



## Health & Human Services and Public Safety Committee Minutes

Tuesday, May 8, 2018, 5:30pm, Room 2019, City Hall

Committee Attendance:

Councilors Belinda Ray, Chair (District 1), Brian Batson (District 3), Pious Ali (At-Large)

City Staff: Mayor, Ethan Strimling; Director of Health and Human Services, Dawn Stiles; Executive Assistant, Adam Harr; Director of Human Resources, Gina Tapp, Corporation Counsel, Anne Torregrossa; Director of Public Health, Dr. Kolawole Bankole

### **AGENDA ITEM 1 – Announcements and Approval of Minutes:**

Meeting was called to order at approximately 5:35 PM.

Chair Ray made a motion to approve the minutes from the 10<sup>th</sup> and April 24<sup>th</sup>, and to keep a public comment repository on the website with links on meeting agendas. Minutes were approved and the motion passed.

### **AGENDA ITEM 2 – Mandatory Paid Sick Leave Ordinance**

Council introduction: Chair Ray explained that the Maine Women's Lobby and Southern Maine Workers Center via the Mayor's office presented to the Council on November 14<sup>th</sup>. A public hearing took place on April 24, 2018.

Mayor Strimling stated discomfort that the City of Portland worked on an employer survey with the Chamber of Commerce now that the Chamber has publically come out against the ordinance as written.

City presentations on their answers to Committee questions from the November 14, 2017 meeting:

Questions answered by Corporation Counsel:

- Who is an employee?
  - State specific exemptions listed
  - Temp/per diem/ seasonal covered by current ordinance
  - Number of hours worked
  - Nature of employment (contract)
  - Characteristic of worker (students, minors, etc.)
  - Collective bargaining



Chair Ray asked about contractor/contracted employees. Contract workers are regular employees hired for a specific time-limited position. The contractor distinction is important for unemployment benefits.

Mayor Strimling asked if Visa holders are treated differently; they are not.

Chair Ray confirmed that the way it is written there is no exemption for people working under an hour threshold or seasonally, but would be limited by how much is worked to be able to accrue time.

#### Definition of Family

- Any individual related by blood or affinity
  - Narrow the text but keep coverage of chosen family
  - Not common, including not with the City
  - Some exist for with language for people “responsible for their care”
  - Federal does say for related by blood or affinity (not FMLA which is limited)

#### Job Protected Leave Requirements

- Federal and State Family Medical Leave
  - Available for health issues with continuing treatment, adoption of a child
  - Eligibility requirements for time worked
  - Type of required documentation
    - The ordinance has a narrow carve out for required documentation compared to other Job Protected Leaves.
- Victims of Domestic Violence

Mayor Strimling asked for elaboration on the requirement to supply documentation for job protected sick leave. Chair Ray and Anne clarified that in the ordinance:

- One cannot ask for documentation until 3 consecutive days have passed
- Must pay for the documentation from a healthcare provider
- The doctor's note cannot describe why, just the duration of leave needed

Mayor Strimling asked about privacy; only the HR representative in charge of processing FMLA leave sees the reason for the leave. Chair Ray asked to note which section of the ordinance it is: page 4 (C).

Councilor Batson asked if we have preempted the field; we have not so Anne cannot guarantee the proposed ordinance is litigation proof at the State level.

#### Enforcement of the Ordinance (Back of Corporation Counsel Handout)

- Successes of other Municipalities listed on the last page of the packet
  - Some had existing enforcement departments
  - One rolled 1 FTE into office of economic development

#### Failures

- A body that took complaints but could not investigate



- Cost
  - Current enforcement is in land use: there is a streamlined process of two court appearances.
    - 15-20 hours of prep
  - Seems much more complicated to enforce
  - 2-3 Staff would be needed
    - At least a half time attorney
    - One investigator
    - Admin Support
- Where does this fit?
  - New division (under executive) or new department

Chair Ray asked about code enforcement; it is a structure created by the state and none have anything to do with employer/employee relations.

Chair Ray asked how many minimum wage issues have been enforced; most are mediated over the phone.

Councilor Batson asked about back wages. 3x back wages for each day denied sick day: how are those days calculated? (when they return to work or could have returned to work) It would be difficult.

Anne has concerned collecting civil enhanced penalties for private citizens. Anne gave an example explaining that in land use penalties accrue to a municipality, not an individual. Under that model, the employer would pay the municipality a fine for each day until it came into compliance (paid/granted leave to an employee).

Mayor Strimling asked about abuse: it would be taken care of through normal disciplinary action. The City would not be involved.

Chair asked if there is a way to take the City out of the enforcement process. Could it be handled in courts? If a court decides the ordinance is legal (the private right of action), then the City would not need to take enforcement action. (with or without penalties). It is unknown if this ordinance would win a legal challenge.

