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CONSTRUCTION & EQUIPMENT

SICK LEAVE, POT LAWS LEAVE EMPLOYERS FEELING QUEASY

Seattle's new safe/sick time law affects companies located outside of the city, if their employees work at least 240 hours per year in the city.

Has the city of Seattle gone too far with its current safe/sick time law? If you own a business anywhere outside of Seattle, but have employees who spend a fair amount of time within the city, you probably think the answer is yes.

BY AARON G. THOMSON
Ashbaugh Beal

Seattle requires businesses located inside and outside the city to comply with the city's sick/safe time ordinance, when such businesses have employees that work regularly, or at least 240 hours per year, in the city. This requirement, found in Seattle Municipal Code Section 14.16, is highly controversial among cities not named Seattle, employers located outside Seattle, and Washington's House and Senate Republicans.

Yet, despite the public outcry over Seattle telling other cities and their businesses what to do with their employees, the new ordinance doesn't appear to be at risk of being repealed any time soon.

Senate Bill 5726 is the Senate's attempt to defeat the ordinance and declare "unenforceable" any "city or town paid sick leave or safe leave program" to employers or employees whose principal place of business or employment is outside such city. However, despite recently passing in the Senate, SB 5726 is not expected to fare well in the House of Representatives, where it currently sits.

House democrats recently tried to push through House Bill 1313, which would have essentially made Seattle's sick/safe time ordinance state-wide law. Though HB 1313 died on the House floor without a vote, it is expected to be revived in the next legislative session.

With the Senate and House simultaneously pushing mutually exclusive bills to defeat and expand Seattle's sick/safe time ordnance respectively, it appears that Section 14.16 will remain in effect, and employers inside and outside Seattle should be prepared to comply with the ordinance.

So what does Section 14.16 require of employers based outside of the Seattle city limits?

Section 14.16 requires employers to provide paid sick and safe leave to its employees. Sick leave involves an employee's or her family member's illness or medical care. Safe time largely comes from Washington's current domestic violence laws, and involves instances of public hazard, school closure, and domestic violence affecting the employee or his family members.

If your business is more than two years old and employs more than four full-time employees, at least one of which works at least 240 hours per year (roughly six weeks) in Seattle or on a regularly scheduled basis, your business is subject to the controversial regulations.

This means that your business could be subject to the regulations even if it is not in Seattle.

Employees do not start with the total allotment of paid leave, but accrue it at a rate of one hour of leave for every 30 or 40 hours of work, depending on which "tier" the employer is in. Employees may roll over their paid leave into a new calendar year, but they are not entitled to cash out unused paid time at separation from employment.

The amount of paid time an employer must offer employees depends how many full-time employees, or full-time equivalents (FTEs), an employer has:

- Tier One. Employers with five to 49 FTEs must allow their employees to accrue at least one hour of paid sick/safe time for every 40 hours worked in Seattle, up to five days of paid sick leave (40 hours) per calendar year, including carry over from the previous year.
- Tier Two. Employers with 50 to 249 FTEs must allow their employees to accrue at least one hour of paid sick/safe time for every 40 hours worked in Seattle, up to seven days of paid sick leave (56 hours) per calendar year, including carry over from the previous year.
- Tier Three. Employers with 250 FTEs or more must allow their employees to accrue at least one hour of paid sick/safe time for every 30 hours worked in Seattle, up to nine days (72 hours) per calendar year, including carry over from the previous year.

In calculating the number of FTEs, businesses must include ALL employees, including part time, seasonal and temporary employees, as well as those working outside Seattle. Thus, this law will affect national and international companies, just as it will affect those in the greater Seattle area.

Sick/safe time begins to accrue at the commencement of employment, but employees are not entitled to use accrued sick/safe time until the 180th day of employment.

Employers who already offer paid leave do not need to provide additional leave, so long as they offer at least the amount of time required by the law, based on their FTEs. Employers will need to start tracking and reporting time in accordance with the law, and reporting leave accrual and balances to their employees on a regular basis (such as on their pay stub).

Not entirely up in smoke

Just as employers are learning to cope with Section 14.16, they are also concerned with Washington's changing laws on marijuana. With last November's passage of I-502, which decriminalized the possession and use of small amounts of marijuana, innumerable questions have arisen regarding how employers are supposed to treat employees who legally use marijuana, both at the work-

place and in the privacy of their own homes.

Fortunately for employers, Washington's laws allowing employers to maintain drug-free workplaces haven't entirely gone up in smoke.

In June 2011, the Washington Supreme Court confirmed in *Roe v. TeleTech Customer Care Management LLC* that Washington's Medical Use of Marijuana Act did not obligate an employer to accommodate an employee's use of medical marijuana, even when the employee in a non-safety-sensitive position and used medical marijuana exclusively off-site.

As stated clearly in the act, "nothing in this chapter requires any accommodation of any medical marijuana use in any place of employment," and the Washington Supreme Court went further to clarify that there is no civil remedy or right to relief for an employee who is terminated for marijuana use outside the workplace.

In other words, the marijuana act does not create employment protections, does not make marijuana users a protected class for discrimination purposes, does not create a clear manifestation of public policy in favor of marijuana accommodation by employers, and does not affect an employer's right to drug test or maintain zero-tolerance drug policies as a condition of employment.

Importantly, Washington's recent passage of I-502 does not change this. In fact, I-502 doesn't even address marijuana use in the context of employment, but only in terms of decriminalization. *Roe v. TeleTech* is still the law in Washington.

While simple possession of small amounts of marijuana have been decriminalized in Washington, if an employee has cannabis in his system, he can still be rightfully terminated under an employer's drug policy and/or due to his at-will status.

Thus, while an employee in Seattle now has the right to use marijuana and take paid sick/safe time off, employers are not required to acquiesce to an employee's marijuana use, and therefore are not required to provide paid sick/safe time to marijuana users where such use is prohibited by the employer.

Aaron Thomson is a member of Ashbaugh Beal's Corporate/Securities group. He works with businesses on various issues — including entity formation, corporate governance issues and contract formation — and acts as outside general counsel.