

August 17, 2016

TO: Mayor Coleman
Saint Paul City Council Members

FROM: Allina Health
Children's Hospital and Clinics of Minnesota
Gillette Children's Specialty Healthcare
HealthEast Hospital System
Regions Hospital and HealthPartners Clinics

RE: Earned Sick and Safe Time Ordinance

Dear Mayor Coleman and Council Members,

As major employers and providers of healthcare in the East Metro area, thank you for the opportunity to provide feedback on the most recent earned sick and safe time ordinance currently under consideration. With nearly 21,000 employees in Saint Paul, we have a vested interest in these deliberations.

We support earned sick and safe time. As providers of healthcare, we are committed to maintaining public health and safeguarding the public welfare and safety in our city. We currently provide generous and comprehensive benefit packages, including sick and safe time to nearly 90% of our employees, some at .4 FTE, .5 FTE and all others at .6 FTE through a variety of arrangements including Collective Bargaining Agreements and Paid Time Off (PTO) plans.

While we are absolutely supportive of this policy goal, we also want the Council and Mayor to acknowledge the corresponding administrative and financial burden to health care systems of implementing a St. Paul ordinance as many of our staff serve patients across multiple municipal boundaries on a daily basis. We also want to draw attention to unintended consequences of the ordinance. The mandate will, add additional costs to our higher paid employees, negatively impact our ability to adequately staff 24 hours per day, 365 days a year and contribute to the already increasing cost of healthcare.

We urge the council and Mayor to address the following issues:

- Exempt Highly Compensated Employees (HCE) as defined by the IRS (Section 414(q)(1)(B)) which is adjusted yearly. The 2016 HCE limitation is \$120,000, which is \$57.69 per hour. This will address adding additional costs related to physician and other managers and executives who operate under a variety of employment or contractual arrangements.
- Provide an exception for health care casual employees similar to Vermont or Philadelphia who choose to work at their convenience and have no set schedule.

Alternately, consider exempting casual employees who make more than four times the minimum wage. With 827 benefit eligible positions open, of which 274 are registered nursing positions, it is clear that our employees are choosing casual status to meet the needs of their lifestyle and families.

- Clarify Section 233.03. D as follows in red: If an employer has a paid-leave policy, such as a paid-time-off policy, or a combination of sick and vacation time, that makes available to employees an amount of paid leave that may be used for **various purposes, including** the same purposes as earned sick and safe leave under this section, and that is sufficient to meet the requirements for earned sick leave as stated in subsections (A)–(C) of this section, the employer is not required to provide additional earned sick leave **regardless of when or for what purpose employees choose to use the benefits provided under any such policy.** Satisfaction of subsections (A)–(C) may be made through any combination of sick, vacation, or paid time off.
- Clarify that the employer's existing paid time off/sick time policy or procedure is sufficient proof of compliance and there is no need for the employer to change existing paid time off/sick time policies or procedures to implement a new tracking system if current policies meet or exceed city ordinance standards.
- Allow existing PTO policies that provide a minimum 80 hours of PTO at the beginning of each work year, but do not have a carry over, to be in compliance. This would allow continuation of existing PTO policies that are designed to encourage employees to take time off.

Finally, we would ask for an implementation date of July 1, 2018 to allow for an appropriate transition time.

Thank you for your work on this important issue and for your consideration of some of the unique circumstances of the healthcare setting.



Minnesota Nursery & Landscape Association

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Mayor Christopher B. Coleman/St. Paul City Council
St. Paul City Hall
15 Kellogg Boulevard W.
St. Paul, MN 55102

August 17, 2016

Mayor Coleman, City Council President Stark, and City Council Members:

The Minnesota Nursery and Landscape Association (MNLA), which represents more than 2,000 members in the Twin Cities metropolitan area and across the state, has been following the city's discussions regarding a possible mandated paid sick and safe time ordinance. Such policies would have significant consequences for many of our members which include landscape plant and flower growers, garden center operators, landscape designers and contractors, irrigation and landscape lighting providers, lawn, tree, and landscape service providers, and a multitude of allied industry partners and suppliers. In addition to enhancing the environment and people's lives, MNLA firms employ over 42,000 people, have an annual payroll of over \$1.2 billion, generate sales of more than \$1.9 billion, and benefit Minnesota's economy by \$3.5 billion each year with approximately 72% of this impact being in the Twin Cities area.

