

Is Ohio Healthy Families Act Making Ohio Sick?

By Marie-Joëlle Khouzam

Currently, only employers with 50 or more employees who are subject to the federal Family & Medical Leave Act must give time off, and unless the employer's policies provide otherwise, FMLA time is not required to be paid time off.

If labor has its way, a new measure may appear on the November ballot in Ohio, requiring employers with 25 or more employees to pay full-time employees for seven (7) sick days and to pay part-timers a pro-rated number. The Act would permit leave for physical or mental illness, injury, or medical condition, to obtain a medical diagnosis, a related treatment, or preventive care, for the employee or the employee's child, parent (including in-laws), or spouse. It permits visits to any licensed health care professional – including nurses, chiropractors, or optometrists.

Although the Ohio Healthy Families Act ballot initiative appears to be a well-meaning effort to give employees time off to care for a sick child or attend medical appointments, it has raised considerable concern in the employer community at a time when businesses are leaving the state to avoid excessive regulation and the costs of doing business here.

The key problems with the OHFA, originally proposed by labor in 2007, are that:

- It expands coverage to businesses half the size of those covered by the FMLA, covering many businesses less able to afford the fiscal impact.
- It makes the paid sick days available to any employee who has worked 90 days. In contrast, FMLA leave rights are available to those who have worked for one year.
- It requires accrued sick leave to be carried over from year to year (it is unclear as to whether an employee can maintain a 7-day or a 14-day balance).
- It does not require the employee or the family member to be suffering from any "serious health condition". Thus, employees can use leave for almost any reason for up to 3 days, even in small increments, without medical certification.
- It allows employees to take leave upon written or oral request to the employer. When the need leave is fore-seeable, at least 7 days' notice is required (compared to 30 days under the FMLA); otherwise, notice should be given as soon as practicable. Employees could, without notice, leave work early or come in late if they had a headache or other unforeseeable condition, so long as they make the request.

Once the paid sick leave extends beyond 3 consecutive work days, the employer can request certification by a health care professional, which the employee must provide within 30 days; however, leave takes effect at the time of the request, not upon receipt of the certification. The Act also contains notice and record-keeping requirements, with monitoring done by the Director of the Ohio Department of Commerce and enforcement by the Ohio Attorney General. Employees could institute anti-retaliation claims if employers rely on paid sick leave as a negative factor in an employment action (hiring, promotion, or a disciplinary action). In addition, the OHFA days cannot be counted against an employee in a no-fault attendance policy.

While many are fighting the OHFA www.ohiobusinessvotes.org/Mandates08/Home.htm, other business groups who feel that the measure could be passed by voters are working toward a compromise with the governor's office. The proposed compromise includes exploring a smaller

number of paid days off, using the time off in larger increments, and including some medical certification requirement. Employers are encouraged to contact the governor's office at 614.728.7342 or policy@governor.ohio.gov. If no resolution is reached by September 5, the measure will go to the voters.

If you have any questions or concerns about the specific circumstances of your business or organization, please contact Joëlle Khouzam or your CPM attorney for an individualized review.

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