable measures” to verify the use of leave – but none require employers to pay any share of the costs of securing such documentation.

Issue #7: When should paid leave begin to accrue?

As drafted, *accrual* of leave begins when an employee first begins work with a new employer. Employees are then eligible to *take* leave after 180 days of employment with a Tier 1 or Tier 2 employer; or after 90 days with a Tier 3 employer. Most of the other jurisdictions mandating paid leave follow this same model.

San Francisco, however, has adopted a slightly different approach. Under the statute approved by the City’s voters, paid leave does not begin accruing until 90 days after a worker is hired. Employees become eligible to take leave on this same date, but will not have any leave immediately available in their “bank”.

Another alternative is to link eligibility to cumulative number of hours worked rather than the number of days. For full-time workers such an approach will not be materially different than a standard linked to cumulative days. However, if the same cumulative hours standard set for full-time workers is applied to part-time or temporary workers, it would have the effect of postponing their eligibility relative to the current approach of counting the number of days since an employee’s hiring date.

Issue #8: How should temporary employees and seasonal workers be addressed in the legislation?

In the context of a temporary employment firm, who is the employer? The proposed legislation makes very clear that employees placed through a temporary employment agency are to be treated as employees of the agency, and not as employees of the firm to which they are temporarily assigned.

Other jurisdictions have used a comparable approach to temporary agencies, although the specific provisions of each ordinance are somewhat different. Milwaukee clearly established that temporary agencies are the employer and responsible for providing the benefit, but the Wisconsin State Legislature pre-empted the law before there was any history of enforcement. San Francisco follows the same model – temporary workers are employees of the staffing agency.

As detailed in the discussion immediately below, the current approach does generally offer greater benefits to the employee and is thus consistent with the health goals that underlie the proposed ordinance. For example, the term of employment, which serves as a trigger for when an employee becomes eligible for paid leave, is tied to how long the employee has worked for the placement agency, not the currently assigned employer. Similarly, when an existing assignment ends, the temporary employee retains their leave balance.

How should the cumulative term of service be defined? This question has slightly different implications for seasonal and temporary workers.

- For *seasonal* workers, employment is episodic, and potentially predictably so. As written, the proposed legislation would provide paid leave to an employee who is regularly hired to work for three or more months per year, although not necessarily in the first year:
 - The total number of days required to be eligible for paid leave is *not* based on a continuous period of employment, but rather cumulative time. So the 180 days of work needed to qualify for leave could be accumulated over two or more years.
 - And accrued leave must be reinstated if the period of separation is 9 months or less, so the seasonal worker would develop a “bank” of available time over a number of years with the same employer.
- For *temporary* employees, employment is defined by the relationship with the temporary agency, not the firm to which they are assigned. This implies that employees would begin to accrue time after 90 or 180 days of being hired by the agency, even if they did not have assignments during that period. In addition, unless there was a formal separation of more than 9 months, the employee would retain all accrued leave.

Additional issues. There are other issues related to temporary workers that might also need some clarification. For example:

- If an employee is not on an assignment, can they still use paid leave? From a public health perspective there is no need to allow paid leave during such periods. A non-working temporary employee will not infect co-workers and has no financial disincentive to seeking medical care.
- If an employee does not accept an assignment for an extended period of time, should they be considered “employed” for that whole period? Or should such

periods be defined as a separation from employment for temporary workers? If so, then 9-month separation standard set in the proposed ordinance would need to be modified for workers employed through temporary agencies.

Cost implications for temporary employees. From an economic perspective, the proposed legislation raises the cost of temporary employees, relative to counting them as employees of their temporarily assigned employer. In turn, these increased costs may lead firms to use fewer temporary employees, potentially reducing the hours available to those who choose to work in this capacity. It may also increase the number of permanent employees, as firms now using temporaries will shift instead to “in-house” positions. On the other, the increased cost of temporary workers may just lead these employers to hire less, period. In any case, the legislation could be modified to shift the definition of employer so as to make the company using the temporary worker the employer, rather than the temporary agency. This would reduce employment costs but provide fewer benefits to temporary workers.

Issue #9: What is the right rate of “sick” pay for workers who earn different hourly rates from the same employer?

Some workers do not have a fixed rate of pay, and/or earn different rates depending on the specific duties they perform on any given day. In these situations it may not be obvious what the appropriate rate of compensation for paid leave should be. The proposed legislation does not specifically address this issue, and without legislative clarification the question would need to be addressed in the administrative rules that the Office of Civil Rights is empowered to develop. In San Francisco, the administrative rules establish that “the employer shall reimburse the employee at a rate of pay equal to the scheduled rate(s) of pay for the job during which sick leave is taken.” The San Francisco rules also address pay for tipped workers, piece rate workers, as well as those who earn commissions from sales.

Citations

- ¹ “On Paid Sick Leave”. Program Perspectives, Vol. 2, Issue 2. United States Bureau of Labor Statistics. March, 2010.
- ² Ibid.
- ³ Ibid.
- ⁴ Drago, Robert and Lowell, Vicky. San Francisco’s Paid Sick Leave Ordinance: Outcomes for Employers and Employees. Institute for Women’s Policy Research. February, 2011.
- ⁵ Impact of Paid Sick Leave on NYC Business: A Survey of New York City Employers. Partnership for New York City. September, 2010.
- ⁶ Ibid.
- ⁷ Washington State Employees Benefit Survey Report. Washington State Employment Security Department. April, 2010.
- ⁸ Davis, K et al., Health and Productivity among U.S. Workers. The Commonwealth Fund. 2005.
- ⁹ Drago, Robert and Lowell, Vicky. San Francisco’s Paid Sick Leave Ordinance: Outcomes for Employers and Employees. Institute for Women’s Policy Research. February, 2011.
- ¹⁰ Ibid.
- ¹¹ Clemons-Cope, L et al. Access to and use of paid sick leave among low-income families with children. Urban Institute. 2007.
- ¹² A Health Impact Assessment of the Healthy Families Act of 2009. Human Impact Partners. September, 2009.
- ¹³ Ferguson, N.M. et al. Strategies for mitigating an influenza pandemic. Nature. 442:448-52. 2006
- ¹⁴ Gould, et al. The Need for Paid Sick Days. Economic Policy Institute. June, 2011.
- ¹⁵ Waters Boots, Shelley et al. Employers’ Perspectives on San Francisco’s Paid Sick Leave Policy. The Urban Institute. March, 2009.
- ¹⁶ Drago, Robert and Lowell, Vicky. San Francisco’s Paid Sick Leave Ordinance: Outcomes for Employers and Employees. Institute for Women’s Policy Research. February, 2011.
- ¹⁷ United States Bureau of Labor Statistics. Employer Costs for Employee Compensation, Table 1. June, 2011.
- ¹⁸ Waters Boots, Shelley et al. Employers’ Perspectives on San Francisco’s Paid Sick Leave Policy. The Urban Institute. March, 2009. (Also shown in Drago, Robert and Lowell, Vicky. San Francisco’s Paid Sick Leave Ordinance: Outcomes for Employers and Employees. Institute for Women’s Policy Research. February, 2011.)
- ¹⁹ Drago, Robert and Lowell, Vicky. San Francisco’s Paid Sick Leave Ordinance: Outcomes for Employers and Employees. Institute for Women’s Policy Research. February, 2011.
- ²⁰ Ibid.
- ²¹ “On Paid Sick Leave”. Program Perspectives, Vol. 2, Issue 2. United States Bureau of Labor Statistics. March, 2010.