The MNLA believes comprehensive employee benefits packages, including sick and safe time benefits, can be advantageous to both employers and employees and strongly supports these types of benefits from a voluntary, best practice perspective when employers are able to provide them. Many of our member firms already offer benefits packages that variously include paid sick leave or paid time off (PTO) while others are hopeful that they will eventually have the financial resources to offer these types of benefits in order to attract and retain good employees. Every business is, however, unique and these are complex business decisions that are best left to individual employers and their employees to work out and not something that should be mandated by governments as one-size-fits-all policies are rarely prudent and frequently have unintended consequences.

Given the potential implications of a mandated sick and safe time policy on St. Paul businesses and residents, including our member firms, their employees, and the clients they serve, we were hopeful that the City of St. Paul would approach this important issue in partnership with the businesses that perform work in the city. Having been involved in the process since the beginning, however, and bolstered by recent news reports suggesting the process was designed to achieve a predetermined outcome, we are disappointed that this hasn't been the case. As a result, it shouldn't be surprising that we are disappointed in the process and its outcome and are forced to conclude the city never intended to listen to the business community on this issue. Unfortunately, and through no fault of their own, the membership of the Earned Sick and Safe Time (ESST) Task Force appointed by the city council was not truly representative of the stakeholders that would be affected and whether a mandated sick and safe time ordinance was justified was never really discussed. Put simply, it was preordained that the ESST Task Force would recommend that the city pass a sick and safe time ordinance and any suggestion that the process was sincere, fair, and transparent is absolutely and completely disingenuous. Instead, it appears the city has chosen to listen to a group of vocal, special interest groups and intends to enact a contested and unworkable sick and safe time mandate that will likely hurt businesses, employees and their families, and the St. Paul business climate. While we do not doubt that these groups are well-intentioned, their belief that government regulation is the answer is misguided and the notion that businesses do not want to do right by their employees is naïve and demonstrably false. And while there may be bad actors, they are not the

norm and indiscriminate mandates designed to address these exceptions will punish the majority of businesses that are working hard to be successful and support their employees and their families. Businesses are already challenged by a growing list of burdensome and questionable regulations and it is likely the proposed ordinance will add to this list and do more harm than good. Only a strong and vibrant economy can achieve the results the proponents of this ordinance seek and excessive regulation threatens this important goal.

Without a doubt, and despite statements to the contrary, businesses large and small will be negatively impacted by the proposed ordinance and the impact will likely be significant. Too often the fact that businesses already contribute greatly to the welfare of their employees is overlooked, minimized, or simply ignored. According to the Bureau of Labor Statistics, private businesses provide benefits valued at \$9.21/hour/employee and local and state government entities rely on taxpayer dollars to offer benefit packages valued at \$14.19/hour/employee. These benefits account for about a third (30% and nearly 35%, respectively) of the total cost of employee compensation. These are significant and growing costs and compliance with the proposed sick and safe time ordinance will only add to these costs. It will also be a tracking and bookkeeping nightmare and has the potential to threaten other employee benefits and, in some cases, jobs. It is an unfunded mandate that puts the burden exclusively and unfairly on employers. As a result, the cost of doing business in the City of St. Paul will increase, some businesses will close – especially small businesses and recent start-ups – and others will decide not to expand or choose to relocate. Increased costs for consumers is also a concern as many employers, regardless of size, will be forced to pass along the added cost to consumers. The same is true for firms with government contracts as sick and safe time benefits tend to be instituted for government entities first, as has already happened in St. Paul, and taxpayers, including the businesses that will already face increased costs under the ordinance, ultimately pay the added costs.

