

The Workplace Partnership Group conducted a listening session on Wednesday, January 13, 2016, to engage employees and employers within the nonprofit/social services sector. The session was conducted at St. Mary's University, Room 105, Br. Louis Hall, 2304 Park Avenue, beginning at 3:30 p.m. Representatives of both employees and employers within the nonprofit/social services sector were invited to participate in a moderated forum to provide their perspectives in response to a prearranged set of questions related to policy issues concerned with earned sick time and paid time-off (PTO). The following is a summary of feedback from participants in this listening session.

[The following questions established the broad framework within which participants were invited to provide feedback.]

- How broadly or narrowly should the City of Minneapolis consider coverage to effectively address the public health and equity concerns associated with policies related to earned sick time and paid time-off?
- How should paid sick time and/or paid time-off be used? What are your experiences in offering this kind of coverage, or in using paid sick time?
- How should paid sick time and/or paid time-off be earned? Should it vary by hours worked, business sector, revenue, number of employees? Should it be capped?
- What, if any, measures should be considered to ensure workers are not penalized for using paid sick time, and to ensure that employers are not subject to undue hardship or abuse of such policies?

Participants generally agreed all workers needed, and deserved, access to paid sick time coverage in order to address personal health care needs and to address similar needs for their family members. Some participants noted those workers often most in need of having access to paid sick time were those who did not have it, and, as a consequence, they were most vulnerable to the hardships associated with being forced to choose between their health and the health and welfare of their families and the economic need to earn a living. Many participants noted how, being in the nonprofit and social services sector, they were very familiar with the larger impacts resulting for workers who lacked access to paid sick time.

As employers, nonprofits and social services agencies, in line with their service missions, often offer generous benefits packages to workers, including paid sick time and/or PTO as well as short-term and long-term disability, to offset lower salaries and pay structures often associated with jobs in this sector. For example, some participants noted their agencies provided PTO to both full-time and part-time workers; one participant indicated their agency provided 4-6 weeks of PTO for any employee working more than 20 hours per week on a pro-rated basis, effective the first year of employment, which could be carried over from year to year in an amount of up to 200 earned PTO hours. Others noted their agencies provided separate sick and vacation accruals which increased based on tenure or seniority. From the employer perspective, most agreed their approach was to be flexible and to attempt to accommodate to the needs of their employees, recognizing the mutual benefit for the agency and the worker when the needs of both sides were met.

Several participants noted that the distinction between paid sick time and PTO was difficult, since the majority had adopted a consolidated approach to paid leaves, giving preference to a single PTO policy rather than accruing separate amounts for vacation versus sick leaves (and other types of leaves as well). Some indicated that they believed the concept of "sick time," as it is generally understood, was an antiquated idea, and they expressed strong support for a more universal approach to a PTO policy that gave maximum flexibility to the employee to use, at their discretion, for whatever needs they had, including sick time, family care, vacation, etc.

One participant noted their agency provided vacation accruals at 4 hours per 40 hours worked, with the additional benefit of offering employees a 4-day workweek.

One participant said that in addition to a general PTO policy, their agency offered an extended illness bank for all workers, which grew up to 80 hours total, which could be accessed by employees. To access those additional hours, an employee was required to provide a doctor's note (including authorization to return to work after an extended illness). These programs were not payable at termination, but helped to fill the gap between a self-funded short-term disability program and the employee's individual leave accruals. Others who offered a similar "sick bank" for their employees indicated that their policies allowed workers to donate earned hours to other employees in need. This necessitated some documentation, on part with the recordkeeping requirements under FMLA, but provided an additional safety net for workers.

With respect to potential abuse, those participants representing the employer perspective said they generally approached leave issues as a matter of trust with their employees. If it was abused, the response was not to tighten the policies—and thus affect other workers—but to address any potential abuse through regular supervisory channels with the individual employee.

Many participants shared the concern that sick workers could potentially infect other workers or clients served by the agency; this, then, was cause for ensuring adequate leave policies were in place. However, several pointed to constraints imposed by federal and state regulations that created additional challenges. For example, many social service agencies were not allowed to have unfilled shifts; consequently, when an employee was sick and couldn't work, a substitute to fill that employee's position for the shift was required. That resulted in the agency paying out the absent worker as well as the substitute; these kinds of double-impact situations presented financial and operational hardships on agencies that already face significant financial challenges, being in the nonprofit and social services sector, particularly those which are service-providers engaging vulnerable and at-risk populations. This was identified as a unique aspect of the social services sector, subject to strict federal and state regulations and service mandates.

