

Listening Session: Hospitality & Service Industry

The Workplace Partnership Group conducted a listening session on Sunday, January 17, 2016, to engage employees and employers in the hospitality and service industry. The session was conducted at the Astor Café, River Room, 125 SE Main St, beginning at 7 p.m. A select number of panelists representing both employees and employers were invited to provide their perspectives in response to a pre-arranged 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 those panelists, as well as general commentary from those members of the community in attendance for this listening session.

PANEL FEEDBACK

[The following questions helped to frame the dialogue with panelists.]

Question #1. How broadly or narrowly should the City of Minneapolis consider coverage related to earned sick time and paid time off to effectively address public health and equity concerns?

Most employer representatives expressed concerns and even reservations with a city policy mandating earned sick time or equivalent paid time-off (PTO), indicating that it was difficult if not impossible to develop a single, uniform policy that could easily apply to all situations. The result would create not only significant administrative burdens with respect to implementation and compliance, but potentially force many businesses—especially small-sized businesses—to close their doors. While all employer panelists expressed general support for the concept, they warned that “the devil is in the details,” and that the unintended consequences of an overly restrictive policy could be detrimental to the local economy. Many indicated they were still recovering from the impacts of the increased minimum wage mandated by the State of Minnesota; the additional operational impacts of a mandated sick time policy from the city was seen as the potential “hair that breaks the camel’s back.” Employers wondered how this policy would be supported financially.

One employer representative quantified the business impact: in a one-year period since the State of Minnesota’s increase to minimum wage, his business (with 25 employees) had experienced increased operational costs of more than 24% with an 11% impact just in labor expenditures. While he expressed support for the policy intent, he stated that the true business impact was a factor that had to be considered, separate and apart from the public health and employee wellness issues that had been identified. He said he treated his employees well; in fact, he was proud to claim a high retention of workers, with more than half remaining with his company for more than 2 years. While it was possible costs could be passed along in prices to consumers, this was not an easy solution and not an easy choice for many businesses to make. In the end, there are good employers and good employees and there are bad employers and bad employees. A one-size-fits-all policy approach didn’t make this distinction and potentially punished good business owners to address what might be a small number of bad actors within the overall business community.

One employer representative from the hotel/hospitality industry noted that, having consulted other general manager colleagues, he could report all hotels located in downtown Minneapolis provided workers with sick time (or PTO) as a necessary benefit. Employees in these establishments earn 2 weeks of vacation plus 3 days of PTO, with increasing accruals based on tenure in the position; after 10 years on the job, accrual increased to more than a month earned in PTO. These benefits policies were viewed as helping to recruit and attract good workers, serving as a way to distinguish an employer from others in the larger marketplace. One reason that a consolidated PTO policy was preferred is that it was easier to administer and provided maximum flexibility to employees to take and use accrued hours at their discretion, whether for sick time, vacation,

family care, general health and wellness, or other needs. Some employer representatives pointed out that the majority of workers in Minneapolis are covered by some form of paid sick time or PTO; thus, the reality was that the city was looking to enact a policy to protect a minority of workers, since most had access to these types of leaves. Accordingly, they suggested that the city should focus its efforts on tailoring policies to target those businesses or sectors specifically, rather than craft an overly broad and, in their opinions, unnecessary policy mandate. Assuming there could be exemptions for businesses already offering paid sick time or PTO, or some equivalency, then there was less concern with actions that might be pursued by the City of Minneapolis. Some cautioned that an overly broad approach could result in the dislocation of existing jobs, the closing of businesses, or the relocation of businesses to more business-friendly environments outside of Minneapolis.

In the hotel industry, workers are required to call-in sick if they are going to miss their scheduled shift. Call-ins were supposed to be made at least 2 hours in advance of the scheduled shift. If the worker elected to use PTO hours, then no additional documentation was required. Documentation was only required for claimed sick hours in order to verify illness and to allow a return-to-work provision. Generally, a doctor's note was only required if an employee missed 3 or more days of work.

One business owner expressly stated that she was in the process of exploring opportunities to open another storefront in Minneapolis, expanding her presence as a restaurant owner. However, given the uncertain economic environment created, in part, by this policy proposal, she said she was already considering options outside of Minneapolis. She warned that businesses will not open, stay in business, expand, or relocate to Minneapolis when it appeared the city was not providing a business-friendly environment. The question of benefits needed to be tailored by the employers as a competitive, market-driven tool to attract and retain the best workforce possible.