In addition to these effects, other unintended consequences may include reduced hours for employees, reduced work time flexibility, fewer part time employees (which also reduces flexibility for some employees), lower pay, downsizing, reductions in existing benefits, and a reduced likelihood that additional benefits will be offered. At the same time, research shows many of these benefits are valued more by employees than sick leave benefits, but when businesses are forced to provide added benefits like paid sick leave, adjustments must be made. Simply put, the proposed sick and safe time ordinance has the potential to result in more harm than good including harm to those it is intended to help. Connecticut and San Francisco are a good examples. Research focused on the effects of the mandated sick leave benefit in Connecticut (effective in 2012), found that businesses had indeed reduced employee benefits, reduced employee hours, and lowered wages to accommodate the costs associated with the new law. Businesses had also raised prices, offered fewer raises, reduced overtime, laid off employees, converted part-time positions to full-time positions, and increased the employee's contributions for other benefits like health insurance. That companies would hire fewer people was perhaps the most concerning outcome reported. Similarly, a study in San Francisco found that 15% of affected businesses had cut jobs or reduced hours as a result of the city's mandated sick leave policy. These are bad outcomes.

It has been variously stated that the primary justification for the proposed St. Paul sick and safe time ordinance, is to safeguard public health and safety and reduce illness and health care costs. While these are laudable goals, there is no scientific or practical evidence that these outcomes would be achieved. There is also no evidence that the ordinance is justified from a public health perspective based on the history of illness in the City of St. Paul or the state based on the epidemiological data compiled by the Minnesota Department of Health. As a result, the proposed ordinance is flawed and unlikely to achieve the goals that have been used to justify its passage. As a result, the proposed ordinance is simply a feel-good policy and an example of poor governance.

From a public health perspective, restaurant workers, mainly servers and kitchen staff, is a group that is often cited as a group where sick leave benefits would be particularly effective in reducing the spread of illness to coworkers and the general public. In reality, research indicates the assumption that public illness will be dramatically reduced because people will stay home when they are sick if sick leave is available to them is seriously flawed and overblown as a justification for mandated sick leave benefits. In fact, many people, regardless if they are salaried or have paid sick leave benefits or not, often come to work when they are sick for reasons unrelated to lost wages or finances. In addition, concerns about public health and the transmission of

illnesses are not limited to the workplace and a policy that simply focuses on the workplace, while easier to craft and implement, is insufficient; places of worship (services, weddings, etc.), shopping centers, educational institutions, concerts, movies, grocery stores, sports events, public transit – any situation where people come in contact with others – are just as likely, and potentially even more likely, to be associated with spreading illnesses as the workplace. Does the City of St. Paul intend to pass regulations designed to address these situations? Probably not, but this reality further weakens the cited justification for the proposed ordinance. And, specific to restaurant workers, while state law already prevents them from working, many are unlikely to call in sick as they would lose tip income and these days tips are often pooled and shared with other staff.

