## Sick and Safe in Minneapolis

Following on the heels of several other cities, The City of Minneapolis jumped on the ever lengthening train of municipalities mandating paid time off for almost every employee working within the city limits.

The ordinance, effective July 1, 2017, requires all but the smallest employers to provide employees with paid time off, in proportion to the employee's hours worked, for the employee to use for "sick and safe" events in their lives. Generally, this includes the employee's own illness, or to care for a family member's, illness, wellness (physical or mental), to address issues related to abuse, sexual assault, or stalking and to address issues relating to "closures" (schools) or impairments of places of employment, schools, or care facilities. The definitional weeds are deep. The ordinance's mechanics have been, and will be, the subject of other articles.

Important to all but the smallest motor carriers is that the ordinance applies to employees who work within the city's geographic limits for a minimum number of hours (80) per year. In other words, even if the employer is located outside Minneapolis, to the extent an employee "performs work" in the city of more than eighty (80) hours per year, the employee is entitled to benefits. Of course, for an employer whose employees are all physically located completely within Minneapolis' borders, this sick and safe ordinance is straightforward to apply.

But what does a business whose very essence, like a trucking company, is trans-geographic (i.e. moving constantly in and out of the city) do? Unfortunately, Minneapolis did not provide much help to transportation businesses in its lengthy and detailed ordinance.


To the contrary, they casted a wide net by providing that employers with "employees who occasionally perform work in the city must track hours worked in the city by each employee performing work in the city." They went even further to provide that if the employer does not keep "adequate records," "it shall be presumed that the employer has violated" the sick and safe ordinance "absent, clear and convincing evidence" otherwise.

If the employer is lax in its record keeping (in the eyes of Minneapolis) and does not provide sick and safe benefits, the employee is presumed to be entitled to the benefits. The employer can only reverse the unproven presumption by "clear and convincing evidence". In other words, Minneapolis wants an employer to prove it is not breaking the law. If it cannot, the employer is breaking the law. Therefore, there is considerable risk to a motor carrier in not keeping track of the hours its employees work with the city.

Given the risk, a motor carrier has several options. First, it can fully comply with the ordinance by keeping track of the hours of every employee who ventures into the city and provide the benefits as required. This is not impossible, but could be time consuming and burdensome. It might also lead to positive discriminatory treatment of its

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"Minneapolis" working employees over its employees working in other locations without sick and safe ordinances.

Second, the transportation company could restructure its employees' duties to minimize the number of employees who could be subject to the ordinance. This may not be as cumbersome but would be time consuming and likely a blow to efficient dispatching.

Third, the transportation company could relocate out of Minneapolis altogether. That is not an option available to many, however.

Fourth, the transportation company could look elsewhere, under other law, for cover. The most likely prospect at present is the Federal Aviation Administration Authorization Act of 1994 (FAAAA). The FAAAA might provide just the right kind of cover for some transportation companies, specifically federally regulated motor carriers, to avoid this ordinance altogether. Enacted by in 1994, to place motor carriers on equal footing with airlines under the Airline Deregulation Act of 1978 (ADA), the FAAAA pre-empts any local or state motor carrier regulations which are burdensome on interstate commerce by exempting interstate motor carriers from the "patchwork" of local regulation which relate to "price, route or service….of any motor carrier…. with respect to transportation of property."

The FAAAA is often used to exempt motor carriers from local and state regulations which are burdensome on interstate property transportation. Unfortunately, courts looking at various local statutes have reached conflicting results on the FAAAA's preemptive effect where employee benefits or protections are concerned. Courts in California and Illinois, not surprisingly, have held that employee protection laws are not pre-empted (meal and rest breaks, prevailing wages and unauthorized wage deductions). Other courts in other parts of the country have held such local laws are pre-empted (prohibiting independent contractors from performing certain motor carrier services and tip laws affecting contracted airline luggage porters).

No court has yet addressed whether a motor carrier can safely ignore the provisions of the City of Minneapolis' new ordinance under a theory of federal law pre-emption under the FAAAA. However, any motor carrier assuming that such a challenge will prevail does so at its own risk.

In the interim, motor carriers should track hours and, if the ordinance otherwise applies, follow it until, and if, a court pre-empts its application on motor carriers. There are efforts at the national level before Congress to amend the FAAAA (maybe the FAAAA-A) which will zero in on and specifically pre-empt state and local wage and benefit laws for motor carriers. For now, however, there is no cover for the motor carrier and it will have to comply with the new ordinance next July or take significant risks in not doing so.

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