Others noted that it would be difficult to apply a uniform policy in Minneapolis, given the dynamic context created by the surrounding metropolitan area. Other areas where similar policies have been enacted might not have this close proximity; thus, consideration needed to be given to the real economic competition that could result from imposing a mandate on businesses in Minneapolis, when those same conditions did not affect nearby business locations. It made Minneapolis a less-favorable location or destination for businesses.

As to the application of a uniform policy, most panelists—both those representing employers and those representing employees—concurred that it should affect businesses and employees inside the city limits. There was a question as to whether the City of Minneapolis could enforce such provisions on businesses located outside its boundaries. Still, to the extent such a policy was pursued, panelists said the simpler the policy could be crafted, the better the results would be. Thus, employees working in the city should qualify to receive the benefit of earned sick time or equivalent PTO, depending on the number of hours actually worked. Most agreed that the policy should not be limited or restricted in any way to employees who are also residents of Minneapolis; residency status should not be a factor.

The discussion was opened to audience members in attendance, with the following comments being offered in response to this first question/issue:

- “From a logistical viewpoint, we encourage employees not to work if they’re sick. We cover their shift if they’re sick. But if we are now required to pay sick time or PTO for all those employees that would potentially be difficult. The work has to be done, so I’m looking at paying PTO up to one hour for every 30 hours worked; for me, that’s a lot of double-time over the course of a year. If all my employees are making \$17 per hour, and if they’re not working them, then I’m looking at a potentially huge financial impact to my bottom line. I generally support the intent of this policy; I agree that employees deserve—and need—good workplace conditions. But there’s a delicate balance for restaurants, in particular. It’s not an easy business. If I’m sick as an employee, the show must go on and somebody else will have to cover my shift, and generally I’ll pay it back sometime in the future. As the employer, I help facilitate that. But that’s the way it works. I have 42 employees; if each of them has 9 accrued sick days per year, they’d

be stupid not to use them. And then I'd be in trouble, having to cover the double-time to cover all those shifts. So I feel concerned about the logistical point of view of paying double-time. From an accounting and human resources point of view, many small business owners are, actually, serving as the entire back office function, including accounting, payroll, personnel; and so this policy adds a huge additional burden of work for us. It's another cost. And we don't know how we'll pay for it."

- "I'm an employee, and I'm here on behalf of people that I love. I have a question to pose to the committee that I haven't seen come up on social media or other venues, so I want to ask it here. It's that I'm a child of the baby boomer generation. I come from a very large family that's getting progressively smaller over time. And I'm not unique in that regard. There are no more people to require paid time away in order to secure their job, but they need that time because of family care needs. As an employer, I understand you can't control what happens in my family and in my situation, but there is a point when enough is enough from the employer standpoint. When an employee checks out mentally, it's something every business owner has to deal with as they grapple with family care issues and harsh work conditions. Employees will be absent or absent-minded from work. So, how much qualifies as 'sick days' or an excuse not to be at work? I'm just glossing over the kinds of personal needs off from work that folks have, but there are legitimate family care issues, and how an employer must deal with an employee in that regard. Thank you."
- "I think any regulations of this kind need to take into consideration those businesses that are actually based in Minneapolis, or work that's done in Minneapolis for those businesses that are based outside the city. With sales tax, you already pay the sales tax based on where you're making the point-of-sale. So, I think this would be similar. In this particular case, you have to—if the policy is enacted—cover everybody doing work within the city limits. You have the threat of businesses not wanting to locate their operations in the city because of a policy prohibition. If you're doing work here, you have to cover those employees or you risk possibly having employers not choosing Minneapolis as a place to do business."
- "We have very generous benefits, I think, for our employees. I prefer to think in terms of 'wellness,' rather than purely sick time or sick leave. That seems to me to be a step backwards; we've moved away from calling it sick time. I want to encourage the city to think minimally. Focus on establishing guidelines that highlight the many good businesses in the city; I think that would be preferable. For those companies that don't think about treating their employees, well, that's going to cost them. It's about team work, and having a good working environment. Sometimes, you know, we have to send workers home because they come into work when they're sick anyway."
- "I just want to say something about people coming to work when they're sick. I clean rooms. The issue there is that many people don't know how to use their sick time in the hospitality industry. Many don't speak English, and they don't understand their benefits for sick time. They don't want to lose hours or, worse, be threatened within the possibility of losing the job, so they come to work when they're sick. Especially because of language barriers, in particular industries or jobs, those that are usually entry-level, the city needs to do a better job of educating workers about their access to sick time benefits; what it is, how to use it, when they can use it. I think implementation will be a really important point if the city does move forward with a uniform policy. Our workers need sick time."

