

MEMORANDUM

TO: Health and Human Services and Public Safety Committee
CC: Mayor Strimling
FROM: Anne M. Torregrossa, Associate Corporation Counsel
DATE: June 20, 2018
RE: Paid Sick Time Ordinance Information

This memo will address two of the questions raised by the HHS Committee at its May 8, 2018 meeting, and subsequently.

1. Paid Time Off

A question arose during the May Committee meeting as to whether a paid time off (“PTO”) policy would meet the requirements of the proposed ordinance. At that meeting, I advised that it would, so long as the PTO program provided at least as much leave as the ordinance, allowed the leave to be taken for the same reasons set forth in the ordinance, allowed accrued time to roll over, and met the other requirements of the ordinance.

Since that time, I have reviewed the memo from Maine Medical Center on their concerns regarding how the proposed ordinance might impact their PTO program. In an attempt to clarify the application of this ordinance to a PTO program, I have would suggest a clarification as follows:

(f) Any employer that has a paid leave policy that makes available an amount of paid leave sufficient to meet the accrual requirements of this section, and allows that paid leave to be used for the same purposes and under the same conditions as earned paid sick time under this ordinance, is not required to provide additional paid sick time. This exception applies regardless of how the paid leave is designated, including “sick leave,” “paid time off,” or otherwise. If an employer has a policy that does not distinguish between sick leave and other types of leave, the employer need not track the actual reasons for leave, so long as leave is available for the same purposes and under the same conditions as earned paid sick time under this ordinance.

As for the other concerns in MMC’s memo, including the requirement to roll over time; the exposure to other requirements in the ordinance, including tracking, burden of proof, retaliation, recordkeeping, etc.; and the application to part-time and per diem employees, whether to apply those requirements to an employer with an existing paid leave program is a policy question for the Committee.

2. Applicability to Remote Employees

The question was posed whether employees who work remotely from home in the City for entities who do not otherwise have a place of business within the City would be subject to the proposed ordinance. The proposed ordinance incorporates the definitions from Portland’s minimum wage ordinance, which only applies to an employer who “has a place of business within

the City limits.” Absent a permanent place of business physically located within the City, the paid sick leave ordinance would not apply.

3. Coverage of Per Diem Employees

The Committee wrestled with how a per diem employee would be given paid sick days. By way of background, several state and local laws exempt per diem employees from their paid sick leave laws, including Connecticut, Vermont, and New Jersey (limited to the health care field). Other states do include per diem employees, so long as they meet other minimum standards, including District of Columbia, California, Massachusetts, and Arizona.

Massachusetts provides the following guidance on implementing its paid sick leave ordinance with respect to per diem employees:

Q: When can a per diem or on-call employee use earned sick time?

Per diem or on-call employees can use earned sick time only for hours they have been scheduled to work. Being “scheduled to work” does not include shifts for which an employee has been asked to be available or on call, unless the employee is required to remain on call on the employer’s premises.