In addition, encouraging people to stay at home when they feel sick often isn't sufficient to prevent the transmission of contagious illnesses as the contagious period often precedes the onset of symptoms by several days and may extend well beyond recovery. For example, according to respected authorities like the Mayo Clinic and the Centers for Disease Control (CDC), people infected with norovirus, the most common cause of food-related gastrointestinal illnesses in adults and children, and the illness most often cited as a justification for mandated sick leave benefits, can be contagious for 48-72 hours (2-3 days) before people begin to feel ill and for several days and up to two weeks after they have recovered. Furthermore, the most contagious period is often after they no longer feel ill and some people infected with norovirus (and other illnesses) may be asymptomatic and never feel ill, but are still contagious. The situation is similar for rotavirus – the primary cause of viral gastroenteritis in infants and young children – as infected individuals are contagious before they become ill and for up to two weeks after they have recovered. The same is true for a number of other illnesses including influenza. Although it is certainly advisable that people should stay home when they feel ill, sick leave benefits, even those that are mandated, do nothing to prevent the spread of norovirus prior to the development of symptoms and after people feel better and have returned to work; as a consequence the effectiveness of sick leave benefits in preventing outbreaks of these types of illnesses are questionable at best. As a result of these common sense and scientific realities, the presumed health benefits of a mandated sick leave ordinance are likely exaggerated. To be effective, a policy designed to reduce illness must keep people that are contagious (which is impossible because there may be no symptoms) and sick at home which is difficult in a free society. Clearly, when held to this standard, paid sick leave mandates are ineffective and unlikely to further the goal of improved public health in a meaningful way.

That other municipalities have passed mandated sick and safe time ordinances, combined with assertions of their effectiveness, are often cited to support the enactment of similar ordinances in other cities like St. Paul. While this is understandable, an analysis of the limited information available doesn't substantiate the claims of the advocates of such regulations. Once again, from a health perspective, a study of San Francisco's mandatory sick leave ordinance found that only 3.3% of employers reported that the ordinance had reduced workplace illness while the vast majority reported no change and 3.4% reported an increase in workplace illness. In short, the ordinance had no effect on illness in the workplace and several other studies have similarly found no relationship between mandated sick leave benefits and a reduction in workplace illness. Contrary to predictions, and not surprisingly, paid sick leave mandates have also failed to reduce employee turnover. A Seattle study, where only two employers reported decreased employee turnover, four experienced increased turnover, and 243 saw no change in response to the city's mandated sick leave benefit, is a good example.

Advocates of mandated paid sick leave benefits have also used the results of surveys that show most employers support these mandates in cities and states that have passed such regulations after they have been implemented to promote their passage in other jurisdictions. These findings are, however, questionable and likely misleading since, in every case, the majority of employers already offered sick leave or similar benefits before the ordinances were passed and had to make few changes to comply. In fact, the percentage of businesses opposing these types of mandates typically corresponds to the percentage of businesses that had to create or overhaul their paid sick leave policies in response to the new requirements. For example, according to the latest figures from the Bureau of Labor Statistics, about 36% of the nation's private-sector workforce, including workers in the Twin Cities metropolitan area, do not currently receive formal sick time benefits (note, however that it would be incorrect to assume the sick and safe time needs of many of these employees are not addressed in some fashion informally) while 64% do. Interestingly, however, these percentages tend to correlate well with the business

community's perspectives relative to paid sick and safe time mandates. A study in Jersey City, NJ, where three out of five employers reported they did not have to make significant changes and suffered little hardship resulting from the city's sick leave ordinance, is a good example. Note that these percentages (3 out of 5 which is equivalent to 6 out of 10 or 60%) closely match the percentages of employees/businesses that typically do and do not have sick leave benefits, respectively. The fact that unaffected businesses tend to support such mandates after the fact does not prove paid sick leave mandates are a success since it is typically the smaller businesses that are affected most that experience the greatest hardship. These smaller businesses are also the ones that usually lack the flexibility to deal with such mandates without sacrificing profitability to the detriment of their employees and customers. And while some small businesses have indeed expressed support for the proposed ordinance, their support has absolutely no bearing on whether the ordinance is justified or not. Nothing prevents those businesses that voluntarily choose to offer these types of benefits from doing so and that's great. There is a long list of benefits employers might choose to offer their employees, but that doesn't mean all businesses should be required to provide those benefits and mandating that all businesses offer the same benefits would be to their disadvantage in competing for the best employees.