Question #2. How should earned sick time/paid time off be used? What are your experiences in offering or using paid sick time/PTO?

[NOTE: Answers to this question were incorporated into the discussion on Question #3; see below for details.]

Question #3. How should paid sick time/PTO be earned? Should it vary by hours worked, business sector, revenue, number of employees? Should it be capped?

Panelists identified a number of ways in which sick time and/or PTO were accrued; however, most employer representatives stated that they did provide some form of this benefit to their workers. The question was whether the benefit currently provided was sufficient, particularly from the employee perspective.

One employee representative of front-line service workers (janitors, office cleaners, etc.) stated that the nature of the work was particularly draining on employees, who worked long, hard hours and could get physically exhausted and were, as a consequence, potentially more vulnerable to the need for earned sick time. Currently, contracts required only 3 paid sick days per year, regardless of length of service. That was perceived as being inadequate, because illnesses often exceeded that 3-day limit and, in any case, often were insufficient to the needs of workers across an entire 12-month period. This shortage in paid sick time hours was further exasperated when workers had dependent family members—especially children—to care for but lacked sufficient hours. Another employee representative said the company provided 6 days of paid leave with an additional 3 unexcused days. However, if an employee actually used more than 6 days, he or she could be written up, disciplined, and even terminated, notwithstanding a true sickness or medical issue for themselves or dependent family members. As an example, one worker with an asthmatic daughter had to use more than her allotted 6 days of leave. Originally, her supervisor was understanding and worked to ensure she could have the time needed to care for her child. In total, the worker needed 10 days off from work to care for her daughter. However, as a result of taking more days than allowed under the policy, this worker has been warned that she is ineligible for any additional time away from work. Thus, she now faces the real challenge of deciding whether to keep her job or to take care of her daughter who has a documented medical condition. It was stated that this burden on workers is especially prevalent in jobs dominated by immigrants or those who do not speak English, where such treatment and uneven enforcement of policies tends to be magnified. This connection to equity and disparity goals articulated by the City of Minneapolis is one reason so many low-wage, entry-level workers are eager to see some movement on a universal policy mandate. It is seen as an important means of achieving equity for those whose access is diminished to basic working conditions that respect people. Not only is there a public health aspect to such policies, but also human dignity and human rights elements, too.

Some reiterated caution against any uniform, universal policy proposal, noting that there are many differences between large corporations and their potential capacity for absorbing the costs of this mandate compared to small businesses, micro-businesses, etc. The business sector was a critical factor to consider, since a solution in one industry or sector could magnify challenges in another industry or sector. Assuming all businesses were alike was as foolish as considering all employees were alike; there are major differences, and the city should give careful consideration to its true policy objectives. Many recommended that the city pursue a policy as a means of establishing a minimum set of workplace expectations, rather than mandating certain prescribed conditions. Many agreed that a broad PTO policy would be more acceptable, since it provided greater flexibility in how to administer the use of leave time and gave employees the discretion to determine how to use their accrued leave time.

A representative of the hotel industry said PTO was accrued by the hour for all employees beginning on the first day of employment, but that use of the benefit was not allowed for an initial 90-day period. This initial 90-day “vesting period” was used to determine if an employee was compatible with the business and was a likely long-term investment for the company. After the initial vesting period was passed, the employee was able to begin accessing and using accrued PTO hours. The amount of time used was based on the value the employee gets from the job, and should have a correlation to that value; that is, if an employee accrues PTO, it should be based on the number of hours actually worked, regardless of full-time or part-time status or other employment conditions. This had the practical impact of ensuring that full-time workers accrued leave hours faster than part-time workers (or seasonal and temporary workers).

For simplicity, it was suggested that 1 hour of PTO should be accrued for every 40 hours worked, regardless of whether an employee held a full-time or part-time status. Employer representatives found this simple, streamlined approach a better option than some varying methodology.

Some employer representatives urged that accruals be capped at some set amount; otherwise, employees could potentially bank a virtually unlimited number of hours that could present an undue or even impossible financial burden on the business when that employee desired to “cash out” his or her accruals. Some also

advocated for exemptions for true seasonal and temporary work positions, including young workers who used part-time or less hours as a first job during high school and college. This was especially seen as a potentially significant detriment to small businesses that utilized such workers (e.g., restaurants).

One business representative stated that, usually within 6 months on-the-job, you could tell if an employee was going to work out or not. Therefore, the proposal of including an initial “vesting period” before accrued sick or PTO hours could be accessed was a good idea. In the event an employee left before that vesting period was reached, the employer would not be liable for providing those hours (even as a payout). The benefits could accrue from the first day of employment, but access be deferred until an employee was considered valuable to the business, which should be apparent within that initial vesting period. One employer noted that matched the way benefits were administered in her business; the accrual started on the first day but was not accessible for 9 months and was capped. In the first 18 months on the job, the cap was 40 hours.