Concern about the operational impact of a possible city mandate on sick time or PTO was expressed by most participants, who questioned if any exemptions might be offered to particular industries, based on unique situations. Staff clarified that the purpose of the listening sessions was to gather information and feedback from various community groups and economic sectors in order to make informed recommendations to the Mayor and City Council. In response, it was stated that the Minnesota Council of Nonprofits had adopted a position opposing broad-based exemptions to such policies within the nonprofit sector because it was believed that such exceptions weakened the overall position of nonprofit organizations.

Within educational institutions, it was noted that at least two subsets of workers presented unique challenges in terms of uniform leave policies; this included student workers and adjunct faculty members. Historically, these workers were not provided comparable benefits, and careful consideration about the impact of a universal policy mandate on similar types of workers—primarily those of a seasonal, on-call, and/or temporary nature—was required. Another category of workers identified as potentially creating challenges for a universal policy were grant-funded or project-specific positions.

In response to a question about how employers could ensure that workers did not face retaliation for taking paid sick time (or PTO), one participant noted several federal and state laws helped to assure workers' rights with respect to earned leave were protected; this included, for example, rules and regulations under the Fair Labor Standards Act; provisions of the Family Medical Leave Act; as well as requirements under Minnesota's newly-enacted Women's Economic Security Act (WESA), which was more commonly referred to as "safe time." However, it was noted that not all of these laws and regulations applied to all businesses or organizations, and that many provided exemptions for certain types or categories of businesses or organizations, often based on numbers of employees. This only further underscored concerns among those participating in this listening session about the potential impact that a local sick leave mandate might have on

the complex, interrelated regulations already in place—both for employers and for employees, and in balancing those concerns with the operational needs of organizations.

In further conversation, most nonprofit and social services agencies expressed significant concern about the impact of a universal sick leave policy on the practical use of on-call workers, which constituted a significant percentage of the workforce in this particular sector. Again, these on-call status workers were difficult to define within the general parameters because they often worked less than 20 hours per week (sometimes per month), moved frequently among multiple work locations, and in some instances were and in other situations were not eligible to receive such benefits under current policies and practices. If on-call workers were also covered by a universal policy, it could create undue hardships on organizations, and there was concern about how to adapt without significant impact on core missions. Again, because finances are more constrained by the nature of the sector, as compared to private enterprise, increased operational costs could not be passed along to clients of nonprofit and social services agencies. So, the very real concern about operational impact was due to the further financing and budget constraints that could result, unless some accommodation or exemption were provided.

To this point, it was noted that proposals currently pending at the federal level related to FLSA were already concerning to this particular sector. Under these proposals, some definitions might be changes, such that eligibility for overtime would be affected (e.g., those with a base salary of \$50,400 or less would qualify for overtime). That presents a potentially significant impact to nonprofit organizations and social service agencies, likely to be implemented in one year, if enacted. Further policy mandates at the local level addressing a uniform sick leave requirement could create additional challenges. Nevertheless, most participants expressed general support for the underlying principles of the initiative to provide better work conditions for employees, including paid sick leave and/or PTO. All those attending expressed a commitment to creating the best work places possible, both for employees and for employers, noting that all workers—regardless of position, duties, tenure, and other factors—deserved to have the security required to take care of themselves and their families. Still, some pointed to the differences in the nonprofit and social services sector, where true costs of business and true revenues were very different, in comparison to the private sector. In the social services sector, every dollar that doesn't go to the core mission of the agency pulls resources from the ability to deliver on their missions. And, as already stated, those impacts cannot be easily transferred to clients. Participants also emphasized the need for administrative simplicity in managing any such policy. So, for example, the threshold under FMLA is 50 employees; thus, the city might consider aligning with that provision to make the administration of a universal sick policy in Minneapolis easier to administer.

In closing the dialogue, some participants expressed concern about whether the City of Minneapolis would achieve its intended goals or policy outcomes if a universal policy mandate on sick time were implemented. Concern about the extent of coverage was repeated: would this apply to all workers in Minneapolis, or only those who were residents of the city working in the city? Also, concern was expressed about enforcement measures and the associated challenges of monitoring, auditing, and documentation, and the potential expansion of municipal bureaucracy to handle that scope of work. In response, it was pointed out that approximately 75 percent of workers in Minneapolis lived outside the city, in other communities, and about 55 percent of city residents worked outside of Minneapolis. Of the city's residents, only about 40 percent actually worked in the city; that was roughly 75,000 residents who also worked inside the city. To that point, some questioned if it was worth the potential political, business, and economic risk to pursue a uniform policy on sick leave that might only apply to approximately 75,000 residents (of a city with more than 400,000 residents). Some participants responded that, while understanding these concerns, the economic and equity gaps in Minneapolis were significant and, in the end, "somebody has to start."