



Paid Sick Leave Mandate Removed From Ohio Ballot Focus Shifts to Federal Legislation

by James B. Yates and Carrie L. Sponseller

The ballot initiative requiring Ohio employers with 25 or more employees to provide employees with seven paid sick days annually was recently removed from the ballot. The proponents of the Ohio Healthy Families Act, which included the Service Employees International Union (SEIU), stated that the decision was made to remove the issue to avoid a “shrill and vitriolic” ballot campaign. The mandate had recently come under fire after Governor Strickland’s attempts to broker a compromise between proponents and opponents of the initiative proved unsuccessful. Governor Strickland and Lieutenant Governor Fisher indicated they would actively oppose the initiative and referred to the mandate as “unworkable, unwieldy” and “detrimental to Ohio’s economy.”

The proponents of the OHFA initiative vowed to channel their efforts toward passing analogous federal legislation supported by Democratic presidential nominee Senator Barack Obama and Ohio Senator Sherrod Brown, who promised that a federal sick leave mandate would be “part of a Democratic agenda starting in January.” Given the recent comments of Senators Obama and Biden on the campaign trail, passing this legislation will be near the top of the Democratic legislative agenda if Senator Obama is elected President.

The federal legislation (S. 910/H.R. 1542) is similar in most respects to the Ohio proposal. Like the Ohio proposal, the federal legislation would mandate that employers provide seven paid sick leave days annually for employees working 30 or more hours per week for absences resulting from: “a physical or mental illness, injury, or medical condition” of the employee; obtaining a medical diagnosis or care or preventative care; or caring for a child, parent, spouse or someone whose relationship is “the equivalent of a family relationship.”

The federal legislation also contains carry-forward provisions and prohibits employers from requiring certification for absences covering three or fewer work days. The legislation also prevents employers from eliminating, reducing or redesignating any leave in existence on the “date of enactment” in order to comply with the legislation.

The federal legislation differs from the Ohio proposal in several key respects:

- The federal legislation applies to employers with 15 or more employees;
- Only employees working 20 or more hours per week (or 1,000 hours annually) would be eligible for paid sick days;
- An “employer” is any person who has the requisite number of employees for each working day during 20 or more calendar work weeks in the current or preceding calendar year (adopting the FMLA formula);
- Two year statute of limitations for commencing actions (three years if violations are determined to be willful); and
- Delayed effective date for current collective bargaining agreements.

Employers should, at a minimum, be reviewing leave and related policies to determine whether the paid leave provided is “at least equivalent to” the provisions of the proposed legislation. If not, employers should be considering alternatives to current leave policies.



For more information on this bill, Mr. Yates and Ms. Sponseller may be reached at our Toledo office (419-241-6000). Mr. Yates is a member of the Firm while Ms. Sponseller is an associate. Both are part of the Labor and Employment Practice Group.



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