The minimum wage has City enforcement but not progressive penalties. Mayor Strimling asked if it mirrored the minimum wage what it would look like. The City could enforce and fine 100 dollars a day to the City until compliance.

City manager shall enforce the ordinance but then says the City manager may investigate. This gives the City discretion.

#### Other Questions

- Per diems would be included
- Employer fiscal years can be used



- There is no grace period before using accruals
- Each company's payroll structure would track accruals
- A traditional PTO program
  - would not track sick versus other reasons for leave
  - It could and most do meet most hour requirements
  - May not work with the roll over requirement as most are "use it or lose it"
  - Notice requirements: most require 10 but the ordinance says no more than 5
  - Each PTO program is unique

Mayor Strimling asked about the cap on PTO versus rollover? Most get X number of hours in a year that must be used by the end of the year. The survey is collecting PTO policies to compare them.

- Some have grace periods to use the previous year's in the first month of the new year
- Some have years starting at 0
- Some have the year's leave immediately available at the start of a new year
- Some roll over but are capped
- Some can buy out PTO
  
- Notice requirements: planned paid sick leave cannot require more than 5 days' notice
  - Emergency notice must be given asap
  - The 5 day notice could be problematic with some programs
- Out of pocket costs:
  - It could include transportation to a doctor
- Documentation: concern about employees going to the ER and passing on large expenses to employers.
  - Other side is employers requiring employees without health insurance incurring large bills in order to produce a doctor's note.
  - Cannot require more expensive providers to produce notes.
  - Employers cannot unilaterally choose but could limit costs concerns if added to the ordinance.
  - Exclude emergency room unless for treatment.
- No blank exemptions, employers who meet minimum requirements don't have to change.
  - Would exempted employers still be auditable?
    - Could have a safe harbor clause
  - Exempted employers would be exempted from notice requirements.
  - Record retention is typically 3 years, ordinance is 6
    - Can be enforced if ordinance is legal

Councilor Ali asked about people working at home from an employer in Portland and one in Boston. Anne will check, but thinks that that it based on where work is performed. It is referred to in the minimum wage. How could it be enforced for people that work in Portland in services or delivery?

Gina Tapp presented information on the City as an employer:



- 83% are covered by unions
  - 861 are on-call
    - These individuals do not accrue sick leave and are not benefits eligible
- Any regular employee working at least 18.75 hours are benefits eligible and accrue sick leave.
- Elected official compensation is not influenced by absence due to illness
- Sick leave policy is attached
  - 12 days a year is accrued (prorated to FTE)
  - Used for self and to care for immediate family
  - 6 days used annually on average
  - Some departments require a doctor's note if an employee uses more than the average amount used.
- Impact: the 861 would be where the ordinance impacts the City
  - Per Diems could use a sick day when called into work if they had the accrued time.
  - How many work 240 hours in the course of a year?
  - Councilor Ali asked if on-call staff currently have the benefit; they do not but many get the look back benefit to qualify for health insurance under the ACA.
  - Councilor Batson asked if the sick leave is for scheduled employees to call out.
    - A per diem would need to be scheduled and call out
    - A per diem would not be asked to work and say they are sick and want to use sick time.
    - It must be clarified.
- Any employer that did not have an accrual system would need to implement one
- Attached USDOL Chart: Federal Vs State Medical Leave
- Documentation is asked for adding people to the employee's health plan (children, domestic partners)
- The City's benefits system is not representative and most employers will have unique systems.
- The probationary period is not tied to benefits.
- It is important for sick employees to stay home which is easier to do with large organizations
- Tipped Employees?
  - Tipped average? Per DOL, No
  - Per DOL, Would be the minimum wage
  - Need to be clarified in ordinance (minimum wage or expected wage)
- Doctor's notes currently not paid for by the City
- How to verify employee abuses
- Non-retaliation provision is tricky
  - No retaliation
  - Documentation requirement is limited

**AGENDA ITEM 3 – Next Steps**

Chair Ray thanked Gina and Anne and went over items to address further:

- Enforcement and cost: how many minimum wage issues have been enforced
- PTO
- Would employers outside of Portland with people who work in Portland but have no place of business in Portland adhere to the ordinance?
- Clarify On-Call/Per-Diem sick leave (Must be scheduled and call out to use it?)
- Of City Employees, how many work 240 hours in the course of a year?
- Tipped workers need to be clarified in ordinance (minimum wage or expected wage)
- How to verify employee abuses (currently could still not require a doctor's note until three consecutive absences)

**AGENDA ITEM 4 – Next Meeting May 22**

- Finance will present on financial aspects and business survey results and the City's role in it.

The committee thanked the speakers and the public in attendance.

Meeting adjourned at approximately 7:32 pm