Many reiterated the preference for a more universal PTO policy as opposed to a specific earned sick time policy, because of the ease to administer, which lessened the requirements on businesses for managing paid sick time policies. Some stated that if the city was going to insert itself into mandatory sick time policies, then the next step was for the city to dictate mandatory vacation policies, too. So, sticking to a universal PTO policy was a better approach and actually aligned with current practice in most industries. Some described PTO policies as corresponding with the increasing trend across many industries to focus on preventative healthcare, overall wellness, and putting choices in the hands of employees—not businesses.

The discussion was opened to audience members in attendance, with the following comments being offered in response to this third question/issue:

- “I twisted my ankle at work, and I had to be off work for, like, 3 weeks. And I used my sick time knowing that my job was protected for me when I was able to get well and was ready to return to work. But I know that not all workers are in the same position, and not all workers have the same protections. I think we have to think about how we make sure that workers aren’t put in the position of having PTO but not using it because of potential retaliation.”
- “I think it makes sense to tie any hours earned to the number of hours worked. That’s a sensible approach, and I think could be applied to most business models. However, I don’t think it’s possible to devise a one-size-fits-all policy; I’ll never be convinced of that. There are too many differences, even as some have described it here, between a cleaning crew at a restaurant, at a hotel, or a law firm. It’s too complicated, and there are too many moving parts. Not all businesses face the same challenges. What works in one industry doesn’t necessarily work for another.”
- “I’d like to suggest that the city think about a phased-in approach, so that we could sort of test and see how it goes on a smaller scale first, before we impose a uniform mandate across all industries, where it might not work well. With the different kinds of work being done, and the unknown impact on operations, we want to be sure that the policy isn’t overly complicated, and I certainly don’t favor a one-size-fits-all policy. That seems like a non-starter here.”
- “In our old contract we had vacation and sick time and we had PTO. In the new contract, it’s just PTO. That’s made a huge difference, because in the past people felt the needed to work while they were sick in order to save up their sick time so that they could care for their children. But with PTO, workers just take the time they need when they need it, for whatever purpose. The flexibility is better, I think. It’s true, you do accrue time more slowly, especially if you only work part-time hours. I’ve been there 15 years now, so I accrue faster than someone who has just started. But, with the new PTO policy, I haven’t seen any abuse by employees.”

Question #4. What, if any, measures should be considered to ensure workers are not penalized for using paid sick time/PTO? What, if any, measures should

be considered to ensure employers are not subject to undue hardship from abuses of such policies?

Panelists representing both employers and employees agreed unanimously that retaliation against employees using accrued sick or PTO hours was something that the city should examine and, if possible, work to prevent. All agreed a good working environment characterized by collaboration and cooperation was in the mutual best interests of business owners and workers. Employer representatives reiterated the need to make some decisions about benefits packages as a means of being competitive in the marketplace and having the ability to attract, retain, and reward the best workers for their businesses.

One panelist spoke to the extra burdens on small business start-ups and micro-businesses, and indicated that these particular cases deserved special consideration by the city before imposing an unreasonable policy mandate. It was noted that for small businesses (and micro-businesses) it often took an investment of 4 or 5 years, sometimes more, before becoming profitable; during that period, the owner is investing their capital to keep the business open, to keep their employees paid, and to make ends meet. In those years without a profit, the business owner must often invest or reinvest more of their own funds to keep the business afloat. That deserved recognition by the city, not punishment in the form of additional administrative burdens.

The discussion was opened to audience members in attendance, with the following comments being offered in response to this final question/issue:

- “I’m here on behalf of the Main Street Alliance. We encourage the city to keep the language of any policy proposal simple and not to overcomplicate things by looking at full-time or part-time or industries or other factors. There are ordinances from across the country that have worked, and that we can look to for best practices. That’s what we’re advocating, as a collection of more than 45 businesses that support a universal standard for earned sick time. We think a universal standard is best.”
- “I appreciate hearing from experienced business owners here tonight. I’m new to the restaurant business, and as a small-business owner I am learning from those who have experience, and I agree that it’s better for the city to get involved in a more generalized PTO policy rather than sick versus vacation time accruals or other forms of paid leave. That feels gross to me.”
- “As a business owner, in terms of the waiting period or “vesting period” that was mentioned for new employees, I do like that idea. I think it depends on the employee, but it takes some time before you know if an employee is going to make a contribution to the business. That might be up to 90 days, as stated here, I don’t know the exact time required. But the concept of an initial testing period, when benefits could accrue but not be used, I think has merit. So, as an employer, I’d like to encourage you to give that some thought. There are lots of temporary employees who don’t work out, and I understand they need community support, but the burden shouldn’t fall to the business.”
- “This is a question for committee: is the committee thinking about paid sick days with reported wages or base wages, and has that been part of the dialogue? That’s an important discussion topic for restaurants and our front-of-house workers. Federally, you have to report wages, but Minnesota doesn’t count that. Unemployment counts it. It’s illogically counted, you see. But I think that’s an issue for the Workplace Partnership Group to consider, in terms of how paid sick days would be accrued, whether it’s based on accrued time and how that time is determined.”
- “As a business owner, I don’t know where the money comes from to pay for this. I appreciate there is a human impact in this, but as was pointed out, most workers in Minneapolis do have access to some kind of time off benefit; so, what is the goal in this proposal? The increase in labor costs has had a huge impact on my business. As was said already, the State increased the minimum wage last year, and we’re still recovering from that. Now the city wants to get involved and raise my costs, too. I’m not against the idea, as a concept, and support giving workers access to good working conditions. But, somebody said earlier they haven’t seen any abuses by workers to this policy. I see it abused all the time. You’d be surprised. So, where is the money going to come from? I don’t know where it comes from; I’m sure it’s not coming from the city.”

- “First of all, there are lots of voices, and lives, that we’re talking about with this policy, people who are affected by it, and who aren’t here. They can’t come for whatever reason: they’re sick, or they’re with their families, or they’re working. Many of them are still working tonight. So, I think it’s important to point out who we’re talking about that will be affected by this. We have some of the worst racial disparities in the country here in Minneapolis, and we have to look at that. Yes, I understand that it’s important that businesses can make money here. I support that; we all do. But businesses also play a role in our society in general, and we need to uplift everybody. We should be thinking about lives as well as dollars, the lives of those who work to make your businesses successful. I’ve been working with Minnesota Neighborhoods Organizing for Change (MNNOC), and I’ve talked to about 80 folks in the service industry and they all really want this policy. They really, really want it. They need it. I don’t know how it would be paid for. Does anyone here know that? How will this be paid for? I think there are different mechanisms that could be looked at for that. But, what I really want to say is that workers want this. We really need this, and you’re talking about our livelihood here.”
- “The issue is raised about workers potentially abusing time off policies. I think that by having an initial vesting period, as was discussed, of maybe up to 6 months, that folks who usually abuse those kinds of benefits, that usually comes out. So, if we allow employees to accrue the benefit but not take it for a designated period of time. I think that could be a good compromise.”
- “Restaurants usually run on an 8 to 10 percent profit margin; that’s just reality. If this policy goes into effect without real thought given to the associated costs, where the money comes from, this one-size-fits-all idea, then the reality is that more restaurants and businesses in Minneapolis will close or go somewhere else.”
- “As a business owner, I’ve been forced to raise prices to cover increases costs and there is almost always a reduction in the number of customers. That’s always the case. We’re serving less people today at higher prices than we did just 10 years ago. Small businesses are very unique kinds of business, and small businesses depend on their customers and their employees. All small business people do what they can to take care of their employees. A lot of it is based on finances, and what the business can afford. That’s reality. Small business owners are not wealthy; very often, they’re lucky if they take home what their highest-paid employees make. That’s the truth. The problem with the city mandating a policy like this to give benefits to employees, no matter how their business condition is and regardless of other factors, is that it assumes all operational models are the same. Sure, it works for big corporations and even for governments; that’s just fine. Governments, especially, using other people’s money from taxes, that’s easy to do. But small businesses have to earn every penny that comes in the door and have to manage that carefully. To have the city mandating another policy—it’s challenging, and I encourage the city to really think carefully before instituting a mandated policy with a one-size-fits-all approach.”
- “I want to say I agree with lots of business owners here tonight: this is something that has to be sectored if it’s going to work. I have only 25 employees, and we care for them, too, just like other business owners have expressed. They’re like family. I make sure my employees can make-up their shifts and take care of them and retain them. Maybe we should set the policy by the number of employees in the business. I cannot afford this; someone has to pay for the benefit. Maybe it can be passed to the customer. But we have to be careful how this is done. I’m in the process of looking for another spot to open another restaurant now and I’m afraid to look in Minneapolis. The business environment here is just too uncertain now.”
- “We need paid sick days. It is a benefit for the workers. Thank you.”