Finally, it would be especially cumbersome and problematic for St. Paul to attempt to regulate businesses that are not located in the city. The result is an example of regulation without representation as these business owners cannot express their dissatisfaction or satisfaction because they cannot vote in the city. For this and other reasons, lawsuits are possible as mandated sick and safe regulations have been challenged in court and these legal challenges are likely to continue. In fact, the authority of a city to extend this type of regulation to businesses located outside the political boundaries of a city, specifically Trenton, NJ, has already been challenged; it was argued that the law was vague and gave the city too much power to regulate businesses in other municipalities. The city ultimately clarified that the ordinance would only apply to businesses located within the city and the judge's decision stipulated that interpretation. The ever-evolving and increasingly burdensome patchwork of regulations is also a growing challenge and the likelihood of "gotcha" lawsuits for unwittingly violating a specific requirement of one ordinance or another is a concern. If the proposed sick and safe time ordinance is passed and successfully challenged in court, it will be a costly mistake that the taxpayers will have to fund; this is certainly something that should be considered and something the City of St. Paul simply can't afford.

Ultimately, it is small and medium-sized businesses that will be most affected by the proposed ordinance and these impacts have largely been ignored or minimized during the city's process. These businesses typically do not have the flexibility to reassign employees and cannot afford to pay twice for the same labor (the temporary worker and the employee who is ill). The city has variously many of these arguments, but has thus far chosen to ignore them. It might be better to recommend that businesses leave and not perform work in jurisdictions that pass these types of regulations on the businesses that are the foundation of their economies and let the municipalities deal with the consequences. Some businesses have already done so and others are likely to follow their example. Mayor Coleman is correct when he states that it is entrepreneurs, not government, that creates jobs and it is business owners that choose where to create those jobs. It would also seem the proposed sick and safe time mandate is at odds with the mayor's initiative to make job creation a priority with the goal of 3,000 new jobs in the city by the year 2020. Government and business must work in partnership to foster a prosperous economy for all and excessive government regulation is definitely not the answer.

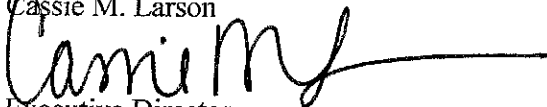
Although the MNLA does not support the mandated sick and safe time ordinance that has been proposed, the following changes are recommended should the city make the unwise decision to pass the proposed ordinance: at minimum the city should limit the ordinance to businesses located within the City of St Paul, only apply the ordinance to businesses that have 50 or more employees, increase the number of hours required for coverage from 80 to 240 (or more), decrease the maximum annual accrual from 48 hours to 40 hours and reduce the maximum carryover from 80 hours to 40 hours, eliminate the ambiguous language "any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship" from the definition of family member, exclude employees that are covered by collective bargaining agreements, and allow employers greater flexibility to require reasonable notice relative to the use of sick and safe time when foreseeable.

On a separate topic, the MNLA commends Mayor Coleman for recognizing the threat posed to the city's tree canopy, and the environmental and socioeconomic benefits it provides, by the non-native emerald ash borer. While the loss of its ash trees will be a significant loss for the City of St. Paul, being proactive by being prepared to remove and replace the thousands of dead and dying ash trees that will result is a sign of forward-thinking and will provide the opportunity to create a more diverse and resilient tree canopy for current residents and future generations. We encourage the city council to join the mayor in making this effort a reality as part of a comprehensive, thoughtful, and fiscally-responsible budget.

Once again, the Minnesota Nursery and Landscape Association believes employee benefits packages, including sick and safe time benefits, can benefit employers and employees and supports these types of benefits on a voluntary basis when employers are able to provide them but does not support the mandated sick and safe time ordinance that has been recommended to the St. Paul City Council. It is a regulatory overreach and an example of government micro-managing private business and caution is advised. We, therefore, ask the city to reject this ordinance and work with the business community to find better alternatives.

Respectfully submitted,

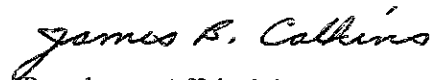
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